

Stenholm	Thune	Watt (NC)
Strickland	Thurman	Watts (OK)
Stump	Tiahrt	Waxman
Stupak	Tierney	Weiner
Sununu	Toomey	Weldon (FL)
Sweeney	Towns	Weldon (PA)
Talent	Trafigant	Weller
Tancred	Turner	Wexler
Tanner	Udall (CO)	Whitfield
Tauscher	Udall (NM)	Wicker
Tauzin	Upton	Wilson
Taylor (MS)	Velazquez	Wise
Taylor (NC)	Visclosky	Wolf
Terry	Vitter	Woolsey
Thomas	Walden	Wu
Thompson (CA)	Walsh	Wynn
Thompson (MS)	Wamp	Young (AK)
Thornberry	Watkins	Young (FL)

## NOT VOTING—15

Bilbray	Gilchrest	Rush
Coburn	Hutchinson	Smith (MI)
Doolittle	Lazio	Vento
Engel	Neal	Waters
Eshoo	Owens	Weygand

□ 1313

So (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

EXPLANATION REGARDING ROLE  
IN BOY SCOUTS OF AMERICA

(Mr. PEASE asked and was given permission to address the House for 1 minute.)

Mr. PEASE. Mr. Speaker, since 1993, I have served as a member of the Advisory Council of the National Council of the Boy Scouts of America. In this role I am a volunteer advisor to the Boy Scouts and its national governing organization.

□ 1315

I receive no compensation for my service in this role, and am not reimbursed for expenses incurred in fulfilling the duties of the position.

MOTION TO INSTRUCT CONFEREES  
ON, H.R. 4205, FLOYD D. SPENCE  
NATIONAL DEFENSE AUTHORIZATION  
ACT FOR FISCAL YEAR 2001

Mr. GRAHAM. Mr. Speaker, pursuant to clause 7 of rule XX, I offer a motion to instruct conferees.

The SPEAKER pro tempore (Mr. LAHOOD). The Clerk will report the motion.

The Clerk read as follows:

Mr. GRAHAM moves to instruct conferees on the part of the House that the conferees on the part of the House on the disagreeing votes of the two Houses on the bill, H.R. 4205, be instructed not to agree to provisions which—

(1) fail to recognize that the fourteenth amendment to the Constitution guarantees all persons equal protection under the law; and

(2) deny equal protection under the law by conditioning prosecution of certain offenses on the race, color, religion, national origin, gender, sexual orientation, or disability of the victim; and

(3) preclude a person convicted of murder from being sentenced to death.

The SPEAKER pro tempore. Under the rule, the gentleman from South Carolina (Mr. GRAHAM) and the gentleman from Michigan (Mr. CONYERS) each will be recognized for 30 minutes.

The Chair recognizes the gentleman from South Carolina (Mr. GRAHAM).

Mr. GRAHAM. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the topic that we are addressing today in the motion to instruct conferees on the DOD bill involves an effort made by Senator KENNEDY in the Senate to attach Federal hate crimes legislation to a bill in the Senate. This issue is now before the House. It is before America.

To Senator KENNEDY's credit and to the gentleman from Massachusetts (Mr. FRANK), I would think it is fair, I hope he does not take offense, Senator KENNEDY is one of the last liberal lions. He has roared loudly and he has fought for his position and he was successful in the Senate.

As to my motion to instruct conferees on this matter, I hope people who agree with my position will also raise their voice loudly because it is an honest debate long overdue about exactly what we need to be doing in America when it comes time to punish people and what role the Federal Government has.

There has been a huge departure in the law of the land to the Kennedy amendment. Federal jurisdiction is now available through the Attorney General of the United States in almost every act of criminal violence that may exist in the country if in the mind of the perpetrator and the status of the victim certain people are involved.

I hope we will reject this way of thinking. I hope we will, as a Nation, prosecute vigorously those who with intent, malice aforethought, through the violation of existing State law, hurt human beings in general and that there is no need, objectively speaking, politically speaking, to have a Federal crime that only applies based on the hate of the perpetrator and the status of the victim.

This legislation has a four-part test that would allow the Attorney General to invoke a Federal statute that does not exist today, and the last prong is the Federal interest and hate crime eradication is insufficiently served by a State prosecution. That is all encompassing. That means whatever the Attorney General wants it to mean.

I stand before the House and the country saying that we in America have laws at the State level that apply to everyone. I do not know of any law in this country by any State or any jurisdiction that says we can hurt certain people because of their race, religion, or sexual orientation. That is not a defense. That is not a problem that we are having to deal with in this country.

This is an effort, I believe, to give Federal jurisdiction to expand the role of the Federal Government in a way that will ultimately divide Americans.

The Columbine High School case is a case in point. Two obviously hateful, disturbed young men took it upon themselves to do tremendous violence and damage and murder. Their motives vary. They killed some people because they were jocks. They killed other people because they did not like them personally. They killed some people because of their race. They were twisted minds. They brought a lot of pain and heartache and suffering to many families.

My motion to instruct says simply this, prosecute people not for their motives but for their actions.

Motives are important. They have to intend to kill. If they tie someone to the back of a truck in Texas and they drag them to their death, I do not care why they did it, if they intended to do it, they deserve the fullest and swiftest punishment available.

The Kennedy amendment allows the Federal Government to pick and choose based on the status of the victim. In that case, an African American was dragged to his death because the people involved had hate in their heart. In the State of Texas, one is serving life and two of those folks involved are facing the death penalty. That to me is justice. And that can happen and has happened all over this country.

Using the model that Senator KENNEDY has put forward, eight murders would fall in the classification of hate crimes, nine of the thousand rapes. I would argue to the Members of this House that every rape is a hate crime.

Before I came to this body, I was a prosecutor in the civilian world in the Air Force; and I will assure my colleagues that every woman that has been violated and is forcibly raped, the man involved hated that woman, and I do not care to know any more other than, without their consent, they did a great violence to their body.

In the Texas case, here is what could happen if this law that Senator KENNEDY has proposed goes forward and if we agree to it today. There is an element of the Kennedy Federal legislation that is very curious and potentially very damaging. We are creating two statutes to deal with the same event. The Federal Government, under this legislation, because we are the Federal Government, would have the ability to prosecute the case first if it reached out and grabbed the case.

Let us use the case in Texas for instance. Under the legislation proposed by Senator KENNEDY and this House will be instructing conferees on, the death penalty is not authorized. That is a huge point. The basis of the Kennedy legislation deals with events that really are not real in substance. There are no mass ignoring bodily injury cases based on people's sexual orientation, race, gender, or religious background. That is not a problem in this country. And that is good news.

But here would be the problem if we adopted Senator KENNEDY's way of doing business. The Federal Government, by legal right, would have the

ability to take that case over from the State courts, engage in the prosecution, spend the money, the time, and the effort, and the result would be in the Federal system that the two people facing Death Row punishment in Texas could not be sentenced to death under the Federal legislation. It changes the death penalty component of every murder statute in this country.

I want the Members to understand what they are voting on.

Let us talk about the politics for a moment. There are many people really worried about this vote. If I do not create a new Federal statute that would give the Attorney General the right to take over any case in the land when certain conditions are met based on the attitude and the motivation of the perpetrator, maybe people will think that I am a racist, that I am homophobic, that I have religious prejudice. Because that is the political dynamic going on here.

The question we need to ask as a Member of Congress is, do we trust our States to deal with situations where people are assaulted in general and specifically where race, religion, or sexual orientation is involved.

If we do, we do not need this legislation. The question we need to ask ourselves is, is there a legitimate reason other than the political dynamic being created for us to give the Federal Government power unknown in the history of our country to reach out and grab a case that could be prosecuted in the State court. I would argue not.

I would argue that what we need to do in this country is make sure that those people who hurt human beings, regardless of the motivation, receive the fullest punishment under the law, the full extent of punishment available.

The Kennedy proposal takes off the table the death penalty, and the chance of having two prosecutions is very remote because the Federal Government will go first and the only way the death penalty can be applied is to do a separate prosecution in State court. And if they have the desire and the willingness to do that to begin with, there is no need to remove it.

So I would argue very strongly to the Members of the House that this proposal does not address real problems in America that exist today, it is creating a whole new set of problems that this country cannot stand.

