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# Senate

The Senate met at 9 a.m. and was called to order by the Honorable BENJAMIN L. CARDIN, a Senator from the State of Maryland.

## PRAYER

The PRESIDING OFFICER. Today's opening prayer will be offered by our guest Chaplain, Rev. Chuck Lawrence, Christ Temple Church, Huntington, WV.

The guest Chaplain offered the following prayer:

Let us pray.

King of Glory, first of all, we are thankful that we can pray and that You hear us. We are thankful that You have the power, and also the desire, to answer us.

As our Creator, You know what is best for us. So, Lord, even more than Your blessings and what You can give to us, we desire Your presence. We want Your presence to be woven into the very fabric of our lives because Your presence brings purpose to our lives. Without You, we are empty, void of meaning.

Your presence also brings joy to life, not just one arduous task after another but a joyful journey. Your presence will guide us to proper finish lines, to accomplishments that really matter. Your presence brings freedom as well; not just freedom from something but freedom to make the right decisions that will help us fulfill the destiny into which we are called. Your presence brings peace; not a peace from agreeable circumstances but a peace even in the midst of tumultuous moments.

So, today, let every Senator sense Your presence. Let every Senator know that Your hand is available to guide them in all they do. Let us all remember that just having You is enough, and we will continue to pursue Your presence until the day we hear: ''Well done, good and faithful servant.'' In Your Name, we pray. Amen.

## PLEDGE OF ALLEGIANCE

The Honorable BENJAMIN L. CARDIN, led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, September 27, 2007.*

*To the Senate:*

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BENJAMIN L. CARDIN, a Senator from the State of Maryland, to perform the duties of the Chair.

ROBERT C. BYRD,
*President pro tempore.*

Mr. CARDIN thereupon assumed the chair as Acting President pro tempore.

## RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

## NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2008

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 1585, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1585) to authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Pending:

Nelson (NE) (for Levin) amendment No. 2011, in the nature of a substitute.

Warner (for Graham-Kyl) amendment No. 2064 (to amendment No. 2011), to strike section 1023, relating to the granting of civil rights to terror suspects.

Reid (for Kennedy-Smith) amendment No. 3035 (to the language proposed to be stricken by amendment No. 2064), to provide Federal assistance to States, local jurisdictions, and Indian tribes to prosecute hate crimes.

Motion to commit the bill to the Committee on Armed Services, with instructions to report back forthwith, with Reid amendment No. 3038, to change the enactment date.

Reid amendment No. 3039 (to the instructions of the motion to recommit), of a technical nature.

Reid amendment No. 3040 (to amendment No. 3039), of a technical nature.

Casey (for Hatch) amendment No. 3047 (to amendment No. 2011), to require comprehensive study and support for criminal investigations and prosecutions by State and local law enforcement officials.

Coburn amendment No. 2196 (to amendment No. 2011), to eliminate wasteful spending and improve the management of counterdrug intelligence.

McCaskill (for Webb) modified amendment No. 2999 (to amendment No. 2011), to provide for the study and investigation of wartime contracts and contracting processes in Operation Iraqi Freedom and Operation Enduring Freedom.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be 2 hours of debate equally divided between the two leaders prior to the cloture vote on amendment No. 3035 offered by the Senator from Massachusetts, Mr. KENNEDY.

The Senator from Massachusetts is recognized.

### SCHEDULE

Mr. KENNEDY. Mr. President, briefly, let me outline the schedule for this morning. Under an order entered last night, there are 2 hours of debate equally divided prior to votes on pending cloture motions on the two hate crimes amendments.

Once the votes begin, around 11 this morning, there will be very brief debate between the votes, so Members

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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should remain close to the floor during that time.

Once action has concluded on the hate crime amendments, the Senate will then have a brief debate prior to the cloture vote on the motion to concur to the House amendments to the Senate amendments to the CHIP legislation.

Therefore, Members can expect five rollcall votes starting around 11 this morning.

Mr. President, I ask unanimous consent that the 10 minutes immediately prior to the first vote be controlled equally between the two leaders, with the majority leader controlling the last 5 minutes, and that after the first vote, the remaining votes be limited to 10 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I ask unanimous consent if there are quorum calls during this time, they be evenly divided.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I see my friend and one of the principal architects of this CHIP program on the floor. I know he desires to speak for some time. I am glad to accommodate him. I think I am going to speak on both of the measures that are before the Senate, both the CHIP program as well as the hate crimes. So I do not know what the desire of the Senator from Utah would be. But I will be glad to yield to him.

CHIP

Mr. President, as the instructions to the Senate said, later in the morning, we are going to have an opportunity for the Senate to express itself on what is commonly known as the Children's Health Insurance Program, a program that has effectively been in place now for some 10 years and has made a very significant and important difference in the quality of life for children.

It has been said, and I certainly agree, that the great test of a nation and a civilization is how it cares about its children. Some 10 years ago, the Senator from Utah, myself, others, were very much involved in the fashioning, the shaping of this legislation.

It has made a very important difference, which we will come to in a moment, to the quality of health care for children in this country. The Senate, later this morning, is going to make a judgment whether we are going to continue that march for progress for children and expand that opportunity or whether we are going to take a different course and say that is not a national priority.

Being in the Senate and voting is about priorities. Priorities. Members in this body express themselves in votes by indicating our priorities, both our priorities in the allocation of resources, our priorities in views with regard to foreign policy.

This morning, we are going to be making a judgment whether we think it is appropriate that we continue this real march for progress for children in this country with this Children's Health Insurance Program that has proved to be so successful.

First, I wish to show what President Bush himself has stated about the Children's Health Insurance Program. This is the quote of President Bush from the 2004 Republican Convention, not all that long ago, when he said:

> America's children must also have a healthy start in life. In a new term, we will lead an aggressive effort to enroll millions of poor children who are eligible but not signed up for the Government's health insurance programs.

That is what we are talking about, the CHIP program. Here is the President saying:

> In a new term, we will lead an aggressive effort to enroll millions of poor children who are eligible but not signed up for the Government's health insurance programs. We will not allow a lack of attention, or information, to stand between these children and the health care they need.

Well, that is the issue. This is the place where that promise and pledge is going to be tested later this morning. Many of us are going to say: President Bush was absolutely right when he made that statement. But since he has made that statement, he has come to a different position where he is urging opposition to that position today.

We can understand why the President came to that position because we can look at the record of the last 10 years. In the evaluation of the CHIP program, this is the Center for Medicare and Medicaid Services, it is an administration department, effectively known as CMS, the Center for Medicare and Medicaid Services, this is in the Department of Health and Human Services. This is their evaluation as of September 19, 2007:

> Over the past 10 years, the CHIP program has improved overall access to care.

Improved overall access to care.

> Reduced the level of unmet need.

Reduced the level of unmet need.

> And improved access to dental care, expanded access to preventive care.

Expanded access to preventive care. Imagine the parents who may have taken a little time this morning and said: This is going to be an important vote in the Senate today. I think I will listen to it. What is this program all about?

Well, here we have the President of the United States, who has endorsed this, said it ought to be expanded, and then we have the evaluation of the program, not by those of us who were there at the very beginning and who supported the program but by the administration's own evaluation. This is what they say—and who can differ with that? Those who have been opposed to it have been unable to challenge this: Improved the access to care, reduced the level of unmet need, improved access to dental care, expanded access to preventive care.

Every parent knows the importance of preventive care for their children. Anyone who cares about health care policy knows that it is enormously important at any time and particularly in a child's life. And ''reduced emergency department use.'' That is the final item that is mentioned in this chart.

But this has importance in a number of different ways. It means they are taking care of children before they need the emergency care, because their illness, their throat infections, ear infections, other infections have been addressed in preventive care, so they do not have to go to the emergency room.

What is the result of the emergency room visit when the child gets a great deal sicker? More often than not, the parents cannot afford to pay the bills. Or if the bills are there, they are out of sight. So the costs, in terms of the health care system, are dramatically enhanced when the children go to the emergency room. The costs, in terms of the parents' anxiety, are dramatically enhanced when the children have to go to the emergency room.

Last night, there were millions of parents who were wondering, when they were listening to their child cry in the night, whether that child was $150 or $250 sick, because that is what the cost was going to be in an emergency room. Maybe I will wait it out. Maybe I am making the minimum wage. Can I afford to dig deeper and pay those $250? So I am going to let my child remain without being taken care of during the night, to see if that child gets better, rather than having the preventive care. It is a moral issue, a defining moral issue, a priority issue, a moral issue for this country.

So that is the evaluation of the administration, the statement of the President. We can understand why the administration has come up with that kind of—those results, because of the extraordinary reduction in the uninsured rate for children.

If you look, going back to 1997, almost 25 percent of all children had no coverage. Look at this red line going down over the years as the CHIP program is reaching out through the States. This was worked out in these careful negotiations, which Senator HATCH was also involved in, to make sure it was going to be a State program, State-run, State priorities, States establishing the deductibles, the copays, States making the judgments about those items, States setting up the whole program. It is going to be effectively a private insurance program. That is what confuses me about the administration talking about a Government-run program. This is effectively a State-run program built upon private insurance.

The delivery system is very much like the administration favored with the prescription drug program. So we see this dramatic reduction in terms of children.

Now, what has been the reaction? This, for example, is one of the blessings of this program. Not only are the

children healthier with the CHIP program—this is an evaluation of how the child does in class. Not only are we getting a healthier child. We are getting a more attentive child. We are all challenged here, and certainly we are in our education committee, as we are looking out across at the various education programs how we are going to try to deal with children improving in terms of their attention and also keeping up with the school activities.

This last week, the Secretary of Education announced the improvement of children in what they call the NAPE test, children are improving. I am so proud of Massachusetts being the No. 1 State, in terms of the results. That is basically because the State got started on many of these reforms before the Congress did.

But there is no question in my mind that a principal part of the improvement of children doing well academically is as a result of the CHIP program.

This is the proof: paying attention in class, from 34 percent to 57 percent; keeping up with school activities, from 36 to 61 percent. It is understandable. If children can't see the blackboard, if they can't hear the teacher, if they are sick, they are not going to learn. If they are healthy, they can learn. It is pretty fundamental, but evidently there are some who haven't learned the lesson.

We are constantly challenged, if we are going to be one country with one history and one destiny, about moving along together, moving all the children—White, Black, Hispanic—together. Before CHIP, you had important unmet health care needs reflected in disparities between the different races. Once we had the CHIP program put in place for the children, we effectively saw an important improvement in the health of children, and all the children moved along together.

This is for a typical disease. We chose asthma because it has been a disease which has been expanding over time, unquestionably, because of the relaxation of a variety of different environmental requirements and standards. In other illnesses and diseases, it is going down. The challenge with children with asthma is it has actually been going up. But even if the totality is going up, look what happens with these children with asthma as a result of the CHIP program. The number of children who are getting their health needs taken care of dramatically increased. Emergency visits were dramatically down, and hospitalizations were dramatically down. This reflects itself in not only healthier children but in savings.

This is basically a matter of priorities. This is a sound program. It is an effective program. It is one the President endorsed a few years ago. It has been tested, tried. The evaluation of the program has been that it is a great success. Now we have the opportunity to express once again the issue of priorities here in the Senate. What are going to be the priorities for this body? What do they think is really important in this country at this time? The CHIP program reauthorization, $35 billion? That isn't being paid by taxpayers or middle-income families or working families unless they smoke because this is going to be offset completely by those who are going to smoke. As we have pointed out earlier, that has a double positive value. We are not going to put an additional burden on ordinary taxpayers. But with the increased cost of cigarettes and tobacco, it is going to mean less use of tobacco by children and children are going to be healthier. So not only is the fundamental legislation a demonstration in improving health care, but the remedy and how we do that is also adding an additional dimension to the quality of health for children. More than 3,000 children start smoking every single day, and 1,200 of them become effectively addicted every single day. We can do something about this and, eventually, when we pass this legislation and we pass our other tobacco legislation that we have reported out of our committee, we will get a handle on protecting children from addiction to nicotine.

This is over a 5-year period, $35 billion; 1 year in Iraq, $120 billion—almost four times in 1 year what this is in 5 years. Don't we think we ought to be looking after the children in the United States? This is where it is, Mr. President. We have a choice to express ourselves. The President says: No, we are not going to have this for the children; yes, we are going to have this. Many of us believe that investing in the children in this country is where we ought to be invested and we ought to end the conflict and end this war.

That chart could be expressed in another way of what we are spending as, again, a matter of priorities, what we are spending per day—$333 million in Iraq versus $19 million nationwide on the children. So when the time comes, we have a very clear choice in terms of the Nation's priority.

Finally, this is a statement by Dedra Lewis, mother of Alexsiana, a child covered by CHIP from my State:

> If I miss a single appointment, I know she could lose her eyesight. If I can't buy her medication, I know she could lose her eyesight. If I didn't have MassHealth, my daughter would be blind.

One parent, one child, one piece of legislation that can make all the difference in the world.

When we have a chance to vote, we will be voting for this legislation, and we will be asking ourselves, why aren't we doing more to help the children?

I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, as usual, I appreciate the comments of the distinguished Senator from Massachusetts, when we are on the same wavelength. On this one, we are. I have to say that the original CHIP bill that virtually everybody acclaims as an excellent piece of legislation that has helped millions of children from working poor families, the only children left out of the process, wouldn't have come to pass except for the support of the distinguished Senator from Massachusetts. We both took a lot of flak during those early months when we were trying to solve this problem of the working-poor children.

I had two Provo, UT, families come in to see me. Both parents in each family worked. Each family had six children. Neither family, with both incomes, had more than $20,000 a year in total gross income. They clearly could not afford child health insurance. CHIP was the only answer to their plight. They were the only people left out of the process. They worked. They did the best they could.

