

charged with performing abortions—and that this, in turn, means that American taxpayer funds will be used to subsidize abortion. This seemingly logical segue is absolutely and fundamentally incorrect.

Every hospital that performs a surgery—every physician that performs a procedure upon a patient—must figure out the cost of that procedure. This includes not only the time involved, but the materials, the overhead, the liability insurance. This is the fundamental and basic principle of covering one's costs.

I have faith that the Department of Defense will not do otherwise. This is the idea behind a privately-funded abortion—a woman's private funds, her own money pays for the procedure. But she has the opportunity to have this medical procedure—a medical procedure that is constitutionally guaranteed—in an American facility, performed by an American physician, and tended to by American nurses.

During last year's debate, opponents of repealing the current ban claimed that American taxpayers would be subsidizing the purchase of equipment for abortions, and would be training doctors to perform privately-funded abortions. This false argument effectively overlooks the fact that the Department of Defense has already invested in the equipment and training necessary because current law already provides access in cases of life of the mother, rape, or incest.

But the economic cost of this ban is not the only cost at issue here. What about the impact on a woman's health? A woman who is stationed overseas can be forced to delay the procedure for several weeks until she can travel to the United States or another overseas location in order to obtain the abortion. Every week that a woman delays an abortion increases the risk of the procedure.

The current law banning privately-funded abortions puts the health of these women at risk. They will be forced to seek out unsafe medical care in countries where the blood supply is not safe, where their procedures are antiquated, where their equipment may not be sterile. I do not believe it is right, on top of all the other sacrifices our military personnel are asked to make, to add unsafe medical care to the list.

I believe that a decision as fundamentally personal as whether or not to continue one's pregnancy only needs to be discussed between a woman, her family, and her physician. But yet, as current law stands, a woman who is facing the tragic decision of whether or not to have an abortion faces involving not just her family and her physician, but her—or her husband's—commanding officer, duty officer, miscellaneous transportation personnel, and any number of other persons who are totally and completely unrelated to her or her decision. Now she faces both the stress and grief of her decision—but

she faces the judgment and willingness of many others who are totally and wholly unconnected to her personal and private situation.

Imagine having made the difficult decision to have an abortion and then being told that you have to return to the United States or go to a hospital that may or may not be clean and sanitary. That is the effect of current policy—if you have the money, if you leave your family, if you leave your support system, and come back here. Otherwise, your full range of choices consists of paying from your own money and taking your chances at some questionable hospital that may or may not be okay.

This of course, is only if the country you are stationed in has legal abortion. Otherwise you have no option. You have no access to your constitutionally protected right of abortion.

What is the freedom to choose? It is the freedom to make a decision without unnecessary government interference. Denying a woman the best available resources for her health care simply is not right. Current law does not provide a woman and her family the ability to make a choice. It gives the woman and her family no freedom of choice. It makes the choice for her.

In the year 2000, in the United States of America it is a fact that a woman's right to an abortion is the law of the land. The Supreme Court has spoken on that issue, and you can look it up. Denying women the right to a safe abortion because you disagree with the Supreme Court is wrong, but that is what current law does.

Military personnel stationed overseas still vote, still pay taxes, and are protected and punished under U.S. law. They protect the rights and ideals that this country stands for. Whether we agree with abortion or not, we all understand that safe and legal access to abortion is the law of the land. But the current ban on privately-funded abortions takes away the fundamental right of personal choice from American women stationed overseas. And I don't believe these women should be treated as second class citizens.

It never occurred to me that women's constitutional rights were territorial. It never occurred to me that when American women in our armed forces get their visas and passports stamped when they go abroad—that they are required to leave their fundamental, constitutional rights at the proverbial door. It never occurred to me that in order to find out what freedoms you have as an American, you had to check the time-zone you were in.

The United States willingly sends our service men and women into harms way—yet Congress takes it upon itself to deny 14 percent of our Armed Forces personnel—33,000 of whom are stationed overseas—the basic right to safe medical care. And we deny the basic right to safe medical care to more than 200,000 military dependents who are stationed overseas as well.

How can we do this to our service men and women and their families? It seems to me that they already sacrifice a great deal to serve their country without asking them to take unnecessary risks with their health as well. We should not ask our military personnel to leave their basic rights at the shoreline when we send them overseas.

I believe we owe our men and women in uniform and their families the option to receive the medical care they need in a safe environment. They do not deserve anything less. I urge my colleagues to join me in supporting the Murray-Snowe amendment.

Mr. President, I yield the floor.

#### RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, at 12:33 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. SESSIONS).

#### NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001—Continued

AMENDMENT NO. 3252

The PRESIDING OFFICER. We are now under controlled time. Who yields time?

The Senator from Washington.

Mrs. MURRAY. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Washington has 43 minutes remaining, and the opposition has 42 minutes.

Mrs. MURRAY. I thank the Chair.

Mr. President, I remind my colleagues of the issue we will be debating for the next 90 minutes. Basically, today a woman who serves in the military overseas at a facility, if she so desires to have an abortion—and it is her choice; it is her personal choice between herself and her family and her doctor and her religion—has to go to her commanding officer to ask for permission to come home to the United States to have a safe and legal abortion. Then she has to wait for military transport. She has to pay \$10, as the opponents told us this morning, for food on that military transport, and come home in order to have a safe and legal abortion.

The pending amendment simply allows women who serve in our military overseas today to pay for their own medical choice decisions in a military hospital where it is safe and is a place where they can be assured they will be taken care of, as we should expect we would take care of all people who serve us in the military.

I have heard our opponents speak this morning on this amendment and say it is unnecessary. I have a letter

from a woman who served in our military services. I would like to share it with my colleagues who think it is unnecessary:

DEAR SENATOR: My name is Jessica, and I am a college student in Arizona. I am writing you regarding an experience I had as a member of the Air Force while stationed in Yokota Air Base, Japan.

Two years ago, as a young single woman, I found out I was pregnant. I knew I couldn't talk to my immediate supervisor because he was a Catholic priest. You see, my job in the armed services was "Chaplain's Assistant." So instead, I went to the next level in my chain of command. In return for requesting time off, I was verbally reprimanded and told that I had sinned in the eyes of God and was going to hell if I didn't repent immediately.

The next day, I made an appointment with a doctor on base and told him I was pregnant and wanted an abortion. The doctor whispered that I was to walk very quietly to the front desk where the information would be waiting for me. The information was scribbled on a single sheet of paper with hand-drawn maps on it to three hospitals that would perform abortions.

When I arrived at the hospital, I was sent into a cubicle. None of the nurses spoke English, so I had no way of giving them my medical history. I had no Japanese friends to translate, and the Air Force would not provide any assistance. My first doctor did not speak English either, so I had no idea what the doctor did, or what medication he gave me. I was completely alone.

I will never forget the humiliation I felt. I couldn't speak the language, I was turned away by my American doctors on base whose hands were tied. The doctors on base weren't even allowed to give me information regarding this medical procedure. Although I served in the military, I was given no translators, no explanations, no transportation, and no help for a legal medical procedure.

I have never heard of any male soldiers being treated like this. In fact, I don't know of any medical treatments that male soldiers are denied. Perhaps the military recruiters should warn females before they enlist that the United States will discriminate against them due to their gender.

This letter is compelling. It says that a woman who is serving her country overseas, who is fighting for our rights, is basically denied health care services of her choice that she would be given in this country if she opted not to serve in the military.

I appeal to my colleagues to please make sure that the women who serve us overseas are given the same rights as the women who live in this country.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HUTCHINSON. Mr. President, I will respond to a number of things my colleague from Washington said.

While I do not know the specifics or the circumstances of the situation to which she made reference, I know it is a bad practice when we try to legislate by anecdote. I do know this as well, that much of the debate is centered around whether or not a woman's rights can be protected under current DOD policy. The insinuation has been that servicewomen experience a lack of support from their chain of command when requesting leave in order to ob-

tain an abortion. That was the circumstance in the situation to which Senator MURRAY just made reference.

Such an argument impugns the professionalism of the officer corps. There are procedures in place and there are rights by which men and women in uniform can be protected. If, in fact, their rights are being disregarded by a commanding officer, there are means under current law by which those rights can be vindicated and the wrong righted.

I have great confidence in the professionalism of our officer corps. I fully expect any commanding officer to approve a service member's leave when properly requested, whatever the motivation for that request. If that is not done, then there should be a grievance filed, and I would stand in support of such an individual's right to make that request on a space-available basis. I believe the professional officer corps that we have is going to respond and treat that servicewoman properly and give her the rights she has under the law.

The other point I would make to those who would impugn the professionalism of our officer corps is that the commanding officer today may just likely be a woman. That woman seeking permission to receive approved leave for an abortion under current policy may just as well find they are dealing with a commanding officer who is in fact female.

At this time, I would like to yield 5 minutes to my distinguished colleague from the State of Kansas, Senator BROWNBACK.

The PRESIDING OFFICER. The Senator from Kansas is recognized for 5 minutes.

Mr. BROWNBACK. I thank the Chair. I thank my colleague from Arkansas for leading this debate against this amendment. I rise in opposition to the Murray amendment.

On February 10, 1996, the National Defense Authorization Act for fiscal year 1996 was signed into law by President Clinton with a provision to prevent DOD medical treatment facilities from being used to perform abortions except where the life of the mother is endangered or in cases of rape or incest. That is the public law.

This provision reversed a Clinton administration policy instituted on January 22, 1993, permitting abortions to be performed at military facilities. Previously, from 1988 to 1993, the performance of abortions was not permitted at military hospitals except when the life of the mother was in danger.

That is a bit of the history around this issue.

The Murray amendment which would repeal the pro-life provision attempts to turn taxpayer-funded DOD medical treatment facilities into abortion clinics. Fortunately, the Senate refused to let the issue of abortion adversely affect our armed services and rejected this amendment last year by a vote of 51-49, and we should reject it again this year.

It is shameful that we would hold America's armed services hostage to

abortion policies. Using the coercive power of government to force American taxpayers—American taxpayers, that is who we are talking about here—to fund health care facilities where abortions are performed would be a horrible precedent and would put many Americans in a difficult position—using my taxpayer money to fund abortions.

When the 1993 policy permitting abortions in military facilities was first promulgated, military physicians as well as nurses and support personnel refused to perform or assist in elective abortions. In response, the administration sought to hire civilians to do abortions.

Therefore, if the Murray amendment were adopted, not only would taxpayer-funded facilities be used to support abortion on demand but resources would be used to search for, hire, and transport new personnel simply so abortions could be performed.

In fact, according to CRS, a 1994 memorandum from the Assistant Secretary of Defense for Health Affairs says this:

Direct[ed] the Military Health Services System provide other means of access if providing prepaid abortion services at a facility was not feasible.

One argument used by supporters of abortion in military hospitals is that women in countries where abortion is not permitted will have nowhere else to turn to obtain an abortion. However, DOD policy requires military doctors to obey the abortion laws of the countries where they are providing services, so they still could not perform abortions in those locations. Military treatment centers which are dedicated to healing and nurturing life—healing and nurturing life, that is what this is about; in other words, what we should be about—should not be forced to facilitate the taking of the most innocent of all human life, that of the unborn.

As I speak of this, I ask forgiveness for our country, for the Nation, for the killing of this most innocent of life, the unborn.

I urge my colleagues to table the Murray amendment and free America's military from abortion politics and from performing these abortions at taxpayer-funded facilities. If passed, this amendment will effectively kill the DOD authorization bill, and on that ground as well, I urge my colleagues to reject this amendment.

I think we must get down to the very basics on this, as happens so often when it comes to these sorts of issues, and that is: Should we use taxpayer-funded facilities to perform abortions, making them abortion clinics? Is that something our citizens would want us to do, whether they were pro-life or pro-choice? I think the vast majority would say, no, we don't want it to take place in our facilities and this is a bad precedent for us to set.

I thank my colleague from Arkansas for leading this difficult and very important debate.

I yield back the time reserved for our side on this issue.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. I yield 10 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I thank the Chair.

I start by asking the sponsor of this amendment, Senator MURRAY, of Washington, just a few questions so we can clarify what we are talking about.

Is it my understanding that the Senator's amendment is offering to women who are serving in the military the same constitutional right available to every woman in America?

Mrs. MURRAY. The Senator from Illinois is absolutely correct.

Mr. DURBIN. Secondly, is it my understanding that if a woman in the military wants to seek an abortion, the Senator's amendment says it would have to be at her cost completely, not at any cost to the Federal Government?

Mrs. MURRAY. That is right. Under this amendment, the woman would have to pay for the services in the military hospital on her own.

Mr. DURBIN. Third, does the Senator's amendment require every military hospital and every doctor in those hospitals to involve themselves in abortion procedures if it violates their own personal conscience or religious belief?

Mrs. MURRAY. I say to the Senator from Illinois, there is a conscience clause that allows any doctor to be excused from the procedure based on religion.

Mr. DURBIN. I thank the Senator from Washington.

I wanted to make those points clear. We are talking about a constitutional right which every woman in America enjoys, her right to control her reproductive health.

Make no mistake; it is a controversial right. There are people on this floor who do not believe the Supreme Court was right in establishing that, within the right of privacy, every woman should make that decision with her doctor and her conscience. These are people who oppose abortion either completely or want to limit it to certain circumstances.

What we are talking about here is whether or not a young woman who takes an oath to defend the United States of America and becomes part of our military service is going to give up her constitutional right to control her own reproductive health. That is the bottom line.

What Senator MURRAY is trying to say is, why would we treat women who volunteer to serve in the military as second class citizens? Why would we deny to daughters and sisters and mothers and wives who serve in the military the same constitutional right which every woman in America enjoys?

Those who oppose this amendment say women in the military should be

treated as second class citizens; they should not have the same constitutional rights as any other woman in America.

Second, the question about whether the Government is paying for the abortion is always a controversial question. Some people who in conscience oppose abortion say: I don't want a penny of my taxes to be spent on abortion services. Senator MURRAY addresses this directly and says that any abortion procedure has to be paid for by the woman in uniform. She is paying for it out of her pocket. It isn't a matter of the Government paying for it. Should a woman choose an abortion procedure, they have to pay for it. In this case, Senator MURRAY makes that clear.

Finally, to argue we are going to turn military hospitals into abortion clinics and force doctors to perform abortions defiles the very language of the amendment. Senator MURRAY carefully included a conscience clause. If a doctor in a military hospital overseas should say: because of my personal religious beliefs or my conscience, I cannot perform an abortion procedure, there is absolutely no requirement in the Murray amendment that person be involved. The same conscience clause that applies in most hospitals in the United States applies in this amendment.

This is the bottom line: Men and women in uniform are asked to risk their lives in defense of our country. God bless them that they are willing to do that. But should women in the military also be asked to risk their health and their lives because they want to exercise their own constitutional right to decide about their own reproductive health care? That is the bottom line.

It really gets down to a very simple question: Why would we treat women in the military who have volunteered to serve this country as second-class citizens?

Sue Bailey, the Assistant Secretary of Defense for Health Affairs, recently wrote:

The Department of Defense believes it is unfair for female service members, particularly those members assigned to overseas locations, to be denied their constitutional right to a full range of reproductive health care, to include abortion. The availability of quality reproductive health care ought to be available to all female members of the military.

So we know where the military stands. The Department of Defense supports this amendment by Senator MURRAY.

There is a current provision in the law for servicewomen overseas, when they have their life at stake or they have been victims of rape or incest, to have an abortion service at a military hospital. This has been stated by those on the floor. But there is no provision, no protection whatever, for that same servicewoman who discovers during the course of her pregnancy that because of her own medical condition continuing the pregnancy may be a threat to her health. A doctor can diagnose during

the course of a pregnancy the continuing that pregnancy might result in a young woman never being able to bear another child. Perhaps that baby she is carrying is so fatally deformed it will not survive. And according to those who oppose the Murray amendment, that servicewoman is on her own.

What is her recourse? Well, maybe she will turn to a doctor in that foreign country, hoping that she will get someone who is professional and can perform a service that won't harm her more than a continued pregnancy might. Frankly, the alternative is to get on a plane and fly to another location, another country, or back to the United States, wait for space available, or pay for it on commercial fare. Is that the kind of burden we want to impose on young women who volunteer to defend the United States, take away the constitutional right available to every American woman, to say to them, if you find yourself in a delicate or difficult medical situation, it is up to you, at your cost, to get out of that country and find a doctor, a hospital, a clinic, that can serve you? That is the bottom line, as far as I am concerned.

This is a question of simple fairness. It is a question of restoring a policy which was in the law between 1973 and 1988 and again from 1993 to 1996.

Senator MURRAY has said to those who oppose abortion—and many in this Chamber do—to those who oppose the Supreme Court's decision in *Roe v. Wade*, you are entitled to your point of view; You are entitled to make the speeches you want to make; But you are not entitled to deny to servicewomen overseas the same constitutional rights we give to every woman in America. We will debate abortion for many years to come, whether or not the Supreme Court sustains *Roe v. Wade*.

So long as it is the constitutional right in our country for women to consider their own privacy and their own reproductive health and make those personal decisions with their doctor, with their family, with their conscience, we should not deny that same right to women who are serving in the military.

The women in our Armed Forces already give up many freedoms and risk their lives to defend our country. They should not have to sacrifice their privacy, their health, and their basic constitutional rights for a policy with no valid military purpose.

I rise in strong support of this amendment, a bipartisan amendment, by Senator MURRAY and Senator SNOWE of Maine. I hope my colleagues will show respect for the women who serve in our military by voting in favor of this amendment.

I yield the floor.

Mr. HUTCHINSON. Mr. President, one of the issues that has arisen during this debate is whether or not the Murray amendment violates the Hyde provision which prohibits Federal funding

for abortion. Proponents of the amendment argue, no, this doesn't violate Hyde because we are requiring a woman to pay for the abortion procedure.

I have raised the issue as to how exactly to calculate the cost of reimbursing the DOD for the expense of an abortion procedure, in a military hospital, when the facilities were built at taxpayers' expense, and the support staff were paid salaries out of public funds, in which the equipment has been paid for. How in the world would this be calculated?

Now, earlier it was suggested that is not really a problem. During the lunch break, we checked with the Department of Defense. I will share for the record what we found. It is currently not feasible with existing information systems and support capabilities to collect billing information relative to a specific encounter within the military health care system.

