

necessary to craft legislation that is required to make compromises and no one argues against that practice.

But there are certain situations where there are fundamental principles involved. And where fundamental principles are involved, we need to be very, very careful about justifying opposition to principles on the basis of compromise. In other words, Mr. President, there are some things that ought not to be compromised. One of them is the United States Constitution.

When the Supreme Court says that a practice is unconstitutional, we ought to be very, very careful how we override that decision. We ought to do it in the narrowest possible way. That is what my amendment does. It says, until the bonds are repaid, we will grant these municipalities a monopoly power that nobody else can get, that the United States Supreme Court says is unconstitutional but, recognizing that investment decisions were made based upon the previous existing law, we will acknowledge that that exemption should last at least until the bonds are paid off. But my amendment says, at that point, no further. We do not need to go any further. No one else needs protection here.

All we are doing at that point is creating a monopoly protection which creates higher prices and prevents the free market from operating. Now it may be true that standing on that principle will cause a bill to unravel; that if my amendment were to pass, there is insufficient support then for the legislation to get it passed. My response to that is that we do much better politically in this body when we do what is right and that, if we will stick to principles, in the end we will get the kind of legislation that is necessary; that we make mistakes when we compromise principle for the sake of getting something through rather than for the sake of doing what is right.

This is a constitutional issue. I would perhaps suggest an analogy here.

Mr. President, what if a municipality had passed an ordinance declaring that certain speech could no longer be engaged in in the community, and everyone rose up in arms and said, "Why that is unconstitutional"? A lawsuit was brought and the Supreme Court says, "That is correct. You cannot impede free speech. Municipality, your actions are unconstitutional." And the municipality said, "But we have a real need to impede free speech in this particular area."

Do you not think that the U.S. Senate would be very, very careful about granting an exemption from the Constitution, in effect, here; would be very, very careful? Obviously, we could not constitutionally do that, but we would want to be as limited as possible in crafting legislation that would meet the constitutional standards the Court laid down.

That is what we should be doing in this case, because the Court has already spoken. The Court has said that

States that have this flow control do so in violation of the U.S. Constitution.

So, in trying to figure out a way around that, we ought to be as careful and as limited as possible, not as expansive as we can think of. And that is why my amendment, I submit, is the only constitutional, commonsense course of action that the Senate can take to protect those situations where there has been an investment made until the investment is paid off. But, after that, no more monopoly.

And if that should cause the compromise to break apart, then it would be necessary, as the Senator from New Hampshire said, to go back to the drawing board and redo it. And I think that would be a good thing. But my hope would be, Mr. President, that it would not cause the compromise to fall apart; that we would all recognize that a limited exemption is all right to pass, we should pass it, but that we should not do more than that simply because some Senators might want to, in effect, overreach beyond what is really necessary or appropriate given the Supreme Court's decision.

So with all due respect to my friend and colleague from New Hampshire, who really helped to make the argument in principle to what I am saying but found it necessary to object nonetheless because of the position he finds himself in, I suggest the best way to a deal with this issue is to adopt my amendment, provide full protection for all those who need protection, but to limit the exemption to that point.

Mr. President, we are going to be voting on the Kyl amendment at 2:30 and, unless our colleagues, who have not been here on the floor, are watching from wherever they may be, it is going to be very confusing what this is all about, because this was not part of the committee action. I just urge my colleagues to consider this, to ask questions about this, come to the floor to engage me in a colloquy if that is their desire. I would be happy to answer any questions I can.

No one—no one—has made the case why we should extend to the useful life of a project a special exemption after the bonds have already been paid off; how it is that an operator cannot simply add something to the plant and say they have extended the useful life, thereby going to the full 30-year limit of this legislation. No one has made the case of why that should be the law. And until that case is made, if it can be made, we should not accept that proposition in dealing with something as sacred as a constitutional principle here.

Mr. President, I will ask my colleagues, again, to support the Kyl amendment when we vote on it at 2:30.

At this time, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

Mr. DEWINE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DEWINE. Mr. President, Mr. President, I ask unanimous consent to proceed as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIGGERLOCK

Mr. DEWINE. Mr. President, yesterday I came to the floor to begin a discussion about the crime bill that within the next several days I will be introducing. I would like today to continue to talk about other provisions of that crime bill.

As I indicated yesterday, I believe that there are really two truly fundamental issues that we always need to address when we are looking at the validity or the merits of any particular crime bill. First, what is the proper role of the Federal Government in fighting crime in this country? Second, despite all the rhetoric, what really works in law enforcement; what matters and what does not matter?