I remember when the distinguished Senator from Massachusetts and I sat down together. We are from two opposite poles in many respects, although he doesn't realize that he is a lot more conservative than he thinks. He thinks I may be a lot more liberal than I think. But when Kennedy and Hatch can get together, people around here say: Well, if they can get together, anybody can. People tend to get out of the way because they know it took a lot of effort for us to come together.

But the original CHIP bill could not have occurred but for my distinguished friend from Massachusetts and the work he did. Even though that hasn't been broadcast very much in the current debate, it is true. In the current debate, we wouldn't be as far along if it had not been for the efforts of the distinguished Senator from Massachusetts.

There are two sides to this. Yes, there is a legitimate side in opposition to having CHIP be $35 billion above the baseline of $25 billion. That argument is that we are growing this program too fast and we are putting too many people in it who were not originally supposed to be in it. The fact is, when we wrote the original CHIP bill, we provided for a system of waivers because we were afraid we didn't cover some things that should be covered. What really bothers me is that the people complaining about CHIP costing so much today in this administration, my administration, are the ones who gave 14—well, the tail end of the Clinton administration but primarily this administration—waivers to allow this program to go to many more people than we had originally intended. In fact, two States have more adults on the program than they do children. That has caused a lot of angst. A several States are way over the 200 percent of poverty—one state even covers families with incomes up to 350% of poverty.

Let's put it this way: The opponents seem to ignore the fact that this bill covers 92 percent of kids who are under 200 percent of poverty. Yes, there is 8 or 9 percent who may be above but the

vast majority of them have lived with this program. We found that even with the moneys that we had in the original CHIP bill, which happened to be $40 billion over the last 10 years—that it wasn't enough to put all of the kids who were eligible on the program.

One of the higher costs we found has been documented by CBO. We rely on CBO around here. CBO said that the high costs come from trying to locate the kids to get them in the program so they have a shot at being healthy, so that they are not liabilities for society as a whole when they get older.

This program is very important. We fought hard to keep the program within the $60 billion—$25 billion baseline and $35 billion above the baseline, for a total of $60 billion. At first, those in the House wanted $100 billion. Then they came down to $75 billion. Finally, to their credit, they acknowledged that we were not going to do any better than $35 billion over the baseline, and Senator GRASSLEY and I had to stick with that, with the hope that the administration would recognize how hard we had worked, how important this program is, this program which they themselves would like to reauthorize, and how difficult it is to get the additional 6 million eligible kids on CHIP. To be honest with you, it proved to not be enough as far as federal funding was concerned. And, we lost out on a lot of kids who should have had coverage through this program.

Through this bill, what we are trying to do is cover the kids who should be on the program. They are basically kids of the working poor. We did add pregnant women because we thought that since this involves children and it is so important to have good prenatal care and postnatal care for the health and well-being of those children, that is a logical thing to do.

Really what bothers me about the arguments on the other side—there are legitimate arguments, there always are on both sides—is that we spend about $1.9 trillion on health care in our society today each year. About $1 trillion of it is in the private sector, and about $900 billion is in the public sector. We are asking for $60 billion out of $1.9 trillion to help the kids who are left out of the program. The CBO says even at that, we will not put enough money into this program.

Then we have the argument: This is leading to one-size-fits-all Government-mandated, socialized medicine health care. I think you could make that argument on anything we do in health care around here that involves Government. But on the other hand, I don't want to leave these kids high and dry, either. So it is very important that we get this straight and do what is right.

I have appreciated the remarks of the distinguished Senator from Massachusetts. Many on his side don't care to ever ask where is the money going to come from to pay for these things. On the other hand, in a $1.9 trillion budget, it seems to me $60 billion is not too much, especially since we are covering kids who should be covered who weren't covered in a program that virtually everybody says is important, virtually everybody says we ought to have, just not as much. And even with the $60 billion, it is my understanding, according to CBO, we will not really cover all of the kids we should, but we will cover most, which is a big improvement over the current program.

I join with the distinguished Senator from Massachusetts hoping that the administration will listen and maybe change its perception. There are good arguments on both sides. The better argument is to try to do what we can for these kids; that is, work on an overall comprehensive health care bill that will save money, have less Government intrusion, have more private sector development, give people more opportunities of choice, and give them the choice to bring costs down in the current system. People of good will on both sides could probably do that if we really set our minds, if we just don't make this one big political battle all the time. Unfortunately, it is a political battle over CHIP.

According to some in the administration, I am on the wrong side. I don't think so. I am on the right side. I believe this has to be done. Does that mean that I am not willing to modify and work and do what we can to come up with a comprehensive health care approach that emphasizes competition and opportunity, that will cover everybody? Of course not! I would like to get there. This is a bill which does not necessarily take us away from getting there, but I think some of these arguments which have been offered have been not very good and not very accurate.

Mr. KENNEDY. Mr. President, will the Senator let me proceed for 2 minutes? I see the Senator from Georgia.

Mr. HATCH. Of course, and then I think we ought to get in this debate on hate crimes. I would want to yield to Senator ISAKSON, and then I will have my remarks a little later.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I listened carefully to the Senator from Utah. I want to say that the 6 million children who today are covered in all parts of the country, including my State of Massachusetts, would not be if it was not for the Senator from Utah. There was a very important insistence that has been sort of lost in this whole discussion and debate.

At the time we had talked about this program, I was very interested in expanding the Medicaid Program and moving that up. Medicaid deals with the very poor. The real question was the working poor for these programs. Senator HATCH insisted we should not expand the Government program, that we have to let the States participate and involve themselves in it. This was a very contentious discussion in the debate which, eventually, Senator HATCH was successful in winning. Then we would establish the criteria, at least, of the kinds of services that were going to be provided within that kind of a program. That was a very contentious debate, but again Senator HATCH insisted the States should make the judgments on this program. Then we had the issues about trying to make sure about the inclusion, having it be more sweeping, and Senator HATCH stuck by his guns to make sure the States were going to be the ones that were going to do the outreach and set up this program.

So those issues—in terms of when we are talking about these cliches of socialized medicine or Cuban-type of medicine—for those who are really interested in the philosophical underpinnings of this program, of why it is different from other programs, if they go back and look and carefully read the bill, I must say Senator HATCH's position of insisting that the States be the full partner and be the ones that are going to have the prime responsibilities has been the fact.

I think to the credit of the Senator from Utah is the fact that so many of the Governors are in such support of this legislation—not only Democratic Governors but Republican Governors—because they have seen, they have both the responsibility and the opportunity to make a difference for their constituents.

So that is just a small ''factoid'' about the history of the development of this legislation but one that should not be lost when people are thinking about whether this is just another kind of a governmental program. The Senator insisted on principle on a number of these important philosophical issues, and the Senate, in a bipartisan way, came together to support the recommendations that eventually were worked out with members of the Finance Committee and Senator BAUCUS, Senator ROCKEFELLER, Senator Chafee, and many other colleagues. But the underpinnings were from the Senator from Utah. I think history ought to reflect that. I thank the Senator.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President, I thank my colleague. He is accurate on everything except one thing; that is, the 6 million children whom we were supposed to cover, we did on an annualized basis, but really only about 4.5 million were covered fully. I wanted to add that little bit because it is apparent this program has worked. It is apparent it has worked well under this administration as well as under the Clinton administration. It is apparent it has helped millions of kids who otherwise would not have been helped. It is apparent it has helped the children of the working poor. But it has not helped all of those who deserve that help. And, over the long run, if we help them today, it will save us money and problems in the future.

Frankly, this is an important debate. I acknowledge there are people who disagree. There were back then when we first created CHIP. But the fact is, this is a program which has worked. The administration has admitted it has worked. The Governors have admitted it has worked. Maybe it is mired in politics that I wish we were not mired in. My attitude is, let's think of the kids. If there is a way of improving it, I am certainly open to that, but we have come a long way, in a bipartisan way, to get where we are. That is not an easy accomplishment in a Congress that has been pretty partisan in many respects.

I do not think some have really recognized how difficult it was to get to where we are and how many concessions both sides have made, in particular the House. So I think this has been an important part, maybe, of the debate this morning.

But at this point, how much time would the distinguished Senator from Georgia want?

Mr. ISAKSON. Mr. President, I thank the distinguished Senator from Utah and appreciate the time.

Mr. HATCH. Mr. President, can I ask how much time the Senator would desire?

Mr. ISAKSON. Mr. President, I would like to speak as in morning business for about 8 minutes.

Mr. HATCH. No objection.

Mr. KENNEDY. Mr. President, may I ask a question? I have no objection, but is this going to be within the time as expressed by the leader?

The ACTING PRESIDENT pro tempore. It would be time yielded by the Senator from Utah.

Mr. HATCH. Eight minutes, was it?

Mr. ISAKSON. Eight minutes, yes.

Mr. HATCH. Mr. President, I yield 8 minutes to the Senator from Georgia.

The ACTING PRESIDENT pro tempore. The Senator from Georgia is recognized for 8 minutes.

Mr. ISAKSON. Thank you very much, Mr. President.

Mr. President, I rise today based on an occurrence that took place last evening that caused me to think a little bit about this body and our priorities right now at this time.

Two gentlemen from my home community of Cobb County, GA, invited me to go to dinner with them and about 25 other members of the Cobb Chamber of Commerce—Mr. Don Beavers, a distinguished retired marine who now works at the Chamber; and the chairman-elect, Sam Kelly. The invitation was to talk about their issues. But they did an amazing thing last night: They called Walter Reed, they called the Army, and they said they would like to entertain a couple of our wounded warriors who are being treated as outpatients at Walter Reed hospital.

So last night, I sat at a table at Old Ebbets Grill with citizens from my community and two distinguished wounded warriors from the 82nd Airborne Division of the U.S. Army. One had served in Iraq as a sniper and was injured when an IED exploded on his humvee as he was coming back from deployment near Baghdad. Since that hit, he has had 12 surgeries, with substantial reconstruction on the entire left side of his body, from his head to his toe. The other, a special operations soldier of the 82nd Airborne Division, lost his leg. Both—some time now, a year after their initial treatment—still take pain killers, still are in therapy, and still show the scars from their tragic injuries suffered at the hands of an IED in the case of one, and in the case of the other, an RPG, a rocket-propelled grenade.

As we sat at the table, I thanked them so much, as all of us do, for their service to our country and listened to their concerns and listened to their thoughts and listened to their prayers for the soldiers they left when they were injured in Iraq.

It occurred to me as we were talking that we are now in the third week in the Senate—over the third week—of debating the reauthorization of the Defense bill. Think about that. You sit at dinner one night with two soldiers who sacrificed limbs and pain and suffering for you and for me, and we continue to dawdle and get off track on authorizing or reauthorizing probably the single most important thing we ought to be doing. I am concerned that the leadership has decided to take ancillary issues unrelated to defense, unrelated to our men in the field, unrelated to what is going on in the world today, and protracting the debate on what is absolutely essential and needed.

As I sat there and listened to these two wounded warriors, both of whom suffered from explosive devices that hit their humvee or their armored personnel carrier, I realized we were still dawdling on the debate on the authorization of the MRAP; I realized we are dawdling on the debate in terms of the pay raise for our soldiers; I realized, as meritorious as some of the amendments we are discussing may well be, they all pale in comparison to the 170,000 men and women deployed right now in Iraq fighting on our behalf.

Now, there are differences of opinion on the war in the Senate, and I respect that. This is the body and this is the place where those differences should be debated and be debated thoroughly. But I want to jog everybody's memory for a second. It was May when we did the emergency supplemental that we spent not 1 week but 2 weeks on, not debating the supplemental but debating whether we should withdraw or set dates certain or leave Iraq. We had numerous votes—none of them successful—on setting a date certain. Finally, as Memorial Day approached, we decided to pass on the money so needed to support our troops. Then, 60 days later, in the middle of July, pressing before the August break, another bill came up, and once again we redebated all the same issues with regard to dates certain, with regard to withdrawal, even one with regard to defunding the military operations in the war on terror and the battle in Iraq.

Now here we are, 2 months later, in the third week of a Defense authorization bill, and we have already had these same debates once again, and the votes have not changed except they have lost by a little bit more than they lost in July. Yet, all over the country, and last night at Old Ebbets Grill, Americans are sitting down with their sons and daughters, who fought in harm's way and have come back, many of them wounded and harmed, and how do you explain to them it takes 3 weeks to debate the reauthorization of their pay or 3 weeks to debate the reauthorization of MRAP that just might have prevented the very injuries those two soldiers I sat with last night incurred?

So I think it is important that we set priorities. It is very important, I am sure, to the Senator from Massachusetts to discuss hate crimes legislation. I understand that. But in setting priorities, is it right to take something such as hate crimes—which already exists in 45 States, already exists in the Federal law in terms of race and religion—and get all off track on MRAP and reauthorizing the pay of our troops and an increase? Is that right? Is that setting the right priority? Is it important for us to do that?

Is it important for us to do some of the things that have happened over the last 3 weeks? In fact, to give a little report card, because I have been intimately involved in amendments on this bill, this Senate, in 3 weeks of debate, has passed en bloc 34 amendments to this bill—all technical, none requiring debate, one of them mine. It would seem that instead of having all the debate about ancillary subjects or about recirculating amendments that twice before on the floor of the Senate, within 6 months, have failed, it is about time we got our priorities straight. It is about time we authorize the Department of Defense. It is about time we get to the pay raise for our soldiers. It is about time we get to the MRAP that Republicans and Democrats—the Senator from Delaware, Mr. BIDEN, and all of us—have worked so hard on.