Procedures performed in military hospitals are assigned a diagnostic related group code, but these are "assigned" or "allocated" costs that don't necessarily reflect resources devoted to a specific case. Military infrastructure and overhead costs cannot, at the present time, be allocated on a case-by-case basis.

It is very clear that the Hyde amendment would be violated, that we would—whether we admit it or not, whether we promulgate this legal myth—be subsidizing abortion with taxpayers' money, in violation of the law of the land.

I yield 5 minutes to my colleague from Wyoming, Senator ENZI.

Mr. ENZI. Mr. President, I thank the Senator from Arkansas for his dedication to this issue and I thank the Senator from Kansas for his very careful presentation of a number of important issues that deal with this amendment.

Mr. President, I rise in opposition to the Murray amendment and I urge my colleagues to follow the course we have set over the last several years and reject this amendment.

Mr. President, the underlying legislation before us, the Department of Defense Authorization Act, is an extremely important piece of legislation. In conjunction with the accompanying appropriations bill, it provides for the essential funding needed by our brave men and women on whom we rely to dedicate their time and service, and sometimes even their very lives, to protect our great nation from aggressors who threaten our freedom, and security, and our very way of life. Our military personnel are tasked with protecting our lives and our manner of life, which according to our hallowed Declaration of Independence, guarantees to each American those fundamental rights of life, liberty, and the pursuit of happiness.

Rather than supporting our brave military men and women in their difficult task of protecting life and liberty, the Murray amendment would

call on military personnel to use military facilities to take innocent human life through elective abortions. This proposal runs contrary to the mission of our armed services and should be rejected.

Mr. President, it is noteworthy that when President Clinton first promulgated his policy in 1993 directing that abortions be performed in military facilities, all military physicians and many nurses and support personnel refused to perform or assist in elective abortions. This is compelling evidence that military physicians want to be in the business of saving life, not performing elective abortions. We should honor the wishes of these military medical personnel and reject the Murray amendment.

Mr. President, this amendment even goes beyond the debate on abortion because it would essentially require tax funds to be used to aid in elective abortions. Military hospitals and medical clinics are built with American tax dollars. Military physicians, nurses, and other support personnel are paid by federal tax dollars. We have just heard how that billing is done. From an accounting standpoint the person does not pay for the costs involved with the medical hospitals and clinics. Military physicians, nurses and other support personnel are paid by Federal tax dollars. Even if the abortion procedure itself was not directly paid for by federal funds, federal tax dollars would have to be used to train military physicians to perform abortions.

Moreover, if military physicians refused to perform these elective abortions, and they were not required to violate their consciences, then civilian doctors and medical personnel would have to be hired to perform these elective abortions on military facilities. How does the accounting work for direct costs? Would these civilian medical personnel also have to be reimbursed with federal tax dollars?

In essence, the Murray amendment would require that American taxpayers help pay for elective abortions for military personnel. Regardless of one's position on the legality of abortion, it is not proper for Congress to use Americans' tax dollars to fund something that is as deeply controversial as abortion on demand.

I urge my colleagues to cast a vote for life and maintain the status quo by rejecting the Murray amendment. Abortions are available if the life of the mother is at stake, or if there has been rape or incest. But the elective abortion is another area that is controversial because of the funding that is available. So I do ask you to cast a vote for life and maintain the status quo, reject the Murray amendment.

I yield the floor. I reserve the remainder of the time.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I yield 10 minutes to the Senator from New Jersey and 10 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. TORRICELLI. Mr. President, I thank the Senator from Washington and the Senator from Maine. I congratulate each of them on this amendment.

There are good and sound arguments that people who serve in the Armed Forces of the United States deserve some special privilege. Their lives are at risk. They give months and years of their time in service to our Nation. Certainly, they deserve some special recognition and accommodation to their needs.

I know of no argument that people in service to our country, because they are in the Armed Forces, deserve less. Access to safe abortions is not a national privilege. It is not a benefit we extend to the few. It is, by order of the Supreme Court of the United States, a constitutionally mandated right. Yet people would come to the floor of the Senate and say those who take an oath to defend our Nation and our Constitution by putting their lives in harm's way deserve not those constitutional rights of other Americans but less.

To the extent my colleagues want to debate the law, fight on the constitutional issue, I respect them. To the extent they simply want to provide barriers when a woman wants to exercise her constitutional right while in service to our country, it does not speak well of the anti-abortion movement. Women in the Armed Forces serving abroad must arrange transportation, incur delays. Ironically, to those in the anti-abortion movement, these are women whose abortions get postponed to later stages of pregnancy and must have the personal dangers of travel while pregnant because of this prohibition.

In spite of words I heard said on this floor, there are no public funds involved. Women would pay for these procedures themselves. No providers of health care in a military hospital or other facility would be forced to do this against their will. This would be done only on a voluntary basis by regulation of the Armed Forces. It is voluntary; it is privately paid for; it is constitutional; and it is right.

How would we account for the expense, the Senator from Arkansas has raised. This was done in 1994 and 1996; it was done before 1993. In all those years, in hundreds and thousands of cases, we had no accounting difficulty. A woman is presented with a bill: Here is what it costs. Is it a private matter? You pay for it.

The Armed Forces themselves may be in the best position to speak for their own members. On May 7, 1999, Assistant Secretary of Defense Sue Bailey stated:

The Department of Defense believes it is unfair for female service members, particularly those members assigned to overseas locations, to be denied their constitutional right to the full range of reproductive healthcare. \* \* \*

Exactly. Members of our Armed Forces ask for no special privileges. They ask for no special rights. They want to have the constitutional rights of all other Americans. It is not right. It is not fair. It is not even safe to ask a woman at this dangerous, important, critical moment of her own life to seek transportation to travel across continents to exercise the abortion rights that every other American can get from their own doctor at their own hospital.

No matter what side you are on in the abortion debate, this is just the right thing to do. I urge my colleagues on both sides of the aisle, on all sides of this debate, if ever there was a moment for unity on reproductive rights, I urge support for the Snowe-Murray amendment.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time to the Senator from California?

Mrs. BOXER. I believe, under the unanimous consent agreement, I am supposed to get 10 minutes at this time; is that correct?

The PRESIDING OFFICER. The Senator is correct. The Senator is recognized for 10 minutes.

Mrs. BOXER. Mr. President, I thank Senator MURRAY for giving me these 10 minutes. I compliment her and Senator SNOWE for once again bringing this matter to the Senate. We have had very close votes. I believe, if people listened to the arguments on both sides, they would come down in favor of the Murray-Snowe amendment. I want to say why.

The Murray-Snowe amendment will repeal the law which says to service-women and military dependents who are stationed overseas that they are less than full American citizens; that they, in fact, no longer have the protections of the Constitution; and that, in fact, they do not deserve the full measure of that protection.

I don't want to overstate this, but I think it is almost unpatriotic to take the view that a woman who gives her life to her country every single day would be denied a right that every other woman has. No other woman in America is told: Talk to your boss about the problem you've got yourself into. Get his permission.

I say to my colleague from Arkansas, who says some of the commanding officers are women, I suppose about 2 percent are women. But that is not the point. Whether it is a man or a woman, no one else in America has to go get permission from their employer to get a safe abortion.

With all due respect to Senator BROWNBACK, who says this is about protecting the unborn, this is not about protecting the unborn. This is about protecting the rights of American women, who happen to be in the military, to have the same constitutional protections as any other woman. If we want to discuss the issue of whether a woman should have the right to choose, that is another conversation

for another day or perhaps for another Supreme Court, which has upheld a woman's right to choose time and time and time again since 1973. Even Justices who were appointed by Republican Presidents have done so. So although my friends want to make this issue about the rights of the unborn, that is not what this is about. This is about making it difficult and really, in many ways, dangerous for women in the military to exercise their right to choose. I think that is a rather sick thing to do, if you want to know the truth.

How would you like to be a woman who finds herself with this unwanted pregnancy? She may decide to go to full term. That is her choice. She may choose that. But what if she doesn't? Now she is faced with a situation where she has to go to her boss and beg to get on a cargo plane—when there is a seat available, I might say.

So Senator TORRICELLI is right in his point; such could delay this procedure until it was more dangerous to her health, or she could choose not to be humiliated, embarrassed, and the rest, and go to an unsafe place in a country that may well be hostile to her, try to understand what the doctors and the nurses are saying, and subject herself to a dangerous situation. Why? Why would my colleagues want to do that to women in the military?

With all due respect to my colleagues, I do not doubt their sincerity. But for them to stand up and say that the DOD really doesn't know how to allocate these costs so Senator MURRAY is wrong on this point, Senator SNOWE is wrong on this point; we can't figure out really what this costs, that simply flies in the face of experience.

For many years, this is what had been done. It was no problem getting the women to pay their fair share of the costs associated with an abortion, a safe and legal abortion in a safe military hospital.

In the Murray amendment, no one is forced to be involved in this procedure if they have an objection based on conscience.

We have covered all the bases, if you will. I don't care who stands up here and waves a piece of paper and says they can't figure out what it costs. The military supports the Murray-Snowe amendment.

I will repeat that. The U.S. Department of Defense supports the Murray-Snowe amendment. Why? Because they care about the people in the military. They are advocates for people in the military. They do not think you should give up your rights because you put your life on the line for your country. On the contrary. They want to thank the women in the military for putting their lives on the line, and one way to do it is to ensure they will share in the benefits of this Nation, which include being protected by the Constitution of the United States of America.

The Supreme Court decision that occurred in 1973, which many of my col-

leagues do not like—Senator HARKIN and I had a very clear-cut amendment upholding the Supreme Court decision of 1973. We got 51 votes. *Roe v. Wade* got a 51-vote majority in the Senate, but it is hanging by a thread. And this attempt in this bill, which the majority side of the aisle supports, to stop women, who happen to be in the military, from their constitutional right to choose flies in the face of what the military says it wants to do for our people, which is to protect them when they are abroad.

This is simply about the rights of women, one particular group of women, the women I thought my friends on the other side of the aisle would particularly respect because of their respect for the military. This is telling those women in the military: You cannot have the same rights as anybody else.

I recall when we had a debate on the Washington, DC, appropriations bill. I happened to be the minority member who was bringing that bill forward. There were many restrictions on the poor women of Washington, DC, that were not put into any other bill. In other words, the people in my cities did not get stuck with particular rules that told them they could not use city money if they, in fact, wanted to exercise their right to choose.

I said to my friends on the other side of the aisle: Why are you picking on these poor women in Washington, DC? Do my colleagues know what the answer was? Because we can.

I rhetorically ask the same question: Why are we picking on women in the military and saying they are less than full citizens of this country, that they do not have the constitutional rights that other women have?

I suspect an honest answer coming back would be: Because we can take this right away; because we in the Senate have the power of the purse, and we are going to exercise that power because we can. And they will do it.

I am hoping one or two people on the other side will change their minds on this amendment if they are listening to this debate; given the fact that the military supports the Murray-Snowe amendment. I hope a couple of people will change their minds on this. Just because we can exercise our personal religious and moral beliefs on someone else does not mean we should do that.

We should respect people and know we have freedom of religion in this country. That does not mean we have a right to put our moral values and our decisions on someone else. We should respect them. They are going to decide this issue.

I can tell my colleagues that a decision to have an abortion is one that is very serious for our people. Women do not do it in a cavalier way. They think about it, and they talk about it with the people who love them, not their boss. That is what my colleagues make people do: Go to their boss and beg to get on a plane to get a safe abortion. It is shameful. It is just shameful. They

would not want that done to their children. I do not think so. They would want them to have the chance to do what they thought was right and have the opportunity of a safe, legal procedure.

Again, I say to Senators MURRAY and SNOWE that they are courageous to do this; they are right to do this. They lost a couple of votes on close vote counts, and they are not giving up.

I hope everyone who is watching this debate, be they a man or a woman, be they old or young, be they for a woman's right to choose or against it, understands what this debate is about. Nothing we do today, regardless of how this vote goes, will change the law governing a woman's right to choose. That was decided in 1973, and it has been upheld. It is a right.

This is not about the rights of the unborn. It is about the rights of women in the military to have the same constitutional protections as all the other women in our Nation.

I thank the Chair for his courtesy, and I thank Senator MURRAY for her courage. I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HUTCHINSON. Mr. President, the statement was made that the military supports the Murray amendment. Thus far during our debate, twice, a Dr. Sue Bailey, who is a former Under Secretary of Defense for Health, has been quoted. Notwithstanding whatever the Department of Defense might say today, I suspect were there to be a survey of U.S. men and women in uniform across the world, the vast majority would not favor turning U.S. military installations overseas into abortion providers.

I yield to the distinguished Senator from Oklahoma, Mr. NICKLES, such time as he may consume.

The PRESIDING OFFICER. The assistant majority leader.

Mr. NICKLES. Mr. President, I compliment my colleague from Arkansas, Senator HUTCHINSON, for his contribution to this debate. I want to make a couple of comments.

If we adopt the Murray-Snowe amendment, we will be turning military hospitals worldwide into abortion clinics. That is what it is about.

I heard somebody else say: We have to protect the constitutional right to choose. It is not the right to choose. The question is, are we going to turn military hospitals into abortion clinics?

I also heard the comment: The military supports this amendment. I would like to ask General Shelton that. I would like to ask Secretary Cohen that. I would like to ask former Secretary Dick Cheney that. I would like to ask Colin Powell that. I doubt that would be the case.

What about this constitutional right? I heard "safe legal abortions." When did Congress pass a law? I do not believe Congress ever passed a law saying women have a right to an abortion.

The Supreme Court came up with a decision in *Roe v. Wade* that "legalized" abortion, and by legalizing abortion they overturned State laws.

The majority of States—almost all States—had restrictions on abortions. The Supreme Court, in its infinite wisdom, said: States, you do not know enough, so we are going to legalize abortion.

I personally find it offensive anytime the Supreme Court goes into the law-making business. I read the Constitution to say Congress shall pass all laws—article I of the Constitution. It does not say, laws that are kind of complicated, Supreme Court, you go ahead and pass.

Now people are trying to take, in my opinion, a flawed Supreme Court decision and say we are going to turn that into a fringe benefit. Certainly, the Supreme Court did not say that, but my colleagues are saying: We want to have the right to have an abortion in government hospitals; this is a fringe benefit; let's pick it up, it is going to be paid for by the taxpayers.

These doctors, who are Federal doctors, are going to be trained to do what? Provide abortions. What is an abortion? It is the destruction of a human life. We are now going to turn this Supreme Court decision into a fringe benefit? The Supreme Court never said this was a fringe benefit. The Supreme Court never said the Government had to pay for it, or the taxpayers had to pay for it.

Who pays that doctor's salary? Who is going to train that doctor? Who is going to train the nurse? Who is going to make sure the facilities are there? The taxpayers are. The Supreme Court never said you have to turn this into a Federal paid fringe benefit at Federal expense.

I heard somebody else say this is not a debate about paying for it; they are willing to pay for it themselves. They do not pay for the training of the doctors. They do not pay for the building of the facilities or having the facilities there, and all the expenses associated with it.

Basically, they are asking that the Federal policy be to turn our military hospitals into abortion clinics with the acceptance, with the acknowledgment, with the prestige of the U.S. Government, that this is a procedure we will supply, as if it is just an ordinary fringe benefit.

It is dehumanizing life. It is devaluing life. It is just a fringe benefit? It is a destruction of life. We are going to have the taxpayers do that? We are going to mandate all military hospitals worldwide become abortion clinics?

We are going to mandate basically that these doctors, when they are recruited to go into military training, have to also be trained to perform abortions? I think that would be a serious mistake. I urge my colleagues, at the appropriate time, to vote in favor of the motion to table the Murray amendment.

Again, my compliments to my friend and colleague from Arkansas.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Washington.

Mrs. MURRAY. Mr. President, I simply need to respond. The Murray-Snowe amendment is not asking for a fringe benefit. Let me make it very clear to everyone who is listening, what this amendment does is simply allow a woman who serves in the military overseas to pay for her own abortion services in a military hospital where it is safe and it is legal. It is not a fringe benefit. Health care choices for women who serve us overseas are not fringe benefits. They simply are the same right that is afforded to every woman who lives in this country.

Mr. President, I yield 5 minutes to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I come to the floor today just to add a couple of other points to this very important debate.

I thank my colleagues from Washington and Maine for sponsoring this amendment. I will join with them in voting for this amendment.

I simply point out to our colleagues that while emotions and passions may run quite high on this issue, as has been expressed by various Members, I do not necessarily consider this an abortion vote one way or the other. This is about our military. This is about equal rights and equal protection for men and women who serve in the military. It is a pro-military vote. It is a health care vote.

We can debate, as we do regularly, and as the Senator from Oklahoma just pointed out, our differences of opinion on abortion. We have differences of opinion about whether we should be pro-choice, anti-choice, or pro-abortion. But this is an amendment concerning women who have signed up in the military, at some sacrifice to themselves and to their families, to serve our country in uniform.

As a member of the Armed Services Committee, it is so hard for me to understand how this Congress could take a constitutional right away from a woman in uniform by denying her health care she may need, and in some instances may be in desperate need of, while serving our country overseas. It is for no good reason that I can understand, nor can many of us understand.

We can debate the abortion issue on other bills, in other venues. We have resolutions. This is on our military bill. This is a readiness issue. We have reached out to women to serve in our Armed Forces. We have asked them to serve. Ten or fifteen percent of our Armed Forces are female.

Just recently I read, with great pride—and I hope many of our Members here have read this—that in our academies, the Army, the Air Force, and the Navy academies, 5 out of the top 10 graduates this year are women.

We are opening the doors of our military academies. Some of our best

trained people are female, getting ready to defend our Nation's principles for which so many died.

If, in fact, they are overseas and injured in the line of duty, and the woman happens to be pregnant and needs to terminate that pregnancy, they will have to go to their commanding officer, ask for permission, and be transported back on a cargo plane, if and when one is available, putting their health in jeopardy. It is not right. It is not fair.

I would like to correct the record. Secretary Cohen does support giving this health benefit to women who are in our military.

I would like to correct something else for the record. The Murray-Snowe amendment requires that women in uniform pay out of their own pockets for the procedure that they believe they need because of their health or that their doctor might recommend they need. In addition to paying out of their pocket, let me remind my colleagues, they are taxpayers. Their money does in fact build the hospitals and pay for the doctors. The last time I checked the Tax Code, both men and women pay taxes, not just the men of this Nation.

