

the opportunity to share the true essence of Hawaii with my colleagues and our fellow citizens on the U.S. mainland. We have the honor and privilege of showing you a bit of Hawaii in Washington, DC, until September 2, 2002, and I invite you to share in this wonderful experience.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

LOCAL LAW ENFORCEMENT ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 625, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 625) to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes.

Pending:

Reid (for Biden) amendment No. 3807, to provide reliable officers, technology, education, community prosecutors, and training in our neighborhoods.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, let me begin on a point of common ground. We can—each and every one of us—agree that the actions constituting hate crimes are wrong in all respects. Let me state, unequivocally, that as much as we condemn all crimes, a hate crime can be more sinister than a non-hate crime. And let me state, with equal conviction and clarity, that I care about stamping out hate crimes as much as any member of this body. I think everybody know that.

A crime committed not just to harm an individual, but in order to send a message of hatred to an entire community is appropriately punished more harshly, or in a different manner, than other crimes. This is especially true when the targeted community is defined on the basis of immutable traits. The brutal murders of James Byrd in Jasper, TX, and Matthew Shepard, in Laramie, WY, among others, remain seared into our Nation's conscience because of the savagery they suffered solely because of their attackers' irrational and hateful prejudice. The worse a criminal's motive, the worse the crime, and a unanimous Supreme Court recognized as much in upholding Wisconsin's sentencing enhancement for hate crimes. These same considerations also prompted the U.S. Sentencing Commission to establish a sentencing guideline that provides an enhanced sentence for a Federal defendant whose crime was motivated by hate. These decisions are ones we can all applaud.

Not only are the offenses themselves worse, but hate crimes also are more likely to provoke retaliatory crimes. They inflict deep, lasting and distinct

injuries—some of which never heal—on victims and their family members. They incite community unrest. And, at bottom, they are downright un-American. The melting pot of America is the most successful multiethnic, multiracial, and multifaith country in all of recorded history. We should keep our proud heritage of diversity in mind as we consider the atrocities routinely sanctioned in other countries committed against persons entirely on the basis of their racial, ethnic, or religious identity.

So we all should be able to agree that the battle against hate crimes is and must be America's fight. And despite the often contentious partisan rhetoric surrounding the issue of Federal hate crimes legislation, there exists widespread agreement on these fundamental points: Hate crimes are insidiously harmful, they should be vigorously prosecuted, and the Federal Government has a role to play in reducing the incidence of these crimes in our Nation. The dispute, then, centers not on whether Congress should act in this area, but rather on what should be done at the national level.

There is no dispute that hate crimes themselves often involve particularly horrific facts. They rivet our attention and move us to consider almost any measure that would appear to check such bigotry. But the proposed legislation introduced by my good friend from Massachusetts, S. 625, also brings us face to face with the foundations of our constitutional structure—namely, bedrock principles of Federalism that, for more than 2 centuries, have vested States with the primary responsibility for prosecuting violent crimes committed within their boundaries. And on this point we must be crystal clear: every hate crime—every bit of criminal conduct that S. 625 proposes to federalize—is, and always has been, a crime in every jurisdiction throughout our Nation. The question is not whether these crimes can be prosecuted, but who should prosecute them under our constitutional framework.

In other words, S. 625 brings us to a difficult intersection between our well-intentioned desire to investigate, prosecute, and, hopefully, end these vicious crimes, and our unequivocal duty to respect the constitutional boundaries governing any legislative action that we take. We, who are trusted with the awesome responsibility of making our Nation's laws, must scrupulously abide by the rule of law in this process. Congress has a duty to make sure that the legislation it enacts is constitutional. To shrug off that duty is more than just negligent; it invites trouble and may even solicit scorn. A Supreme Court Justice for whom I have the greatest respect, Justice Scalia, said the following just a few years ago:

My court is fond of saying that acts of Congress come to the court with a presumption of constitutionality. But if Congress is going to take the attitude that it will do anything it can get away with, and let the Supreme

Court worry about the Constitution, perhaps the presumption is unwarranted.

So, while all of us would agree that hate crimes are a problem with which Congress must deal, our focus must be on the appropriate and constitutional means to best accomplish that objective.

In the face of some of the recent hate crimes that have riveted public attention—and have unfortunately made the name James Byrd synonymous with Jasper, TX; and the name Matthew Shepard synonymous with Laramie, WY—I am committed in my view that the Senate must speak out and act against hate crimes.

I have long been on record with my view that the Federal Government can play a valuable role in responding to hate crime. In fact, I sponsored the Hate Crime Statistics Act of 1990. But any Federal response—to be a meaningful and lasting one—must abide by the constitutional limitations imposed on Congress, and be cognizant of the limitations on Congress's enumerated powers that are routinely enforced by the courts. I was a prime sponsor of that bill, and I am proud that I was. It was a bill with a lot of controversy at the time. This is more true today than it would have been even a mere decade ago—ever since the U.S. Supreme Court revisited the Federalism doctrine in a string of decisions beginning in 1992.

Having consistently checked the expansion of Federal jurisdiction in areas traditionally reserved to the States over the past decade, the Supreme Court has cast grave doubt over the legitimacy of S. 625. I am not alone in believing that this bill, if passed into law, will be struck down as an unconstitutional invasion into States' rights. I take no pleasure in holding this view. In fact, I was the primary co-sponsor of the Violence Against Women Act of 1994—a law that created Federal jurisdiction over certain serious acts of violence directed at women. Senator BIDEN was a prime sponsor as well and deserves an awful lot of the credit for that particular bill. I felt strongly about that legislation, and I certainly was not happy to see the Supreme Court strike down a portion of that law as unconstitutional. But I respect, as we all must, the Supreme Court's ruling, and we have a duty to take its lesson to heart—whether or not we personally like them.

So there is a serious constitutional concern with S. 625. But, in the frightening climate of terrorism that we live in today, there is a practical consideration that we also cannot ignore. We must ask ourselves what role our Federal law enforcement agencies should play in violent crimes that historically have been prosecuted by State and local officials. The Federal Bureau of Investigation recently has committed a large number of its agents to work exclusively on terrorism cases. The FBI has shifted its focus away from the investigation of general crimes to the