It is about time we set our priorities and get them straight. Whatever the merit of other issues may be, if they are unrelated to the Department of Defense reauthorization, they can wait until another day because every day our sons and our daughters are deployed for you and for me in harm's way. We can differ on the war, and I respect that, but there should not be a difference on the funding of our men and women deployed in the Middle East.

I, for one, call on the leadership for us to get back to the business we are called on to do. Let's complete the DOD authorization without any other dilatory tactics or any other ancillary amendments, other than those that relate to the Department of Defense.

Mr. President, I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, how much time is remaining?

The ACTING PRESIDENT pro tempore. Forty minutes on each side.

Mr. KENNEDY. On each side. Good.

Mr. President, I yield myself 8 minutes, and the Chair will notify me when that time has expired.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, as we mentioned at the opening this morning, there are going to be two major decisions by the Senate this morning: one on dealing with the children's health issue, which we have had a good discussion of here this morning, and the other issue on the hate crimes legislation, which we have been attempting to realize for a period of some 10 years.

This is not a new issue to the Defense authorization legislation. We have passed it by more than 60 votes on the last occasion we had it. We passed it by a majority on other occasions. So for those who sort of suggest it is not appropriate that we deal with this, the majority—Republicans and Democrats alike—have overwhelmingly supported the legislation. But it has been a strong minority that has resisted it and refused to let it move on into law. We finally are at a time and a place and a judgment where the House of Representatives now has moved in favor of the legislation. We have an opportunity today to do it. We haven't taken an unreasonable period of time.

The application of this legislation and why it should be here is a very simple and basic and fundamental one; that is, what the Defense authorization bill is about—dealing with the challenges of terrorism overseas and the support that our men and women ought to get in dealing with terrorism overseas. This is about terrorism in our neighborhoods—terrorism in our neighborhoods—and making sure we are going to fight it. We can talk about having the MRAP, which I support, in the Defense authorization bill. We are fighting overseas with all of our weapons. We want to fight terrorism at home with all of our weapons.

We want to be able to have a value system that is worthy for our brave men and women to defend. They are fighting overseas for our values. One of the values is that you should not, in this country, in this democracy, permit the kind of hatred and bigotry that has stained the history of this Nation over a very considerable period of time. We should not tolerate it. We keep faith with those men and women who are serving overseas when we battle that hatred and bigotry and prejudice at home. So we are taking a few minutes in the morning to have this debate and discussion.

I urge my colleagues to join me, Senate majority leader HARRY REID, Senator SMITH, and 31 cosponsors of the Matthew Shepard Act by voting in favor of cloture and our underlying amendment today. Hate crimes are domestic terrorism. Like all terrorist acts, they seek to bring fear to whole communities through violence on a few. Just as we have committed ourselves to fighting terrorists who strike from abroad, we must make the same commitment to swift and strong justice against homegrown terrorists. We have worked hard to ensure that all of our citizens can live without fear of victimization because of their race, religion, and their national origin. We have made progress over the years, but we need stronger tools to ensure that all Americans—all Americans—are protected under the law.

Hate crimes challenge us to recognize the dignity of each individual at the most basic level. When victims are selected for violence because of who they are—because of the color of their skin or sexual orientation—it is a crime that wounds all of us. Each person's life is valuable, and even one life lost is too many. No member of our society—no one—should be the victim of hate crimes. Today we can send a message that no one—no one—should be a victim of a hate crime because of their disability, their sexual orientation, their gender, or gender identity.

Hate crimes are especially heinous because they deny the dignity, the humanity, and the worth of whole segments of our society. They inflict terror not only on the immediate victims but on all their families, their societies, and, in some cases, an entire Nation. A hate crime against one member of another group shouts to the other members: You are next. You better watch your step when you leave your home, when you go to work, when you travel. This is domestic terrorism, plain and simple, and it is unacceptable as an assault from our enemies abroad who hate us just as irrationally.

At bottom, hate crimes strike out at our most fundamental, moral values. They deny the teaching that we are all—even those viewed as outcasts among us—members of the human family. They seek to divide that family by labeling some so unworthy that they should become objects of violence. They reject our great national motto, "E pluribus unum"—out of many, one. Instead, hate crimes seek to divide us, to reject whole communities by terrorizing their members.

Centuries ago, Blackstone wrote:

> It is but reasonable that among crimes of different natures, those should be most severely punished which are the most destructive of the public safety and happiness.

Hate-motivated crimes are the most destructive of the public safety and happiness and should be punished more severely than other crimes. That is why over 1,400—1,400—clergy from across the spectrum of religious traditions have come together to support the Matthew Shepherd Act. They write:

> Although we come from diverse faith backgrounds, our traditions and our sacred texts are united in condemning hate and violence. As religious leaders, we are on the front lines dealing with the devastating effects of hate-motivated violence. Our faith traditions teach us to love our neighbor, and while we cannot legislate love, it is our moral duty to protect one another from hatred and violence.

These leaders of America's religious communities have called on Congress to stand united against the oppression imposed by violence based on personal characteristics and to work together to create a society in which diverse people are safe as well as free.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. KENNEDY. Mr. President, I yield myself 3 more minutes.

The ACTING PRESIDENT pro tempore. The Senator is recognized.

Mr. KENNEDY. Mr. President, The Interfaith Alliance, a nonpartisan advocacy organization representing 75 different religions, said hate crimes are an assault upon "the belief that lies at the core of our diverse faith traditions—that every human being is endowed with dignity and worth."

This is what The Interfaith Alliance said:

> Hate crimes are an assault upon the belief that lies at the core of our diverse faith traditions—that every human being is endowed with dignity and worth.

Dignity and worth.

The simple fact is, hate crimes are different and more destructive than other crimes. As my friend, Senator HATCH, stated during our debate in 2000:

> Crimes of animus 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, ultimately, they are downright un-American.

The Federal Government has a responsibility to send a clear and unambiguous message that hate-motivated violence in any form, from any source, will not be tolerated. Hate crime perpetrators use violence to dehumanize and diminish their victims. This legislation fights back by reinforcing this country's founding ideals of liberty and justice for all.

In Iraq and Afghanistan, our soldiers are fighting for freedom and liberty. They are on the front lines fighting against hate. We are united in our effort to root out the cells of hatred around the world. We should not turn a blind eye to acts of hatred and terrorism at home. We owe it to our troops to uphold those same principles at home. We should not shrink now from our role as a beacon of liberty to the rest of the world. When the Senate approves this amendment, we will send a message about freedom and equality that will resonate around the world.

If America is to live up to its founding ideals of liberty and justice for all, combating hate crimes must be a national priority. Now is the time for

Congress to speak with one voice, insisting that all Americans will be guaranteed the equal protection of the laws. We must pay more than lip-service to this core principle of our democracy, and we must give those words practical meaning in our modern society. No American should feel they are second-class citizens because Congress refuses to protect them against hate crimes.

Far too many times, hate crimes have shocked the conscience of the country. Tolerance in America still faces a serious challenge, and we must have the courage to act. As the Reverend Sockman said:

> The test of courage comes when we are in the minority. The test of tolerance comes when we are in the majority.

Most of us in this Chamber have lived our lives in the majority, and it is time for us to recognize the courage of those who have lived their lives in the minority and stand up for tolerance. When bigotry exists in America, each of us is diminished. Injustice inflicted on any among us is injustice against us all.

As Leviticus commands us:

> You may not stand idly by when your neighbor's blood is being shed.

For too long, the Federal Government has been forced to fight this injustice with one hand tied behind its back. We know some crimes are motivated by a desire to harm whole communities. It is time those crimes were punished in a manner that is equal to their destructiveness.

The President has threatened to veto this legislation if it comes to his desk, but I urge my fellow Senators to display the same kind of courage that came from David Ritcheson, the victim of a brutal hate crime that scarred him both physically and mentally. Rather than living in fear, David bravely came before the House Judiciary Committee and courageously—courageously—described the horrific attack against him the year before.

We should fight to protect the rights of our fellow citizens such as David and not let a veto threat stop us from doing the right thing. With both the Senate and the House moving forward on this legislation, I hope the President will hear our call and that he, too, will support this much-needed measure.

Nobel Prize laureate Elie Wiesel said:

> Indifference is always the friend of the enemy—Indifference is always the friend of the enemy—for it benefits the aggressor, never the victim, whose pain is magnified when he or she is forgotten.

Today, we can take a strong stand against indifference and intolerance.

Dr. King reminded us all that ''our lives begin to end the day we become silent against the things that matter.'' Today, this body has a chance to break the silence. It has the chance to speak with one voice in support of the value of every individual in our society. Join me and my colleagues in breaking the silence. Make the fight to end violence driven by bigotry the high national priority that it should be. Now is the time because, as Reverend Martin Luther King reminded us:

> The time is always right to do what is right.

Now is the time for Congress to speak with one voice and insist that all Americans will be guaranteed the equal protections of the law. I urge all my colleagues to support this amendment.

Mr. HATCH. Mr. President, how much time does each side have?

The ACTING PRESIDENT pro tempore. There is 40 minutes the Senator from Utah controls and about 25½ minutes for the Senator from Massachusetts.

Mr. HATCH. I thank the Chair. Mr. President, I yield 15 minutes to the distinguished Senator from Texas.

Mr. CORNYN. Mr. President, I know the great passion and sincerity with which our colleague from Massachusetts brings to this subject, but there is a time and a place for everything, and this is not the time—16 days into the Defense authorization bill which should have been finished a long time ago—to inject extraneous matters and matters which, as I will explain, have been poorly thought out and not completely aired by the Members of Congress.

A few blocks from here is the United States Supreme Court building, and above the entry to that building reads the motto ''Equal Justice Under The Law.'' Equal justice under the law. Too many people have sacrificed too much for too long to make sure that guarantee of equal justice under the law is a reality for Congress to continue down the path to treat some crimes unequal from others.

Every civilized Nation recognizes that all people deserve equal protection from criminal attacks. Unfortunately, there are some who reject that notion. But they are brought before the bar of justice, tried, many convicted, and many punished according to the laws we have on our books at the State level and, yes, even at the Federal level. I fear by trying to inject this extraneous matter on to a Defense authorization bill without adequate time for deliberation and discussion and inquiry, that Congress and the Senate in particular are being asked to pass on legislation without full knowledge of the consequences of the legislation.

For example, under current Federal law, an individual who violates current Federal hate crimes law can be given the death penalty by a jury in appropriate circumstances. Under this legislation the Senate is being asked to vote on today, the death penalty is not available for violating this particular amendment or this particular legislative language.

Thus, James Byrd's killers were convicted under State law, and according to a jury verdict, after exhausting all appellate remedies, were ultimately executed. If the same individuals committing those heinous acts back then were charged by a Federal prosecutor under this bill, they could not be given the death penalty by the jury. That is only one example of how this particular provision has not been thoroughly thought out or the consequences thoroughly vetted.

I will be very clear. I don't support this legislation on the merits because I do believe in equal justice under the law. I believe individuals ought to be treated as individuals and not as members of groups, and that all human beings are entitled to the dignity God gave them by creating them, and they all ought to come equally before the bar of justice when they are accused of crimes and be given equal justice under the law. It is a mistake, in my judgment, to begin to treat people unequally based on the same conduct because of notions that some crimes are simply more despicable than others based upon the individual against whom they are perpetrated.

All crimes of violence are crimes of hate. All ought to be judged according to the same criteria. All ought to be subject to the same range of punishments given to juries able to convict people based on evidence in court, not based on a politically correct notion that some crimes are more heinous than others. All crimes of violence are heinous and all ought to be punished equally under the law.

The distinguished Senator from Massachusetts has alluded to the threat of a Presidential veto of this legislation if this amendment is passed, thus, making one of my points, that by introducing this amendment on the Defense authorization bill, the sponsors of this amendment are jeopardizing our ability to pass a Defense authorization bill.

It is worth recounting what it is the Defense authorization bill provides and what they are putting in jeopardy by insisting on this extraneous amendment at this time: a pay raise of 3 percent; the authority to pay bonuses as special pay for enlistment and reenlistment; flight pay; various medical and dental benefits; nuclear incentive pay; an authorization for an additional 13,000 active-duty soldiers and 9,000 active-duty marines.

In the Boston Globe of September 27, 2007, the Army's top officer, General Casey, said what we all know, which is that the military has been stretched too thin. We know, based on the amendment offered by the distinguished Senator from Virginia, Senator WEBB, these are concerns we all share about the lengthy deployments of our troops because we don't have enough men and women in uniform, particularly in the Marines and members of the U.S. Army; and this bill, which this amendment puts in jeopardy, expands the end strength of the Army to reduce that stress and strain on our volunteer military and their families. We should not put it in jeopardy.

This bill also authorizes an additional $4 billion for the MRAPs. To recall, the MRAPs are the mine resistant ambush protected vehicles that are specially constructed vehicles devised

to defeat IEDs and save the lives and limbs of U.S. soldiers. Why in the world, in order to add extraneous legislation that has nothing to do with national security, would the advocates of this amendment jeopardize the ability to pass this Defense authorization bill, which is so important to our men and women in uniform? It is one thing to claim we support our military members; it is another thing to act on that stated conviction.

Have no doubt about it, this amendment has nothing to do with our military. There are remedies in place under the Uniform Code of Military Justice if, in fact, there is an attempt to link this to the military somehow. I think that is a spurious claim. There are a myriad of laws, since 1968 under the Federal United States Code itself, dealing with hate crimes. As I mentioned, this bill, because it has been brought in haste on this legislation without an opportunity for calm deliberation and investigation and understanding by Members, actually dilutes some of the penalties currently available under Federal law if, in fact, the same conduct were indicted or charged under this amendment if it were to become law. Why in the world would the advocates of this legislation want to dilute the punishment that is potentially available to the jury in admittedly heinous crimes?