So for the readiness issue, for the military issue, I ask my colleagues, even those who are opposed to abortion on constitutional grounds, since it is a constitutional right, let us please have consideration for the women who are in uniform, who serve our country valiantly, and who may indeed find themselves in a foreign and strange land, in some instances, fighting for the principles we represent here. For them to not be able to get the health care they need because some Members of this body voted to take that right away from them, I do not want to be in that number.

Mr. President, I am proud to support this amendment. I urge all of my colleagues to join with us in supporting this important amendment.

I yield back the remainder of my time.

**THE PRESIDING OFFICER.** The Senator from Arkansas.

**Mr. HUTCHINSON.** Mr. President, a constitutional right has not been abridged. They in fact can seek an abortion, but it simply cannot be on military grounds, in military hospitals, or subsidized by the American taxpayer.

At this time, I yield such time as he might consume to my distinguished colleague on the Armed Services Committee, the Senator from Alabama, Mr. SESSIONS.

**THE PRESIDING OFFICER.** The Senator from Alabama.

**Mr. SESSIONS.** Mr. President, this is indeed an important Defense authorization bill. We have worked on it for a long time. Unfortunately, it is now being jeopardized by an attempt to shove further and further abortion rights, abortion entitlements forward, to be paid for by the American tax-

payers. That is a principle we ought not to confront, in my view.

As I see it, there has sort of been a quasi, uneasy truce among those who disagree about abortion. We have said the right exists and people can choose it, but we are not requiring that the American taxpayers pay for it. People on both sides may like to see that changed in various directions, but fundamentally that is where we are.

We have an important defense bill being jeopardized by this approach that says that taxpayers have to have the Army, Navy, and Marine hospitals converted into abortion clinics. I do not believe that is popular with the service. I know it is not popular with the physicians in the service. In fact, I am disappointed to hear that the Secretary of Defense—I now hear from this floor—favors this amendment.

Once again, we have politicians and bureaucrats in the Department of Defense playing political and ideological games with the morale and esprit de corps of the men and women in the military. I do not appreciate that.

Every physician who was called upon previously, when there was a period in which these abortions were to be performed in military hospitals, rejected that. Not one military physician, who swore an oath to preserve life and who had character and integrity that led them to conclude they ought not to do these abortions, would do so.

So there is unanimous support. I do not know why the Secretary of Defense ought to be doing this. I did not know that it happened. I knew that a bureaucrat, an Under Secretary of Defense, had said it was a constitutional right.

It is not a constitutional right to have the taxpayers provide a place for someone to conduct an elective surgery. That is not a constitutional right. It is a constitutional right, according to the Supreme Court, that no State can pass laws to stop someone from going out and seeking an abortion and having it. Basically, that is the current state of the law by the U.S. Supreme Court. That is the right.

It is not a right to have it paid for by the American citizens, many of whom deeply believe it is wrong. Overwhelmingly, a majority—apparently all physicians in the military—do not want to do this. Why are we forcing it? It is not good for military morale. It is not good to improve the self-image of the patriots who defend us every day. I feel strongly about that. I wish the Secretary of Defense had not come forward in that way.

What is the policy? What are we saying to our women in uniform today? The policy says: Join the service and you may be deployed. Most people may serve their whole career and never be deployed outside the United States but some are. So you may be deployed. We say to them: You have a full right to have an abortion, as any other American citizen. You have that right. We have regulations, implemented by the Clinton-Gore administration, to guar-

antee those rights. We say: But you must pay for that procedure. The taxpayers are not going to pay for it. If you are on foreign soil and there is not an American hospital nearby or an abortion clinic nearby, you will be given leave. You will be given free travel on military aircraft to come back to a place you think is appropriate to have your abortion. We are just not going to pay for it. We are not going to convert our hospitals, and we are not going to have our physicians who don't approve of this procedure be required to take training in and undertake that procedure.

That is the way it is. That is not a denial of constitutional rights. If it were, why don't we have a lawsuit and have the U.S. Supreme Court declare that is an unconstitutional policy? There is zero chance of having the Supreme Court declare the policy, as I have just stated it, unconstitutional. It is an absolutely bogus argument to say the current state of the law concerning abortions in military hospitals is unconstitutional. It is not so. It is inaccurate and wrong. It ought not to be said. If it is so, it will be reversed by the Supreme Court. But it will not be because it is not unconstitutional.

Someone suggested that this is oppressive to women. That is a very patronizing approach to women in the military. The women I know in the military are quite capable. They know how to make decisions. They are trained to make decisions. They are strong and capable. They are not going to be intimidated from taking a medical course they choose to take. It is not a question of asking permission of their commanding officer. They can have the abortion as they choose. If they want to be transported back to the United States on free travel, they have to ask for the free travel. They have to ask their commander, someone to give them the travel back on the aircraft. It is not begging the commanding officer for permission to have the abortion, which is a right protected by the Constitution.

It has been argued that we are here to place barriers in the way. No. The regulations guarantee the right of a woman in the military to have an abortion and guarantee the right to be transported back to a place where the abortion can be provided. It does not bar an abortion. How can daylight be turned to darkness in that way?

There are many deep beliefs on both sides of this issue. We need to be clear in how we think about it. If we think about it fairly, we will understand that the U.S. military guarantees and protects and will assist a woman to achieve an abortion. What we are saying is, we shall not be required to provide a hospital, doctors, and nurses to do so. I think that is a reasonable policy in this diverse world in which we live. We do not need to jeopardize the entire Defense bill by challenging the deeply held and honorable position of many Americans.

We need to reject this amendment. I think it is basically an attempt to shove, once again, the abortion barriers even further, to attempt to get around the Hyde amendment which flatly prohibits expenditure of Federal dollars to carry out abortions. The Hyde amendment is quite sane, quite reasonable, quite fair in light of the deeply held opinions of Americans.

Let us not go further. Let us reject the Murray amendment.

Ms. MIKULSKI. Mr. President, I rise today in strong support of the amendment offered by Senators MURRAY and SNOWE. I am proud to be a cosponsor of this amendment.

This amendment would repeal the current ban on privately funded abortions at U.S. military facilities overseas.

I strongly support this amendment for three reasons. First of all, safe and legal access to abortion is the law. Second, women serving overseas should have access to the same range of medical services they would have if they were stationed here at home. Third, this amendment would protect the health and well-being of military women. It would ensure that they are not forced to seek alternative medical care in foreign countries without regard to the quality and safety of those health care services. We should not treat U.S. servicewomen as second-class citizens when it comes to receiving safe and legal medical care.

It is a matter of simple fairness that our servicewomen, as well as the spouses and dependents of servicemen, be able to exercise their right to make health care decisions when they are stationed abroad. Women who are stationed overseas are often totally dependent on their base hospitals for medical care. Most of the time, the only access to safe, quality medical care is in a military facility. We should not discriminate against female military personnel by denying safe abortion services just because they are stationed overseas. They should be able to exercise the same freedoms they would enjoy at home. It is reprehensible to suggest that a woman should not be able to use her own funds to pay for access to safe and quality medical care. Without this amendment, military women will continue to be treated like second-class citizens.

The current ban on access to reproductive services is yet another attempt to cut away at the constitutionally protected right of women to choose. It strips military women of the very rights they were recruited to protect. Abortion is a fundamental right for women in this country. It has been upheld repeatedly by the Supreme Court.

Let's be very clear. What we're talking about here today is the right of women to obtain a safe and legal abortion paid for with their own funds. We are not talking about using any taxpayer or federal money—we are talking about privately funded medical care.

We are not talking about reversing the conscience clause—no military medical personnel would be compelled to perform an abortion against their wishes.

This is an issue of fairness and equality for the women who sacrifice every day to serve our nation. They deserve access to the same quality care that servicewomen stationed here at home—and every woman in America—has each day. I urge my colleagues to support this important amendment to the Fiscal Year 2001 Department of Defense Authorization Bill.

Mr. ROBB. Mr. President, the amendment offered by Senator MURRAY and Senator SNOWE renews our debate, once again about women's reproductive choice and access to safe, affordable, and legal reproductive health care services. I commend the sponsors of this amendment for their eloquent advocacy on behalf of women in uniform.

Mr. President, the Murray-Snowe amendment repeals the ban on privately funded abortions at overseas military medical facilities. Simply stated, this legislation would ensure that women service members and military dependents stationed overseas have access to the reproductive health care services guaranteed to all American women. Under the current policy, women who volunteer to serve their country and are stationed outside the United States have to surrender the protection of these rights. They can't use their own funds to obtain abortion services in our safe military medical facilities. It is ironic that active-duty service members who are sent abroad to protect and defend our rights are unnecessarily denied their own in the process.

Mr. President, the Supreme Court has, time and time again, affirmed that reproductive rights are constitutionally protected rights. *Roe v. Wade* is still the law of our land. Congress has even passed legislation making it illegal to prevent or hinder a woman's access to clinics that provide abortion services. And yet we are here again trying to protect the constitutional rights of a group of women who are willing to die to protect the constitutional rights of all Americans. This is a fight we shouldn't have to wage in this chamber, Mr. President.

I'd like to respond to some of the arguments that have been made against this amendment. This amendment does not advocate Federal funding of abortions. Women service members, not the American taxpayer, are entirely responsible for the cost of these services. Furthermore, as per current policy, this amendment would not force any individual service member to perform a procedure to which he or she objects.

I urge my colleagues to support this amendment and give military service members and their dependents the same protections whether stationed in this country or abroad. The women of our Armed Forces should not be forced to risk their health, safety, and well-being via back-alley abortions or sub-

standard foreign health care services. The Murray-Snowe amendment provides the women who have volunteered to serve this Nation and are assigned to duty outside the United States with the range of constitutional rights that they have when they are on American soil. We owe this to our American soldiers, sailors, airmen, and marines. I urge my colleagues to support this amendment.

Mr. KENNEDY. Mr. President, I strongly support this amendment, and I commend my colleagues, Senator MURRAY and Senator SNOWE, for introducing it again this year. This is an issue of basic fairness for all of the women who have voluntarily dedicated their lives to protecting our country or who are dependents of military service members.

The current ban on abortions at U.S. military facilities overseas discriminates against women who are serving abroad in our armed forces. This ban is not fair to our servicewomen, and it is unacceptable. They are willing to risk their lives for our country, and it is wrong for our country to ask them to risk their lives to obtain the health care that is their constitutional right as American citizens.

Abortion is illegal in many of the countries where our servicewomen are based. The current ban on abortions endangers their health by limiting their access to reproductive care. Without proper care, abortion can be a life-threatening or permanently disabling procedure. It is unacceptable to expose our dedicated servicewomen to risks of infection, illness, infertility, and even death, when appropriate care can easily be made available to them.

Over 100,000 American women live on military bases overseas and rely on military hospitals for their health care. They should be able to depend on military base hospitals for all of their medical needs. They should not be forced to choose between lower quality medical care in a foreign country, or travelling back to the United States for the care they need. Forcing women to travel to another country or return to the United States to obtain an abortion imposes an unfair burden on them and can lead to excessive delays and increased risk.

Servicewomen in the United States do not face these burdens, since quality health care in non-military hospital facilities is readily available. It is unfair to ask those serving abroad to suffer a financial penalty and expose themselves to health risks that could be life-threatening.

Congress has an obligation to provide safe medical care for those serving our country both at home and abroad. This amendment does not ask that these procedures be paid for with federal funds. It simply asks that servicewomen overseas have the same access to all medical services as their counterparts at home.

Every woman in the United States has a constitutionally-guaranteed



right to choose whether or not to terminate her pregnancy. A woman's decision to have an abortion is a very difficult and extremely personal one, and it is wrong to impose an even heavier burden on women who serve our country overseas. It is time for Congress to end this double-standard for women serving abroad. I urge the Senate to support the Murray-Snowe amendment and correct this grave injustice.

Mrs. FEINSTEIN. Mr. President, as the Senate debates the FY 2001 Department of Defense authorization bill, I want to add my support for the amendment offered by Senators MURRAY and SNOWE to repeal the provision of current law that prohibits the use of DOD facilities for abortion services. This prohibition is particularly harsh for women who serve their country overseas.

Current law has two bans: (1) a ban on the use of any DOD funds to perform abortions, except if the life of the mother is endangered; and (2) a ban on using DOD facilities to perform an abortion except if the life of the mother were endangered or in the case of rape or incest. The Murray-Snowe amendment would repeal the second ban, on using a DOD facility to perform an abortion except where the life of the mother would be endangered or in the case of rape or incest.

This amendment does not force DOD to pay for abortions. It simply repeals the current ban on using DOD medical facilities. This ban works a particular hardship on military women stationed overseas because if they cannot use DOD facilities, they are forced to find private facilities, which may be unfamiliar, substandard, or far away.

I support this amendment for several reasons.

First, under several Supreme Court decisions, a woman clearly has a right to choose. A woman does not give up that right because she serves in the U.S. military or is married to someone serving in the military. Barring the use of U.S. military facilities creates a particular difficult barrier to exercising that constitutionally protected right when serving in another country.

Second, this prohibition in current law can endanger a woman's health, if she has to travel a long distance or wait to find an appropriate facility or physician. Women may not have ready access to private facilities in other countries. A woman stationed in that country or the wife of a service member might need to fly to the U.S. or to another country—at her own expense—to obtain an abortion because some countries have very restrictive laws on abortion. Most service members cannot easily bear the expense of jetting off across the globe for medical treatment.

If women do not have access to military facilities or to private facilities in the country where they are stationed, they could endanger their own health because of delay and the time it takes to get to a facility in another country or by being forced to get treatment by

someone other than a licensed physician.

We know from personal experience in this country that when abortion is illegal, some women—especially desperate young women—resort to unsafe and life-threatening methods. If it were your wife, or your daughter, would you want her in the hands of an untrained, unknown person on the back streets of Seoul, South Korea? Or would you prefer that she be treated by a trained physician in a U.S. military facility? Under the current prohibition, women could put themselves at great risk by the hurdles required, by the possibility of using an untrained, unlicensed person and sometimes by a lack of knowledge of the seriousness of their condition.

People who serve our country agree to put their lives at risk to defend their country. They do not agree to put their health at risk with unknown medical facilities that may not meet U.S. standards. With this ban, we are asking these women to risk their lives doublefold.

Current law does not force any military physician to perform an abortion against his or her will. All branches have a "conscience clause" that permits medical personnel to choose not to perform the procedure. What we are talking about today is providing equal access to U.S. military medical facilities, wherever they are located, for a legal procedure paid for with one's own money.

The Department of Defense supports this amendment. A May 7 letter from Dr. Sue Bailey, the Assistant Secretary of Defense says the following:

The Department believes it is unfair for female service members, particularly those members assigned to overseas locations, to be denied their Constitutional right to the full range of reproductive health care, to include abortions. The availability of quality reproductive health care ought to be available to all female members of the military.

Abortion is legal for American women. To deny American military women access to medical treatment they can trust is wrong. I urge my colleagues to vote the Murray-Snowe amendment.

Mr. HUTCHINSON. Mr. President, may I inquire as to how much remains on each side?

The PRESIDING OFFICER. The sponsor of the amendment has 10 minutes remaining; the opposition has 15 minutes remaining.

The Senator from Washington.

Mrs. MURRAY. Mr. President, I will address a few of the issues that have been raised.

First, the Department of Defense stand on this: We have it confirmed that Secretary Cohen, the Secretary of Defense, does support this amendment. Several people have questioned Dr. Sue Bailey, who is Assistant Secretary of Defense, and wrote a very eloquent letter in support of this position. She did recently leave the Department. However, the Department's policy still is

intact. Despite her being gone, the Department policy remains strongly the same.

Second, I keep hearing the question of taxpayer funds. Let me lay this out for everyone one more time. Current policy requires a woman who serves in the military overseas to go to her commanding officer and request permission for leave of absence. She cannot get free transport without giving them a reason why. She has to go to her commanding officer, most likely a male, explain to him that she needs abortion services, and then we provide her transportation back to the United States. Her transportation is usually on a C-17 or a military transport jet that I assume costs a lot more than an abortion procedure would in a military hospital.

What we are saying with this amendment is not to use taxpayer dollars, despite what the opponents keep asserting. We are simply asking that a woman who serves in the military overseas be allowed to pay for her own health care services in a military hospital so she can have access to a safe and legal abortion, just as women in this country do every day.

This is an issue of fairness. We are asking the women who serve in our military be allowed the services that every woman has a right to in this country. They are overseas fighting to protect our rights. Certainly, the least we can do is provide them rights as well.

I yield what time he needs to the Senator from Michigan, Mr. LEVIN.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. I thank the Senator from Washington and Senator SNOWE. They have been doing an important job for the Nation.

We require an awful lot from the service men and women who serve us here and abroad. We ask them to volunteer to serve in the military. Then we send them all over the world to serve our Nation's interests. When we ask them to serve in foreign countries, the least we can do is to ensure they receive medical care equal to what they would receive in the United States. Servicewomen and their dependents who are fortunate enough to be stationed in the United States and who make the difficult decision to have an abortion can, at their own expense, get a legal abortion performed by a doctor in a modern, safe, American medical facility with people who speak English. Military women stationed overseas do not have that opportunity under current law.

That is what the Snowe-Murray amendment would change. The alternative of seeking an abortion from a host nation doctor who may or may not be trained to U.S. standards in a foreign facility where the staff may not even speak English is an unacceptable alternative. Our servicewomen deserve better.

This amendment is not about conferring a fringe benefit on military

women. It is, rather, a vote to remove a barrier to fair treatment of women in the military. This amendment does not require the Department of Defense to pay for abortions. As the Senator from Washington very clearly explained again, all the expenses would be paid for by those who seek the abortion.

The Defense Department calculates the cost of medical procedures in military health care facilities all the time. They routinely compute the cost of health care provided to military members and their families when seeking reimbursement, for instance, from insurance companies. Medical care, for instance, provided to a beneficiary who is injured in an automobile accident is routinely reimbursed by the insurance company of the driver at fault.

To say that we cannot calculate the indirect costs of medical care to the Government is simply not an accurate statement of what takes place already. The Defense Department calculates costs—direct and indirect—to the Government right now when it charges a third party for reimbursement.

There is no requirement in this bill—quite the opposite—that the Government pay for the abortion. It makes it very clear that the person who seeks the abortion must pay for the abortion.