We are thinking of a million reasons to divide ourselves. We focus on our differences in this House in a political fashion that maybe goes overboard. But America needs to come together on the idea that we do not care why they engage in violence, we are going to punish them if they do. And every American should feel good about the idea that they are going to be judged based on their conduct and that their sexual orientation, their religious background, or their race is not going to create one statute for them and leave everybody else behind. That does

not make a better America, and that does not address the problems of crimes.

Because the hate crime legislation that Senator KENNEDY proposed, the real area where the cases would be had is in the simple assault area, areas where people get in all kinds of conflicts and, under the theory of the statute, they could remove it. I would argue there is no need to do that.

The real danger here is that we are empowering the Federal Government to remove a case, whether it be the Columbine case or whether it be the Texas case with the gentleman behind the truck who was dragged to a violent death, and prosecute that case in a manner that would do great harm to serving ultimate justice within the jurisdiction where it happened.

Mr. Speaker, I hope that we will reject the political movement, the political cause of the day, and stand behind a simple concept that the Federal Government has a proper but limited role and that, when individual citizens choose to hurt their neighbors, hurt other citizens within their State, that the State has a chance to do swift and certain justice and that we not pass a Federal law that takes the death penalty in practicality off the table. This is not going to make America a better place.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am happy to join my distinguished colleague from the Committee on the Judiciary on this matter. He has three positions with which he asks that we be instructed not to agree. One and three are false, and two I disagree with.

First of all, it is not accurate to say in our bill that we preclude a person convicted of murder from being sentenced to death. While we do not have a death penalty, some States do. And so, wherever the State law applies, there would be a death penalty.

In our bill, we do not have one. And so, I do not see where that is very important.

He questions whether or not the Fourteenth Amendment, by guaranteeing all persons equal protection under the law, is a safeguard against the hate crimes bill. And that has no accuracy whatsoever.

And so, I am a little baffled by the motion to instruct because he seems to suggest that the bipartisan legislation that the Senate has passed somehow violates the equal protection of the laws and affects the Federal Government's administration of the death penalty. We do not appear to be discussing the same bill.

The Graham motion would instruct the conferees to reject provisions that fail to account for the fact that the Constitution guarantees all persons equal protection under the law. His motion is beside the point because his statement is, apparently, designed to

create constitutional doubt where none exists.

The Congress' authority to create new penalties for violent crimes involving bodily injury if motivated because of race, color, religion, national origin, gender, sexual orientation, or even disability, does not depend on the equal protection clause of the Fourteenth Amendment.

□ 1330

What it rests on is the undisputed authority of the 13th amendment and on the commerce clause itself. So my friend, the gentleman from South Carolina (Mr. GRAHAM), I guess is saying that by prohibiting hate crimes against individuals who have suffered historic discrimination on the basis of race and color or national origin or gender or sexual orientation or disability, that we are violating the constitutional rights of everyone else. Could that be what he is saying?

Well, if it is true, then I have to raise a question of whether he thinks that any statute that prohibits discrimination and violence on the basis of these categories also violate the 14th amendment. Should they be repealed? Should we repeal the existing Federal criminal hate crimes law already on the books since 1968, which prohibits the intentional interference, with the enjoyment of Federal rights and benefits on the basis of, again, the victim's race, religion, national origin, or color? Should we repeal the Church Arson Act which prohibits the intentional destruction of religious property because of race, color, or ethnic characteristics of individuals who worship there?

One cannot avoid race. These are the problems. One cannot avoid disability. One cannot avoid sexual orientation. Does the gentleman want to repeal the Civil Rights Act of 1964, which prohibits employment in public accommodations based on discrimination of race, color, religion, as usual? Do we want to repeal the Age Discrimination Employment Act of 1967? What about the Fair Housing Act of 1968, which prohibits housing discrimination on the basis, again, of the usual factors? Does he want to repeal the Americans with Disabilities Act of 1990? We just celebrated it for a decade of progress, which prohibits discrimination on the basis of disability; and the rest. It goes on and on and on.

So if this is a new historic challenge to raise a constitutional point that has never been thought of before, this is a great time to have that debate. If it turns out that the first instruction, part one, is not accurate, the second we disagree with, and the third is not accurate, then we should move quickly on to a motion to instruct the conferees on hate crimes that I have that will come up shortly.

Mr. Speaker, I reserve the balance of my time.

Mr. GRAHAM. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to answer some of the questions asked. The answer is, no, I am not asking that this

body or any body vote to repeal laws that make it unlawful to discriminate based on race, religion, the 14th amendment in general. What I am asking this body to do is not to create a Federal law that does that.

Here is the effect of it: if somebody kills me, that would bother my family. I do not know if it would bother a lot of other people, but it would bother my family. Somebody kills the gentleman from Michigan (Mr. CONYERS) and we let the motive of that person decide what to do, my family is out. That is the effect of this statute. The victims and the attitude of the perpetrator decide whether or not the Federal law applies.

Let me say what is going to happen throughout America if we pass this legislation as drafted. Criminal defense attorneys, pretty smart guys, pretty smart ladies, I have been one, I do not know if I was smart enough, but if I have somebody come in to my office and this statute exists that allows the Federal Government to engage in prosecution first, and I would argue exclusively because the effect of doing it twice is lost, that there is going to be a rise in hate crimes because the defendant is going to find the Federal niche that allows the case to go into the Federal system where there is no death penalty. That is what is going to happen here.

We are going to have people throughout the land manufacturing motives that give the benefit of a Federal statute that prohibits the death penalty because in the State where they live they could get the death penalty, and the chance of prosecuting these cases twice are almost zero from a practical point of view.

Mr. NADLER. Mr. Speaker, will the gentleman yield?

Mr. GRAHAM. I yield to the gentleman from New York.

Mr. NADLER. Mr. Speaker, I would say to the gentleman from South Carolina (Mr. GRAHAM), he just said that if we passed hate crimes legislation, defendants would opt for the Federal statute and so forth; but what the bill before the Senate that we are talking about, before the conference committee, I suppose, does is expand existing hate crimes legislation that has been on the books for 32 years three new categories: sexual orientation, gender, disability. It is already on the books. Has it had that effect?

Mr. GRAHAM. Reclaiming my time, the existing statute that deals with Federal prosecution of events like going to serve on a jury or going to vote is one thing where there is a clear Federal nexus. What this body needs to know that what has happened in the Senate is that the Federal nexus is nonexistent. It is every event in America now is subject to the Attorney General certifying under prong four that this is somehow a hate crime and the Federal Government preempts.

I am not asking that the statutes that exist be repealed that protect

Americans at the Federal level from participating in guaranteed constitutional activities. I am saying that this allows the Federal Government, through prong four and through the whole intent of the legislation, to take any event, anywhere, any time, and make it a Federal case and the death penalty is taken off the table. That is not good for this country.

One, people are divided. I do not get the benefit of the statute in certain situations; some other person might. We are equally harmed. The State has the ability to take care of this.

If it is taken from the State and they are expected to prosecute the person for the death penalty later on, there was no need to take it from the State to begin with.

Mr. NADLER. Mr. Speaker, will the gentleman yield?

Mr. GRAHAM. I yield to the gentleman from New York.

Mr. NADLER. I would say to the gentleman from South Carolina (Mr. GRAHAM), the current statute is a hate crimes statute with respect to race, color, creed, national origin. That is the statute. The amendment would be sexual orientation, gender, disability.

Mr. GRAHAM. Reclaiming my time, the statute has a mechanism to create Federal jurisdiction, the current statute, that requires a Federal nexus.

The amendment has a four prong test and the final prong of that test is that Federal interest in hate crime eradication, according to the Attorney General, is insufficiently served by a State prosecution, which means there really is nothing more than the opinion of the Attorney General determining whether or not there is State or Federal jurisdiction.

This is the expansion that I am talking about, not that people are prosecuted based on the motive; that it is being expanded to an area where there is no Federal nexus required and this would allow the Federal Government, based on this four prong test, to take any case and every case.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. I begin, Mr. Speaker, by congratulating my friend, the gentleman from South Carolina (Mr. GRAHAM), from untrapping himself. He had originally filed two potential instructions. At some point, he must have figured out, with or without help, that they contradicted each other. So he dropped the one.

Mr. GRAHAM. They did.

Mr. FRANK of Massachusetts. Well, the gentleman acknowledges without my yielding to him, but I am a generous kind of guy so I will acknowledge his acknowledgment.

The gentleman acknowledges that he filed two instructions yesterday, on the spur of the moment, which contra-

dicted each other, and then he prayed over it overnight and figured out that they contradicted each other. We were not told until shortly before we began which one he was going to do. So apparently the gentleman first figured out they contradicted each other and then decided which one.