It would be a mistake, and a mistake made out of haste. We should not indulge the desire to pass this legislation, no matter how sincere it is, in haste and without the kind of calm deliberation that will allow the Members of the Senate to understand what they are voting on and what we are doing. We should not jeopardize passing the Defense authorization bill, which contains the essential protections and benefits for our military members by loading it down with this extraneous amendment; or as the Senator from Illinois said, he wants to add an amendment relating to immigration. We know that will only spawn other amendments and burden this bill down so it will never pass. That would be a travesty.

Instead of engaging in these ill-considered attempts to burden this important legislation with extraneous amendments, we ought to be doing the rest of our work. Why are we going to have to pass a continuing resolution to keep the Federal Government open before we leave this week? It is because none of the appropriation bills that are to pay for the Federal Government to keep the Federal Government open have cleared the Congress and gone to the President to be signed. We are simply not taking care of the people's business when we engage in rabbit trails such as this amendment calls for.

I don't doubt the sincerity of the sponsors of this amendment. I disagree with them on adding this amendment to this important legislation for the reasons I have stated. I even disagree with them that some crimes ought to be treated or punished unequally than others based upon a membership in a particular group that can be identified, as I have described. So I don't doubt their sincerity; I just disagree with them. But we ought to have this debate at a time when we can focus our efforts, after a hearing and due deliberation, and after adequate consideration about the merits of the particular proposal, as we ordinarily do—not add it on 16 days after we have started the Defense authorization bill that has taken too long, jeopardizing our ability to add to the end strength and relieve the stress of our men and women in uniform and their families, and make sure they get the dignified treatment of the Wounded Warriors Act, which is part of this underlying Defense authorization bill, so we can deal with the concerns expressed again in the GAO report, which said the reforms we all want to come quickly are coming far too slowly when it comes to cutting the redtape and making sure our wounded warriors not only get the medical care they deserve, but get to move through the Department of Defense health care system and Veterans Affairs system in a way that lightens their load and not burdens them further.

I think it is a mistake to consider this amendment at this time and in this way—a way that jeopardizes this important legislation. It has nothing—zero—to do with the Defense authorization bill.

Whatever the merits of the amendment may be, I encourage the majority leader to give the proponents of this amendment an opportunity to present it at another time when we don't place in jeopardy these important benefits and relief designed to help our men and women in uniform during a time of war. We are at war. Why in the world would we be engaged in these rabbit trails on extraneous topics when we ought to be providing our men and women in uniform the relief they deserve and so urgently need.

I hope my colleagues will vote against cloture on this amendment, no matter how good the intentions may be. I disagree that it belongs on this bill. I disagree that we should jeopardize this important legislation with extraneous matters such as immigration amendments, or hate crimes amendments, or anything else that doesn't have to do with helping our men and women in uniform during a time of war.

I yield the floor.

Mr. KENNEDY. Mr. President, I listened carefully to my friend from Texas. We have spent more time in quorum calls around here over these last few days. We spent a good deal of time on a poster—expressing the will of the Senate on various posters. We spent hours on those issues. Talk about delaying paying for the troops. I didn't hear those arguments when we were trying to uparmor HMMWVs last year. So I have difficulty in giving a lot of focus and attention to it.

Quite frankly, I imagine the Senator is talking about the DREAM Act, which will permit children who have been in this country for 5 years—brought in by their parents through no fault of their own—that we either permit them to go through an education or join the military—join the military. That has something to do with the Defense authorization bill—when we find out that many units are not being kept up to speed. So we will move ahead.

How much time do I have, Mr. President?

The PRESIDING OFFICER (Mr. MENENDEZ). The Senator has 24 minutes.

Mr. KENNEDY. Mr. President, I yield 10 minutes to the Senator from Oregon.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. SMITH. Mr. President, like Senator KENNEDY, I feel it appropriate to respond very respectfully to a dear friend of mine from Texas. I have great affection for him. I have only been in this body for 11 years. For 11 years, I have been working on this piece of legislation. For 11 years, it has often been put on the Defense authorization bill—passed several times by the Senate. You might wonder why is it appropriate to put on the Defense authorization bill. Let me put a human face on it. This photo depicts a Navy seaman who was a gay man serving lawfully under ''don't ask, don't tell.'' Somehow it was discovered that he was a gay man. He was beaten to death so brutally that his mother was only able to recognize his body because of a tattoo that she was able to recognize.

The U.S. military is not immune from hate crimes. It is utterly and entirely appropriate that this be on the Defense authorization bill—if not for this man's reason, for the fact that we are engaged in a war on terrorism, utilizing our U.S. military. They are fighting terrorism abroad. Surely we have the stuff in the Senate to fight terrorism at home and within the military. If you need a human face for why this is entirely appropriate, look at Allen Schindler, whose mother was only able to identify him because of a tattoo she knew he had.

In terms of doing this in haste, I am not on the Judiciary Committee, but I know there have been many hearings in Congress after Congress and debates in the past 11 years in which I have participated. This is not done in haste. This is done thoughtfully and deliberately in Senate fashion. I don't think that charge sticks, and I think it is high time we pass this legislation and that we fight terrorism at home and abroad and even within the military.

I have made it a practice, since becoming aware that the Federal Government did not have a backstop law to State law, of a need to have the Federal Government to have authority to show up to work, to be able to be a backstop to State and local law—not preempt them but to help them and to let Americans know that at every level

of their Government, we care about public safety, we care about fighting terrorism.

Some will say this law is symbolism, it will not do anything. Ever since the Ten Commandments came down off Mount Sinai, the law has also been a teacher. We all fall short of the law. But the truth of the matter is, it does set a societal standard. I believe the Federal Government should join the States in setting this standard so this law can go from symbol to substance because it can, over time, change hearts and minds.

When one does what I have done, and that is enter into the CONGRESSIONAL RECORD a hate crime committed in the United States almost every day I have served in the Senate, I think it is apparent we have a problem, and I think it is apparent the Federal Government ought to have a role.

This law, symbolic as it is, can change hearts and minds and can be real substance. We are neglecting our role in this fight against hatred at home in living up to our national motto: ''E Pluribus Unum''; out of many one.

So irrespective of one's race, religion, sexual orientation, gender, we get equal protection under the law, and this is a glaring omission in the standard of equal protection, as I see it.

When I went to law school, I learned that to establish a crime, one of the first elements you have to determine is motive and intent. Some have said this is thought speech. The truth is, no thoughts are punished here. There is nothing in this amendment that prevents one from saying and thinking anything. The first amendment is unaffected by this legislation. But what this says is, if you think it, you speak it, and you act on it, you come under the jurisdiction of local, State, and I hope Federal hate crimes laws.

It is an element in a crime. Some argue it is unconstitutional. This very issue, as it related to sexual orientation in a Wisconsin case, was tried all the way to the U.S. Supreme Court. A unanimous decision was written affirming the inclusion of sexual orientation and the constitutionality of the Wisconsin State law. I have it in my hand. It is called Wisconsin v. Mitchell. It was written by William Rehnquist, not exactly a liberal, who made it very clear that hate crimes laws are constitutional because it goes to action, criminal behavior, and the speech, the thought, all of those are mere elements in proving a crime.

Many of my brothers and sisters in the religious community are now saying on national television even that this will limit the free exercise of religion, it will limit their ability to preach and interpret the Bible any way they want. If it did that, I would not be here. But if it did that, they would already be in jail because most States in the United States already have these laws. They are constitutional. They go to the elements of establishing the commission of a crime.

It is high time we passed this legislation. We have passed it as a Senate many times. We now have an opportunity to get it to the next step. I hope and pray the President does not veto it. We are not doing this in haste. We are not doing this because it is inappropriate on the Defense authorization bill. We are doing it because it is high time the Federal Government be able to show up to work in rural places such as Laramie, WY, where this young man was brutally beaten to death. This is Matthew Shepard. Matthew's mother Judy is a friend of mine. The sheriff in Laramie, WY, is one of the individuals who persuaded me they needed the help of the Federal Government. They were overwhelmed with what happened in the case of this young man, a 21-year-old college student whose life was taken on this lonely fence.

His life was taken not because they wanted his money or they wanted something else from him. They knew he was gay, and they beat him and left him to die on this fence in Wyoming.

With Matthew's mother's permission, Senator KENNEDY and I have named this amendment the Matthew Shepard Act. What happened to Matthew should happen to no one, no matter their religion, no matter their race, no matter their ethnicity, no matter their sexual orientation, because in the public square, we are all imperfect people. In the public square, we have a duty to provide public safety for all Americans, no matter their transgressions or whatever we think of their lifestyles.

This is a glaring omission in Federal law. I hope we are about to right it, and I hope as we do, we will remember the sacrifice and the commitment and the advocacy of Judy Shepard on behalf of her son and his memory. Let us enshrine this act in his name in our law because it is the right thing to do, and it is about time we do it.

I yield the floor.

The PRESIDING OFFICER (Mr. CASEY). Who yields time?

The Senator from Utah.

Mr. HATCH. Mr. President, I will take a few seconds, and then I will yield to the distinguished Senator from South Carolina.

To be honest with you, I don't think anybody differs with about 90 percent of what the distinguished Senator from Massachusetts or the distinguished Senator from Oregon have said, but it needs to be pointed out that in every case they have cited, State law took care of it and took care of it stronger than this bill will take care of it.

Frankly, whether it is Matthew Shepard or whether it is Byrd or whether it is the other case the distinguished Senator from Oregon mentioned, there is no need to federalize these crimes because they are being taken care of.

I yield 5 minutes to the distinguished Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Mr. President, before my colleague from Oregon leaves, I don't think there is anybody in this body who is more respected than Senator GORDON SMITH. He is a very sincere, thoughtful guy who tries to personalize issues that affect people throughout this country. I know he is motivated by all the right reasons, but somebody needs to talk about the politics.

This legislation has been placed on the Defense authorization bill in the past. It never made it out of conference because we knew, with the makeup of the conference, the amendment would fall. Given the makeup of this conference, the amendment will be part of the bill and it is going to be vetoed. That is the politics. Whether one agrees with President Bush, he said he is going to veto this bill, and if I were him, I would as Commander in Chief. I would not buy into this way of legislating.

Another reason for this amendment, if you think there is a gap in military law that without this kind of amendment the military is not going to prosecute people who act on their prejudices, you are wrong. If someone in uniform commits a crime against a civilian or another person in uniform, I don't care why they did it; if they beat somebody up, hurt somebody, they are going to get prosecuted. That is the way the military law works.

We are not doing the military a favor by passing this legislation because there is no problem in the military in terms of how justice is administered. Whatever motivates you to hurt someone or to take the law in your own hands or act on your prejudices, you are going to be dealt with because we cannot have good order and discipline in the military when people can hurt someone based on their individual prejudice because the whole unit falls apart. This is nothing the military needs. They are going to take care of violence in the ranks based on the law they already have.

I can assure my colleagues that no one in the military gets a pass because of the status of their victim. If you engage in violent conduct, inappropriate behavior, illegal behavior, the law is going to come down on your head because we need good order and discipline.

The politics of this amendment is that this bill will get vetoed. The President is not going to agree to this social legislation on the Defense authorization bill, and we have to take responsibility for that action. Whether one agrees with him or not, we are going to put in jeopardy items the military does need. They don't need a hate crimes bill to make it an effective fighting force. We already have disciplinary tools to discipline people. They need pay raises and MRAP protection, and this bill provides those items.

Members of this body have different views about hate crimes legislation. We can argue those differences any time, anywhere, on any other piece of

legislation. It can be brought up as a freestanding bill. But to put it on this bill is going to put in jeopardy items our men and women who are in combat and being shot at need. When I go to Iraq, I don't have a lot of people coming up to me saying we need to pass a hate crimes bill. They do need better body armor. They do need pay raises. They do need better MRAPs.

I think this is a very poor use of the legislative process knowing the end game. The end game is, we are going to hijack the Defense authorization bill by legislation not needed in the military, that is contentious, and that has an opportunity to be debated somewhere else. I hope reason prevails eventually.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Vermont.

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senator from Massachusetts controls 14 minutes, and the Senator from Utah controls 22 minutes.

Mr. LEAHY. Mr. President, I yield myself up to 5 minutes from the time of the Senator from Massachusetts.

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

Mr. LEAHY. Mr. President, today the Senate is considering an amendment to the Department of Defense bill to address crimes that terrorize entire communities. Violent crimes motivated by prejudice and hate are tragedies that haunt American history. From the lynchings that plagued race relations for more than a century to the well-publicized slayings of Matthew Shepard and James Byrd, Jr., in the 1990s, this is a story we have heard too often in this country. Unfortunately, in my home state of Vermont, there have been two recent attacks that appear to have been motivated by the victims' religion or sexual orientation. A well-respected State representative in the Vermont Legislature has not been immune to threats of violence based solely on his sexual orientation.

I am proud to once again be a cosponsor of this legislation. I would like to express my appreciation to the Senator from Massachusetts and the Senator from Oregon for their work on this. I hope that this time Congress will have the courage to pass it. Six years ago, I made this bill one of the first major bills to move through the Judiciary Committee after I became chairman. It passed the Senate in the 106th Congress and again in the 108th Congress, but Republicans in the House blocked this important bill each time. In the Democratically led House of Representatives, the companion bill this year passed by a wide bipartisan margin. So I am hopeful that this time, Democrats and Republicans in the Senate will join together finally to enact this civil rights measure into law.