It has been my experience, Mr. President, as someone who does not pretend to be an expert in this area but someone who has spent the better part of 20 years in different capacities dealing with this, beginning in the early 1970's as a county prosecuting attorney, it has been my experience that many times the rhetoric does not square very closely with the reality, and that really, if we are serious about dealing with crime, the people that we ought to talk to are the men and women who are on the front lines every single day—the police officers, the tens of thousands of police officers around this country who really are the experts and who know what works and what does not work.

The bill that I will introduce is based upon my own experience, but it is also based on hundreds and hundreds of discussions that I have had over the years with the people who, literally, are on the front line.

Yesterday, I discussed these issues with specific reference to crime-fighting technology. The conclusion I have reached is that we have an outstanding technology base in this country that will do a great deal to catch criminals. Technology does, in fact, matter, and it clearly matters in the area of law enforcement. But we need the Federal Government to be more proactive in this area, more proactive in helping the States get on line with their own technology.

Having a terrific national criminal record system or a huge DNA data base for convicted sex offenders in Washington, DC, is great, but it will not really do much good if the police officer in Lucas County, OH, or Greene County or Clark County or Hamilton County cannot tap into it. It will not do any good if we cannot get the information, the primary source of this information, from them and get it into the system.

Crimes occur locally. Ninety-five percent of all criminal prosecution, of all

criminal investigations, occurs locally, not at the national level. Crime occurs locally, so we have to make sure that the crime-fighting resources, like this high-technology data base that I talked about yesterday, are available to local law enforcement.

Mr. President, today I would like to continue this discussion, and I would like to discuss another component of my crime legislation: How do we go about protecting America from armed career criminals? I am talking about repeat violent criminals who use a gun in the commission of a felony. In this area, too, we need to be asking what works, what does not work, and what level of Federal Government is most appropriate to do what, what level of Federal Government is most appropriate to get certain help from.

Again, experience tells us that we really do know what matters, we really do know what works. In the area of gun crimes, we have a pretty good answer.

We all know that there is a great deal of controversy about guns, controversy over whether general restrictions on gun ownership would help reduce crime. But, Mr. President, there is no controversy over whether taking guns away from convicted felons will reduce crime. Let me guarantee you, if we know one thing, it is this: If we take guns out of the hands of convicted felons, we will reduce crime and we will have fewer victims.

There is legitimate disagreement over bills such as the Brady bill, whether that will reduce crime. Similarly, reasonable people can disagree concerning the question of whether a ban on assault weapons will reduce crime. I happen to support both of these measures, but I recognize that many people do not and many people think that they are not effective.

But what I am talking about today is something on which there is absolutely no controversy, absolutely no dispute. There simply is no question that taking the guns away from armed career criminals will, in fact, reduce crime, and history shows that that works.

When it comes to armed career criminals, we need to disarm them, we need to lock them up, we need to get them out of society. Let us disarm the people who are hurting our victims, who are hurting the citizens of this country. As I said, history indicates that this works. We have a historic track record to point to. We actually have tried this and it does, in fact, work.

One of the most successful crime-fighting initiatives of recent years in this country was a project that was known as Project Triggerlock. This project was very successful, wildly successful, precisely because it addressed a problem squarely and it placed the resources where they were most needed.

Let me tell the Members of the Senate a little bit about the history of this Project Triggerlock.

The U.S. Justice Department began Project Triggerlock in May of 1991. The

program targeted for prosecution in Federal court armed and violent repeat offenders. Under Triggerlock, U.S. attorneys throughout the country turned to the local prosecuting attorneys in whatever jurisdiction they were located and said: "If you catch a felon with a gun, if you want us to, we, under existing Federal statute, we the Federal prosecutors, we the U.S. attorneys will take over that prosecution for you. We will prosecute that individual, we will convict that individual, and we will hit that individual with a stiff Federal mandatory sentence, and we will lock this individual up in a Federal prison at no cost to the local community, to the State."

That is true Federal assistance. That is Federal assistance that matters. That is Federal assistance that makes a difference. That is Federal assistance and Federal action that will save lives by taking these career criminals off our streets.

Mr. President, that is what Project Triggerlock did. Triggerlock was an assault on the very worst criminals, the worst of the worst in American society. And it worked. This program took 15,000—15,000—career criminals off the streets in just an 18-month period of time. Incredibly—at least incredibly to me as a former prosecutor—the Clinton Justice Department abandoned Project Triggerlock. It was the most effective Federal program in recent history for targeting and removing armed career criminals from our society. But for some reason—for some reason—the Justice Department stopped Triggerlock dead in its tracks.