Mr. GRAHAM. Mr. Speaker, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from South Carolina.

Mr. GRAHAM. Mr. Speaker, the two motions to instruct were filed last night. I have always intended to do the one I am talking about now. I had a colleague ask that they preserve the right to approach it from a different angle. That is up to them, but that is why I did it.

Mr. FRANK of Massachusetts. Well, the gentleman from South Carolina (Mr. GRAHAM) filed them both so apparently he tells us now that he filed one knowing that it contradicted the other.

I will say this, and let me point out that the contradiction is not simply a minor thing. The one he filed and decided not to offer deals with hate crimes of the sort that the second one says are unconstitutional. So the gentleman filed two instructions. One he was reserving the right to instruct the House to do something which he has now decided is unconstitutional. That is a reversal. I have seen the Supreme Court reverse itself on constitutional issues, but it usually takes them more than 12 hours.

Now, it is not simply the gentleman's first instruction that would be repudiated here. What it says, and this is particularly relevant to section 2, he says here that it is a denial of equal protection under the law if prosecution of certain offenses is conditioned on the race, color, religion, national origin, gender, sexual orientation, or disability of the victim.

First, let us be very clear. This does not say if one is black they are protected and if one is white they are not; if one is gay they are protected and if one is straight they are not; if one is disabled they are protected and if one is able-bodied they are not. What it says is that if someone goes after someone else on any of those grounds, if a racial minority attacks someone who is white for these hate crime reasons, that is protected. So it is not giving one set of groups protection against another.

It is saying, equally, anyone who is attacked because someone objects to his or her membership in a group that is defined by race, color, religion, national origin, that is the majority, the minority of religions, there is no one majority so it is any group, they are all protected. Christians are protected, Jews are protected, Hindus are protected, atheists are protected, if the motive is based on their religion.

Now we have had laws like this on the books for a very long time. We begin with the Civil Rights Act in the 1860s right after the Civil War. We had

House-passed lynch laws, which Republicans used to be for, which dealt with this. We have on the books some hate crimes statutes. We have in some anti-discrimination statutes, I believe, some criminal provisions.

There was some anti-discrimination statutes which if they are violated blatantly one can have criminal provisions. According to this resolution, all of those would be wrong because there are a series of statutes on the book that trigger prosecution based on the race, color, religion, et cetera, of the victim.

Now, why did this all of a sudden become controversial? Why did the Civil Rights Act of 1868 and the Church Arson Act that my colleague from Michigan mentioned and others, why did they suddenly become controversial? I guess I ought to apologize. It is because of us. By us, I refer to those of us who are gay or lesbian or bisexual.

This whole notion of prosecuting people who singled out vulnerable minorities or who, as a member of a minority acted against the majority based on this, the Church Arson Act, the anti-lynch laws, et cetera, it was never all that controversial and then people said among the people who are often assaulted because of their identity are gay and lesbian and bisexual, particularly transgender people who have been the victims of a lot of violence, and all of a sudden it became controversial. That is why the gentleman first had an instruction and it is one that many in the other body on the Republican side were in favor of; it was one that said we will do hate crimes, but we will stick with good old-fashioned categories like race and religion; but let us not get into sexual orientation. So some inconsistencies have arisen because of sexual orientation.

Now among the inconsistencies is the notion that my friends on the other side are opposed to federalizing State crimes. I mean, they should write for some situation comedies with that kind of material. The House Committee on the Judiciary has consistently federalized crimes. Carjacking we federalized; in the abortion area, the late-term abortion bill. States had the same powers as the Federal Government, whether there is or is not a constitutional problem. It was a Nebraska statute that went to the Supreme Court.

We also passed a Federal statute. The House Committee on the Judiciary and the Congress, for the past 6 years, has federalized a number of crimes without any particular Federal nexus. Indeed, the Supreme Court struck down some of these because they said there was not enough of a Federal nexus, but our committee has gone forward with others.

So there has never previously been an objection to saying that we are going to punish someone in some cases if they have committed bad acts against people, not thoughts but if one has committed bad acts against other

people because of their membership in a group, that was not until recently controversial. In fact, as I said, in the gentleman's first instruction it was not controversial at 6:00 last night. That one got a bad reputation very quickly.

It is when sexual orientation entered into it that all of these objections came up.

Now there is a red herring here and that is the death penalty issue. The fact is that, as the gentleman has acknowledged, if some Attorney General preempted a murder case under the hate crimes statute, it would still be prosecutable by the State. He says that is unlikely. What is even less likely is that the Attorney General, absent any real showing of a hate motive, would reach down and take it up.

It does say the Attorney General can do these in cases where the Federal interest in prosecuting was not being vindicated.

□ 1345

Mr. Speaker, the notion that a State prosecutor was about to bring a capital charge against someone and threaten that person with a death penalty and the Attorney General would say, wait a minute, you are not vindicating the Federal interests, it is nonexistent. That is not really an argument that I think is a major part of this.

Mr. Speaker, I think what we have here is this resistance on the part of some people on the other side to anything that deals with sexual orientation.

We just voted on something with the Boy Scouts. I regretted that that came up. I thought that bill should not be filed. I thought it should not be brought up. I think the Boy Scouts do a lot of good work. I regret the fact that they discriminate. I do not think the appropriate way to try to deal with it was the way here.

Mr. GRAHAM. Mr. Speaker, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from South Carolina.

Mr. GRAHAM. Mr. Speaker, does the gentleman from Massachusetts believe there is a problem throughout the country that people based on the sexual orientation and who are hurt in a violent confrontation that people are letting the prosecution go because of the sexual orientation?

Mr. FRANK of Massachusetts. Reclaiming my time, Mr. Speaker, not throughout the country, but in some places in the country, in fact, I believe, just as there was strong support for lynch laws.

Mr. GRAHAM. How many cases?

Mr. FRANK of Massachusetts. When I yield to the gentleman that means the gentleman asks the question and I get to answer. Okay. I will yield again in a minute.

Mr. GRAHAM. Yes, sir.

Mr. FRANK of Massachusetts. I want to finish the answer. We had a hearing before the Committee on the Judiciary last year and several people came for-

ward, including one particular case in Oklahoma where people were beaten and were not given any prosecutorial defense.

Mr. GRAHAM. Would the gentleman yield?

Mr. FRANK of Massachusetts. Not until I finish. I urge the gentleman to have a little patience. He has asked the question; it is a little complicated. The answer will take awhile.

There was a situation in Pennsylvania, where a particular bar was the subject of a great deal of violence, and I believe there was initially an insufficient response.

The point is that this legislation is written to take into account the fact that most crimes of violence are, in fact, prosecuted at the State and local level. Part of what it does is to offer aid to people at the State level and that, by the way, we have had people, for instance, the local law enforcement officials in Wyoming who prosecuted the Matthew Shepherd murder, welcomed that, because they can be overburdened by it. They can have hate groups that show up; and they can overburden, in some areas, the local resources.

But we are saying there will be some cases in this vast country where a particular group will be subject to a particular prejudice, and in those exceptional cases the Federal Government can intervene. So I can think of a couple right recently that we have had. There was some others, I do not remember exactly which came up in the hearing. But, yes, there are cases where there are particular prejudices against particular groups. Transgendered people happen to be in many cases the objects of violence. And in many cases, they are protected; but in some cases, because of the prejudice that they face, they have not been protected. This is a standby authority for the Attorney General to step in, if she finds that there is this pattern of non-enforcement.

Mr. GRAHAM. Mr. Speaker, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from South Carolina.

Mr. GRAHAM. The gentleman talks about, not me directly, but what we are trying to do. I challenge the gentleman to prove to anybody in this body that I, as a person, former prosecutor, would give the gentleman a pass if the victim was homosexual and the perpetrator just did not like, and I will only use the terms that came up in the Air Force case, the faggot that lived down the hall. That guy got the full effect of the law.

I say to the gentleman from Massachusetts (Mr. FRANK), I do not believe that America is such today that the State court systems need to have the Attorney General under this legislation because of any reason they so choose to be able to take that case away.

Mr. FRANK of Massachusetts. Reclaiming my time, let me respond, I am

going to respond, first of all, the gentleman asked me to prove that the gentleman is biased?

Mr. GRAHAM. No. I am asking the gentleman to tell me how many cases are we talking about the gentleman mentioned. Is it 100? Is it 200? Where are they?