This hate crimes legislation improves current law by making it easier for Federal authorities to investigate and prosecute crimes based on race, color, religion, and national origin. Victims will no longer have to be engaged in a narrow range of activities, such as serving as a juror, to be protected under Federal law. This bill also focuses the attention and resources of the Federal Government on the problem of hate crimes committed against people because of their sexual orientation, gender, or disability, which is an important and long overdue expansion of protection. Finally, this bill provides assistance and resources to State, local, and tribal law enforcement to address hate crimes.

The crimes targeted in this bill are particularly pernicious crimes that affect more than just their victims and their victims' families—they inspire fear in those who have no connection to the victim other than a shared characteristic such as race or sexual orientation. When James Byrd, Jr., was dragged behind a pickup truck and killed by bigots in Texas in 1998 for no reason other than his race, many African Americans throughout our Nation surely felt diminished as citizens. When Matthew Shepard was brutally murdered in Wyoming the same year because of his sexual orientation, many in the gay and lesbian community felt less safe on our streets and in their homes. These crimes promote fear and insecurity that are distinct from the reactions to other crimes, and we need to take action to enhance their prosecution.

All Americans have the right to live, travel and gather where they choose. In the past, we have responded as a Nation to deter and to punish violent denials of civil rights. We have enacted Federal laws to protect the civil rights of all of our citizens for nearly 150 years. The Local Law Enforcement Hate Crimes Prevention Act continues that great and honorable tradition.

This bill will strengthen Federal jurisdiction over hate crimes as a backup, but not a substitute, for State and local law enforcement. States will still bear primary responsibility for prosecuting most hate crimes, which is important to me as a former State prosecutor. In a sign that this legislation respects the proper balance between Federal and local authority, it has received strong bipartisan support from State and local law enforcement organizations across the country.

Moreover, this bill accomplishes a critically important goal—protecting all of our citizens—without compromising our constitutional responsibilities. It is a tool for combating acts and threats of violence motivated by hatred and bigotry. But it does not target pure speech, however offensive or disagreeable. The Constitution does not permit us in Congress to prohibit the expression of an idea simply because we disagree with it. As Justice Holmes wrote, the Constitution protects not just freedom for the thought and expression we agree with, but freedom for the thought that we hate. I am devoted to that principle, and I am confident that this bill does not contradict it.

We have been trying for years to pass the Local Law Enforcement Hate Crimes Prevention Act. It is appropriate to attach this important legislation to the pending Department of Defense authorization bill, as we have done twice in recent memory, because this is a pressing issue. I hope that we will not see another Republican-led filibuster on what should be a bipartisan measure.

Adoption of this amendment will show once again that America values tolerance and protects all of its people. I urge the opponents of this measure to consider the message it sends when year after year, we are prevented from enacting this broadly supported bill. The victims of hate deserve better. Let us join together and adopt these provisions without further obstruction and delay.

CHILDREN'S HEALTH INSURANCE PROGRAM

Mr. President, I wish to express again my strong support for the reauthorization of the Children's Health Insurance Program. When we talk about the work of this Congress, I believe the extension of CHIP will stand out as one of the great accomplishments of this body. The bill is a clear statement of the priority of the majority in the Congress.

In passing this legislation, we state clearly that the health of our Nation's children is an issue too important to be dealt with in a ''business as usual'' fashion. This is a program that represents the best of what can happen when Members of both sides of the aisle come together to forge a consensus, with Democrats and Republicans working together for that consensus.

The outcome is a solid compromise on a vital issue: more health insurance coverage for millions of children. The choice is clear. Either you support children's health care or you do not. Either it deserves to be a high priority on our agenda or it does not. Frankly, as a parent, as a grandparent, I don't see this as a choice at all. It is a matter of priority. Few issues are as important as caring for our children.

Instead of helping more families who are struggling to afford basic health care for their children, the President would cut thousands in Vermont who have coverage right now. He is failing to lead, so Congress again is stepping in to realign our priorities.

If we can find the money to fund the war in Iraq for 41 days, the same amount that would pay for 10 million children to have health insurance for a whole year, then we can pay for this bill. I have heard some argue the bill should be opposed because it raises taxes on tobacco—just tobacco. Anyone who opposes this bill on these grounds is choosing big tobacco over children's health.

I support this bill because I believe it is a travesty that in the richest, most

powerful country in the world, there are more than 47 million people without health insurance. It is an absolutely shocking number. It represents roughly one in six people who are going without regular trips to the doctor and foregoing needed medications and who are forced to use the emergency room for care because they have nowhere else to turn. These are our friends, our neighbors, and millions of our children.

My wife, during the years when she worked as a registered nurse, saw these people and realized what happened to them.

The legislation before us will extend and renew health care coverage for 10 million children. My own State of Vermont has been a national leader in children's health care. Even before the creation of CHIP, we knew this was the right thing to do. Because of our early action, Vermont has the lowest rates for uninsured children in the country, making our State a leader and an example for the rest of the Nation. This bill will bring us still closer to the goal of covering all children in our State but also to thousands elsewhere.

We are faced with many choices in the Senate. For me, the choice in this bill is clear. It is a must-pass bill. It is worthy of our support. I urge all my colleagues to stand for the children of this country and support this bill, and I urge the President to abandon his ill-advised threats and to sign it into law. If we can afford the war in Iraq, we can afford to insure our children.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, I yield 4 minutes to the distinguished Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I just want to share a few thoughts with my colleagues on the pending amendment. This hate crimes legislation is constitutionally dubious and very unusual legislation in the history of how we do law enforcement in America.

What I want to say to my colleague is that a murder in Utah, a murder in Massachusetts, a murder in Alabama is not a Federal crime unless certain other events occur, unless it is related to some other event. A robbery in any State is not a Federal crime per se. It has to be robbery of a Federal bank. It has to be robbery of an interstate shipment or something of that nature. But simple assaults, simple murders, no matter how grievous, are not Federal crimes. So the Supreme Court has been cautious about that and has raised questions about it.

Now, with regard to our history of legislating in this area, we have made Federal civil rights laws applicable to assaults and murders of people in America on account of their race, and the Supreme Court has upheld that. One of the fundamental reasons for that is that in many areas of the country, for many years—truly not so today, I believe, but in the past, areas such as my area of the country, have not prosecuted those cases, and there was a historical record of a failure to effectively prosecute in racial assaults that affected people's fundamental civil liberties. So that has been upheld. But the legislation we are talking about today is about picking an area that people care about and are concerned about and feel deeply about, which is that people should not be assaulted or abused as a result of their sexual orientation, and now we want to create a Federal crime wherever in America such an assault or an illegal activity or murder against that person occurs. We want to make that a Federal crime.

One of my colleagues said it is a backstop for the Federal Government. It is not a backstop. I was a Federal prosecutor. Federal law has priority. So this is a move in that direction.

So the question is, what about the elderly? What about those who are sick and infirm? What about police officers, if they are murdered? Do we need the Federal Government to make that a crime also and be able to prosecute all of those murders throughout the country when we have never done that historically? It is a big deal from that perspective, and that is why it is constitutionally suspect.

A State can pass such a law, I will admit. The Federal Government can pass such a law on Federal property, military bases, and the District of Columbia. But when the Federal Government reaches into a State that has no interstate nexus and creates a crime of this kind, I think it is, first, constitutionally questionable; secondly, not necessarily good policy because what other kinds of crimes motivated by what other kinds of malintent are we going to now make a Federal crime?

So Senator HATCH has explicitly and openly and directly delineated the very aggressive prosecutions we are seeing in States for hate-type crimes against homosexuals, and he has shown how a number of them have gotten a death penalty, which this act does not provide for, but State laws do. We have no record to indicate there is a shortage or a lack of willingness to prosecute these cases, so I think, under those circumstances, we ought not to do it.

I also would note it would be a tragic thing indeed if this Defense bill would be vetoed as a result of this extraneous piece of controversial legislation.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, this has been an interesting exercise, as far as I am concerned, but I rise to oppose this hate crimes legislation. This is wrong—hate crimes legislation. Instead, we have the opportunity to support the prosecution of hate crimes in a meaningful and a legitimate way that is different from this.

I have said for years in this Chamber that violence motivated by bias against a particular group is abhorrent. Everybody in this body believes that. There is no issue here. We believe that. I believe such conduct must and should be made a crime and punished differently from other crimes. I know all of my colleagues share my conviction about hate crimes. But where should that conviction lead us? The conviction that hate crimes are abhorrent leads me to ask what Congress may properly do about it. That conviction cannot, however, justify supporting the wrong legislation.

The Senate has before it today two amendments which represent two different approaches to the problem of hate crimes. I believe the amendment offered by my good friend from Massachusetts, Senator KENNEDY, is unwise, unnecessary, and unconstitutional. Some would argue the ends justify the means. They say, if you believe hate crimes are abhorrent, then you must vote for the Kennedy amendment. That certainly is not true, and I urge my colleagues to resist that sort of misguided pressure.

Our obligation is not only to pursue the right goals but to do it in the right way. The Kennedy amendment would federalize the prosecution of hate crimes. It would create a new Federal felony, punishable by up to 10 years in prison, for causing bodily injury to another because of that person's actual or perceived religion, national origin, gender, sexual orientation—gender identity?—or disability.

This amendment is unwise because of how it is drafted and how its supporters are trying to get it passed. The Senator from Massachusetts introduced S. 622 in the 106th Congress. He introduced S. 966 in the 108th Congress. He introduced S. 1105 in April. It would prohibit violence motivated by an additional new category of bias. The amendment before us today would do the same. That process of adding categories constituency by constituency and extending the reach of the Federal hate crimes law could continue indefinitely.

When my colleagues consider whether to support the current Kennedy amendment, even if they have supported previous versions, they should know that this amendment before us today is broader than any version of this legislation ever considered by this body. In its latest iteration, the Kennedy amendment would prohibit violence motivated by gender, sexual orientation, and gender identity. Now, there has been no public discussion about what these terms mean, how they may differ, and whether they can be applied in anything approaching a consistent and reasonable way.

But let me address another problem with including the latest new category—what the Kennedy amendment calls perceived gender identity. The term ''perceived'' applies to gender identity as it applies to the other categories, and it refers to the perpetrator's perception. In other words, the amendment prohibits violence based on

what the perpetrator perceives to be the victim's gender identity. But the term ''gender identity'' refers to the victim's perception. Get that? The term ''gender identity'' refers to the victim's perception.

The online resource Wikipedia defines gender identity as:

> Whether one perceives oneself to be a man, a woman, or describes oneself in some less conventional way.

Now, the contradiction is obvious. The Kennedy amendment would criminalize violence based on the perpetrator's perception of the victim's self-perception. Whether or not this is good sociology—and I don't believe it is—it is bad legislation.

The Kennedy amendment is also unwise in the way its supporters are trying to get it passed. Even though my good friend from Massachusetts introduced it as a separate bill, we are here today considering it as an amendment to the Defense authorization bill. Some justify that by saying it would also protect members of the military. This measure would protect those serving in the military as well as everyone it attempts to cover whether it is attached to this bill or any other bill on any other subject at any other time. So that is not a good argument.

Its proponents wanted to attach the Kennedy amendment to this legislative vehicle not because it is relevant to the Defense authorization bill but because we consider the Defense authorization bill around here to be what we call a must-pass bill. If the Kennedy amendment prohibited violence against individuals because of their status as members of the military, I suppose it might be more relevant to the Defense bill. But I note that the Kennedy amendment does no such thing.

The Kennedy amendment does not belong on the Defense authorization bill, especially when the President has already threatened to veto the amendment and may have to veto this bill because of this amendment, a bill that is absolutely necessary for the benefit of our soldiers.

Now, in addition to being unwise, the Kennedy amendment is unnecessary. State laws already provide for prosecuting the underlying violence prohibited by the Kennedy amendment. Laws against murder, rape, assault, and the like are State laws, and they should remain that way. Forty-six States also have hate crimes legislation on the books that either criminalize substantive offenses or enhance criminal penalties for existing offenses because of their motive or bias.

By the way, the murderers of James Byrd in Texas and Matthew Shepard in Wyoming, after whom this bill is named, were either sentenced to death or are in prison for the rest of their lives under State law, more than this bill would do. My point is, State laws have been taking care of these matters, and there is absolutely no evidence that the proponents of this bill have been able to show that States are not doing their job under their laws, which are better than this law.

While these are the most widely cited examples, the Byrd and Shepard cases, and the other case cited by my friend from Oregon to demonstrate the need for the Kennedy amendment, it would treat both of these hate crime murders more leniently than current State law does.

There is no evidence that State and local governments are incapable of prosecuting these crimes, or that they are failing to do so.

Fewer than 17 percent of all law enforcement agencies reported even a single hate crime in 2005.

Hate crimes account for less than one-tenth of 1 percent of crimes in America.

The majority of hate crimes involve such things as vandalism or verbal intimidation.

By requiring actual or threatened bodily injury, the Kennedy amendment focuses on an even smaller portion of hate crimes.

This means that States would be more, not less, able to address the hate crime problem themselves.

The States are, in fact, already doing so.

In addition to being unwise and unnecessary, the Kennedy amendment is unconstitutional.

Yesterday in this Chamber, my good friend from Massachusetts strenuously emphasized, clearly and unambiguously, that his amendment is not limited by existing Federal jurisdiction.

In fact, he deliberately wants to break this new Federal hate crime felony free from any such limitation.

In his words, the limitation of requiring Federal jurisdiction for such a Federal crime would be ''outdated, unwise, and unnecessary.''

He said the same thing in April when he introduced this measure as a separate bill.

But the requirement that Congress have authority to legislate on such an issue derives from the very Constitution that each of us has sworn to support and defend.

We must have affirmative authority, derived from the Constitution, to legislate.

By giving us only delegated powers, America's founders rejected the idea that the desirable ends justify the political means.

Federalizing crime is legitimate only when it is connected to a power properly exercised by the Federal Government.