Finally, we have heard about military doctors who have said in the past that they did not want to perform abortions. We heard one of our colleagues say that doctor after doctor said they did not want to perform an abortion.

That is why this amendment provides that abortions could only be performed by American military doctors who volunteer to perform abortions.

This amendment is about whether or not women who serve in the military are going to be treated as second-class citizens. That is what this amendment is about—whether it is going to be made more difficult for them when serving us abroad to exercise a constitutional right which the Supreme Court has conferred.

It is very intriguing to me that the opponents of this amendment speak about a woman being able to receive transportation back to this country. They don't seem to object to that; quite the opposite. They say: Look, we are making Government-provided transportation available to the woman. Why isn't the same objection being made to that?

The answer is because denial of access to a military hospital abroad for an American woman who chooses to have an abortion does not facilitate that procedure. And the opponents of this amendment, as a matter of fact, oppose this procedure. They want to make it more difficult. And forcing a woman to ask a commander to have leave and then, if transportation is going to be made available, provide transportation back to the United States to have an abortion, and then back across the ocean overseas, clearly makes it more difficult and in many

cases more dangerous for that woman to have the procedure.

That is what this debate is all about. It is not about whether the Government is going to pay for the abortion or whether this is a fringe benefit. It is not. The woman must pay for it in that hospital by a doctor who voluntarily agrees to perform it.

This amendment is about whether or not we wish to remove a barrier which has been placed in front of a woman who chooses to exercise, at her own expense, that constitutional right.

I hope the votes will be here this time to remove this badge of second-class citizenship which now exists in the law which unduly, unfairly, and sometimes dangerously restricts the right of a woman who is serving us in our military to exercise her constitutional right.

I again thank my friend from Washington for her leadership.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HUTCHINSON. Mr. President, I yield myself all but the remaining 2 minutes of the time allotted to my side.

Let me clarify a couple of things from my perspective.

It has been alleged that if you have a servicewoman who is seeking an abortion under current policy, you put her on an aircraft, fly her back to the U.S. at taxpayers' expense, and therefore what is the difference? And the only reason we want to maintain the current policy is we want to put an impediment up to a woman having an abortion.

The current DOD policy for servicewomen seeking to obtain abortions is that they may fly on a space-available basis, if the aircraft are already making the trip for operational reasons—not for the purpose of facilitating abortions. Space-available transportation is available for any service member on leave regardless of what their motivation is.

These aircraft have been referred to repeatedly during the debate as "cargo aircraft." In fact, these aircraft have passenger seats just as on civilian airlines.

I wish to propound a series of questions to the distinguished Senator from Washington, Mrs. MURRAY, on my time.

I ask the Senator exactly how she would calculate the cost of reimbursing DOD for the expense of an abortion procedure. Does she count only things consumed such as blood, bandages, and surgical tools, or would she compute the cost of using the facility, the salaries of the support staff, and the other medical equipment used to perform such a procedure?

Mrs. MURRAY. Mr. President, any hospital today has to calculate costs. Certainly I give a lot of credence to our military hospitals and to the military officials who run them to be able to do the same thing just as they have done

prior to the time when women could have access to these abortions.

Mr. HUTCHINSON. Mr. President, I ask Senator MURRAY, if her proposal allows, as she argues, for a true calculation of the expenses, how much does she calculate the Government would be reimbursed for performing an abortion?

Mrs. MURRAY. Mr. President, that question goes directly to what the military is able to do, which is to themselves figure out what the cost is and bill it. It is an easy thing to do. They have done it before. It is not up to me to calculate the cost. Our military officials who run our hospitals are highly qualified individuals who have the ability to figure out what their costs are.

Mr. HUTCHINSON. After 1993, when the President, by Executive memorandum, ordered that military hospitals provide abortions overseas, there was, as the Senator from Washington knows, no physician who volunteered to do that. Where there would be no current doctors volunteering to perform abortions, does it envision the possibility of contracting civilian doctors to perform abortions in military facilities?

Mrs. MURRAY. Mr. President, we have the ability within our military hospitals right now to contract procurements of what our military personnel need. It would frighten me a great deal as a woman serving in the military if none of our military hospitals overseas knew how to perform an abortion in an emergency in case a woman's life is at risk, which we now need to know is available. If we are saying there are no doctors available anywhere in the entire world where we have service people available to perform that service, I would be frightened as a woman in the military service today if my life was at stake and there would not be a doctor available to help me.

Mr. HUTCHINSON. I take it that the answer is, yes, that the Senator envisions contracting doctors to perform.

Mrs. MURRAY. Just as we do with any other requirement in the military.

Mr. HUTCHINSON. In such an instance, would DOD then identify the contract physician?

Mrs. MURRAY. I would assume so. But, again, I would like to point out that we will bill the woman for the costs, whether it is contracted or not. She will be liable to pay.

Mr. HUTCHINSON. Is the Senator proposing that the Department of Defense perform elective abortion procedures in countries where abortions are prohibited by law?

Mrs. MURRAY. Our military hospitals overseas are on military facilities and go by American law. They would be performed in those facilities overseas on our property.

Mr. HUTCHINSON. I thank the Senator. I appreciate very much her candor in answering the questions. I think it has been illuminating.

I would like to go back on some of these questions. Frankly, it has been made very clear by the Department of Defense, as I stated earlier, that they do not currently have the ability to make these calculations on a case-by-case basis.

I quote once again that "procedures performed in military hospitals are assigned a diagnostic-related group code, but these are assigned or allocated costs that do not necessarily reflect resources devoted to a specific case."

That is very plain.

They further go on and say that military infrastructure and overhead costs cannot at the present time be allocated on a case-by-case basis.

As much as we would like to say and as much as I believe the proponents of this amendment are sincere, it is not currently possible for the Department of Defense to calculate what portion of the infrastructure, the equipment and facilities, should be allocated to an individual servicewoman seeking an abortion. That simply means we will, in fact, be subsidizing abortion procedures, and in doing so violate existing law.

I raise another issue as we think about Senator MURRAY's response to my questions. She said: Yes, in the case that you contract for a physician, it would be assumed that the proper defense would indemnify the contract physician. That means that the U.S. Department of Defense becomes the malpractice insurer for that abortion provider, that contract physician. It means that should there be a botched abortion, that doctor doesn't have to worry about malpractice because it is the U.S. Government that will, in fact, indemnify those costs. The Senator is correct; it is a terrible liability we would be assuming.

Senator MURRAY, in her response to my questions, also said it was her understanding that her amendment would allow elective abortion procedures to be performed in countries where abortion is prohibited by law. That is a very candid confession because that would dramatically change current DOD policy. This amendment would, in fact, allow abortions to be performed in countries where it is against the law. That includes South Korea, where we have 5,958 women serving. It includes Germany, where there are 3,013 women serving. Over 9,000 women serve overseas.

We are not just changing one Department of Defense policy. We are changing current policy that honors the laws of the countries in which these men and women are serving, a dramatic change from current policy and one of which my colleagues certainly need to be aware.

Much of this debate has been about providing abortions to military personnel overseas. The amendment would remove the restrictions on performing abortions at all military hospitals, even in the United States.

I urge my colleagues to look closely at the Murray amendment and exactly

what it seeks to amend. I want my colleagues to be aware this amendment permits abortions at any military facility overseas or in the United States. This is not a simple refinement of current policy. This is not something dealing with the quality and fairness.

It can be argued that if it does not overturn current DOD policy regarding countries where abortion is illegal, you are only going to exacerbate any disparity that exists by saying some women overseas would be able to go to an American military facility and receive an abortion and others in countries where it was illegal would not. This is a dramatic change that would not only permit abortions in military facilities overseas but would also make a dramatic change in military facilities in the United States.

The arguments are clear and the arguments are persuasive. It is a mistake for this Congress to intervene and change current DOD policy, a policy that has worked well, a policy that accommodates women in uniform who desire to have an abortion, but without turning the American taxpayer into subsidizers of a practice that they find deeply, deeply offensive.

In Senator MURRAY's response to my question regarding what this amendment would do to our current policy regarding abortions in countries where it is illegal, we could have a dramatic and detrimental effect on our diplomatic relationships with our allies. Would Saudi Arabia continue to permit U.S. forces to remain if we permitted abortions at our facilities? How would the South Korean Government react to having abortions, which are illegal in South Korea, performed at the U.S. military facilities? These are serious issues. This is not something to be trifled about in a 2-hour debate on the floor of the Senate, as if we are trying to provide equity and to be fair to our women and military overseas.

The evidence is clear. The Murray amendment violates the Hyde provision in current law. The Hyde provision says we are not going to subsidize abortions; we are not going to spend public funds for abortions. It is a provision that has wide, broad, bipartisan support across this country. In fact, it is supported by both those who are pro-choice and those who are pro-life, who believe, even if a woman has this constitutional right, those who are offended by that, those who believe it is wrong, should not be required to subsidize it.

The Murray amendment chips away at that basic provision supported by the American people. It says she may have to pay something, but we are going to use taxpayer-funded facilities, taxpayer supported and paid for salaries, support staff, and equipment. If that is not subsidizing it, I am not sure what is. The Department of Defense has made it clear that trying to calculate the infrastructure, support staff, salaries, and everything else that goes into a military health care facility

simply cannot currently, understandably, be computed on a case-by-case basis.

The issue about indemnification of contracted doctors is a serious issue that bears very serious consideration by this Senate. It is an issue that has not been previously raised. Senator MURRAY said, yes, if, as in 1993 when not one physician in the military volunteered to perform abortions when the President said we were going to offer these services in military facilities around the world, not one volunteered to do that, Senator MURRAY says in that circumstance, should that recur, under her amendment we will go out and contract. If we go out and contract physicians, it is a very clear and explicit violation of the Hyde amendment and, in addition, subjects the U.S. Government to untold liability.

I believe men and women of good will differ and do sincerely differ on the abortion issue. I do believe that men and women of good will, respecting the sincere convictions of others, do not believe those who are offended by the practice of abortion should be required to subsidize it. That is what is at issue. There can be no serious question. There can be no real debate that, in fact, by taking the step the Murray amendment suggests, we are going to put the U.S. military in the business of performing abortions. I don't believe that is supported by the American people. I don't believe that is in the spirit of the Hyde law. I don't believe that meets the criteria of the letter of that law.

It would be a terrible mistake down the slippery slope of providing abortion in this country to pass the Murray amendment and, in so doing, make millions and millions and millions of Americans who feel very deeply about this issue involuntary contributors to the practice of abortion by having this procedure done in military facilities not only overseas but here in the United States.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I only have 33 seconds. I find it incredible that the argument has been made that if we allow women to pay for their own abortions in military facilities overseas, it will undermine our relationships with our host countries. We have sovereign law that covers our military facilities. If we were to flip that argument, we could simply say that in a country that provides abortions, if we don't provide them in our hospitals, it may also seriously undermine our credibility.

This amendment is about allowing the women overseas who serve our country and fight for us every day the same rights as the women in this country. I urge my colleagues to support this amendment and to send a message to the women who serve us overseas that we, too, will fight for their rights.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HUTCHINSON. Mr. President, I ask unanimous consent that when all debate time on the Murray amendment expires, there be an additional 20 minutes of debate relating to the hate crimes amendment, equally divided between Senators HATCH and KENNEDY. I further ask unanimous consent that following that debate, there be 4 minutes equally divided for closing remarks relative to the Murray amendment prior to the scheduled series of rollcall votes.

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

Mr. HUTCHINSON. I yield any remaining time on our side.

AMENDMENT NO. 3474

The PRESIDING OFFICER. All time has expired on the Murray amendment. Who yields time? The Senators from Massachusetts and Utah control time on the debate on the Hatch amendment.

Mr. KENNEDY. Mr. President, as I understand it, Senator HATCH will control 10 minutes; am I correct?

The PRESIDING OFFICER. The Senator is correct. Senator HATCH controls 10 minutes and Senator KENNEDY controls 10 minutes.

The Senator from Utah.

Mr. HATCH. Mr. President, I rise to speak in favor of the amendment that I have offered concerning the horrible crimes that are being committed in our country that have come to be known as hate crimes. They are violent crimes that are committed against a victim because of that victim's membership in a particular class or group. These crimes are abhorrent to me, and I believe to all Americans who think about it. They should be stopped. That is why I have offered this amendment.

My amendment does two things. First, it requires that a comprehensive analysis be conducted to determine whether State and local jurisdictions are failing or refusing to prosecute hate-motivated crimes to the fullest extent possible. Second, it provides assistance to State and local jurisdictions who lack the resources to carry out their duties of combating hate crimes.

Let me talk about the comprehensive study first. Under the Hate Crimes Statistics Act, data has been collected regarding the number of hate-motivated crimes that have been committed throughout the country. This data, however, has never been properly analyzed to determine whether States are abdicating their responsibility to investigate and prosecute hate crimes. My amendment calls for a comprehensive analysis of this raw data that would include a comparison of the records of different jurisdictions—some with hate crimes laws, others without—to determine whether there, in fact, is a problem with the way certain States are investigating and prosecuting these crimes.

Supporters of broad hate crimes legislation, like that proposed in the Kennedy amendment, claim that there are

States and localities that are unwilling to investigate and prosecute hate crimes. It is unclear whether this claim is true. There is precious little evidence showing that there is a widespread problem with State and local police and prosecutors refusing to enforce the law when the victim is black, or a woman, or gay, or disabled.

At the hearing on hate crimes legislation that we held in the Judiciary Committee, Deputy Attorney General Eric Holder came to testify and explain the reasons why the Justice Department supports the expansive legislation proposed by Senator KENNEDY. I asked Mr. Holder the rather basic and straightforward question of whether he could identify "any specific instances in which State law enforcement authorities have deliberately failed to enforce the law against the perpetrator of a crime." After he gave a somewhat non-responsive answer, I asked him again: "Can you give me specific instances where the States have failed in their duty to investigate and prosecute hate crimes?" Mr. Holder could not. He then indicated that he would go back to the Justice Department, conduct some research, and then provide the Judiciary Committee with the specific instances for which I asked.

In a subsequent response to written questions, the Justice Department identified three cases in which the Justice Department "filed charges against defendants . . . after determining that the state response was inadequate to vindicate the federal interest." In addition, the Department identified two cases where the Justice Department determined that the State could not "respond as effectively as the Federal Government because, for example, State penalties are less severe." These five cases hardly show wholesale abdication of prosecutorial responsibilities by State and local prosecutors. To the contrary, these cases show that State and local authorities are vigorously combating hate crimes and, where necessary, cooperating with Federal officials who may assist them in investigating, charging, and trying these defendants.

During the debate yesterday, Senator KENNEDY indicated that the Justice Department had produced additional examples of cases where State and local prosecutors have failed or refused to prosecute hate crimes. There are three of these additional cases. I have to say, however, that the three additional cases produced by the Justice Department and cited by Senator KENNEDY do not establish that State and local authorities are unwilling to combat hate crimes.

So where does that leave us? We are being asked to enact a broad federalization of all hate-motivated crimes that historically have been handled at the State and local level because, it is argued, States and local authorities are either unable or unwilling to prosecute them. My amendment's grant program addresses the first con-

cern—that States and localities, because of a lack of resources, are unable to prosecute these crimes. If there is not enough money there, let's put enough money into the bill. I am not against increasing the sums. As for the second concern, we are being asked to conclude that States and localities are unwilling to prosecute hate-motivated crimes on the basis of eight cases—eight cases out of the thousands and thousands of criminal cases that are brought each year. Eight cases, I might add, that at the very least are equivocal on the issue of whether States and localities are failing or refusing to prosecute hate crimes.

Supporters of the Kennedy amendment also cite to the horrible beating death of Matthew Shepard in Laramie, WY, and the dragging death of James Byrd, Jr. in Jasper, TX, as evidence that there is a problem that Congress should address. But the Shepard and Byrd cases prove my point. Both were fully prosecuted by local authorities who sought and obtained convictions. In the Byrd case, the defendants were given the death penalty—something that would not be permitted under the Kennedy amendment.

This is not a case where my mind is made up; where no matter what evidence I am shown of dereliction by State and local authorities in the area of hate crimes, I would say that it is not enough, or is not sufficient for me to believe that there is a problem. I am open to the possibility that State and local authorities are not doing their part. I hope that is not true, but my mind is not made up. That is why my amendment calls for a comprehensive study that would carefully and thoroughly and objectively study the data we have collected to see if there is a disparity in the investigation and prosecution of hate crimes. If there is a problem with prosecution at the State level, then I am on record calling for an effective and responsible Federal response.

To summarize: My amendment calls for a comprehensive analysis of hate crimes statistics to determine whether, in fact, any State and local law enforcement authorities are unwilling, for whatever reason, to combat these horrific crimes. Even if the eight cases identified by the Justice Department did show that State and local authorities were unwilling to investigate and prosecute hate-motivated crimes, they still would only be eight cases out of the thousands and thousands of cases that are brought each year. They simply do not show a widespread problem regarding State and local prosecution of hate-motivated crime.

In fact, if you look at them it show that the system is working and the two bodies, the State and local prosecutors and the Federal prosecutors generally work together and they simply do not show a widespread problem regarding State and local prosecutions of hate-motivated crime.

Reasonable people should agree that an analysis of the hate crimes statistics that have been collected ought to be conducted to determine whether there is anything to the argument that State and local authorities are failing to combat hate crimes. If the study shows that State and local authorities are derelict in their duties when it comes to hate crimes, I will be the first to support legislation targeted at such government conduct.

The second main thing that my amendment does is create a grant program to help provide resources to States and local jurisdictions to investigate and prosecute hate-motivated crimes. Supporters of the Kennedy amendment claim that some State and local jurisdictions do not have adequate resources to combat hate crimes. They say that these jurisdictions, while willing to combat hate crimes, are unable to do so because they lack the resources. My amendment answers this very real concern. My amendment would equip States and localities with the resources necessary so that they can combat such crimes. And my Amendment would do so without federalizing every hate-motivated crime.

Now, I should make clear what my amendment does not do. It does not create a new federal crime. It does not federalize crimes motivated because of a person's membership in a particular class or group. Such federalization would, in my estimation, be unconstitutional and would unduly burden federal law enforcement, federal prosecutors and federal courts.