Mr. FRANK of Massachusetts. I do not have the exact number, but I will respond to the gentleman's assertion. He says he cannot believe, apparently, that anywhere in this country there would be bias on the part of local law enforcement that would lead to unequal prosecution.

I wish we lived in that country. I believe most law enforcement people do the right thing. I gave them two specific cases, one in Oklahoma, where people were beaten and the district attorney did not intervene, and one in Pennsylvania where a bar was being terrorized and there was not local intervention.

I would say this, this concern about Federal intervention puzzles me coming from someone who has generally voted with the committee majority to federalize a number of crimes. Carjacking, is it that there are State prosecutors who somehow have a soft spot in their heart for carjackers? Why did the majority federalize carjacking? I do not think that they did that because there was some soft spot; they felt there was some particular pattern that had to be responded to.

There have been other cases, where we have in this body, I sometimes voted no, made Federal crimes out of things that were also State crimes. But the gentleman's point I want to focus on, this statute assumes that prosecution at the Federal level will be the exception.

In fact, much of the statute that we are asking people to vote for says let us help local people with the prosecution, let us help State prosecutors; but for him to argue that it is unthinkable that anywhere in the country members of a particular insular group might be the victims, people of an unpopular religion, transgendered people, people of a particular race, and they might be of the majority race in some parts, but the minority race in other parts.

The notion that American history yields us no pattern ever of local law enforcement people withholding equal treatment because of prejudice is very puzzling to me. We have not heard it before.

Church arson, is there some pattern? Maybe the gentleman wants to repeal the Church Arson Act, but the Church Arson Act does talk about going in there in these circumstances, and I did not previously hear these arguments.

Mr. GRAHAM. Mr. Speaker, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from South Carolina.

Mr. GRAHAM. By definition, every statute that the gentleman talked about has a clear Federal nexus; the existing hate crimes statute has a Federal nexus.

Mr. FRANK of Massachusetts. What about church arson? What is the Federal nexus in the Church Arson Act? What is the Federal nexus in church arson? There is not any. I thank the gentleman for his shrug. What is the Federal nexus for church arson?

Mr. GRAHAM. Is there none?

Mr. FRANK of Massachusetts. I asked the gentleman a question.

Mr. GRAHAM. Honestly, I do not know.

Mr. FRANK of Massachusetts. I did not yield to the gentleman. I am being asked to give back the time. I yielded to the gentleman to ask him a question. If he was going to ask me the same question back, I would not have taken other people's time.

Mr. GRAHAM. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the point I am making and the point still stands, there are two very good points, every law we have on the books at the Federal level has a Federal nexus. But in the Senate, there has been a huge departure here. And part of it is politically motivated.

Let me tell my colleagues the effect of this statute again. If we go down this road, the Attorney General of the United States for the first time, that person, whoever he or she may be, has the ability under this legislation to take an event that has no Federal nexus at all, reach out and grab it based on the mentality of the perpetrator and the class of the victim.

Using an example, if someone in South Carolina or any other State engages in a violent offense against somebody based on the race, sex, religion, sexual orientation, under this statute, the Attorney General can take that case away and prosecute it at the Federal level and take the death penalty off the table. That should really send a chilling effect throughout this body. Not only have we done away with the Federal nexus, bias exists all over the world and will to the end of time. Is that the reason bias in general in theory to go out and destroy the ability of a State to prosecute vicious crimes in their backyard?

I would argue that this country is better off because the people in Texas sentenced two of the three people to death who drug the African American to his death behind a truck; that we are better off when local people will stand up and say, wrong, face the ultimate punishment, than we would ever be to have somebody in Washington for political reasons take the case away and get a headline and we can impose that penalty.

That is what this is about. This is an effort to empower the Federal Government in a manner never had, and the way you get there is you separate us. Because if I am attacked by the same person that the gentleman from Massachusetts (Mr. FRANK) may be attacked by, their motive determines what statute applies, and that is wrong.

Columbine, when they shoot the man, the young fellow because he is a

jock, and killed the person beside him because of her religion, and the one next to the table because of the color of their skin, forget about those differences, prosecute that person based on what they did. And that is what you are trying to destroy here, and that is why I am here.

I want people to be responsible for their conduct to the fullest extent of law and let people where the event happens chart their destiny; and there is no reason to give the Attorney General of the United States this much power, because the abuses described do not exist. This is an effort to politicize and federalize where the country will be a great loser.

Mr. Speaker, I yield 2 minutes to the gentleman from South Carolina (Mr. SANFORD).

Mr. SANFORD. Mr. Speaker, I thank the gentleman for yielding the time to me.

Mr. Speaker, I hate following him. I just came to chime in for just a few moments because the gentleman asked me to and because I think this makes common sense. I think that the problem with the debate on the other side, and I would say to the gentleman from Massachusetts (Mr. FRANK), who I have the utmost respect for his intellect, the utmost respect for the way he has been a consistent advocate for things that he believes in, and the only reason I find myself in this case differing with him is based on, for instance, the statistics I have here.

For instance, last year, 23 children were murdered in America by their baby-sitters; 23 children were murdered in America by their baby-sitters. And the question I think goes back to the heart of what the gentleman from South Carolina (Mr. GRAHAM) was getting at. I am not a lawyer, I do not have a legal background, but just from the standpoint of common sense, let us say it was the most loving of baby-sitters, they took care of the child for years, but in the end they ended up murdering them, do we want to treat that person differently than somebody else simply because one hates the child more than the other?

But the bottom line is still the same, and that is those 23 children last year in America are just as dead. Whether they were loved prior to being killed or whether they were hated prior to being killed, they are both dead. The theme that I think the gentleman from South Carolina is getting at is the theme that has been the basis of our judicial system, which is equality under the law.

The other issue that I think he is getting at, and I think there is validity in this, and that is the idea of federalizing crime. There is disagreement within our conference on whether we should or should not do that. I found myself voting against the gentleman from Florida (Mr. MCCOLLUM) on any number of different things who takes a very different position on federalizing some of these crimes versus not.

Lastly, I would go to the point which the gentleman from South Carolina has

raised a couple of times, and that is, this death penalty issue, which is a legitimate debate; but I do not know that we want to preemptively strike out death penalty with this kind of legislation.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Speaker, I thank the gentleman for yielding the time to me, and I rise in opposition to the motion of the gentleman from South Carolina (Mr. GRAHAM) and support the motion that will be offered by the gentleman from Massachusetts (Mr. FRANK).

If we walked down the National Mall along the Potomac River, we reach the newest memorial in our Nation's Capital. It honors Franklin Delano Roosevelt, the 33rd President of the United States. It was FDR who said "We must scrupulously guard the civil rights and civil liberties of all citizens, whatever their background. We must remember that any oppression, any injustice, any hatred is a wedge designed to attack our civilization."

This statement is no less true today than it was back then. I strongly support the Hate Crimes Prevention Act because this legislation respects the fundamental relationship between local law enforcement and the Federal Government.

Local law enforcement agencies will continue to have primary responsibility for investigating, prosecuting violent crimes based on hate. But when it comes to violations of civil rights, the Federal Government has historically played an important role in the prosecution and punishment of these violations. And when local authorities request assistance or are unable or unwilling to act, Federal law enforcement agencies must be able to come to their aid.

The hate crimes legislation authored by Senators GORDON SMITH, a Republican, and TED KENNEDY, a Democrat, creates an important safety net to ensure victims of hate crimes receive the justice to which they are entitled. It will permit the Department of Justice to provide technical, forensic, prosecutorial or any other form of assistance to State and local law enforcement officials in cases of felony crimes that constitute a crime of violence and are motivated by bias based on race, color, religion, national origin, gender, disability, or sexual orientation. Federal hate crimes, therefore, is not a new idea.

Mr. Speaker, for 32 years Federal law has covered certain forms of violence based on hate. Unfortunately, under current law, Federal prosecution of a hate crime is permitted only if the crime was motivated by bias based on race, religion, national origin, or color and the assailant intended to prevent the victim from exercising a federally protected right such as voting or attending school.

This dual requirement substantially limits the potential for Federal prosecution of hate crimes, even when the

crime is particularly heinous. The Hate Crimes Prevention Act removes this restriction, enhancing the ability of Federal law enforcement agencies to assist State and local authorities and in investigating and prosecuting hate crimes of all kinds.

I believe violence based on prejudice is a matter of national concern, and I urge my colleagues to pass the Frank motion so we can enact this important legislation this year. I would say I have voted to federalize a number of crimes as have the opponents of this effort.