Rejecting the requirement of Federal jurisdiction in the legislation before us is rejecting the limitations imposed upon us by the Constitution.

With all due respect to my good friend from Massachusetts, I do not believe the Constitution is outdated, unwise, or unnecessary.

In its findings, the Kennedy amendment cites the 13th amendment to the Constitution, which banned slavery and involuntary servitude, as a constitutional basis for this legislation.

Modern forms of slavery do exist, and I urge my colleagues to support efforts by the Departments of Justice, Labor, and State to uncover and eliminate such heinous practices as human trafficking and forced prostitution.

But that is not what the Kennedy amendment, or existing hate crimes laws for that matter, are about and they cannot hook their train to the 13th amendment engine.

Connecting 19th century slavery with 21st century perceived gender identity at least requires a long series of rhetorical dots, but it should require more than a storytelling imagination to produce sound legislation.

The Kennedy amendment's growing list of prohibited bias categories extends far beyond anything the Supreme Court has ever recognized as relating to the badges and incidence of slavery.

We do not have to speculate about other constitutional defects in the Kennedy amendment.

As I said yesterday in this chamber, the Supreme Court struck down a portion of the Violence Against Women Act—I was a prime sponsor with Senator BIDEN of that bill—because Congress's authority to regulate interstate commerce did not extend to turning State crimes into Federal lawsuits.

The Court emphasized the distinction between the truly national and truly local and concluded that Federal legislation must be directed at such things as the actual instrumentalities, channels, or goods involved in interstate commerce.

The Kennedy amendment tries to avoid the same fate by appearing to require an interstate commerce nexus for some of the hate crimes it would cover.

If its backers are serious about this requirement, as the Supreme Court surely is, this would further reduce the hate crimes the Kennedy amendment would actually reach.

Their rhetoric and the ever-expanding list of prohibited bias categories in successive versions of this legislation, however, make me wonder whether they genuinely want the Kennedy amendment to be so narrowly applied.

As I said in this chamber yesterday, my good friend from Massachusetts, in the straightforward and direct way we have all come to appreciate and respect, has said unequivocally that all hate crimes will face Federal prosecution.

This will lead to a massive federalization of hate crimes that traditionally have been, and that constitutionally should remain, left to the authority of the States.

There is no need to burden prosecutors and courts and do such damage to our constitutional framework of government.

Our conviction about hate crimes cannot, it must not, blind our conviction about the need for wise legislation and respecting the fundamental limits of our constitutional authority.

While the Kennedy amendment is unwise, unnecessary, and unconstitutional, the good news is that we can do

something legitimate and meaningful about hate crimes without back-handing the Constitution.

The amendment I have offered would strengthen enforcement of hate crimes laws right where that enforcement may legitimately and most effectively occur, at the State and local level.

My amendment would charge the Comptroller General, in consultation with the National Governors Association and State and local law enforcement, with studying whether State and local governments are properly and effectively addressing hate crimes.

This would give us a more objective understanding of the nature and scope of the hate crimes problem so that we can better determine whether there is any basis for a greater Federal role before we go off on this massive sweeping legislation the distinguished senator from Massachusetts is urging. My legislation would help identify whether any gaps exist in the ability and determination of States to prosecute hate crimes and provide Federal resources to help them do so.

The authority to prosecute hate crimes rests with the States, and if we truly want both to address hate crimes and stay within our proper constitutional role, we can help the States effectively carry out their responsibility.

I said it before, and I will say it again.

Crimes of violence, no matter their motivation, are abhorrent.

I recognize that some crimes of violence are directed not only against individual victims, but against the groups or communities with which those victims identify.

Concern about hate crimes, however, is only the beginning of the discussion and the political ends do not justify the legislative means.

I know that my good friend from Massachusetts is genuinely passionate about what he sees as an injustice.

His amendment, however, is the wrong way to address the problem.

The Kennedy amendment is unwise, unnecessary, and unconstitutional.

It is unwise in its drafting and in the way its supporters are trying to get it passed.

It is unnecessary because States have their own hate crimes laws and are demonstrably able to address the problem.

It is unconstitutional because Congress lacks authority to create such a freestanding criminal felony unrestricted by Federal jurisdiction.

I urge my colleagues, instead, to do the right thing and to do it the right way by supporting the amendment I have brought to the floor.

I find no fault with people who are sincere in trying to do things that sincerely are well motivated. But we should live within the confines of the Constitution. There is no nexus that would justify this type of overwhelming legislation, imposed upon everybody in this country, when the States are already doing the job.

We have two hate crimes amendments before us today. One is extremely broad, probably unconstitutional, and likely unnecessary. The President has threatened to veto it. The amendment would torpedo the Defense authorization bill. The other is a more modest approach. My amendment would assist State and local law enforcement as they do the hard work of providing equal justice for all their citizens. The Kennedy amendment is sweeping, but it cannot realistically get done on this bill. Mine is a modest, and I believe adequate, approach to this problem, and it would become law. To quote an unappreciated political philosopher:

> You can't always get what you want. But if you try, sometimes, you'll find you get what you need.

I urge my colleagues to vote against cloture on the Kennedy amendment and for cloture on my amendment and I think we will make better headway than we would if we agree to the Kennedy amendment.

I reserve the remainder of my time.

Mr. LEVIN. Mr. President, I support the passage of the Matthew Shepard Local Law Enforcement Hate Crimes Prevention Act of 2007. We have all heard the story of Matthew Shepard: the 21-year-old student at the University of Wyoming who was brutally beaten—his skull smashed—and tied to a fence with a rope and left to die—because he was homosexual. No one should be targeted because of the color of their skin, their religion, their gender or their sexual orientation.

In April of this year, I joined Senators KENNEDY, SMITH, and others in introducing hate crimes legislation. This amendment, which is identical to that legislation, for the first time will expand the definition of a hate crime to include gender, gender identity, disability, and sexual orientation. It gives the Justice Department jurisdiction over crimes of violence committed because of a person's actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability. Existing law only covers race, color, religion, or national origin-based hate crimes, where the victim was engaging in one of six 'specified activities.' It will also strengthen the ability of the Federal, State, and local governments to investigate and prosecute hate crimes based on race, ethnic background, religion, gender, sexual orientation, and disability.

Some have said that this bill will take away first amendment rights. That is just not true. This law would punish violent acts, not beliefs. This legislation only applies to violent, bias-motivated crimes and does not infringe on any conduct protected by the first amendment. The first amendment right to organize against, preach against and speak is not impinged.

America's diversity is one of our greatest strengths. Our tolerance for each other's differences is part of the lamp that can help bring light to a world which is enveloped in bigotry and intolerance.

America has taken many steps throughout our history on a long road to become a more inclusive Nation.

We are hopefully about to take another one if we adopt the Matthew Shepard Hate Crimes Prevention Act of 2007.

Ms. FEINSTEIN. I rise today in support of the Kennedy-Smith amendment No. 3035, the Matthew Shepard Local Law Enforcement Hate Crimes Prevention Act of 2007.

This legislation is a crucial step toward prosecuting crimes directed at thousands of individuals who are the targets of brutal and senseless violence.

The current Federal hate crimes law simply does not go far enough. It covers only crimes motivated by bias on the basis of race, color, religion, or national origin.

This amendment improves the current Federal hate crime law by including crimes motivated by gender, gender identity, sexual orientation, and disability.

Congress must expand the ability of the Federal Government to investigate and prosecute anyone who would target victims because of hate. In those States with State hate crimes laws, the Federal Government must provide the resources to ensure that those crimes do not go unpunished. We can and must do more.

In my own State of California, horrific instances of violence signify the critical need for legislation today.

I would like to share just a few examples:

In Santa Ana, retired Federal agent Narciso Leggs, Jr., was found strangled and tortured on June 29 in his southern California apartment. The killer placed a smiling ceramic angel on the victim's shoulder blade and wrote antigay slurs on his flesh with a black marker.

Another instance, in Los Angeles, CA, this past Spring: James McKinney, a mentally disabled man, was beaten to death by an unidentified man wielding an aluminum baseball bat as he was walking to the store from his home, a mental health care facility. The attack was caught on surveillance camera on Tuesday May 29, but his attacker remains at large.

In San Diego, attackers wielding baseball bats and shouting antigay slurs beat two men and stabbed a third in the back. The attack was the first in more than a decade at San Diego's annual gay pride festival.

Lastly, one of the most well-known cases in California happened in West Hollywood to actor Trev Broudy in 2002.

The night of his attack, Trev Broudy was hugging a man on a street. Three men with a baseball bat savagely attacked the actor, leaving him in a coma for approximately 10 weeks. As a result of the attack, Trev suffered brain damage, lost half of his vision, and has experienced trouble hearing.

The crimes are brutal. The attackers targeted their victims because of who they are. Yet none of these crimes can be prosecuted as a Federal hate crime.

These are not isolated instances. These crimes occur all over the country. According to FBI statistics, 27,432 people were victims of hate-motivated violence over the last 3 years. That is an average of over 9,100 people per year, with nearly 25 people being victimized every day of the year, based on their race, religion, sexual orientation, ethnic background, or disability.

Even more disturbing is the fact that these FBI statistics show only a fraction of the problem because so many hate crimes are unreported.

The Southern Poverty Law Center estimates that the actual number of hate crimes committed in the United States each year is closer to 50,000, and survey data from the biannual National Crime Victimization Survey suggests that an average of 191,000 hate crime victimizations take place per year.

Race-related hate crimes are the most common, but crimes based on religion, ethnic background or sexual orientation are also significant. In fact, a close analysis of hate crimes rates demonstrates that groups that are now covered by current laws—such as African Americans, Muslims, and Jews—report similar rates of hate crimes victimizations as gays and lesbians—who are not currently protected.

On average, 8 in 100,000 African Americans report being the victim of hate crime; 12 in 100,000 Muslims report being the victim of hate crime; 15 in 100,000 Jews report being the victim of hate crime; and 13 in 100,000 gay men, lesbians, and bisexuals report being the victim of hate crime.

Every individual's life is valuable. Congress must act to protect every person who is targeted simply because of who they are.

Specifically, the Matthew Shepard Local Law Enforcement Hate Crimes Prevention Act of 2007 expands on the 1968 definition of a hate crime.

Under current Federal law, hate crimes only cover attacks based on race, color, religion, and national origin. Under this amendment, hate crimes will include gender, gender identity, sexual orientation, and disability.

The bill enables States, local jurisdictions, and Indian tribes to apply for Federal grants in order to solve hate crimes and provides Federal agents with broader authority to aid State and local police.

Additionally, the bill amends the Hate Crime Statistics Act by inserting ''gender'' and ''gender identity,'' allowing law enforcement agencies to gather data on the newly protected groups.

This is not a new bill. It was first introduced in 1998. It has passed the Senate three times: in 2000, and in 2002 and 2004 as an amendment to the Department of Defense authorization bill.

It passed the House this year as a stand-alone bill and last year as an amendment to the Adam Walsh Act.

It is bipartisan. It has 44 cosponsors in the Senate and 171 cosponsors in the House. It is endorsed by over 210 law enforcement, civic, and religious organizations and has the support of 73 percent of the American population.

There is no excuse for not passing this bill out of the Senate today. This bill is not about free speech. It is about crimes of violence—often brutal, savage acts of violence. These crimes target a person solely because of that person's race, sexual orientation, religion, gender, national origin, or disability. By terrorizing one member of a group, they terrorize entire communities of people. These crimes damage our social fabric. We must be clear that we cannot tolerate this kind of intimidation.

Today, I ask all of my colleagues to rally against hate by working to ensure that this legislation is not simply supported but actually passed and signed into law.

Until it is enacted, many hate crime victims and their families will not receive the justice they deserve.

Let us send a message to all Americans that we will no longer turn a blind eye to hate crimes in this country.

Mr. KERRY. Mr. President, I still remember standing on the steps of the Capitol on October 14, 1998—thousands gathered on a cool autumn evening—to remember Matthew Shepard 2 days after he had been killed in Laramie, WY.

That night I said:

> Matthew Shepard is not the exception to the rule—his tragic death is the extreme example of what happens on a daily basis in our schools, on our streets, and in our communities. And that's why we have an obligation to pass laws that make clear our determination to root out this hatred. We hear a lot from Congress today about how we are a country of laws, not men. Let them make good on those words, and pass hate crimes legislation.

Almost 10 years have passed since that candlelight vigil—10 years too long for Washington to do what was so obviously needed. Violent hate crimes are on the rise—almost 10,000 violent acts of hate against individuals based on their sexual orientation have been reported to the authorities since Matthew Shepard's murder. What a tragic reminder of the urgency of providing local law enforcement with the added resources and support needed to get tough on hate crimes. What a horrific wake-up call to a sleepy Washington about the need to ensure a Federal backstop to assist local law enforcement in those cases in which they request assistance or fail to adequately investigate or prosecute these serious crimes.

The good news is that today with this Senate vote we will move one step closer than ever to legislating a Federal hate crimes law that includes sexual orientation and gender identity—the Matthew Shepard Act.

This is the least we can do, as we committed to do that night in 1998, to insure that ''the lesson of Matthew Shepard is not forgotten.'' It is the least we can do to right a wrong in an America where every morning, someone takes the long way to class, an America where every day someone looks over his shoulder on the street, and still today in America innocent people fear for their safety—all because some people hate them for being who they were born to be—gay, lesbian, bisexual, or transgender.

This fight is not over, but this vote is an important milestone in the fight—a day when I hope we will begin at last to turn the tide, and reaffirm our faith that the strength of human justice can overcome the hatred in our society by confronting it.