What I propose in my crime legislation is that we resurrect Project Triggerlock, and we can do it. My legislation includes a provision requiring the U.S. attorneys in every jurisdiction in this country to make a monthly report to the Attorney General in Washington on the number of arrests, the number of prosecutions and convictions they have gotten within that last 30-day period of time on gun-related offenses. The Attorney General then would report semiannually to the U.S. Congress on the success of this program and report on the number of these individuals who have been convicted.

Like all prosecutors, U.S. attorneys have limited resources. In fact, with U.S. attorneys, they have more discretion because of the fact that many times we have concurrent jurisdiction between the local prosecutors under State law and Federal prosecutors under Federal law. So the Federal prosecutors have a great deal of discretion about what type cases to pursue. It really is a question of what the priorities are. It is a question of prioritization.

Like all prosecutors, U.S. attorneys do have to exercise discretion about whom to prosecute. We all recognize that Congress cannot dictate to U.S. attorneys, cannot dictate to the Attorney General who should be prosecuted.

But it is clear that we should go on record with the following basic proposition, and that is this: There is nothing more important than getting armed career criminals off the streets. There is nothing more important that the Justice Department can do than to set this as a priority.

Mr. President, I think Project Triggerlock was a very important way to keep the focus on the prosecution of gun crimes. Getting criminals off the streets, criminals who use guns, is a major national priority and we all should behave accordingly.

Let me turn now to a second portion of this bill that deals with the problem of criminals using guns in the commission of a felony. The second thing we need to do is to change the law. We need to toughen the law against those who use a gun to commit a crime. My bill would say to career criminals: If you are a convicted felon and you possess a gun, you will get a mandatory sentence. Under current law, a first-time felon gets a 5-year mandatory sentence. A third-time felon gets a mandatory minimum of 15 years. But there is a gap in current law. There is no mandatory minimum for a second-time felon.

My legislation, Mr. President, would fix that. It would provide a mandatory minimum of 10 years for a second-time felon with a gun. That would make it a lot easier for police to get that gun criminal off of our streets.

Third, bail reform. The third thing we need to do is to reform the bail system. Under current law, the Bail Reform Act, certain dangerous, accused criminals can be denied bail if they have been charged with crimes of violence. But it is unclear under current law whether possession of firearms should be considered a crime of violence or not.

Mr. President, let us do a reality check here today. If someone who is a known convicted felon is walking around with a gun in your community in Michigan, or in my community in Ohio, what is the likelihood that that person is carrying the gun for law-abiding purposes? Convicted felon with a gun. I think it is perfectly reasonable to consider that person *prima facie* dangerous. We should deny bail to keep that convicted felon off the streets while awaiting trial on the new charge.

My legislation would eliminate the ambiguity in current law. My bill would define a crime of violence to specifically include possession of a firearm by a convicted felon. If you are a convicted felon and you are walking around with a gun, you are dangerous and you need to be kept off the streets. We need to give the prosecutors the legal right to protect the community from these people while they are awaiting trial.

Mr. President, a fourth way we can crack down on gun crimes is to go after

those who knowingly provide—knowingly provide—guns to felons. Under current law, you can be prosecuted by providing a gun only if you knew for certain that it would be used in a crime. The revision I propose would make it illegal to provide a firearm if you have reasonable cause to believe that it is going to be used in the commission of a crime. This is the best way, I believe, to go after the illegal gun trade, those who provide guns to those people who are predators in our society. We will no longer, under this provision, allow these gun providers to feign ignorance. They are helping felons and they need to be stopped.

Mr. President, all of these proposals are motivated by a single purpose. I, along with the police officers of this country, believe that we have to get the guns away from the gun criminals. Project Triggerlock was one major initiative that we can pursue at the Federal level to help make this happen. Imposing stiff mandatory minimums, cracking down on illegal gun providers, are also good, important measures.

All of the gun proposals contained in my crime legislation, Mr. President, really have the same goal. They are designed to assure American families who are living in crime-threatened communities that we are going to do what it takes to get guns off of their streets. We are going to go after the armed career criminals. We are going to prosecute them, convict them, and we are going to keep them off of our streets. That is why we have a Government in the first place, to protect the innocent, to keep ordinary citizens safe from violent, predatory crimes.

Mr. President, I believe that Government needs to do a much better job with this fundamental task. That is why targeting the armed career criminals is such a major component of the crime bill that I will be introducing.