I must say that the serious constitutional questions that are raised by the Kennedy amendment's broad federalization of what are now State crimes is its greatest drawback. The intention of Senator KENNEDY's amendment—to combat hate-motivated crimes—is certainly praiseworthy. But the Kennedy amendment's method for achieving this laudable aim—by making a federal case out of every hate-motivated crime—is not. If enacted, the Kennedy amendment likely will be struck down as unconstitutional. As I discussed at length yesterday, Congress simply does not have the authority to enact such broad legislation under either Section 5 of the Fourteenth Amendment or the Commerce Clause. This is clear in light of the Supreme Court's decision last month in *United States v. Morrison*.

During the debate yesterday it was argued that the Thirteenth Amendment provides Congress with the authority to enact the Kennedy amendment. I respectfully disagree. The Thirteenth Amendment provides:

Neither slavery nor involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Congress shall have the power to enforce this article by appropriate legislation.

Under this amendment, Congress is authorized to prohibit private action

that constitutes a badge, incident or relic of slavery. An argument could perhaps be made that the failure or refusal by State authorities to investigate and prosecute crimes committed because the victim is an African-American constitutes a badge or incident or relic of slavery. But while this creative, Thirteenth Amendment argument possibly may work for federal regulation of hate crimes committed against African-Americans, it simply does not work for federal regulation of hate crimes against women, or gays, or the disabled, as the Thirteenth Amendment applies only to the badges or incidents or relics of slavery. At no time in our nation's history, thank goodness, have our laws sanctioned the enslavement of women, homosexuals or the disabled.

Supporters of the Kennedy amendment argued yesterday that the Justice Department has placed its stamp of approval on this creative, Thirteenth Amendment argument. I am fairly confident, however, notwithstanding the Justice Department's opinion, that the Supreme Court will not interpret the Thirteenth Amendment so expansively.

In conclusion, it is my hope that my colleagues who intend to vote for the Kennedy amendment will also support my amendment. While I strongly disagree with the approach taken by the Kennedy amendment, the two amendments are not inconsistent. My amendment provides for a strong and workable assistance program for State and local law enforcement. Indeed, it has the support of the National District Attorneys Association. Further, my amendment requires a comprehensive study so that we can really learn what, if any, problems and difficulties exist at the State and local level.

With that, I reserve the remainder of my time.

Mr. KENNEDY. Mr. President, I yield 2 minutes to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia is recognized for 2 minutes.

Mr. ROBB. Mr. President, I rise to support the Smith-Kennedy legislation. This legislation will simply strengthen existing hate crime laws by enhancing the Federal Government's ability to assist State and local prosecutions. It is a little bit like Project Exile, which is so much in vogue and which has been practiced so successfully in Richmond, VA. This will allow the resources of the Department of Justice to be made available where appropriate to investigate and prosecute those in our society who commit acts of brutality based on hate. The dragging death of James Byrd, Jr., an African American man in Jasper, TX, the torture and death of Matthew Shepard, a homosexual male in Laramie, WY, shocked the national conscience. Hate crimes have occurred in the Commonwealth of Virginia as well.

In 1999, a man was sentenced to life in prison and fined \$100,000 for his role

in the death of an African American man who was beheaded and burned in Independence, VA. And a homosexual man was murdered and his severed head was left atop a footbridge near the James River in Richmond, VA. It is hard to imagine the pain and suffering of the victims and their families.

This legislation does not allow individuals to be prosecuted for their hateful thoughts; rather it allows them to be punished for their hateful acts. Willfully inflicting harm on another human being based on hate is not protected free speech. I urge my colleagues to support this amendment and demonstrate our commitment to eradicate the hate.

I reserve any time remaining to the Senator from Massachusetts.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I yield 5 minutes to the Senator from Oregon.

The PRESIDING OFFICER. The Senator from Oregon is recognized for 5 minutes.

Mr. SMITH of Oregon. Mr. President, I rise today as a cosponsor of the Kennedy-Smith amendment. I also rise to announce my support for the amendment offered by Senator HATCH. I ask my colleagues, in voting for Senator HATCH's amendment, to vote for Senator KENNEDY's as well. It is fine to study, but I think we know enough. We know that hate crimes are already committed in our society.

When I, as a human being, wake up to read headlines of a black man dragged to death and a gay man beaten to death, I want to do something. I believe in the separation of State governments and the Federal Government. I understand all of that. But doggone it, it is OK for the Federal Government to show up to work. It is time for us to say as Republicans and Democrats that we want to make a difference. We want our police officers to help not primarily but secondarily and to be there to teach, to prosecute, and to pursue those who commit the most malignant of crimes.

I say to my colleagues, there are two critical words, in my view, missing in Senator HATCH's amendment. The words are "sexual orientation," as it applies to making it a Federal crime. I never thought I would be on the Senate floor saying this until I saw the report of Matthew Shepard's death. I began to ask myself what I could do.

Many in the Senate are reflexively inclined to vote no on the Kennedy amendment because of feelings of religious reluctance. I understand that because I shared those feelings for a long time. Then I happened upon a story in a book that I regard as Scripture. It is in the eighth chapter of John when the Founder of the Christian faith was confronted by the Pharisees and the Sadducees of His day with a hate crime. A woman who was caught in the very act was to be stoned to death. What did He do? His response was to speak in such a way to shame the self-righteous and

the sanctimonious to drop their stones, and He saved her life. We should do the same.

I do not believe on that day He endorsed her lifestyle anymore than I believe anyone here will be endorsing any lifestyle if they vote for the Kennedy-Smith amendment. I believe what my colleagues will be doing is following an example that says when it comes to violence and hatred, we can stand up for one another. No matter our distinctions, no matter our uniqueness, no matter our peculiarities, no matter how we pray or how we sin, we can stand up for each other, and we can stand up against hate.

I say to my colleagues: Vote for Senator HATCH's amendment. It is fine, but it does not go far enough, in my view, and it is time to go far enough to include this group of Americans who are not now included in a current Federal law.

The PRESIDING OFFICER. The time allocated to the Senator has expired.

Mr. SMITH of Oregon. Mr. President, I conclude with this plea: Put down the stone and cast a vote based on love, cast a vote against hatred and vote for the Kennedy-Smith amendment.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, how much time does the Senator from Utah have?

The PRESIDING OFFICER. The Senator has 2 minutes 52 seconds remaining.

Mr. HATCH. Mr. President, the distinguished Senator from Oregon made my case. I decry what happened in the Matthew Shepard case. I decry what happened in the James Byrd case. Those horrific crimes, however, were investigated by local authorities and prosecuted by local prosecutors. In both instances, the local prosecutors obtained appropriate sentences—life terms in the case of the Shepard defendants and death sentences in the case of the Byrd defendants. Local law enforcement and local prosecutors did their jobs and investigated and prosecuted truly awful hate crimes.

All of these horrible examples of hate crimes were handled properly by State and local authorities. That is why my amendment is strongly supported by the National District Attorneys Association, the major organization that represents State and local prosecutors throughout the country.

The National District Attorneys Association has endorsed my amendment because State and local prosecutors believe that the assistance offered in my amendment would be very helpful to them as they seek to fight hate-motivated crime.

In a letter of support, the National District Attorneys Association also states that it strongly endorses my amendment because my amendment "appropriately recognizes that local law enforcement has the primary responsibility to safeguard their citizens while working as a team with the Federal Government."

I have at least a couple of problems with the Kennedy amendment. First, it is unconstitutional. The Morrison case, decided only a month ago, is directly on point and leads to the inexorable conclusion that the Kennedy amendment, if adopted, will be struck down as unconstitutional. Second, the Kennedy amendment is overbroad. It would make a federal case out of every single hate-motivated crime that occurs in this country—including all rapes and sexual assaults, which currently are prosecuted under State law. Can you imagine what will happen if our Federal courts are clogged with all the rape cases in this country that are currently being handled very well by State and local prosecutors? That is why the National District Attorneys Association is strongly supportive of what I am trying to do here today.

My amendment takes action with regard to the horrible crimes that are being committed in our country that have come to be known as hate crimes. They are violent crimes that are committed against a victim because of that victim's membership in a particular class or group. These crimes are abhorrent to me, and to all Americans. They should be stopped. That is why I have offered this amendment.

My amendment does two things. First, it requires that a comprehensive analysis be conducted to determine whether State and local jurisdictions are failing or refusing to prosecute hate-motivated crimes to the fullest extent possible. Second, it provides assistance to State and local jurisdictions who lack the resources to carry out their duties of combating hate crimes.

Let me talk about the comprehensive study first. Under the Hate Crimes Statistics Act, which I worked to get enacted in 1990, data has been collected regarding the number of hate-motivated crimes that have been committed throughout the country. This data, however, has never been properly analyzed to determine whether States are abdicating their responsibility to investigate and prosecute hate crimes. My amendment calls for a comprehensive analysis of this raw data that would include a comparison of the records of different jurisdictions—some with hate crimes laws, others without—to determine whether there, in fact, is a problem with the way certain States are investigating and prosecuting these crimes.

Supporters of broad hate crimes legislation, like that proposed in the Kennedy amendment, claim that there are States and localities that are unwilling to investigate and prosecute hate crimes. It is unclear whether this claim is true. There is little or no evidence showing that there is a widespread problem with State and local police and prosecutors refusing to enforce the law when the victim is black, or a woman, or gay, or disabled. Of the thousands—perhaps hundreds of thousands—of criminal cases that are

brought every year, the Justice Department could identify only five cases where it believed that it could have done a better job than the States in prosecuting a particular hate crime. In each of these five cases, however, the States either investigated and prosecuted the hate crime themselves, or worked with the federal government to investigate and prosecute the hate crime. In none of these cases did the perpetrator of the hate crime escape the heavy hand of the law.

In *United States v. Lee and Jarrad*, a 1994 case from Georgia, the State obtained a guilty plea from one of the defendants and, after investigating the matter for several months, determined that there was insufficient evidence to prosecute the other defendant.

In *United States v. Black and Clark*, a 1991 case from California, the county sheriff—who lacked resources—ceded investigatory authority to the FBI after the federal government indicated its desire to investigate and prosecute the case. Because the defendants were charged federally, State prosecutors declined to bring State charges. My amendment would provide grants for similarly situated Sheriffs who operate on a tight budget.

In *United States v. Bledsoe*, a 1983 case from Kansas, the State prosecuted the defendant for homicide and, after a trial, the defendant was acquitted. The Justice Department then brought federal charges and obtained a life sentence.

In *United States v. Mungia, Mungia and Martin*, a Texas case, state prosecutors worked with federal prosecutors and agreed that federal charges were preferable because (1) the defendants could be tried jointly in federal court and (2) overcrowding in State prisons might have led to the defendants serving less than their full sentences.

And, in *United States v. Lane and Pierce*, a 1987 case from Colorado, State prosecutors worked with federal prosecutors and agreed that federal charges were preferable because most of the witnesses were in federal custody in several different States.

These five cases hardly show wholesale abdication of prosecutorial responsibility by State and local prosecutors. To the contrary, these cases show that State and local authorities are vigorously combating hate crimes and, where necessary, cooperating with federal officials who may assist them in investigating, charging, and trying these defendants.

During the debate yesterday, Senator KENNEDY indicated that the Justice Department had produced to the Judiciary Committee additional examples of cases where State and local prosecutors have failed or refused to prosecute hate crimes.

In fact, the Justice Department did identify three additional cases to Senator KENNEDY. However of these three additional cases produced by the Justice Department and cited by Senator

KENNEDY, none establishes that State and local authorities are unwilling to combat hate crimes.

In the 1984 case of *United States v. Kila*, the State authorities who were investigating the case requested that the Justice Department become involved in the case and bring federal charges. A federal jury then acquitted the defendants of the federal charges.

In a 1982 case that the Justice Department does not name, the defendant was acquitted of federal charges; the Justice Department does not state whether State charges were brought or whether the local prosecutors simply deferred to the federal prosecutors.

And, in *United States v. Franklin*, a 1980 case from Indiana, the defendant was acquitted of federal charges; again, the Justice Department does not state whether State charges were brought or whether local prosecutors deferred to federal prosecutors.

In summary, my amendment calls for a comprehensive analysis of hate crimes statistics to determine whether, in fact, any State and local law enforcement authorities are unwilling, for whatever reason, to combat these horrific crimes.

Even if the eight cases I have just discussed did show that State and local authorities were unwilling to investigate and prosecute hate-motivated crimes, they still would only be eight cases out of the thousands and thousands of cases that are brought each year. In no way do they show a widespread problem regarding State and local prosecution of hate-motivated crime. Reasonable people should agree that an analysis of the hate crimes statistics that have been collected ought to be conducted to determine whether there is anything to the argument that State and local authorities are failing to combat hate crimes. If the study shows that State and local authorities are derelict in their duties when it comes to hate crimes, I will be the first to support legislation targeted at such government conduct.

The second main thing that my amendment does is create a grant program to help provide resources to States and local jurisdictions to investigate and prosecute hate-motivated crimes. Supporters of the Kennedy amendment claim that some State and local jurisdictions do not have adequate resources to combat hate crimes. They say that these jurisdictions, while willing to combat hate crimes, are unable to do so because they lack the resources. My amendment seeks to answer this very real concern. My amendment would equip States and localities with the resources necessary so that they can combat such crimes. And my amendment would do so without federalizing every hate-motivated crime.

Now, I should make clear what my amendment does not do. It does not create a new federal crime. It does not federalize crimes motivated because of a person's membership in a particular

class or group. Such federalization would, in my estimation, be unconstitutional and would unduly burden federal law enforcement, federal prosecutors and federal courts.

I must say that the serious constitutional questions that are raised by the Kennedy amendment's broad federalization of what now are State crimes is its greatest drawback. The intention of Senator KENNEDY's amendment—to combat hate-motivated crimes—is certainly praiseworthy. But the Kennedy amendment's method for achieving this laudable aim—by making a federal case out of every hate-motivated crime—is not. If enacted, the Kennedy amendment likely will be struck down as unconstitutional. As I discussed at length yesterday, Congress simply does not have the authority to enact such broad legislation under either Section 5 of the 14th amendment or the commerce clause. This is clear in light of the Supreme Court's decision last month in *United States v. Morrison*.

During the debate yesterday it was argued that the 13th amendment provides Congress with the authority to enact the legislation proposed in the Kennedy amendment. I respectfully disagree. The 13th amendment provides: "Neither slavery nor involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Congress shall have the power to enforce this article by appropriate legislation." An argument could perhaps be made that the failure or refusal by State authorities to investigate and prosecute crimes committed because the victim is an African-American constitutes at badge or incident of slavery. But while this creative 13th amendment argument possibly may work for federal regulation of hate crimes committed against African-Americans, it simply does not work for federal regulation of hate crimes against women, or gays, or the disabled, as the 13th amendment applies only to the badges or incidents or relics of slavery. At no time in our nation's history, thank goodness, have our laws sanctioned the enslavement of women, homosexuals, or the disabled.

Supporters of the Kennedy amendment argued yesterday that the Justice Department has placed its stamp of approval on this creative 13th amendment argument. I am fairly confident, however, notwithstanding the Justice Department's opinion, that the Supreme Court will not interpret the 13th amendment so expansively.

In conclusion, I urge my colleagues to vote against the Kennedy amendment. It almost certainly is unconstitutional, given the current state of constitutional law. In addition, it is bad policy to enact a broad federalization of what traditionally have been State crimes—crimes that are, by all accounts, being vigorously investigated and prosecuted at the State and local level.

I also would urge my colleagues to vote in favor of the amendment that I have offered. It calls for a study of the way States are dealing with the problem of hate crimes and provides grants to States so they will have the resources to continue their efforts. And, my amendment has the added benefit of being constitutional. For the reasons that I have stated, I urge my colleagues to vote in favor of my amendment.

I commend Senator KENNEDY and those who are supporting his amendment in the sense that all of us should be against this type of tyranny, this type of criminal activity that is motivated by hate, this type of mean, venal, vile conduct that lessens our society. But nobody should make the mistake of not understanding that I do not think the case has been made that States and localities are unwilling to combat hate crimes. In the cases I have seen, the evidence is to the contrary: States and localities are leading the fight against hate-motivated crimes. The only way to resolve this issue regarding the willingness of the States to engage in the fight against hate crimes is to do what I suggest: conduct a thoroughgoing study of the hate crimes statistics that we do have to see if, in fact, States and local jurisdictions are not doing their jobs. I, for one, do not believe that the case has been made against local prosecutors.

The PRESIDING OFFICER (Mr. GORTON). The Senator's time has expired. The Senator from Massachusetts has 3 minutes.

Mr. KENNEDY. I yield to the Senator from New York.

Mr. SCHUMER. Mr. President, I thank the Senator from Massachusetts for yielding, and I thank the Senator from Oregon for his leadership.

Right above the Presiding Officer's chair it says: *E Pluribus Unum*, the motto of the United States, *Out of Many One*. Every hate crime puts a dagger into the heart of America, puts a dagger into our national motto, *Out of Many One*.

We have federalized so many crimes—gun crimes, drug crimes, car jacking, capital crimes. Why, we might ask, is the only crime we do not want to federalize that of hate?

Ask yourself that question, my colleagues. Why? They are every bit as troubling to America as other crimes, perhaps more so because they strike at the very fabric of what this country is about: *E Pluribus Unum*.

I urge my colleagues to support the Kennedy-Smith amendment.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself the remaining time.

Mr. President, hate crimes are a national disgrace, and they attack everything for which this country stands. We, as a Congress, must take a clear and unequivocal stand. We have the opportunity to do so this afternoon. It ought to be bipartisan, and it ought to be an overwhelming statement of law.

As a country and as a people, we are committed to equal protection under the law. We all take pride in that. We do not say we have equal protection under the law only if you are a white male. We do not say we have equal protection under the law if you have no disability. We are not going to say we have equal protection under the law only if you are "straight."

We say equal protection under the law must apply to all Americans. That is what this is about. The Hatch amendment is a study. We are beyond studying. The American people want action on hate crimes. That is what our amendment does, very simply.

We ought to have the support of the overwhelming majority of the Members of this body. Hate crimes are rooted in hatred and bigotry. If America is ever going to be America, we should root out hatred and bigotry. We do not have all of the answers, but we ought to be able to use the full force of our power to make sure we are going to do everything we can—that we are not going to stand alongside but are going to be involved in freeing this country from hate crimes. Our amendment will do so.