I want to thank my friend and colleague, Senator KENNEDY, for his hard work to address hate crimes and ensure that this vital legislation is enacted.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I have listened with great interest to my friend from Utah describe this legislation. He has followed one of the great traditions of the Senate. That is, he has misrepresented and misstated my position and then he has differed with it. I know that technique because I have used it a few times myself.

I hope, for those of our colleagues who have been following this debate, to keep in mind very briefly—I outlined earlier the principal reasons for this—but with regard to what is happening in the local communities, and in the States, the fact is the National District Attorneys Association is supporting this legislation. Do you believe if we were doing all the things the Senator said, if we were violating everything local and State, the National District Attorneys Association would be supporting this? The National Sheriffs' Association is supporting it, as is the States Attorneys General of the United States. The principal law enforcement agencies in the States are supporting it. Do you think they would be supporting this if it was unconstitutional? You don't think they would have the opportunity to know what is constitutional or not constitutional? And you don't think they understand what is necessary to protect their citizens from the viciousness of hate crimes?

There it is. I ask unanimous consent the entire list be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Letters From Organizations That Support the Local Law Enforcement Hate Crimes Prevention Act of 2007

1. American-Arab Anti-Discrimination Committee
2. American Association of University Women
3. American Civil Liberties Union
4. American Jewish Committee
5. American Psychological Association
6. Anti-Defamation League
7. Asian American Justice Center
8. Center For the Study of Hate and Extremism
9. Hadassah
10. Human Rights Campaign

11. Interfaith Alliance
12. International Association of Chiefs of Police
13. Jewish Council for Public Affairs
14. Leadership Conference on Civil Rights
15. Major Cities Chiefs Association
16. Matthew Shepard Foundation
17. NA'AMAT USA
18. National Association of Lesbian, Gay, Bisexual & Transgender Community Centers
19. National Association for the Advancement of Colored People
20. National Center for Transgender Equality
21. National Council of Jewish Women
22. National District Attorneys Association
23. National Organization for Women
24. National Sheriffs' Association
25. Organization of Chinese Americans, Inc.
26. People for the American Way
27. PFLAG
28. Religious Action Center of Reform Judaism
29. SALDEF (Sikh American Legal Defense and Education Fund)
30. States Attorneys General
31. Unitarian Universalist Association
32. The United States Conference of Mayors
33. United States Student Association
34. Group Letter: Religious Organizations: African American Ministers in Action, American Jewish Committee, Anti-defamation League, Buddhist Peace Fellowship, Catholics for a Free Choice, Church Women United, The Episcopal Church, Hadassah, Hindu American Foundation, The Interfaith Alliance, Jewish Council for Public Affairs, Jewish Women International, Muslim Public Affairs Council, NA'AMAT USA, National Council of Churches of Christ, National Council of Jewish Women, North American Federation of Temple Youth, Presbyterian Church USA, Sikh Council on Religion and Education, United Church of Christ Justice and Witness Ministries, Union for Reform Judaism, United Methodist Church General Board of Church and Society, Unitarian Universalist Association of Congregations, United Synagogues of Conservative Judaism and Women of Reform Judaism.
35. Group Letter: Consortium for Citizens with Disabilities: Alexander Graham Bell Association for the Deaf and Hard of Hearing, American Association on Health and Disability, American Association on Intellectual and Developmental Disabilities, American Association on Mental Retardation, American Association of People with Disabilities, American Council of the Blind, American Counseling Association, American Dance Therapy Association, American Medical Rehabilitation Providers Association, American Music Therapy Association, American Network of Community Options and Resources, American Occupational Therapy Association, American Psychological Association, American Therapeutic Recreation Association, American Rehabilitation Association, Association of Tech Act Projects, Association of University Centers of Disabilities, Autism Society of America, Bazelon Center for Mental Health Law, Council for Learning Disabilities, Council of State Administrators of Vocational Rehabilitation, Easter Seals, Epilepsy Foundation, Helen Keller National Center, Learning Disabilities Association of America, National Alliance on Mental Illness, National Association of Councils on Developmental Disabilities, National Coalition on Deaf-Blindness, National Disability Rights Network, National Down Syndrome Society, National Fragile X Foundation, National Rehabilitation Association, National Respite Coalition, National Structured Settlement Trade Association, NISH, Paralyzed Veterans of America, Research Institute for Independent Living, School Social Work Association of America, Spina Bifida Association, The Arc of the United States, United Cerebral Palsy, United Spinal Association, World Institute on Disability.
36. Group Letter: National Partnership for Women and Families: 9 to 5 Bay Area, 9 to 5 Colorado, 9 to 5 Poverty Network Initiative (Wisconsin), 9 to 5 National Association of Working Women, AFL–CIO Department of Civil, Human and Women's Rights, American Association of University Women, Atlanta 9 to 5, Break the Cycle, Coalition of Labor Union Women, Colorado Coalition Against Sexual Assault (CCASA), Communications Workers of America AFL–CIO, Democrats.com, Equal Rights Advocates, Feminist Majority, Gender Public Advocacy Coalition, Gender Watchers, Hadassah the Women's Zionist Organization of America, Legal Momentum, Lost Angeles 9 to 5, NA'AMAT USA, National Abortion Federation, National Asian Pacific American Women's Forum, National Association of Social Workers, National Center for Lesbian Rights, National Congress of Black Women, National Council of Jewish Women, National Council of Women's Organizations, National Organization for Women, National Partnership for Women and Families, National Women's Conference, National Women's Committee, National Women's Law Center, Northwest Women's Law Center, Sargent Shriver National Center on Poverty Law, The Women's Institute for Freedom of the Press, Washington Teachers Union, Women Employed, Women's Law Center of Maryland, Women's Research and Education Institute, YWCA USA.

Mr. KENNEDY. I will mention a few. They include the Anti-Defamation League, Human Rights Campaign, Leadership Conference on Civil Rights, National Association for the Advancement of Colored People. Why? Because, as we know, hate crimes are increasing. They are not diminishing in the United States of America. They are increasing. All the statistics demonstrate it.

What is also demonstrable is what local law officials point out by their support. They do not have the tools or the will to deal with the most vicious types of attacks that take place upon individuals because of who they are. That is why they support this rather measured proposal that we have, that will give help and assistance in attacking the problems of hatred at home like we are attacking the problems of hatred abroad.

This is not such a strange issue.

Will the Chair let me know when I have a minute left, please.

My friend, Senator HATCH, pointed out during our debate in 2000:

> Crimes of animus are more likely to promote 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, ultimately, they are downright un-American.

No one could say it better. He understands that is what we are talking about and whether we are going to battle that with both hands, not with one hand tied behind our back as exists at the present time. It is the local law officials who are stating that. Even the Justice Department said the same a few years ago.

Finally, on why this is such an extraordinary situation—this is what the Justice Department says.

> Local authorities may not have the tools or the will to prosecute a particular bias-motivated crime fully.

We put this aside. This, basically, is a moral issue. It is a moral issue because of the viciousness and the motivational aspects of hatred and bigotry. Our Founding Fathers, as brilliant as they were, wrote prejudice in the Constitution of the United States. They wrote slavery in the Constitution of the United States. This Nation has been battling for 230 years to free ourselves from the stains of discrimination, and we are not there yet. We suffered the brutalities of the Civil War. We went through the period of Reconstruction. We have faced those issues on the floor of the Senate: In 1964, the Civil Rights Act; the 1965 Civil Rights Act; the 1968 Civil Rights Act. We went on to knock down the walls of discrimination.

When we knocked down the walls of discrimination on the basis of race, we also, history will show—we knocked them down with regard to gender, we knocked them down with regard to ethnicity, we knocked down a lot of them in terms of disability. We have not with regard to sexual orientation. But we have made remarkable progress. No nation in the world has made that progress—no nation.

That is one of the reasons I am as proud of this Nation as I am. But it is a continuing process. If we do not understand that out there, as the various statistics of the Justice Department and the Southern Poverty Law Center say, there are these centers of hatred and bigotry that exist out there, that are hating and demonstrating and killing our citizens on the basis of those definitions.

That is continuing, and the question is whether we are going to do something about it. We are not going to solve all of the problems with legislation, but if we do not solve this one, we miss a golden opportunity.

I finally say, to those who have talked about, we are adding this on the Defense authorization bill, we have had more time in quorum calls around here. We have not taken a great deal of time. We are taking 2 hours this morning on SCHIP and hate crimes. We have not taken up a great deal of time.

The majority of the Members have supported this. On three other occasions, a majority of Republicans and Democrats have supported this concept—on three other occasions. Let's get the job done. We have that opportunity this morning.

Finally, this is about the morality of our country, the values of our country. That is directly tied into what our men and women are doing overseas in resisting terrorism and fighting for the values here at home. One of the values that is here at home is the value of honoring the dignity of the human being and the individual. That is why

all of those in the great religious faiths, the Interfaith Alliance, 75 different religions—the belief that lies at the core of our diverse faith traditions is that every human being is endowed with dignity and worth. That is why 1,400 members of the clergy have pointed out: Our faith traditions teach us to love our neighbor. While we cannot legislate love, it is our moral duty to protect one another from hatred and violence.

The PRESIDING OFFICER. The Senator has 1 minute remaining.

Mr. KENNEDY. This is from the religious community.

So we have on that standard above the Presiding Officer ''E pluribus unum''—''out of many, one.'' We have a responsibility, to the extent we can, to eliminate division, to eliminate the hatred, to eliminate the bigotry, and to become one Nation with one history and one destiny. This amendment moves us on that road to the kind of country this Nation deserves to be. I hope our colleagues will support this amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, do I have any time remaining?

The PRESIDING OFFICER. The Senator has 54 seconds remaining.

Mr. HATCH. Mr. President, I agree with 80 percent of what the distinguished Senator has said during this debate. The fact is, the very name of this bill makes the very point I am making. It is the ''Matthew Shepard Act,'' a heinous crime committed against him where both people were prosecuted and sentenced to life; in the Byrd case, sentenced to death. We are taking care of these problems. There has been no showing by the other side that the State prosecutors are incapable of doing so. The fact is, we do not need a massive Federal piece of legislation that would require the Federal Government to get into areas that clearly are not in interstate commerce but are subject to State laws that are being enforced. That is a very important point. We should be very loath to go beyond that point.

I thank my very loquacious colleague who feels very deeply, but I feel deeply, too, about the issue, about these people, about what is happening, and what I am saying constitutionally.

The PRESIDING OFFICER. The Senator's time has expired.

The majority leader is recognized.

Mr. REID. Mr. President, I would refer my colleagues to my statement in yesterday's RECORD on the hate crime legislation.

CHIP

Mr. President, just like any job in America, Senators have good days and bad days. We all know what it is like to leave work frustrated that we did not make the right decision, that the progress we have made was not what we had hoped, that we did not express our views in quite the right way or we just did not have enough time to get everything done. But we also know, here in the Senate, how the opposite feels: days when we put our political differences aside, rise above partisanship, and do something lasting and meaningful for our country.

Earlier this year, when the Senate passed its version of the Children's Health Insurance Program, it was a day just like that. It was a day of happiness. And today can be another day just like that. As a result of the hard work of Chairman BAUCUS, Senators ROCKEFELLER, GRASSLEY, and HATCH, we have before us legislation that I am confident will enjoy overwhelming bipartisan support, which we will vote on shortly.

Hopefully, the strong bipartisanship message this body sends today will be loud enough and strong enough that the President will reconsider his stubborn opposition to this legislation. Senators GRASSLEY and HATCH are very supportive of the President. No one needs to lecture anyone on that. But they have said the President's stand on children's health is wrong and that he should join with us. And they are right. For all the talk we hear about what Government does wrong, the Children's Health Insurance Program is a shining example of what Government does right.

Before children's health became law 10 years ago, millions of children were totally uninsured. These children were part of a coverage gap. Their parents' incomes were not high enough to afford private insurance, nor low enough to qualify for Medicaid. Now, a decade later, this program has reduced the number of uninsured children in working families by 35 percent. Today, 6.6 million children have insurance thanks to this exemplary program. Many of these children are now getting regular checkups. They are benefiting from preventative medicine. They are saving money for society, and their primary care comes from a doctor, a family doctor, not from an expensive, inefficient emergency room. Examples of this success can be found in every single State, in urban areas, rural areas, east coast, west coast, south, north, everywhere in between.

When we voted on this bill originally, I gave an example. I told the story of a Reno woman named Terry Rasner. Since 1998, Terry has helped children in Nevada enroll in Nevada Check Up, which is Nevada's children's health insurance program. Her work has never been more important. The latest numbers just released show that 430,000 Nevadans have no insurance; they are uninsured. Nevada is a sparsely populated State, but these numbers are overwhelming—430,000 people have no health insurance. And 115,000 of the uninsured are kids, children.

Terry explained to me, in an e-mail she sent me, how the program is operating in Nevada. She wrote:

> There are many stories of children as old as 11 and 12 who were finally able to visit a dentist for the first time in their lives.
>
> Stories of families who finally felt whole because they could access affordable medical and dental care for their children.
>
> School nurses who were acutely involved in supporting and promoting this program from the outset because they were on the front lines of failed programs, or no programs at all, to address the medical and dental needs of children of low-income working families.
>
> One child in particular was so bad off he was unable to eat or chew food due to the dramatic decay in his mouth. Imagine, children for the first time in their lives actually getting to see a doctor or dentist that their parents were able to afford.

Stories like this, examples of the children's health program saving lives—these same stories are being told all across America, and statistics bear this out.

This program is even better than ever because we have extended dental care for these children. Study after study shows that our youth enrolled in the Children's Health Insurance Program are much more likely to have regular doctor and dental care. They report lower rates by far of unmet needs for care. The quality of care they receive is far better than it was before. That is an understatement. School performance improves. The plan is helping to close the disparity in care for minority children. And the Children's Health Insurance Program has become a major source of care for rural children. So there is no doubt, no question at all that the Children's Health Insurance Program is good for kids, little people who cannot help themselves, it is good for families, also, and it is good for America for sure.