□ 1400

For me, there are times the Federal Government needs to step in.

Mr. GRAHAM. Mr. Speaker, to address the point of my colleague here, who I admire very much, this is not about adding into an existing statute sexual orientation and disability. This is about changing fundamentally to its core the way the Federal Government is able to interfere or take over a prosecution of an otherwise State case.

There has been a fundamental deviation here from the Senate. Senator KENNEDY was able to create an environment legally where the only thing stopping the Federal Government from reaching out and grabbing a case for the first time in the history of the country is the attitude of the Attorney General and put it in a venue where the death penalty does not apply. That is my point. The point is that this statute does so many bad things.

POINT OF ORDER

Mr. CONYERS. Mr. Speaker, I make a point of order.

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman will state his point of order.

Mr. CONYERS. Mr. Speaker, the gentleman from South Carolina (Mr. GRAHAM) has not yielded himself time.

The SPEAKER pro tempore. Does the gentleman from South Carolina yield himself such time as he may consume?

Mr. GRAHAM. Yes.

The SPEAKER pro tempore. The gentleman may proceed.

Mr. GRAHAM. Mr. Speaker, to get the statute to kick into effect, all you need is an Attorney General willing to do it. There is no Federal nexus in the traditional sense of what has been the law of this land since its inception.

Number two, to get this statute to kick into effect, you are treating Americans differently who may have suffered the same harm. The example I gave at Columbine, three dead kids, three different reasons in the mind of the perpetrator; one gets the statute, the other does not. That is not going to make this a better country.

Mr. Speaker, the State court systems have proven themselves to rise to the occasion in horrendous events of recent time. The Wyoming case, the person who was brutally murdered because of sexual orientation, those persons are serving life in jail. It was done by the people of Wyoming. Wyoming is a bet-

ter place for having taken care of that problem and risen to the occasion. The recent case of the African American being dragged to his death in Texas, two of the three perpetrators are on death row, where they should be. This statute would not allow that to happen if they were tried in Federal Court, and there would not have been a second prosecution.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield 3½ minutes to the distinguished gentleman from New York (Mr. NADLER), a member of the Committee on the Judiciary.

Mr. NADLER. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I came here to rise in support of the motion to instruct offered by the gentleman from Michigan (Mr. CONYERS) and in opposition to the motion to instruct offered by the gentleman from South Carolina (Mr. GRAHAM), because I read the motion to instruct offered by the gentleman from South Carolina (Mr. GRAHAM); and I am not sure whether it is worth supporting or opposing, because it does not deal with anything in front of the conference.

The gentleman purports it to mean that this would oppose the hate crimes legislation, but we know that there is hate crimes legislation on the Federal books, and it has been there for 32 years. What the Senate proposes, and what I hope the House accedes to, is to increase the purview of that legislation from race, color, creed, and national origin, to include, which it does now, to include sexual orientation, gender, disability of the victim. And we certainly should, because an attack on someone based on those characteristics is an extra assault on society and ought to be punished in an extra way.

But look at the motion to instruct offered by the gentleman from South Carolina (Mr. GRAHAM). We should instruct the conferees not to agree to anything that fails to recognize that the 14th amendment guarantees all people equal protection under the law. Well, of course. And the Hate Crimes Protect Act does not deny anyone equal protection under the law. So I have no problem with that provision, because it does not refer to anything in front of the Senate or the House.

He instructs that we should not agree to provisions which deny equal protection under the law by conditioning prosecution of certain offenses under race, color, religion, national origin, gender, sexual orientation, or disability of the victim.

Well, the hate crimes legislation does not do that either. As was pointed out before, the hate crimes legislation does not say that if you attack a black person or a gay person only should you be prosecuted. It says if you attack someone because of their race, color, creed, or whatever variety, whatever race,

whatever color or creed, whatever sexual orientation, whatever gender, because of that there is an extra viciousness and an extra protection, that does not deny equal protection under the law.

Everybody is subject to it; everybody can be helped by it. Whether you are attacked because you are a man or a woman, a gay person or a straight person, a Christian, a Jew or a Hindu, black, white or green, it does not matter. Everybody gets that equal protection. And it says that we should not agree to any provision that would preclude a person convicted of murder from being sentenced to death.

Well, that one, I do not agree with the death penalty, so I do not have a problem with that. But the fact is, it does not do that either. The gentleman from South Carolina (Mr. GRAHAM) said that by the Federal Government prosecuting on a statute that does not have the death penalty, that might preclude the State from prosecuting the same act on a statute that does have the death penalty.

But it is black-letter law. For the last 40 years it has been black-letter law, Black and Douglas dissenting only, 7 to 2 in the Supreme Court, that different sovereignties can prosecute the same acts under different statutes. That is why the State can prosecute for murder, and the Federal Government can prosecute for deprivation of civil rights. If the Federal Government prosecuted for deprivation of civil rights, the State can still prosecute for murder; and if the death penalty applies, apply it.

So the gentleman from South Carolina (Mr. GRAHAM) is giving us in a motion to instruct, which is entirely phoney, tries to imply that the hate crimes legislation would do these things, which it clearly would not do. It is entirely a phony instruction; and it ought to be defeated, not because it is bad, but because it is phony; and the Conyers instruction to say to broaden hate crimes legislation to cover what should be covered, should be agreed to.

Mr. GRAHAM. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we can talk about this or you can read the law yourself. Here is what I am saying, unequivocally: this proposal in the Senate does not expand the list of categories from which a hate crime can be prosecuted to include sexual orientation and disability. It fundamentally changes and does away with the Federal nexus that exists in the existing statute to give the Attorney General of the United States, whoever that person might be, at whatever time in our history, the ability to reach out and take over a case based on the attitude and the motivations of the perpetrator and the class or category of the victim.

One thing is going to flow from this: because you cannot get the death penalty, there are people going to be manufacturing reasons, believe it or not, if you have ever been in criminal law,

there are people who are mean and clever, and I have defended some and prosecuted a lot, who are going to say, well, this is a hate crime; this is a Federal hate crime. And they want to go to Federal Court because there is no death penalty, and it will be a headline.

There will be a tremendous amount of political pressure to grab this case, and to show you how much I care as the Attorney General, I am going to take this heinous situation and I am going to do it, because I want to get the political benefit and I am going to be the person in the headline. And America loses, because the Texas case, the Wyoming case, and the whole 21st century, I really believe, is going to be about people finally being held accountable for what they do.

When you go into the Columbine High School situation, you have got three grieving parents. We do not need to carve out one law against the other two. We need to come together as a people and punish to the full extent of the law those that want to harm human beings, end of story, and not create a Federal legislation that undermines the ultimate punishment, the death penalty.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts (Mr. DELAHUNT), a member of the Committee on the Judiciary and a long-time State prosecutor.

Mr. DELAHUNT. Mr. Speaker, I thank the ranking member for yielding me time.

Mr. Speaker, I know it is not the intention of my friend and colleague to mislead, but I think it is very important to be clear here that those individuals that are presently incarcerated facing the death penalty in Texas would still be there facing that death penalty if the instructions that will be offered in the Conyers motion prevail. It is clear that there is nothing in the Conyers motion that would preclude a State prosecution, absolutely nothing whatsoever; and to suggest that is, I would submit, unintentionally misleading.

I also find it ironic that my colleague has concerns about the States' positions on these particular issues, as if the Attorney General will not work with the States to do what is right. The gentleman should be aware that the legislation is supported by the National Sheriffs Association and by the International Association of the Chiefs of Police.

Mr. CONYERS. Mr. Speaker, I yield the balance of my time to the gentleman from Texas (Ms. JACKSON-LEE), a Member of the Committee on the Judiciary.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the ranking member for yielding me time, and I thank him for his leadership on this motion.

I have come to the floor of this House to support the ranking member, the

gentleman from Michigan (Mr. CONYERS), in his motion to instruct. Because I view this as a very solemn debate, I want to say to my good friend from South Carolina that it is important for people to realize that Members take to heart, take seriously, the positions that they argue for, and I do not question the integrity or the honesty and the well-meaning efforts behind my good friend's motion to instruct.