Mr. President, tomorrow I intend to talk briefly about a third major component of my bill, and that is how we help the victims of crime, those who are victimized by the criminals, those who we, many times, forget.

It has been my experience that, unfortunately, many times society treats the criminals as if they are victims and the victims as if they are criminals. Provisions in the bill that I will be discussing tomorrow deal with that. We will reach out to the victims of crime to help them and to make the playing field more level.

Mr. President, at this point, I will yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SANTORUM). Without objection, it is so ordered.

INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 789

Mr. SMITH. Mr. President, I send a manager's amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendments will be set aside, and the clerk will report.

The bill clerk read as follows:

The Senator from New Hampshire [Mr. SMITH] for himself, Mr. CHAFEE, and Mr. BAUCUS, proposes an amendment numbered 789.

Mr. SMITH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 38, line 18, strike the phrase "the Administrator has determined".

On page 39, after line 8 insert the following: "For purposes of developing the list required in this Section, the Administrator shall be responsible for collating and publishing only that information provided to the Administrator by States pursuant to this Section. The Administrator shall not be required to gather additional data over and above that provided by the States pursuant to this Section, nor to verify data provided by the States pursuant to this Section, nor to arbitrate or otherwise entertain or resolve disputes between States or other parties concerning interstate movements of municipal solid waste. Any actions by the Administrator under this Section shall be final and not subject to judicial review."

On page 38, after the "." on line 16 insert the following: "States making submissions referred to in this Section to the Administrator shall notice these submissions for public review and comment at the State level before submitting them to the Administrator."

On page 33, line 20, strike "(6)(D)" and insert "(6)(C)".

On page 34, line 13, strike "determined" and insert "listed".

On page 34, line 13, strike "(6)(E)" and insert "(6)(C)".

On page 36, line 16, strike "(6)(E)" and insert "(6)(C)".

On page 50, strike line 18 and insert the following: "in which the generator of the waste has an ownership interest."

Mr. SMITH. Mr. President, this amendment has been agreed to by both sides. It is a managers' amendment, a very technical amendment that has been requested by EPA, and it applies to tracking interstate waste pursuant to title I of the bill.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New Hampshire.

The amendment (No. 789) was agreed to.

Mr. SMITH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from Arizona, moves to table the motion.

The motion to lay on the table was agreed to.

AMENDMENT NO. 769

Mr. CHAFEE. Mr. President, I would like to address the pending amendment which is, indeed, the Kyl amendment.

The PRESIDING OFFICER. The Senator is correct.

Mr. CHAFEE. Mr. President, I would just like to say a few words about the amendment presented by the distinguished Senator from Arizona.

In our Environment and Public Works Committee, there are 16 members: 9 Republicans and 7 Democrats. The bill that is before the Senate today that the Senator from Arizona seeks to amend was approved in the committee by a vote of 16 to 0. Every Democrat and every Republican voted for it.

Now, this bill before the Senate represents a delicate balance. There are two sides to this issue. On one side is the following: The State and local governments say, why should we not be allowed to designate that all municipal solid waste, all solid waste within this entity, be it the city of Detroit or be it some small town in Michigan or town or city in Rhode Island, whether it is in the Nation—why should we not be able to designate that all of the municipal waste within that community go to a facility that we designate—we, the town fathers; and in that fashion, we, the town fathers and the community, will be able to afford a proper disposal facility, be it an incinerator or be it a licensed proper landfill?

If our citizens do not like this arrangement, if they think they can have their solid waste hauled away by some private entrepreneur in a different fashion, then they can vote Members out of office and we will be gone and the citizens can have a separate system, if that is what they want. At least we ought to have that power.

Now, on the other side of the equation is the view espoused by Senator KYL, which is that flow control is anti-competitive and is against the U.S. Constitution, in addition to all that. The Constitution has said that flow control is against the commerce clause and it should not be permitted.

However, the Senator in his amendment recognizes that there are some facilities that have been built pursuant to the belief that flow control will be there in perpetuity and, therefore, he has arranged under his amendment that those investments made by those communities can be paid off. In other words, his amendment is tailored to the life of the outstanding bonds.

Once they are paid off, then that ends it regarding flow control existing in that community. In other words, he has kept the flow control limited to a minimal period to provide for the payment of the bonds. Now, he has put a lot of thought into that argument, and as I say, an argument can be made for it, as indeed he has made.

In crafting this view, we balanced these two views. The ones who say on