Today, we have the opportunity to take the next step toward making the great American success story even more of a success. The bill before us maintains coverage for the 6.6 million children currently enrolled and adds an additional 4 million low-income, uninsured children. It also improves the program by curbing coverage of adults in the program and targeting the lowest income eligible families as new enrollees. It does all of this in a fiscally responsible manner.

This legislation is fully paid for. It does not add one penny to our Nation's debt or add to the deficit.

It is not surprising that this bill was supported by 45 Republicans in the House and virtually every Democrat in the House. Chairman GRASSLEY, Senator HATCH, and more than a dozen other Republican Senators voted for this bill the first time around, and every single Democrat in the Senate.

I might just add, as an aside, Senator HATCH has never been known as a big spender, and he supported this bill overwhelmingly. We could not be where we are but for him and Senator GRASSLEY.

But not only do a significant number of Republican Senators support this legislation, but Governors support it, our health care providers support it, children's advocates and the vast majority of Americans are cheerleaders for this worthy legislation. The Senate

will shortly do its part and pass this children's health insurance legislation.

But despite all of this, all of the bipartisan support, all of the goodwill this bill enjoys, surprisingly, stunningly, President Bush continues to insist he will stop this bill from becoming law. This is the same President Bush who, during the 2004 campaign, touted his plan to expand the SCHIP program.

Quoting from the President, in a release he made:

> The President will launch an aggressive, billion-dollar effort to enroll children who are eligible but not signed up for the government's health insurance program. The goal will be to cover millions more SCHIP and Medicaid-eligible children within the next 2 years.

That is what he said in 2004. Now President Bush offers us a list of reasons for opposing legislation that would do what he said he strongly supports.

One of the reasons he gives us is we cannot afford it. Let me repeat what I said before: This bill is paid for and will not increase the deficit a single cent.

Second, let's look at the things the President thinks we can afford. In about a month in Iraq, the President will spend $12 billion. This would far exceed what we would spend on these children. But, remember, we are spending for what is fully paid for. It comes from a tobacco tax.

So clearly it is not about having money; it is not about any of the reasons he has given. Despite his list of unknown reasons, it has become clear in recent days that there is only one reason I can come up with for his reversal, his flip-flop on the Children's Health Insurance Program: I guess it is because he wants to do something with health care that he has not yet told us.

He has in the past calculated that holding this bill hostage is the only way to raise from the dead his partisan, unpopular, and ineffective health agenda. We realize this. Republicans realize this. In fact, the ranking member of the Finance Committee realizes this, and he has spoken so on the floor, Senator GRASSLEY.

President Bush, on this issue, stands alone. Can one imagine our President, President Bush, going to one of these children and saying: You cannot have health care. You have to stop seeing your doctor. If you get sick, your parents or a brother or sister will have to take you to the emergency room. Get a brother or sister, get a neighbor to do that, but we are not going to let you go see a doctor.

So despite his promises, I hope he will come to his good side and put the well-being of millions of poor children ahead of his own flawed political agenda that we are seeing on this issue today. I hope he realizes this program is government at its best—lending a helping hand, providing a safety net to children who need our help to reach their full potential.

If we pass today the Children's Health Insurance Program with a good bipartisan vote, this can be one of our good days, our legislative good days, when we do something lasting and meaningful for the American people who sent us here to help fulfill their dreams and their hopes.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, I wish to proceed for a few moments with my leader time and say to my good friend the majority leader, I know it is customary for him to speak last, but I was unavoidably detained from getting to the floor and wanted to make a couple of observations about the Kennedy amendment on my leader time.

A vote for Senator KENNEDY's hate crime amendment regretfully puts this whole bill in jeopardy. The only way to ensure we have a Defense authorization bill this year is to vote against the Kennedy amendment. There are too many important Defense provisions in the bill that are at risk because of a controversial, nongermane amendment dealing with social policy.

Among the items at risk, the Wounded Warriors provision, the pay raise, acquisition reform, and many other important Defense provisions, all are put at risk by the adoption of the Kennedy amendment.

We have now gone through a long exercise debating Iraq amendments and nongermane amendments related to the social agenda of the other side. But what are we trying to accomplish here? Do we want to protect the defense policy matters in this bill that actually matter to our forces in the field, or do we want to debate political and social issues on this measure? The Senate has been on record all year that we will not cut off funding for our troops in the field and that we need to do more to help our wounded warriors returning from the war. Let us not sacrifice the bipartisan work of the committee for an amendment that is not relevant to the underlying bill.

I hope the Kennedy amendment will be defeated.

The PRESIDING OFFICER. All time has expired.

CLOTURE MOTION

Under the previous order, pursuant to rule XXII, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

> We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on amendment No. 3035 regarding hate crimes.
>
> Gordon H. Smith, Chuck Schumer, Bernard Sanders, Robert Menendez, Sheldon Whitehouse, Frank R. Lautenberg, Hillary Rodham Clinton, Chris Dodd, John F. Kerry, Patty Murray, Barack Obama, Jeff Bingaman, Ben Cardin, Evan Bayh, Tom Harkin, Ted Kennedy, Dianne Feinstein.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on amendment No. 3035 offered by the Senator from Massachusetts, Mr. KENNEDY, to H.R. 1585, the National Defense Authorization Act for Fiscal Year 2008, shall be brought to a close.

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The bill clerk called the roll.

Mr. LOTT. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 60, nays 39, as follows:

[Rollcall Vote No. 350 Leg.]

YEAS—60

| | | |
|---|---|---|
| Akaka | Feinstein | Nelson (FL) |
| Baucus | Gregg | Nelson (NE) |
| Bayh | Harkin | Obama |
| Biden | Inouye | Pryor |
| Bingaman | Johnson | Reed |
| Boxer | Kennedy | Reid |
| Brown | Kerry | Rockefeller |
| Byrd | Klobuchar | Salazar |
| Cantwell | Kohl | Sanders |
| Cardin | Landrieu | Schumer |
| Carper | Lautenberg | Smith |
| Casey | Leahy | Snowe |
| Clinton | Levin | Specter |
| Coleman | Lieberman | Stabenow |
| Collins | Lincoln | Tester |
| Conrad | Lugar | Voinovich |
| Dodd | McCaskill | Warner |
| Dorgan | Menendez | Webb |
| Durbin | Mikulski | Whitehouse |
| Feingold | Murray | Wyden |

NAYS—39

| | | |
|---|---|---|
| Alexander | Craig | Isakson |
| Allard | Crapo | Kyl |
| Barrasso | DeMint | Lott |
| Bennett | Dole | Martinez |
| Bond | Domenici | McConnell |
| Brownback | Ensign | Murkowski |
| Bunning | Enzi | Roberts |
| Burr | Graham | Sessions |
| Chambliss | Grassley | Shelby |
| Coburn | Hagel | Stevens |
| Cochran | Hatch | Sununu |
| Corker | Hutchison | Thune |
| Cornyn | Inhofe | Vitter |

NOT VOTING—1

McCain

The PRESIDING OFFICER. On this vote, the yeas are 60, the nays are 39. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. KENNEDY. I move to reconsider the vote.

Mr. MENENDEZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order—the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, if I could have the attention of the leadership, we would be glad to have a voice vote, if that is acceptable, satisfactory. We would vitiate the need for the yeas and nays and move to a voice vote, if that is satisfactory.

Mr. MCCONNELL. Mr. President, I was distracted.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. MCCONNELL. Was the Senator from Massachusetts trying to get my attention?

Mr. KENNEDY. As a result of this vote, we would be glad to vitiate the need for the yeas and nays on this amendment and have a voice vote, if that is acceptable.

Mr. MCCONNELL. As far as I know, a voice vote is acceptable. We will vote on the Hatch alternative.

Mr. KENNEDY. Then, Mr. President, if I could just have everyone's attention for a minute, we are prepared to accept the Hatch amendment, if that is satisfactory.

Mr. MCCONNELL. We will need a rollcall vote on the Hatch amendment.

Mr. KENNEDY. Then, Mr. President, I would like to see if we could have a voice vote now on the underlying amendment.

The PRESIDING OFFICER. The question is on agreeing to the Kennedy amendment.

The majority leader is recognized.

Mr. REID. Mr. President, it would seem to me what we should do is have a vote on the underlying Hatch amendment. I do not think we need to vote on cloture. So I ask unanimous consent that we have a voice vote on the amendment that is now before the body, we vitiate the cloture motion on the Hatch amendment, and have a rollcall vote on his amendment.

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

The question is on agreeing to the Kennedy amendment.

The amendment (No. 3035) was agreed to.

Mr. KENNEDY. I move to reconsider the vote.

Mr. MENENDEZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3047

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided on the Hatch amendment prior to a vote on the amendment.

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, we are willing to accept the Hatch amendment. It requires a study and requires some authorization for helping local communities. I would hope the amendment would be unanimously accepted. I intend to vote for it, and I would hope all the Members would vote for it. I understand we are going to order the yeas and nays now. I hope we will vote in favor of the Hatch amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, with that fine concession, I yield back the remainder of my time.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 3047.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 3, as follows:

[Rollcall Vote No. 351 Leg.]

YEAS—96

| | | |
|---|---|---|
| Akaka | Dole | McCaskill |
| Alexander | Domenici | McConnell |
| Allard | Dorgan | Menendez |
| Barrasso | Durbin | Mikulski |
| Baucus | Ensign | Murkowski |
| Bayh | Enzi | Murray |
| Bennett | Feingold | Nelson (FL) |
| Biden | Feinstein | Nelson (NE) |
| Bingaman | Grassley | Obama |
| Bond | Gregg | Pryor |
| Boxer | Hagel | Reed |
| Brown | Harkin | Reid |
| Brownback | Hatch | Roberts |
| Bunning | Hutchison | Rockefeller |
| Burr | Inhofe | Salazar |
| Byrd | Inouye | Sanders |
| Cantwell | Isakson | Schumer |
| Cardin | Johnson | Sessions |
| Carper | Kennedy | Shelby |
| Casey | Kerry | Smith |
| Chambliss | Klobuchar | Snowe |
| Clinton | Kohl | Specter |
| Cochran | Kyl | Stabenow |
| Coleman | Landrieu | Stevens |
| Collins | Lautenberg | Sununu |
| Conrad | Leahy | Tester |
| Corker | Levin | Thune |
| Cornyn | Lieberman | Voinovich |
| Craig | Lincoln | Warner |
| Crapo | Lott | Webb |
| DeMint | Lugar | Whitehouse |
| Dodd | Martinez | Wyden |

NAYS—3

| | | |
|---|---|---|
| Coburn | Graham | Vitter |

NOT VOTING—1

McCain

The amendment (No. 3047) was agreed to.

## CHILDREN'S HEALTH INSURANCE PROGRAM REAUTHORIZATION ACT OF 2007

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote on the motion to invoke cloture on the motion to concur in the House amendments to the Senate amendments to H.R. 976, the Children's Health Insurance Act of 2007.

Pending:

Reid motion to concur in the amendments of the House to the amendments of the Senate to the bill.

Reid Amendment No. 3071 (to the House amendment to Senate amendment to the text of H.R. 976), to change the enactment date.

Reid Amendment No. 3072 (to Amendment No. 3071), of a perfecting nature.

The PRESIDING OFFICER. Who yields time?

Mr. ALLARD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. 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. REID. Mr. President, what is the matter before the Senate?

The PRESIDING OFFICER. Each side has 1 minute of debate on the children's health insurance amendment.

Mr. REID. Mr. President, we yield back the remainder of our time.

The PRESIDING OFFICER. Who yields time?

Mr. GRASSLEY. We yield back the remainder of our time.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order and pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to concur in the House amendments to the Senate amendments to H.R. 976, SCHIP.

Max Baucus, Ted Kennedy, Jeff Bingaman, Patty Murray, Barbara Boxer, Tom Carper, Patrick J. Leahy, Charles Schumer, Maria Cantwell, Dick Durbin, Blanche L. Lincoln, Robert P. Casey, Jr., Debbie Stabenow, Jack Reed, B.A. Mikulski, Tom Harkin, Harry Reid.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that the debate on the motion of the Senator from Nevada, Mr. REID, to concur in the House amendment to H.R. 976, the Children's Health Insurance Act of 2007, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The bill clerk called the roll.

Mr. LOTT. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

The PRESIDING OFFICER (Mr. TESTER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 69, nays 30, as follows:

[Rollcall Vote No. 352 Leg.]

YEAS—69

| | | |
|---|---|---|
| Akaka | Feingold | Murray |
| Alexander | Feinstein | Nelson (FL) |
| Baucus | Grassley | Nelson (NE) |
| Bayh | Harkin | Obama |
| Biden | Hatch | Pryor |
| Bingaman | Hutchison | Reed |
| Bond | Inouye | Reid |
| Boxer | Johnson | Roberts |
| Brown | Kennedy | Rockefeller |
| Byrd | Kerry | Salazar |
| Cantwell | Klobuchar | Sanders |
| Cardin | Kohl | Schumer |
| Carper | Landrieu | Smith |
| Casey | Lautenberg | Snowe |
| Clinton | Leahy | Specter |
| Coleman | Levin | Stabenow |
| Collins | Lieberman | Stevens |
| Conrad | Lincoln | Sununu |
| Corker | Lugar | Tester |
| Dodd | McCaskill | Warner |
| Domenici | Menendez | Webb |
| Dorgan | Mikulski | Whitehouse |
| Durbin | Murkowski | Wyden |