But I do want to raise some questions and concerns and offer my sincerity and my heartfelt expressions of opposition against this motion, and that is that although we have been calling the names of those who have tragically lost their life, some of the more well-known names, let me say to you that it is particularly a source of consternation and hurt in the State of Texas, from which I come, and that is to be known as the State who, in the 20th century, the latter part of the 20th century, had the dismemberment of a human being as a headline of a particular area in our State. The heinous act of hatred against Mr. James Barrett continues to ring loud and clear throughout this Nation, and, following that, the very tragic and violent and brutal death in Wyoming of Matthew Shepard.

But I would say to my friend from South Carolina, even now, just a few short months ago, three individuals saw fit to burn a cross in the front yard of an African American family that moved into a neighborhood that was predominantly white. This is in modern-day Texas. This is in an area not far from Houston, Texas. This is real.

So when we begin to talk about are we serious about a hate crimes initiative, let me say to the gentleman from South Carolina (Mr. GRAHAM), in opposing this motion to instruct, we already have and understand the value and importance of the 14th amendment, the guarantee of equal protection of the law. You already have the evidence that the Constitution has been preserved by 30 years of case law that already says that hate crimes legislation can pass constitutional muster.

In addition, I think it is important to note your provision number two suggests exclusion. There is no exclusion to addition. All we are doing in this Hate Crimes Act of 2000 is to ensure that in addition to all the other elements of this bill, gender and sexual orientation and disability are included. It is not exclusion; it is inclusion. It means that if an Anglo or a white or a Caucasian citizen of the United States or any other, was found to have been hatefully acted upon, they would be able to come under the hate crimes law. It is to be read broadly.

I agree with my good friend talking about the death penalty, because many of us fall on different positions on the death penalty.

□ 1415

I believe there should be a moratorium. I believe it is a tragedy that



there are people who are on death row that we do not really know whether or not they, in fact, are guilty.

Mr. Speaker, what I would say in conclusion is that I will include for the RECORD at this time a letter from the Department of Justice. We have already answered the question as to whether this denies the equal protection of the law. It does not.

DEPARTMENT OF JUSTICE,  
OFFICE OF LEGISLATIVE AFFAIRS,  
Washington, DC, September 13, 2000.

Hon. RICHARD GEPHARDT,  
Minority Leader, U.S. House of Representatives,  
Washington, DC.

DEAR MR. LEADER: The Department of Justice has been asked for its view on a motion by Representative Graham that would instruct the House conferees on H.R. 4205. The motion appears to be directed at the hate crimes provisions contained in section 1507 of the Senate-enacted version of H.R. 4205. The motion would instruct the conferees not to agree to provisions in section 1507 that "(1) fail to recognize that the fourteenth amendment to the Constitution guarantees all persons equal protection under the law; an (2) deny equal protection under the law by conditioning prosecution of certain offenses on the race, color, religion, national origin, gender, sexual orientation, or disability of the victim; and (3) preclude a person convicted of murder from being sentenced to death."

With respect to the first two parts of the proposed instruction, we already have provided extensive analysis explaining the bases of Congress's constitutional authority to enact the hate crimes provisions in §1507 of the Senate-enacted version of H.R. 4025. Moreover, those provisions would not implicate the Equal Protection Clause of the Fourteenth Amendment, which applies only to the States. And, in our view, those provisions would be wholly consistent with the equal protection component of the due process clause of the Fifth Amendment. The protections afforded by the criminal provisions in section 1507 would not be limited to persons of certain races, colors, etc. Those provisions would, instead, protect all persons—regardless of their race, color, etc.—who are the victims of certain crimes of violence committed because of the victims' actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability. In this regard, section 1507 would be analogous to numerous existing laws that protect all persons from certain harms perpetrated against them because of personal characteristics (such as race or gender). See e.g., 18 U.S.C. §245(b)(2) (prohibiting the willful injuring of a person "because of," *inter alia*, "his race, color, religion or national origin"); 42 U.S.C. 2002e-2 (prohibiting employment discrimination "because of [an] individual's race, color, religion, sex, or national origin").

With respect to the final part of the proposed instruction, the amendment instructs conferees not to agree to provisions that "preclude a person convicted of murder from being sentenced to death." This provision would have no bearing on Section 1507 of H.R. 4205. That provision does not address the death penalty or prosecutions for murder. Rather, it recognizes that States retain primary responsibility for enforcing criminal laws against violent conduct. The provision requires that federal authorities consult with state officials before initiating a federal prosecution and would not impose any restrictions on the ability of state authorities to pursue whatever sanctions are available pursuant to state law.

Thank you for the opportunity to present our views. The Office of Management and

Budget has advised us that from the perspective of Administration's program, there is no objection to submission of this letter.

Sincerely,

ROBERT RABEN,  
Assistant Attorney General.

Mr. Speaker, I support the motion of the gentleman from Michigan (Mr. CONYERS), and I oppose the motion of the gentleman from South Carolina (Mr. GRAHAM).

Mr. Speaker, I rise on the Conyers motion to instruct conferees on the Department of Defense Authorization bill. It is important that Congress adequately address hate crime violence in America.

Today, we have a unique opportunity to instruct conferees on H.R. 4205, the FY 2001 Department of Defense Authorization bill, to accept the bipartisan Senate-passed provision on hate crime.

In June, the Senate passed the hate crimes bill, introduced by Senators EDWARD KENNEDY and GORDON SMITH. The Kennedy-Smith amendment was adopted on a bipartisan vote of 57–42, with 13 Republicans voting in favor. This legislation would enhance the ability of the local, state and federal law enforcement officials to investigate and prosecute violent acts of hate crimes committed against persons because of their race, color, religion, national origin, gender, sexual orientation or disability.

Despite the fact that more than 190 Members of the House have cosponsored the similar House version of the hate crimes legislation, H.R. 1082, and despite repeated requests that Judiciary Committee Chairman HYDE and Speaker HASTERT allow consideration of this bipartisan legislation, they have refused. In fact, it is because the Republican Leadership has said no for the past several years that this important legislation has not yet to become law.

I remember the senseless killings of three African American children who were killed on Sunday morning by a bomb while they participated in services at the 16th Street Baptist Church. Only recently have individuals been indicted to face trial in the nearly 40 year old murders. This terrible act galvanized the civil rights movement and began a shout for justice, which may at last be answered in a court of law as two Ku Klux Klansmen in Alabama's Jefferson County are finally being brought to justice for the 196 bombing.

As the years passed from the time of the bombing, it was felt that America had made great strides until the night of June 7, 1998 when this Nation's deepest sin was revealed by the murder of James Byrd Jr.

There is no case, which more graphically reminds this Nation that the submerged intolerance caused by racism that steeped throughout the fabric of our society can erupt into gangrenous crimes of hate violence like the murder of James Byrd in Jasper, TX.

The lynching of James Byrd struck at the consciousness of our Nation, but we have let complacency take the place of unity in the face of unspeakable evil. It was difficult to imagine how in this day and age that two white supremacists beat Byrd senseless, chained him by the ankles to a pickup truck and then dragged him to his death over three miles of country back roads.

Since James Byrd Jr.'s death our Nation has experienced an alarming increase in hate violence directed at men, women and even children of all races, creeds and colors.

Ronald Taylor traveled to the eastside of Pittsburgh, in what has been characterized, as an act of hate violence to kill three and wound two in a fast food restaurant. Eight weeks later, in Pittsburgh Richard Baumhammers, armed with a .357-caliber pistol, traveled 20 miles across the west side of Pittsburgh which now leaves him charged with killing five. His shooting victims included a Jewish woman, an Indian, "Vietnamese," Chinese and several black men. Matthew Shepard also suffered a hateful and violent death. We need this legislation to further protect the people of America.

The decade of the 1990's saw an unprecedented rise in the number of hate groups preaching violence and intolerance, with more than 50,000 hate crimes reported during the years 1991 through 1997. The summer of 1999 was dubbed "the summer of hate" as each month brought forth another appalling incident, commencing with a three-day shooting spree aimed at minorities in the Midwest and culminating with an attack on mere children in California. From 1995 through 1999, there has been 206 different arson or bomb attacks on churches and synagogues throughout the United States—an average of one house of worship attacked every week.

Like the rest of the nation, some in Congress have been tempted to dismiss these atrocities as the anomalous acts of lunatics, but news accounts of this homicidal fringe are merely the tip of the iceberg. The beliefs they act on are held by a far larger, though less visible, segment of our society. These atrocities, like the wave of church burnings across the South, illustrate the need for continued vigilance and the passage of the Hate Crimes Prevention Act.