The PRESIDING OFFICER. All time of the amendment has expired.

AMENDMENT NO. 3252

The PRESIDING OFFICER. Under the previous order, we will revert to the Murray amendment, on which there are 4 minutes equally divided.

The Senator from Washington.

Mrs. MURRAY. Mr. President, we are about to vote on an amendment that will simply allow a woman who serves us overseas in the military to go to a military facility, if she so chooses, to have an abortion that is safe and legal.

Current law requires that a woman who serves us overseas go to her commanding officer and ask for permission to fly home on a military transport, at taxpayer expense—as I say, at taxpayer expense—to fly home on a military jet to have access to what is legally given to every woman in this country today.

I heard our opponents say that this is an issue of taxpayer-funded abortions. I disagree. The amendment disagrees. This will say that women will pay for their own abortions in the military facilities.

We ask women to serve us, to fight for our rights, to go overseas in conditions that are often intolerable, to fight for this country. In return, we tell them that a decision that should be theirs, and their families, along with their physician and their own religion, is no longer a private issue for them.

From women who serve us, we take away a right that has been established in this country for many years, and we tell them, if you serve in the military, that right is taken away from you. We are asking them to fight for our rights, but we are essentially taking away their rights.

This restores that right to women who serve us overseas, to have an abor-

tion, if they so choose. This applies to military families—to wives and daughters, as well.

I ask my colleagues to simply say to the women who serve us overseas that we support you as much as we ask you to support us.

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

The Senator from Arkansas.

Mr. HUTCHINSON. Mr. President, I hope everybody will read the Murray amendment. In fact, there is nowhere in this amendment that it says a woman who is seeking an abortion overseas has to pay for it. There is nowhere that it says that. But the current policy in fact is that service-women serving overseas do not forfeit their right to obtain an abortion. They may request leave. They fly to the United States, or another country, on a military aircraft, on a space-available basis. The flights are for \$10.

This amendment should be tabled for a number of reasons. It violates the Hyde amendment. The Department of Defense has said you cannot calculate reimbursement on a case-by-case basis, even if it did say a woman was going to pay.

As Senator MURRAY said, you would have to contract with physicians. That puts us in the position of violating the Hyde amendment by paying these physicians to come into military hospitals to perform abortions.

It is going to create untold diplomatic dilemmas because, as Senator MURRAY said, her amendment will require abortions to be performed in countries that prohibit abortions, such as Saudi Arabia and South Korea. It is going to be a thumb in the eye of our allies. It is going to create untold diplomatic problems.

Finally, it turns military hospitals into abortion providers. That is not what we want. That is not what the American people want. It is going to make millions and millions of Americans, pro-life Americans, who have deeply held beliefs about this issue, subsidizers of a practice they find offensive and morally wrong.

I ask my colleagues to join me in tabling the Murray amendment. I move to table the amendment, Mr. President, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to table Murray amendment No. 3252. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Oklahoma (Mr. INHOFE) is necessarily absent.

The result was announced—yeas 50, nays 49, as follows:

[Rollcall Vote No. 134 Leg.]

YEAS—50

Abraham	Breaux	Cochran
Allard	Brownback	Coverdell
Ashcroft	Bunning	Craig
Bennett	Burns	Crapo
Bond	Campbell	DeWine

Domenici	Hutchison	Santorum
Enzi	Kyl	Sessions
Fitzgerald	Lott	Shelby
Frist	Lugar	Smith (NH)
Gramm	Mack	Smith (OR)
Grams	McCain	Stevens
Grassley	McConnell	Thomas
Gregg	Murkowski	Thompson
Hagel	Nickles	Thurmond
Hatch	Reid	Voinovich
Helms	Roberts	Warner
Hutchinson	Roth	

NAYS—49

Akaka	Feingold	Lieberman
Baucus	Feinstein	Lincoln
Bayh	Gorton	Mikulski
Biden	Graham	Moynihan
Bingaman	Harkin	Murray
Boxer	Hollings	Reed
Bryan	Inouye	Robb
Byrd	Jeffords	Rockefeller
Chafee	Johnson	Sarbanes
Cleland	Kennedy	Schumer
Collins	Kerrey	Snowe
Conrad	Kerry	Specter
Daschle	Kohl	Torricelli
Dodd	Landrieu	Wellstone
Dorgan	Lautenberg	Wyden
Durbin	Leahy	
Edwards	Levin	

NOT VOTING—1

Inhofe

The motion was agreed to.

Mr. HUTCHINSON. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3474

The PRESIDING OFFICER. Under the previous order, there are 4 minutes of debate equally divided before a vote on an amendment by the Senator from Utah, Mr. HATCH.

The Senator from Utah.

Mr. HATCH. Mr. President, what happened to James Byrd and Matthew Shepard should not happen in a great nation such as ours. Hate crimes are abysmal. They are horrible. We should all be against them.

My amendment does two things. First, it requires that a comprehensive analysis be conducted to determine whether or not State and local jurisdictions are failing or refusing to prosecute hate-motivated crimes to the fullest extent of the law. Second, it provides monetary assistance to State and local jurisdictions who lack the resources to combat hate crimes.

My amendment is strongly supported by the National District Attorneys Association, the major organization that represents State and local prosecutors throughout the country. The National District Attorneys Association endorsed my amendment because State and local prosecutors believe that the assistance offered in my amendment would be helpful to them as they seek to fight hate-motivated crime.

In a letter, the National District Attorneys Association also states that it strongly endorses my amendment because my amendment "appropriately recognizes that local law enforcement has the primary responsibility to safeguard their citizens while working as a team with the Federal Government."

I ask unanimous consent to have that letter printed in the RECORD.



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

NATIONAL DISTRICT ATTORNEYS  
ASSOCIATION,

*Alexandria, VA, June 20, 2000.*

Hon. ORRIN G. HATCH,  
Chairman, Senate Committee on the Judiciary,  
Washington, DC.

DEAR CHAIRMAN HATCH: As President of the National District Attorneys Association I want to offer our strong support for your Hate Crimes amendment to the Department of Defense Authorization bill.

I am aware that several hate crimes proposals are under consideration by the Senate and want to take this opportunity to particularly emphasize the necessity for your concept to be adopted. What you would provide to local law enforcement is the ability to respond more effectively, and more efficiently, in the face of a crime, that in addition to the physical wounds and injuries of the victims', could very well pose a serious threat to the tranquility and safety of our community as well.

As you well know the majority of hate crime cases, despite any federal interest or efforts, have been, and will remain, the providence of local law enforcement efforts. The emergency grants provisions and access to federal technical assistance that you are proposing would provide invaluable assistance to us. When faced with tragedies such as those in Texas or Wyoming the ability to call upon extra resources could make all the difference, particularly in our smaller jurisdictions.

Moreover, your recognition of the necessity to provide this help under sometimes more expansive state hate crimes statutes, appropriately recognizes that local law enforcement has the primary responsibility to safeguard their citizens while working as a team with the federal government.

Sincerely,

STUART VANMEVEREN,

*District Attorney, 8th Judicial District, Fort  
Collins, Colorado, President.*

Mr. HATCH. Supporters of the Kennedy amendment want to enact a broad federalization of all hate-motivated crimes because, they argue, some State and local authorities are unable to investigate and prosecute hate crimes because of the lack of resources.

My amendment will solve this problem by establishing a grant program to provide financial assistance to State and local jurisdictions for the investigation and prosecution of hate crimes.

Supporters of the Kennedy amendment also argue that we should make a Federal case out of every hate-motivated crime because some States and locales are unwilling to engage in the fight against hate crimes. There is little or no evidence, however, that shows that States and localities are being derelict in their duties to enforce the law.

Supporters of the Kennedy amendment cite the horrible beating death of Matthew Shepard in Laramie, WY, and the dragging death of James Byrd, Jr. in Jasper, TX, as evidence that there is a problem that Congress should address. The Shepard and Byrd cases, however, both were fully prosecuted by local authorities who sought and obtained convictions. In the Byrd case,

local prosecutors obtained the death penalty—something that would not be permitted under the Kennedy amendment.

Moreover, the Justice Department has identified only eight cases in which, in the Justice Department's view, States or localities were unwilling to investigate and prosecute a hate-motivated crime. Of the thousands and thousands of criminal cases that are brought each year, the Justice Department could identify only eight cases. These eight cases, I might add, are at the very least equivocal on the issue of whether States and localities are failing or refusing to prosecute hate crimes.

Because the evidence is so scarce on the issue of whether States and localities are unwilling to combat hate crimes, my amendment provides for a comprehensive study to see if there really is a problem with State and local prosecution of hate crimes. Studying this issue to see if there really is a problem seems to me to be a reasonable course of action.

Even if it could be clearly shown that States and localities were failing or refusing to investigate and prosecute hate crimes, the approach taken by the Kennedy amendment raises serious constitutional questions, especially in light of the Supreme Court's recent decision last month in *United States v. Morrison*. As written, the Kennedy amendment likely would be held to be unconstitutional under the commerce clause, the 13th amendment, the 14th amendment, and quite possibly, the 1st amendment.

In conclusion, it is my hope that those of my colleagues who intend to vote for the Kennedy amendment also will support my amendment. While I disagree with the approach taken by Senator KENNEDY, our two amendments are not inconsistent. My amendment provides for an effective and workable assistance program for State and local law enforcement, a program that enjoys the strong support of the National District Attorneys Association. And, it requires a comprehensive study so that we can really learn what, if any, problems and difficulties exist at the State and local level.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I yield 1 minute to the Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I support the amendment which will give jurisdiction to the Federal Government over hate crimes. Ordinarily, I support jurisdiction for the district attorney. Senator HATCH points out the National District Attorneys Association has taken on a position. I was a long-term member of that association as district attorney of Philadelphia. The fact is, prosecutors are county officials of the State system. There are great pressures against prosecutions where there is a matter of sexual orientation, or where there may be a matter of race, or where there may be a matter of religion or other hate-related crimes.

That is why I believe this is a unique field where the Federal Government ought to be involved. Ordinarily, it should be up to the local prosecutor. That is a principle to which I subscribe. But here it ought to be a matter for the Federal Government.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. BAYH. Mr. President, I rise in opposition to the Hatch amendment and in support of the approach taken by Senator KENNEDY. I do so because I believe that an 18-month study is no adequate substitute for the prompt, vigorous, assurance of civil rights for every American.

The crimes described in Senator KENNEDY's approach are not ordinary offenses. They strike at the heart of a pluralistic society. They strike at all of us, not just the individual victims. We need to look no further, colleagues, than to the Balkans to see what happens when the genie of intolerance and hate is unleashed upon an unhappy land.

We must not let that happen. We must not. We fought a civil war in our country to establish the basic principle that certain rights should be guaranteed to every American, regardless of their State of residency. We fight to reestablish that principle once again today.

Mr. President, if a study is in order, let it be in addition to establishing these basic rights, not as a replacement therefore.

Now is the time for action. I urge my colleagues to oppose the Hatch amendment and to support Senator KENNEDY in his approach.

Mr. BYRD. Mr. President, I oppose the amendment offered by Senator KENNEDY to expand the definitions of federally protected hate crimes.

I am concerned that this amendment would be challenged on Constitutional grounds and would not stand up to the scrutiny. I believe that categorizing hate crimes based on race, religion, or ethnicity as "badges and incidents" of slavery and relying on the Thirteenth Amendment is a tenuous argument. Furthermore, recent Supreme Court decisions finding that legislation federalizing what are traditionally State crimes exceeded Congress' powers under the Fourteenth Amendment, raise Constitutional concerns about the Kennedy amendment. The Kennedy amendment seeks to criminalize private conduct under the Fourteenth Amendment. In *United States v. Morrison*, the United States Supreme Court reaffirmed that legislation enacted by Congress under the Fourteenth Amendment may only criminalize State action, not individual action. I fear the Kennedy amendment will not survive a court challenge.

I further oppose the Kennedy amendment because I feel it did not go far enough in providing penalties for hate crimes. It did not include the death penalty for the newly created federal hate crimes.

I support Senator HATCH's amendment that will allow for study and analysis of this important issue and provide additional resources for state and local entities in investigating and prosecuting existing hate crime statutes.

Mr. WARNER. Mr. President, I rise today to discuss two amendments to S. 2549, the Department of Defense Authorization bill. Specifically, I wish to discuss Senator KENNEDY's amendment and Senator HATCH's amendment, both of which deal with hate crimes.

Typically defined, a hate crime is a crime in which the perpetrator intentionally selects a victim because of the victim's actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation.

Mr. President, I deplore all acts of violence. But, I must say, that I personally find hate crimes to be particularly horrific. Crimes committed against someone simply because of that person's race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation are, in fact, different types of crimes.

In 1998, James Byrd, Jr. was beaten, tied to the back of a pickup truck, and dragged to death along a Texas road. Why? For one reason and one reason only: Mr. Byrd was black.

Later in 1998, Matthew Shepard was beaten, tied to a fence in Wyoming, and left to die. Why? For one reason and one reason only: Mr. Shepard was homosexual.

These brutal murders shocked me and shocked our Nation. James Byrd and Matthew Shepard were killed not for what they did, but simply because who they were.

Our country's greatest strength is its diversity. While it is true that certain people might not approve or might not agree with another person's religion or sexual orientation, or might not like someone's color, we must not, I repeat, we must not tolerate acts of violence that spur from one individual's intolerance of a particular group.

Hate crimes do tear at the fiber of who we are in this country. The United States is a country of inclusion, not exclusion. Hate crimes, unlike other acts of violence, are meant to not just torture and punish the victim, such crimes are meant to send a resounding message to the community that differences are not acceptable.

In 1990, I was pleased to vote in support of the Hate Crimes Statistic Act. This act required the Attorney General of the United States to gather and publish data about crimes "that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity." In addition, in 1994, I was pleased to support the Violence Against Women's Act. This important legislation provides funding for many important programs, including funding to prosecute offenders, funding to help victims of violence, grants for training of victim advocates and counselors and

grants for battered women's shelters, to name but a few.

Presently before the United States Senate is an amendment offered by Senator KENNEDY, entitled the Local Law Enforcement Enhancement Act of 2000. This legislation, essentially, would amend current law to make it a federal crime to willfully cause bodily injury to any person because of the victim's actual or perceived race, color, national origin, religion, gender, sexual orientation or disability. This is a great expansion of federal jurisdiction. Current federal hate crimes law covers race, religion, and national origin so long as the victim is engaged in one of six federally protected activities. The Kennedy amendment would expand federal jurisdiction into certain murder, assault and battery cases and possibly all rape cases.

As a United States Senator, I believe that before the Congress passes legislation that would vastly expand federal criminal jurisdiction, we must take into consideration two important factors: the need for the legislation and the constitutionality of the legislation.

The horrific murders of James Byrd and Matthew Shepard certainly cause strong emotional feelings that would lead me to believe that the expansion of federal hate crimes law is necessary. However, once the emotional feelings somewhat subside, we are left with the facts. In this case, the facts are not yet present to indicate a need for federal legislation.

All states have laws that prohibit murder, battery, assault, and other willful injuries. Most states, 43 I believe, have hate crimes statutes, although these states differ in what groups are covered. Since 1990, with the passage of the Hate Crimes Statistics Act, we have learned about the number of hate crimes that are occurring. These statistics, however, do not show whether states are, in fact, not prosecuting crimes under their hate crimes statutes or are not prosecuting crimes being committed against certain groups of people. If states are prosecuting such crimes, a vast expansion of federal jurisdiction is unnecessary.

Moreover, it is also interesting to point out that in some circumstances the Kennedy amendment, if it became law, would in fact result in a weaker punishment for a hate crimes perpetrator than state law. For example, the Kennedy amendment states that where the crime is murder, the convicted defendant shall be imprisoned for any term of years or for life. It does not authorize the death penalty for the most heinous crimes. Two of the three murderers of James Byrd were prosecuted, convicted and sentenced to death in Texas. The third was sentenced to life in prison.

In addition to analyzing the need for the expansion of federal criminal jurisdiction, I believe that members of Congress have a duty to evaluate the constitutionality of particular legislation before passing such legislation. I have

some grave concerns about the constitutionality of the Kennedy amendment.

Congress must have constitutional authority to enact legislation. Article I, section 8 of the Constitution provides a laundry list of Congress' power to enact legislation. One such power in that list is the power to regulate interstate commerce.

From the New Deal era to the mid 1990s, the United States Supreme Court broadly interpreted Congress' authority for enacting legislation pursuant to the commerce clause. In fact, for approximately 60 years following the passage of New Deal legislation, the Supreme Court did not overturn one piece of congressionally passed legislation on the grounds that Congress exceeded its authority to enact legislation under the commerce clause.

In the past few years, however, the Supreme Court, in the cases of *United States v. Lopez* and *United States v. Morrison*, issued opinions that places some serious boundaries on Congress' authority to enact legislation under the commerce clause. Just this year, in the *Morrison* case, the Supreme Court struck down a provision of the Violence Against Women's Act—a bill that I supported in 1994.

The plaintiff in the *Morrison* case was allegedly raped by three students at a major university in my home state. She brought a civil suit in federal court under a provision in the Violence Against Women's Act that provides federal civil remedies for victims of gender motivated violence. The Supreme Court stated that this provision of VAWA was unconstitutional, holding that the Congress exceeded its authority under the commerce clause in enacting this legislation.

Now, I am not going to get intimately involved in a legal analysis of the *Morrison* case and its application to the Kennedy amendment. It is important, however, to point out one particular quotation in the majority opinion. Writing for the majority, Chief Justice Rehnquist stated "if Congress may regulate gender-motivated violence, it would be able to regulate murder or any other type of violence since gender-motivated violence, as a subset of all violent crime, is certain to have lesser economic impacts than the larger class of which it is a part." 20000 U.S. Lexis 3422, \*31 (2000). Based on the *Morrison* case, I have serious concerns about the constitutionality of Senator KENNEDY's amendment.

I believe that a federal role in combating hate crimes is appropriate. I support Senator HATCH's amendment to study the success of States in investigating and prosecuting hate crimes. I also support provisions in Senator HATCH's amendment that will provide assistance and federal grants to States and localities to help assist them in their investigation and prosecution of hate crimes.

Let me be clear, if a federal study indicates that states and localities have

not been successful in investigating and prosecuting hate crimes, I will be the first person to join Senator KENNEDY in trying to find a constitutional federal hate crimes solution. At this time, however, I must reluctantly vote against Senator KENNEDY's amendment in light of my concerns about the necessity and constitutionality of this legislation.

Mr. DEWINE. Mr. President, I began my public career prosecuting individuals who committed violent crimes against our fellow citizens. And, that's why I believe that people who commit violent crimes should be punished.

The debate about hate crimes legislation is about fighting crime. It is about fighting violence. It is about taking a stand against crime and violence.

The amendments that we're debating here today would permit states to take full advantage of the investigative resources of the federal government in prosecuting these cases. And, should a state be unwilling or unable to prosecute a case itself, the federal government is there to make sure that these kinds of violent criminals are brought to the bar of justice.

A country that so righteously protects free speech, even when such speech is abhorrent, must vigorously act as a nation, so that when vicious speech is turned into despicable acts—acts that lead to violence and to death—such acts do not go unpunished.

Mr. HATCH. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment No. 3474. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Oklahoma (Mr. INHOFE) is necessarily absent.

The result was announced—yeas 50, nays 49, as follows:

[Rollcall Vote No. 135 Leg.]

YEAS—50

Abraham	Enzi	McConnell
Allard	Frist	Moynihan
Ashcroft	Gorton	Murkowski
Bennett	Gramm	Nickles
Bond	Grams	Roberts
Brownback	Grassley	Roth
Bunning	Gregg	Santorum
Burns	Hagel	Sessions
Byrd	Hatch	Shelby
Campbell	Helms	Smith (NH)
Cochran	Hutchinson	Smith (OR)
Collins	Hutchison	Stevens
Coverdell	Kyl	Thomas
Craig	Lott	Thompson
Crapo	Lugar	Thurmond
DeWine	Mack	Warner
Domenici	McCain	

NAYS—49

Akaka	Conrad	Harkin
Baucus	Daschle	Hollings
Bayh	Dodd	Inouye
Biden	Dorgan	Jeffords
Bingaman	Durbin	Johnson
Boxer	Edwards	Kennedy
Breaux	Feingold	Kerrey
Bryan	Feinstein	Kerry
Chafee, L.	Fitzgerald	Kohl
Cleland	Graham	Landrieu

Lautenberg	Reed	Specter
Leahy	Reid	Torricelli
Levin	Robb	Voinovich
Lieberman	Rockefeller	Wellstone
Lincoln	Sarbanes	Wyden
Mikulski	Schumer	
Murray	Snowe	

NOT VOTING—1

Inhofe

The amendment (No. 3474) was agreed to.

Mr. BYRD. Mr. President, I hope the Chair is watching for Senators who are trying to get order. I have asked for order here six or eight times, and it has not been noticed. I hope they will be more alert.

Second, I hope the Chair will clear the well.

The PRESIDING OFFICER. The Senate will be in order.

Mr. BYRD. I urge there be order in the Senate.

The PRESIDING OFFICER. We will suspend until the well is cleared. The well has not been cleared.

Mr. BYRD. Mr. President, Senators should show respect to the Chair. When the Chair asks that the well be cleared, Senators should listen and clear the well.

Mr. NICKLES. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3473

The PRESIDING OFFICER. There are now 4 minutes equally divided on the Kennedy amendment. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I believe we have 2 minutes.

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. I yield 1 minute to the Senator from Oregon and 1 minute to the Senator from California.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon. I thank the Chair.

Mr. President, I say to my colleagues, we have a chance to make a difference today, to vote for an amendment that will actually help a category of Americans who need our help. I believe we have a duty to stand up against hate. I believe the law is a teacher. I believe we can teach all Americans that we will protect all Americans.

I also believe those who feel reluctant to support this amendment for religious reasons, remember the example of the Founder of the Christian faith who when a woman caught in adultery was brought to Him spoke in a way that the sanctimonious dropped their stones. He spoke in a way that saved her life. He did not endorse her lifestyle, but He saved her life.

I believe the Federal Government ought to show up to work when it comes to hate crimes, even if it includes the language of "sexual orientation." It is about time we include them. Even if one does not agree with

all that they ask for, help them with this.

The PRESIDING OFFICER. The time of the Senator from Oregon has expired. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I rise to say I believe the time has come to adopt the Kennedy legislation. In effect, the study has been done. We know that since the early 1990s, there have been 60,000 hate crimes in this country. We know that young men such as Matthew Shepard, just because they are gay, can be beaten until they are killed. We know that a U.S. postal worker can be shot and killed simply because he happens to be a Filipino American. We see people targeted for specific crimes.

I authored the original hate crimes legislation in 1993. It had two loopholes: It excluded sex and sexual orientation. This legislation corrects it, and it only applies in pursuance of a Federal right. This legislation extends that. I urge its adoption. I thank the Chair.

Mr. LAUTENBERG. Mr. President, I rise today to express my strong support for the Kennedy/Smith Hate Crimes Prevention Amendment.

Recent events in the news have unfortunately offered a number of disturbing examples of why this legislation is so badly needed.

All of my colleagues remember that terrible day in August of last year, when a hate-filled gunman, Buford Furrow, opened fire with a semiautomatic rifle at a Jewish Community Center near Los Angeles. We all remember that line of frightened children, holding hands as policemen led them to safety. Furrow's rampage wounded three children, a teenager and a 68-year-old receptionist.

And he later used a handgun to kill a Filipino postal worker. There is every indication that Mr. Furrow, a white supremacist, was motivated by racial hatred.

Then there was the brutal attack in August 1998 on Matthew Shepard, a gay student at the University of Wyoming. Matthew was savagely beaten to death by two homophobic thugs who tied him to a fence and tortured him.

That assault came just a few months after the horrific attack on James Byrd Jr., who was chained to a pickup truck, dragged along a Texas road and killed by avowed racists motivated by prejudice.

Earlier this year, I had the privilege of meeting Matthew Shepard's parents, and the family of James Byrd Jr. at a ceremony honoring victims of crime. They are truly remarkable people, because they've turned their loss into a source of strength for others. They have devoted themselves to helping others—victims of crime everywhere—even while coping with their own personal tragedies.

That's an example that this Congress should follow. Crimes that target race, or sexual orientation, or gender, or religion are the ugliest expressions of ignorance and hate. We need stronger

federal laws to deal with these crimes and the people who commit them.

Mr. President, current federal law is just too restrictive to allow federal prosecutors to try hate-crimes cases effectively. In 1994, a jury acquitted three white supremacists who had assaulted African-Americans. After the trial, jurors said it was clear the defendants had acted out of racial hatred.

But prosecutors had to prove more than that. They had to prove that the defendants intended to prevent the African-American victims from participating in a federally protected activity—a major roadblock for the prosecution's case.

The Kennedy/Smith amendment would remove that element from federal hate-crimes law. It would also allow federal prosecutors to prosecute violent crimes based on a victim's sexual orientation, gender or disability.

Mr. President, as all of us here know, no area of the country is free from hate crimes. In my home state of New Jersey, there were at least four incidents of hate-related violence between January 12 last year and January 15 this year. One of the victims was a 16-year-old gay high school student who was badly beaten.

The Kennedy/Smith amendment would bring the full force of this country's legal system to bear on incidents like this. I hope my colleagues will join me in supporting this legislation to protect American citizens from crime motivated by bigotry and intolerance.

Mr. KERRY. Mr. President, in October 1998, I stood on the steps of the U.S. Capitol Building at a candlelight vigil for Matthew Shepard, the young gay man who was beaten and left for dead on a lonely Wyoming roadway. Two thugs were arrested, charged and convicted of murdering Matthew Shepard because of his sexual orientation. Tens of thousands of people—gay and straight, black and white, young and old, Americans all—came to the Capitol with only a few hours notice to encourage the passage of a Federal hate crimes law.

The evening was memorable. We expressed our passionate conviction and knowledge that there is no room in our country for the kind of vicious, terrible, pathetic, ignorant hatred that took the life of Matthew Shepard, or of James Byrd, or of Barry Winchell, or of Brandon Teena. And the Congress responded. We came close to extending the federal hate crimes law that year, but the provision was dropped in conference.

So, we came back again to guarantee that crimes will not be tolerated when they are motivated by other people's limitations. We are here to reaffirm that hate crimes are indeed an insult to our civilization. We are here for once and for all to make certain that there will be no period of indifference, as there was initially when the country ignored the burning of black churches or overlooked the spray-painted swastikas in synagogues; or suggested that

the undiluted lethal hatred is someone else's problem, some other community's responsibility.

We must accept the national responsibility for fighting hate crimes and commit—each of us in our words, in our hearts and in our actions—to insure that the lesson of Matthew Shepard and scores of others is not forgotten. Mr. President, I understand that we cannot legislate racism and hatred out of existence, but we can empower our local law enforcement officials to prosecute hate crimes. And we can empower our local communities to be free of violence and fear brought about by hate crimes.

Look to the 58 high schools in my own beautiful, progressive state of Massachusetts where 22 percent of gay students say they skip school because they feel unsafe there and fully 31 percent of gay students had been threatened or actually physically attacked for being gay. Matthew Shepard is not the exception to the rule—his tragic death is rather the extreme example of what happens on a daily basis in our schools, on our streets and in our communities. That is why we have an obligation to pass laws that make clear our determination to root out this hatred.

And today we will have carried the day in passing the Kennedy-Smith amendment.

It is my belief that Americans always act when confronted by an inherently unethical wrong. They stare down those who want us to live in fear and declare boldly that we will not live in a country where private prejudice undermines public law.

American heroes such as Martin Luther King did this when he preached in Birmingham and Memphis, when he thundered his protest and assuaged those who feared his dreams. He taught us to look hatred in the face and overcome it. Harvey Milk did this in San Francisco, when he brushed aside hatred, suspicion, fear and death threats to serve his city. Even as he foretold his own assassination, Harvey Milk prayed that "if a bullet should enter my brain, let that bullet destroy every closet door." He knew that true citizenship belongs only to an enlightened people, unwavering by passion or prejudice—and it exists in a country which recognizes no one particular aspect of humanity before another.

Mr. President, we must root out hatred wherever we find it, whether on Laramie Road in Wyoming, or on a back road in Jasper, Texas, or in the Shenandoah National Park. That kind of hatred is the real enemy of our civilization. The day is here, Mr. President, when we can rightly celebrate our passage of this amendment to the hate crime prevention act to treat all Americans equally and with dignity, to allow all Americans to enjoy the inalienable rights framed in the Declaration of Independence—the rights of life, liberty and the pursuit of happiness.

This indeed will be a happy day.

Mr. KERRY. Mr. President, today's vote on hate crimes legislation marks a monumental day in our history. The U.S. Senate definitively voted in support of expanded hate crimes legislation because standing law has proven inadequate in the protection of many victimized groups. The 30-year-old Federal statute currently used to prosecute hate violence does not cover hate violence based on sexual orientation, gender or disability and requires that the victim be participating in a federally protected activity. The Kennedy-Smith amendment addresses and corrects these gaps in the law. Not only is this bill the right thing to do, but Americans overwhelmingly support it. Law enforcement groups, as well as 80 civil rights and religious organizations support this bill, in addition to a 1998 poll showing that this Hate Crimes Prevention Act is favored 2 to 1 by a majority of voters. This bill protects all Americans and ensures equal justice for all victims of hate violence, regardless of their race, religion, sexual orientation, national origin, gender, or disability—and regardless of where they live.

Mr. DODD. Mr. President, I was back in Connecticut yesterday and was unable to participate in the debate on the Kennedy-Smith amendment pertaining to hate crimes prevention. I want to take this opportunity to share my views on this most crucial issue.

The Federal Bureau of Investigation recently released its latest statistics documenting hate crimes in our country. This report establishes that over 7,500 hate crimes occurred during 1998. The FBI found that 4,321 crimes were motivated by racial bias, 1,390 because of religion, 1,260 because of sexual orientation, and 754 by ethnicity or national origin. But hate crime statistics do not tell the whole story. Behind each and every one of these numbers is a person, a family and a community targeted and forever changed by these willful acts of violence.

We as a nation know of some of these hate crimes. We know of the brutal dragging death in 1998 of James Byrd Jr., in Jasper, Texas. We know about the senseless beating of Matthew Shepard in Laramie, Wyoming in 1998. And we cannot forget the vicious acts of an armed assailant who fatally shot five people in a Jewish Community Center in Los Angeles earlier this year.

Joseph Healy, a 71-year-old Roman Catholic priest who was in Pittsburgh counseling victims of crime was gunned down in March at a fast food restaurant. Father Healy was a native of Bridgeport, Connecticut. He was killed in a racially motivated shooting. Father Healy and four other white men were shot; three of the five men died. Court documents revealed that the gunman shot the victims with "malicious intent towards white males."

Then there's the case of Heather Washington, a young, well respected African-American kindergarten teacher from Hartford, who along with her

boyfriend was chased at high speeds on a Connecticut highway last month. The couple was pursued by a white male who yelled epithets such as "white power," shot at the vehicle's tires, and rear-ended the couple's car with his own vehicle. The couple was able to escape the assailant. However, they were not able to escape the constant fear that a similar incident could happen at any time.

These are examples of the bias crimes that are committed every day in America. Every day people across the nation continue to be victims of crimes motivated by bigotry. We owe it to these victims to ensure that the perpetrators of these crimes are brought to justice.

We should not wait until these brutal and shocking crimes make national headlines. Congress has the ability, the opportunity, and the duty to do something about this epidemic now. This problem cannot and should not be ignored.

In response to these disturbing acts, I am pleased to be an original cosponsor of S. 622, the Federal Hate Crimes Prevention Act of 1999, introduced by my longtime friend and colleague Senator KENNEDY.

I believe that all people, regardless of background or belief, deserve to be protected from discrimination. We must unite now to send an unequivocal message that hate will not be tolerated in our communities. Hate crimes deserve separate and strong penalties because they injure all of us. The perpetrator of a hate crime may wield a bat against a single person, but that perpetrator strikes at the morals that hold our society together. Hate destroys what's good, what's great about America. It is just and fitting for Congress to impose sanctions against criminals who are motivated by blind bigotry. These incidences tear the very fabric of our society and they cannot be tolerated. I admit that laws have little power to change the hearts and minds of people, but Congress can ensure that those who harbor hateful thoughts are punished when they act on those thoughts. I urge my colleagues to vote in favor of the Kennedy-Smith amendment.

Mr. LEAHY. Mr. President, violent crime motivated by prejudice is a tragedy that demands attention from all of us. It is not a new problem, but recent incidents of violent crimes motivated by hate and bigotry have shocked the American conscience and made it painfully clear that we as a nation still have serious work to do in protecting all Americans from these crimes and in ensuring equal rights for all our citizens. The answer to hate and bigotry must ultimately be found in increased respect and tolerance. But strengthening our federal hate crimes legislation is a step in the right direction.

Bigotry and hatred are corrosive elements in any society, but especially in a country as diverse and open as ours. We need to make clear that a bigoted attack on one or some of us diminishes each of us, and it diminishes our na-

tion. As a nation, we must say loudly and clearly that we will defend ourselves against such violence. 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 more than 100 years. The Local Law Enforcement Enhancement Act of 2000 continues that great and honorable tradition.

This legislation strengthens current law by making it easier for federal authorities to investigate and prosecute crimes based on race, color, religion, and national origin. It 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. This bill will strengthen Federal jurisdiction over hate crimes as a backup, but not a substitute, for state and local law enforcement. In a sign that this legislation respects the proper balance between Federal and local authority, the bill has received strong bipartisan support from state and local law enforcement organizations across the country. This support from law enforcement is particularly significant to me as a former prosecutor. Indeed, it has convinced me that we should pass this powerful law enforcement tool without further delay.

This bill accomplishes a critically important goal—protecting all of our citizens—without compromising our constitutional responsibilities. It is a tool for combating acts of violence 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.

I commend Senator KENNEDY and Senator SMITH for their leadership on this bill, and I am proud to have been an original cosponsor. Senator KENNEDY has been a leader on civil rights for the better part of four decades and has worked hard to tailor this needed remedy to the narrowing restrictions of the current activist Supreme Court. Senator SMITH is someone I am getting to know better through our work on the Innocence Protection Act. He is becoming a worthy successor in the great tradition of Senators of conscience like Senator Mark Hatfield.

Now is the time to pass this important legislation. I had hoped that this legislation would become law last year, when it passed the Senate as part of the Commerce-Justice-State appropriations bill. But despite the best efforts of the President, and us all, the majority declined to allow it to become law.

Since that failure, the need for this bill has become even more clear. Just two months ago, a white man named Richard Scott Baumhammers apparently went on a racially and ethnically motivated rampage that left his suburban Pittsburgh community in shock. First, he allegedly shot his next-door neighbor, a Jewish woman, six times and then set her house on fire. He then traveled throughout the Pittsburgh suburbs, shooting and killing two Asian-Americans in a Chinese restaurant, an African-American at a karate school, and an Indian man at an Indian-owned grocery. He also shot at two synagogues during his awful journey. This incident followed only a month after Ronald Taylor, an African-American man in the Pittsburgh area, apparently shot and killed three white people during a shooting spree in which he appears to have targeted whites. Policy investigators who searched Taylor's apartment after the shooting found writings showing anti-Semitic and anti-white bias.

These ugly incidents join the numerous other recent examples of violent crimes motivated by hate and bigotry that have motivated us to strengthen our hate crimes laws. None of us can forget the story of James Byrd, Jr., who was so brutally murdered in Texas for no reason other than his race. Nor can we erase last summer's images of small children at a Jewish community center in Los Angeles fleeing a gunman who sprayed the building with 70 bullets from a submachine gun. When he surrendered, the gunman said that his rampage had been motivated by his hatred of Jews.

And of course, we are still deeply affected and saddened by the terrible fate of Matthew Shepard, killed two years ago in Wyoming as a result of his sexual orientation. Last year, Judy Shepard, Matthew Shepard's mother, called upon Congress to pass this legislation without delay. Let me close by quoting her eloquent words:

Today, we have it within our power to send a very different message than the one received by the people who killed my son. It is time to stop living in denial and to address a real problem that is destroying families like mine, James Byrd, Jr.'s . . . and many others across America. . . . We need to decide what kind of nation we want to be. One that treats all people with dignity and respect, or one that allows some people and their family members to be marginalized.