This legislation will make it easier for federal authorities to assist in the prosecution of racial, religious and ethnic violence, in the same way that the Church Arson Prevention Act of 1996 helped federal prosecutors combat church arson: by loosening the unduly rigid jurisdictional requirements under federal law. Current law (18 U.S.C.A. 245) only covers a situation where the victim is engaging in certain specified federally protected activities. The legislation will also help plug loopholes in state criminal law, as ten states have no hate crime laws on the books, and another 21 states fail to specify sexual orientation as a category for protection. This legislation currently has 191 co-sponsors, but has had no legislative activity in this House.

It is long past time that Congress passed a comprehensive law banning such atrocities. It is a federal crime to hijack an automobile or to possess cocaine, and it ought to be a federal crime to drag a man to death because of his race or to hang a person because of his or her sexual orientation. These are crimes that shock and shame our national conscience and they should be subject to federal law enforcement assistance and prosecution.

Mr. Speaker, the Conyers motion is truly the only chance for members of the House to vote on a hate crimes bill in the 106th Congress. Accordingly, I call upon my colleagues to seize this opportunity and vote in favor of the motion.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the gentleman from Guam (Mr. UNDERWOOD).

(Mr. UNDERWOOD asked and was given permission to revise and extend his remarks.)



Mr. UNDERWOOD. Mr. Speaker, I rise in strong support of the motion to instruct of the gentleman from Michigan (Mr. CONYERS) in the name of justice and fairness.

I would like to thank the gentleman from Michigan, Mr. CONYERS, for offering this motion to instruct Committee Conferees. I strongly support this motion which is based upon the Senate Hate Crimes Amendment introduced by Senators EDWARD KENNEDY and GORDON SMITH. This amendment would:

Expand current hate crime laws to include discrimination based on gender, sexual orientation and disability;

Allow federal authorities more jurisdiction in investigating and persecuting hate crimes; and

Provide grants up to \$100,000 to train local law enforcement officials in identifying, investigating, prosecuting and preventing hate crimes, including hate crimes committed by juveniles.

Such legislation is particularly important in light of the rash of hate crimes committed in recent months. Hate crimes, such as the events in Pittsburgh, Pennsylvania, where one African American, one Jewish woman, and three Asian American men were killed on April 28, 2000, highlights the critical need for hate crimes legislation, not only for the Asian Pacific American Community, but for all Americans.

This hate crimes amendment was patterned after the Hate Crimes Prevention Act of 1999 (H.R. 1082/S. 622). It enjoys the broad support of 175 civil rights, civic and law enforcement organizations, including the Organization of Chinese Americans, India Abroad Center for Political Awareness, International Association of Chiefs of Police, Federal Law Enforcement Officers Association and Police Foundation.

As Chairman of the Congressional Asian Pacific American Caucus, I speak on behalf of the national Asian Pacific American community in urging all members to support this motion. Strengthening Hate Crime laws is a common sense policy and step in the right direction for all Americans.

Again, I appreciate the opportunity to address the Committee and urge all Members to support this motion to instruct.

Mr. GRAHAM. Mr. Speaker, I yield myself such time as I may consume.

One thing will happen when this is over. There will not be hate between us. We will come together, and we will work together where we can, and we will disagree when we have to.

I want to clear up the RECORD the best I can and explain what my motion does what I think is very needed. One, there is no objective evidence that the Committee on the Judiciary or anyone else, as we see, that the States are ignoring violent assaults based on people's race, sex, gender, national origin, religion or disability. There is no State, there is no repeated pattern of where one gets to pound on a particular group and nobody does anything about it. That is a fallacy.

Let me tell my colleagues about the legal consequences of what we are about to do in my opinion, and my colleagues need to read the statute themselves. This allows the Federal Attorney General, unlike the current stat-

ute, it is not merely including sexual orientation and disability in a list of existing Federal hate crime legislation. It is changing fundamentally the way that the legislation operates to allow the Attorney General, whoever he or she might be, to reach out and preempt a State lawsuit.

There are definitely two sovereigns in play; but legally speaking, if the Attorney General, motivated by headlines or a disgust for the death penalty or whatever political reasons may exist in an emotional, high profile case, can stop that prosecution and do it in Federal court, leaving the State to have to clean up the mess later. And the expense goes through the roof and the likelihood of that happening is zero.

It allows too much authority in the hands of the Attorney General with no Federal nexus like all the other Federal statutes have. It does a terrible thing. It divides us based on the motivation of a perpetrator and the class of the victim, and the Columbine situation is the perfect situation, unfortunately, to talk about this. Disturbed, mean, hateful people who hated life, focused on jocks, focused on somebody who was African American, focused on a girl praying, killed them all. They deserve to be prosecuted by the people in the community where it happened, and the Federal Government has no reason to get involved unless one can show throughout the land that people such as that get away with it, and they do not.

Mr. Speaker, I will tell my colleagues, as someone was involved in the criminal law before I came to Congress, that if we create this system, if we create this dynamic, we are going to have a lot of mischievous behavior out there where people are manufacturing hate crimes because it is a better deal if they can get in the Federal system, because they will not face the death penalty, as the men who are in Texas are facing the death penalty for dragging the African American gentleman to his death.

Please, look at what we are doing here today. Do not divide America. Stand up for the 14th amendment the way it was written for all of us, and make sure the Federal Government, because of headline-grabbing Attorney Generals in the future, regardless of party, cannot come and destroy our communities' abilities to heal their wounds and to deal with their bad actors and to create justice the way it sees fit in its backyard.

The SPEAKER pro tempore (Mr. SIMPSON.) Without objection, the previous question is ordered on the motion.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from South Carolina (Mr. GRAHAM).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FRANK of Massachusetts. Mr. Speaker, I object to the vote on the

ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 196, nays 227, not voting 10, as follows:

[Roll No. 470]

YEAS—196

Aderholt	Goodlatte	Petri
Archer	Goodling	Phelps
Armey	Goss	Pickering
Bachus	Graham	Pitts
Baker	Granger	Pombo
Ballenger	Green (WI)	Portman
Barcia	Gutknecht	Radanovich
Barr	Hall (TX)	Ramstad
Barrett (NE)	Hansen	Riley
Barton	Hastings (WA)	Rogan
Bereuter	Hayes	Rogers
Berry	Hayworth	Rohrabacher
Billirakis	Hefley	Roukema
Bliley	Herger	Royce
Blunt	Hill (MT)	Ryan (WI)
Boehner	Hilleary	Ryun (KS)
Bonilla	Hoekstra	Salmon
Boyd	Horn	Sanford
Brady (TX)	Hostettler	Scarborough
Bryant	Hulshof	Schaffer
Burr	Hunter	Sensenbrenner
Burton	Hutchinson	Sessions
Buyer	Hyde	Shadegg
Callahan	Isakson	Shimkus
Calvert	Istook	Shows
Camp	Jenkins	Shuster
Campbell	John	Simpson
Canady	Jones (NC)	Skeen
Cannon	Kasich	Skelton
Chabot	King (NY)	Smith (MI)
Chambliss	Kingston	Smith (TX)
Chenoweth-Hage	Knollenberg	Souder
Coble	LaHood	Spence
Coburn	Largent	Stearns
Collins	Latham	Stenholm
Combest	Lewis (CA)	Stump
Cook	Lewis (KY)	Sununu
Cooksey	Linder	Sweeney
Costello	Lipinski	Talent
Cox	Lucas (KY)	Tancred
Cramer	Lucas (OK)	Tanner
Crane	Manzullo	Tauzin
Cubin	Martinez	Taylor (MS)
Cunningham	McCrery	Taylor (NC)
Davis (VA)	McHugh	Terry
Deal	McInnis	Thomas
DeLay	McIntyre	Thornberry
DeMint	McKeon	Thune
Dickey	Metcalfe	Tiahrt
Doolittle	Mica	Toomey
Dreier	Miller (FL)	Trafficant
Duncan	Miller, Gary	Vitter
Dunn	Moran (KS)	Walden
Ehrlich	Myrick	Wamp
Emerson	Nethercutt	Watkins
English	Ney	Watts (OK)
Everett	Northup	Weldon (FL)
Ewing	Norwood	Weller
Fletcher	Nussle	Whitfield
Fossella	Ose	Wicker
Fowler	Oxley	Wilson
Ganske	Packard	Wolf
Gekas	Paul	Young (AK)
Gibbons	Pease	Young (FL)
Gillmor	Peterson (MN)	
Goode	Peterson (PA)	

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Abercrombie	Biggart	Capuano
Ackerman	Bilbray	Cardin
Allen	Bishop	Carson
Andrews	Blagojevich	Castle
Baca	Blumenauer	Clay
Baird	Boehrlert	Clayton
Baldacci	Bonior	Clement
Baldwin	Bono	Clyburn
Barrett (WI)	Borski	Condit
Bartlett	Boswell	Conyers
Bass	Boucher	Coyne
Becerra	Brady (PA)	Crowley
Bentsen	Brown (FL)	Cummings
Berkley	Brown (OH)	Danner
Berman	Capps	Davis (FL)

Davis (IL)	Kilpatrick	Price (NC)
DeFazio	Kind (WI)	Pryce (OH)
DeGette	Klecza	Quinn
Delahunt	Klink	Rahall
DeLauro	Kolbe	Rangel
Deutsch	Kucinich	Regula
Diaz-Balart	Kuykendall	Reyes
Dicks	LaFalce	Rivers
Dingell	Lampson	Rodriguez
Dixon	Lantos	Roemer
Doggett	Larson	Ros-Lehtinen
Dooley	LaTourette	Rothman
Doyle	Leach	Roybal-Allard
Edwards	Lee	Rush
Ehlers	Levin	Sabo
Etheridge	Lewis (GA)	Sanchez
Evans	LoBiondo	Sanders
Farr	Lofgren	Sandlin
Fattah	Lowey	Sawyer
Filner	Luther	Saxton
Foley	Maloney (CT)	Schakowsky
Forbes	Maloney (NY)	Scott
Ford	Markey	Serrano
Frank (MA)	Mascara	Shaw
Franks (NJ)	Matsui	Shays
Frelinghuysen	McCarthy (MO)	Sherman
Frost	McCarthy (NY)	Sherwood
Gallely	McCollum	Sisisky
Gedensson	McDermott	Slaughter
Gephardt	McGovern	Smith (NJ)
Gilman	McKinney	Smith (WA)
Gonzalez	McNulty	Snyder
Gordon	Meehan	Spratt
Green (TX)	Meek (FL)	Stabenow
Greenwood	Meeks (NY)	Stark
Gutierrez	Menendez	Strickland
Hall (OH)	Millender	Stupak
Hastings (FL)	McDonald	Tauscher
Hill (IN)	Miller, George	Thompson (CA)
Hilliard	Minge	Thompson (MS)
Hinchey	Mink	Thurman
Hinojosa	Moakley	Tierney
Hobson	Mollohan	Towns
Hoeffel	Moore	Turner
Holden	Moran (VA)	Udall (CO)
Holt	Morella	Udall (NM)
Hooley	Murtha	Upton
Houghton	Nadler	Velazquez
Hoyer	Napolitano	Visclosky
Inslee	Neal	Walsh
Jackson (IL)	Oberstar	Waters
Jackson-Lee	Obey	Watt (NC)
(TX)	Olver	Waxman
Jefferson	Ortiz	Weiner
Johnson (CT)	Pallone	Weldon (PA)
Johnson, E.B.	Pascarell	Wexler
Jones (OH)	Pastor	Wise
Kanjorski	Payne	Woolsey
Kaptur	Pelosi	Wu
Kelly	Pickett	Wynn
Kennedy	Pomeroy	
Kildee	Porter	

## NOT VOTING—10

Engel	Lazio	Vento
Eshoo	McIntosh	Weygand
Gilchrest	Owens	
Johnson, Sam	Reynolds	

## □ 1443

Messrs. ANDREWS, MOORE, FRANKS of New Jersey, and REGULA, Ms. SLAUGHTER, Ms. RIVERS, and Ms. DANNER changed their vote from "yea" to "nay."

Mr. LEWIS of California and Mr. ARCHER changed their vote from "nay" to "yea."

So the motion to instruct was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated against:

Mrs. ROUKEMA. Mr. Speaker, on Rollcall No. 470 I inadvertently pressed the "yea" button. I intended to vote "nay."

## PERSONAL EXPLANATION

Mr. OWENS. Mr. Speaker, this morning, I was unavoidably absent on a matter of critical importance and missed the following votes:

On the Journal (Rollcall No. 465), I would have voted "yea."

On H.R. 4810, (Rollcall No. 466), the veto override of the Marriage Penalty Act, introduced by the gentleman from Texas, Mr. ARCHER, I would have voted "nay."

On H.R. 4986 (Rollcall No. 467), Foreign Sales Corporation Repeal and Extraterritorial Income Exclusion Act of 2000, introduced by the gentleman from Texas, Mr. ARCHER, I would have voted "nay."

On H. Con. Res. 327 (Rollcall No. 469), honoring the service and sacrifice during periods of war by members of the U.S. Merchant Marine, introduced by the gentleman from California, Mr. KUYKENDALL, I would have voted "yea."

On H.R. 4205 (Rollcall No. 470), instructions to conferees on the Department of Defense authorization bill, offered by the gentleman from South Carolina, Mr. GRAHAM, I would have voted "nay."

# MOTION TO INSTRUCT CONFEREES ON H.R. 4205, FLOYD D. SPENCE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001

Mr. CONYERS. Mr. Speaker, I offer a motion to instruct conferees on H.R. 4205.

The SPEAKER pro tempore (Mr. SIMPSON). The Clerk will report the motion.

The Clerk read as follows:

Mr. CONYERS moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 4205 be instructed to agree to the provisions contained in title XV of the Senate amendment.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Michigan (Mr. CONYERS) and the gentleman from Arkansas (Mr. HUTCHINSON) each will be recognized for 30 minutes.

The Chair recognizes the gentleman from Michigan (Mr. CONYERS).

## □ 1445

Mr. CONYERS. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from Missouri (Mr. GEPHARDT), the minority leader of the House, to begin the debate on the motion to instruct on this most important vote on civil rights in this session of Congress.

(Mr. GEPHARDT asked and was given permission to revise and extend his remarks.)

Mr. GEPHARDT. Mr. Speaker, I rise in strong support of the Conyers motion, a motion that is in keeping with the best of our national traditions.

First, let me say that I am very glad that we are finally at long last having this debate, a debate that allows us to express our feelings, our passion on one of our most important and greatest priorities.

Yesterday, I stood outside of this marvelous building on the lawn just a few feet from our rotunda, and I listened to Judy Shepherd talk about the murder of her son Matthew. Judy Shepherd talked about the pain of losing a child to senseless violence and about

the ugly, horrible crimes that are committed against people simply because of who they are.

Matthew's mother called on our Congress to act. She called on all of us here to take a stand against hate, to renew a few simple principles into our laws, principles that say so much about who we are and what we believe.

This bill is critical in so many ways. It gives law enforcement officers at all levels of government the tools they need to deal with horrible acts of hate-based violence.

It sends a message to the world that crimes committed against people because of who they are, that these crimes are particularly evil, particularly offensive. It says that these crimes are committed, not just against individuals, not just against a single person, but against our very society, against America.

These crimes strike fear into the hearts of others because they are meant to intimidate, to harass, to menace. When an angry man, a troubled man shot up a Jewish community center in Los Angeles, wounding teachers and students in a place that was supposed to be a sanctuary of protection, the man said that he had shot at these children because he wanted to send a message. He wanted to send a wake-up call to America to kill Jews.

Today, with this bill, we reject that message in the most powerful, most forceful way that we can. Today, we as a society can say that we will do everything we can to protect people from these heinous acts, that we will not rest until America is free of this violence.

This bill honors the victims of hate crimes, and it recalls their memory. It honors the memory of James Byrd who was dragged to death behind the pickup truck because the killers did not like the color of his skin. It honors Matthew Shepherd who was beaten with the butt of a gun and tied to a fence post and left to die in freezing weather because he was gay. It honors Ricky Byrdsong, a former basketball coach at my alma mater, Northwestern, who was gunned down on the street because he was black. It honors not only those victims, not just the high profile crimes, it honors all the people whose lives have been scarred by these acts, the victims who do not always make the headlines.

The hate crimes that we do not hear about deserve our strong response today. So today, let us take a stand against violence. We are voting to dedicate our national resource, to bring the strongest laws that we have to bear against the most sinister thing that we know. The Conyers motion is the only motion that will strengthen our existing laws, that will strike a real blow against hate.

Let me say this is a bipartisan effort. There is nothing partisan in this effort today. Republicans and Democrats are joining together. This issue transcends politics. It challenges us to look into