Mr. HARKIN. Mr. President, I want to express my strong support for this amendment. I am a cosponsor because I believe that our society must enforce a message of tolerance—not hate. State and local law enforcement should not have to shoulder the burden of investigating and prosecuting hate crimes alone. This amendment allows the Federal Government to stand behind them in their effort to put a stop to hate-motivated violence.

This amendment would authorize the Department of Justice to assist law enforcement officers across the country in addressing acts of hate violence by

removing unnecessary obstacles to federal involvement and, where appropriate, by providing authority for federal involvement in crimes directed at individuals because of their race, color, religion, national origin, gender, sexual orientation or disability.

Because of my long involvement in the area of disability rights and the fact that this year marks the Tenth Anniversary of the Americans with Disabilities Act, I want to focus my remarks on hate crimes' impact on Americans with disabilities. Prejudice against people with disabilities takes many forms. Such bias often results in discriminatory actions in employment, housing, and public accommodations. Laws like the Fair Housing Amendments Act, the ADA, and the Rehabilitation Act are designed to protect people with disabilities from such prejudice.

Sadly, disability bias can also manifest itself in the form of violence. It is imperative that the Federal Government send a message that these expressions of hatred are not acceptable in our society.

For example, a man with mental disabilities from New Jersey was kidnaped by a group of nine men and women and was tortured for three hours, then dumped somewhere with a pillowcase over his head. While captive, he was taped to a chair, his head was shaved, his clothing was cut to shreds, and he was punched, whipped with a string of beads, beaten with a toilet brush, and, possibly, sexually assaulted. Prosecutors believe the attack was motivated by disability bias.

In the state of Maine, a husband and wife were both living openly with AIDS, struggling to raise their children. Their youngest daughter was also infected with HIV. The family had broken their silence to participate in HIV/AIDS education programs that would inform their community about the tragic reality of HIV infection in their lives. As a result of the publicity, the windows of their home were shot out and the husband was forcibly removed from his car at a traffic light and severely beaten.

Twenty-one states and the District of Columbia have included people with disabilities as a protected class under their hate crimes statutes. However, state protection is neither uniform nor comprehensive. The Federal Government must send the message that hate crimes committed on the basis of disability are as intolerable as those committed because of a person's race, national origin, or religion. And, federal resources and comprehensive coverage would give this message meaning and substance. Thus, it is critical that people with disabilities share in the protection of the federal hate crimes statute.

This legislation will also provide local and state law enforcement officials with the resources necessary to investigate and prosecute hate crimes. In consultation with victim services

organizations, including nonprofit organizations that provide services to victims with disabilities, local law enforcement officials can apply for grants when they lack the necessary resources to investigate and prosecute hate crimes. The amendment also includes grants for the training of law enforcement officials in identifying and preventing hate crimes committed by juveniles. Again, so often hate crimes on the basis of disability go unrecognized. These grants will help police identify crimes committed because of disability bias in the first place.

Mr. President, for this reason and others, this amendment is vitally important. Millions of Americans would benefit from its passage. And the public clearly recognizes this.

This amendment is a constructive and sensible response to a serious problem that continues to plague our Nation—violence motivated by prejudice. It deserves full support, and I am hopeful that the President will have an opportunity to sign this legislation into law this year.

Ms. SNOWE. Mr. President, I rise today to support Senator KENNEDY's amendment to the fiscal year 2001 Department of Defense Authorization Act. This amendment, the Local Law Enforcement Enhancement Act, is a new version of the Hate Crimes Prevention Act, of which I am a cosponsor.

Mr. President, there is nothing so ugly as hate. It saddens me that at the brink of a new century, when our country is in a time of almost unprecedented prosperity—when more people than ever before are educated, when major medical breakthroughs seem to occur almost on a daily basis—that we are still faced with racism and prejudice in our society.

Current law permits Federal prosecution of a hate crime only if the crime was motivated by bias based on religion, national origin, or color, and the assailant intended to prevent the victim from exercising a "federally protected right" such as voting, jury duty, attending school, or conducting interstate commerce. These tandem requirements substantially limit the potential for federal prosecution of hate crimes.

Most crimes against victims based on their gender, disability, or sexual orientation are now only covered under State law, unless such crimes are committed within a Federal jurisdiction such as an assault on a Federal official, on an Indian reservation, or in a national park. While more than 40 States have hate crimes statutes in effect, only 22 States have hate crimes legislation that addresses gender, and only 21 States have hate crimes legislation that address sexual orientation or disability.

The amendment before us today would expand Federal jurisdiction and increase the Federal role in the investigation and prosecution of hate crimes.

Under this legislation, hate crimes that cause death or bodily injury be-

cause of prejudice can be investigated and prosecuted by the Federal Government, regardless of whether the victim was exercising a federally protected right. The bill defines a hate crime as a violent act causing death or bodily injury "because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person."

I believe that one of our country's greatest strengths is Congress's ability to balance strong State's rights against a Federal Government that unites these separate States. I also believe that the Federal Government has a duty to provide leadership on issues of great moral imperative, especially in the area of civil rights.

Hate crimes go beyond the standard criminal motivation. We are all familiar with the horrible stories of James Byrd, Jr., who was chained to a truck and dragged to his death because of his race, of Matthew Shepard, who was beaten and tied to a wooden fence and died in freezing temperatures because of his sexual orientation, and of the attack last August at a Jewish community center because of religion.

There is no doubt that crime is morally and legally wrong and there is no one in this chamber who could possibly argue otherwise. And I understand the argument that opponents of the amendment have: How can the law punish a crime for more than what it actually and literally is?

But hate crimes are not just about the crime itself, they are about the motivation. And there is something especially pernicious about a crime that occurs because of who somebody is. There is something all the more horrific when a crime happens because of the victim's race, or color, or religion. Hate crimes are meant to send a message to a group: "you had better be careful because you are not accepted here."

The Federal Bureau of Investigation reports that in 1998—the latest data available—almost 8,000 crimes were motivated by hate or prejudice. Over half of these crimes were motivated by racial bias; nearly 20 percent of these crimes were because of religious bias; and 16 percent of these crimes were a result of sexual-orientation bias. Twenty-five of these crimes happened simply because the victim was disabled, and 754 because of the ethnicity or national origin of the victim.

The amendment before us today is not about creating a special class of crime. It is not about policing our ideas or beliefs; it is about the criminal action that some people take on the basis of these beliefs. We cannot make it a crime to hate someone. But we can make it a crime to attack because a person specifically hates who the victim is or what the victim represents.

One of my favorite sayings is "As Maine goes . . . so goes the Nation." This adage proves true again with the Hate Crimes Prevention Act and with Senator KENNEDY's amendment. I am proud that the Hate Crimes Prevention

Act, and today's amendment, are largely based on Maine's 1992 Civil Rights Law, which was enacted while my husband, John R. McKernan, was Governor of the State. And I am proud that the Hate Crimes Prevention Act is supported by our current Attorney General, Andrew Ketterer.

Mr. President, our laws are a direct reflection of our priorities as a nation. And I, along with the vast majority of Americans I would venture to say, fundamentally believe that crimes of hate and prejudice should not be tolerated in our society.

That is why I support prosecuting hate crimes to the fullest possible extent. The amendment before us today will expand the ability of the Federal Government to prosecute these immoral and pernicious crimes. I urge my colleagues to support it.

Mrs. FEINSTEIN. Mr. President, no one should be victimized because of his or her skin color, national origin, religious beliefs, gender, sexual orientation, or disability.

In furtherance of this belief, I sponsored in 1993 the Hate Crimes Sentencing Enhancement Act, which required the U.S. Sentencing Commission to provide sentencing enhancements of no less than three offense levels for crimes determined beyond a reasonable doubt to be hate crimes. The Act increased the penalties for hate crimes directed at individuals not only because of their perceived race, color, religion, and national origin, but also on account of their gender, disability or sexual orientation.

Today, I am proud to be the cosponsor of the Kennedy hate crimes amendment, which would build on this effort by expanding the Justice Department's authority to prosecute defendants for violent crimes based on the victim's race, color, religion or national origin.

This important amendment would also allow the Federal government to provide assistance in state investigations of crimes against another based on the victim's gender, disability, or sexual orientation.

Sadly, hate crimes occur more often than we might think. According to the U.S. Department of Justice, there have been nearly 60,000 hate crime incidents reported since 1991. In 1998 alone, the last year for which we have statistics, nearly 8,000 hate crime incidents were reported in the United States. That is almost one such crime per hour.

In the same year, more than 2,100 Californians fell victim to a hate crime. That's a shocking number when one considers the motivation behind a hate crime. These are truly among the ugliest of crimes, in which the perpetrator thinks the victim is less of a human being because of his or her gender, skin color, religion, sexual orientation or disability.

Even more disturbing is that nearly two-thirds of these crimes are committed by our nation's youth and young adults. The need to send a strong message of mutual tolerance

and respect to our youngsters has become all too clear in recent years.

One of the most high profile hate crime cases in California involved two young Northern California men, Benjamin Matthew Williams, age 31, and his younger brother James Tyler Williams, age 29. The two brothers became poster boys for our Nation's summer of hate last year. Both men were charged with the double slaying of a prominent gay couple who lived about 180 miles north of Sacramento.

The men are also prime suspects in the wave of arson that hit three Sacramento-area synagogues two weeks before the killings, causing more than \$1 million in damage. When investigators searched the Williams brothers' home, they found a treasure trove of white-supremacist, anti-gay, anti-Semitic literature. They also found a "hit list" of 32 prominent Jewish and civic leaders in the Sacramento area, apparently compiled after the synagogue fires.

Hate crimes not only affect the victim who is targeted, but also shakes the foundation of an entire community that identifies with the victim. I grow increasingly concerned when I hear reports about the proliferation of hate in our nation, because California, the state I represent, has one of the most diverse communities in the world.

Our state has greatly benefitted from the contributions of persons from countries as nearby as Mexico and El Salvador, and as far away as India and Ethiopia. It is only through our willingness to live among each other and to respect our individual differences and gifts, that we can continue to build from the strength of our diversity.

That is why Senator KENNEDY's amendment is so important. Not only would it broaden the protection offered by Federal law to people not covered by hate crime legislation, but it will provide vital Federal assistance and training grants to states investigating these crimes.

Specifically, this legislation would compensate for two limitations in the current law: First, even in the most blatant cases of racial, ethnic, or religious violence, no Federal jurisdiction exists unless the victim was targeted while exercising one of a limited number of federally protected activities. Second, current law provides no coverage for violent hate crimes based on the victim's sexual orientation, gender or disability.

Unfortunately, there are those who would stop short of supporting this legislation because it extends protections to those targeted on account of their sexual orientation. This is especially disturbing given the fact that crimes against gays, lesbians and bisexuals ranked third in reported hate crimes in 1998, registering 1,260 or 15.6 percent of all reported incidents. Even in light of the growing number and severity of these horrific events, Congress has not seen fit to enact important Federal hate crime measures to ensure that justice is served.

I wonder, how many cases go unsolved because of the Federal government's inability to participate in the investigation and prosecution of a hate crime?

How many people have chosen not to report a serious hate crime out of fear of retribution because there is no state or federal protection?

How many more people, and families, and communities, need to be victimized by these most horrendous acts before our colleagues realize that now is time to act?

Since those who commit hate crimes seek out a category of people, rather than a particular individual, anyone of us at anytime can become a victim of a hate crime. I believe the Kennedy hate crimes amendment would send the right message: that those who commit violent acts because the victim is of a certain gender, religion, race, sexual orientation, or disability will be prosecuted because everyone—I repeat—everyone has a right to be free from violence and fear when they are going to school, work, travel, or doing something as simple as going to a movie.

While I rise in strong support for the Kennedy amendment, I must also express my opposition to the amendment offered by my friend from Utah, Mr. HATCH. While well-intentioned, the Hatch amendment would not extend protection to people targeted because of their sexual orientation, gender or disability in states that have not enacted hate crime laws or have limited their laws to crimes motivated by race, national origin or religion.

Moreover, the Hatch amendment would permit the Federal government to address hate crimes only in those very limited circumstances in which the offender crosses a state line to commit an act of hate violence. This amendment would, therefore, fail to address the majority of cases we confront today in which a hate crime results in death or serious bodily harm.

As elected leaders, it is incumbent upon us to set an example—not just by expressing outrage about these crimes—but by strengthening legislation and bolstering the ability of law enforcement—whether state or Federal—to combat hate crimes.

How many more people will become victims of hate before we act? I believe the time has come to affirm our support for the diversity that makes our nation so great. The time has come to enact a sensible hate crime measure to address this problem of violent bigotry and hate. The time has come to enact the Local Law Enforcement Enhancement Act of 2000.

Mr. SARBANES. Mr. President, I rise today to express my strong support for the Local Law Enforcement Enhancement Act of 2000, Senator KENNEDY's amendment to the Department of Defense authorization bill. As a cosponsor of Senator KENNEDY's Hate Crimes Prevention Act, I believe that it is past time for Congress to act to prevent future tragedies.

While as a Nation we have made significant progress in reducing discrimination and increasing opportunities for all Americans, regrettably the impact of past discrimination continues to be felt. Far too often, we hear reports of violent hate-related incidents in this country. It seems inconceivable that, in the year 2000, such crimes can still be so pervasive. Statistics from my own State of Maryland unfortunately indicate that the incidence of bias-motivated violence may be on the rise. The number of reported incidents of hate or bias-motivated violence in Maryland rose by 11.6 percent in 1999. Of the 457 verified incidents of bias-motivated violence that year, 335 were committed against individuals on the basis of their race (approximately 73%), 63 on the basis of religion (14%), 38 on the basis of sexual orientation (8%), 17 on the basis of ethnicity (4%), and 4 on the basis of the victim's disability (1%).

Data gathered under the Federal Hate Crime Statistics Act is also sobering. Beginning in 1991, the Act requires the Justice Department to collect information from law enforcement agencies across the country on crimes motivated by a victim's race, religion, sexual orientation, or ethnicity. Congress expanded the Act in 1994 to also require the collection of data for crimes based upon the victim's disability. The Department of Justice has reported that, for 1998, 7,755 bias-motivated crimes were committed against 9,722 victims by 7,489 known offenders.

Beyond these stark statistics, stories of heinous crimes continue to make headlines across the country. In 1998, James Byrd, Jr., an African-American man, was walking home along a rural Texas road when he was beaten and then dragged behind a pickup truck to his death. Later than same year, Matthew Shephard, a gay University of Wyoming Student, was beaten, tied to a fence, and left to die in a rural part of the state. And just last year, a gunman entered a Jewish community center in California, opened fire on workers and children attending a day care center, and later killed a Filipino-American postal worker.

It is nearly impossible to imagine such crimes occurring in a country that is said to lead the world in equal opportunity for its citizens. Franklin Delano Roosevelt once described America as a "nation of many nationalities, many religions—bound together by a single unity, the unity of freedom and equality." But, as the stories of James Byrd, Matthew Shephard, and the California Jewish community center all too clearly show, we are not living up to President Roosevelt's vision of America. The Federal government cannot ignore the thousands of hate crimes that are committed in the United States each and every year as long as people are afraid to walk down our streets because of their religion, or the color of their skin, or their sexual orientation.

I had the great honor of serving, during my time in the House of Representatives, with Shirley Chisholm, the first African-American woman elected to Congress, who said: "Laws will not eliminate prejudice from the hearts of human beings. But that is no reason to allow prejudice to continue to be enshrined in our laws to perpetuate injustice through inaction."

Senator KENNEDY's amendment includes crucial provisions designed to help the Federal government stop bias-motivated crimes. This amendment would extend Federal law to prohibit crimes committed against victims because of their gender, sexual orientation, or disability. Moreover, the amendment would also remove requirements of existing law that prohibit Federal government action unless the crime victim is engaged in certain "federally protected activities."

It is true that this legislation will not drastically increase the number of crimes subject to Federal prosecution. Criminal law is a matter largely enforced by the states, and the sponsors of this amendment have been careful to ensure that the Federal government will only step in and prosecute a crime if a state cannot adequately do so itself. And certainly, as Congresswoman Chisholm eloquently stated, we cannot erase the hatred and bigotry in people's hearts by passing this amendment today. But the balanced approach of Senator KENNEDY's amendment will allow the Federal government to intervene in the small number of hate crimes cases where a Federal prosecution is necessary to insure that justice is served.

Mr. President, I urge my Senate colleagues to join me in supporting the Kennedy hate crimes amendment. We have an invaluable opportunity to make a statement that the United States government will not tolerate crimes motivated by bigotry and prejudice, and that the "the unity of freedom and equality" binds together all Americans—regardless of their race, religion, nationality, gender, sexual orientation, or disability.

Mrs. BOXER. Mr. President, one year ago, three synagogues in the Sacramento, California area were attacked by arsonists. Two weeks later, a gay couple was killed at their home in nearby Redding, California. Two nights after these brutal murders, a Sacramento women's health care clinic was firebombed.

These vicious crimes shocked the people of Sacramento. At the same time, it moved many members of the community to speak out and take action. Led by the late mayor Joe Serna, thousands of residents joined a Unity Rally at the Sacramento Convention Center and pledged to work together to prevent future hate crimes.

Out of this rally grew the "United We Build" project, which is bearing fruit this week. In the name of tolerance and unity, hundreds of volunteers are gathering and setting to work on commu-

nity projects: planting gardens, cleaning up schools and parks, and refurbishing churches and senior centers. The week's events will culminate on Sunday with a Jewish Food Faire at one of the targeted synagogues and an afternoon rally at the State Capitol.

Mr. President, every community in America should take inspiration from the people of Sacramento. They have turned their shock, anger, and fear into positive actions. From the ashes of hatred and intolerance, they have emerged stronger and more unified than ever before.

Hate crimes seek to stigmatize persecuted groups and isolate them from the larger society. We must turn the tables to isolate those who preach hatred and commit hate crimes. This will not be easy: Today hate groups flood the Internet with venom, and hateful individuals flood the talk shows with vitriol.

To stop hate crimes, we must of course catch and prosecute the perpetrators. But we must do more than that. We must each act to root hatred and intolerance out of our daily lives. We must have zero tolerance for intolerance. If a friend or family member uses hateful speech, we must have the courage to say that this is unacceptable. If a neighbor or co-worker takes an action designed to hurt another because of that person's race or religion or sexual orientation, we must stand with the victim, not the aggressor.

Congress can pass laws to prevent and prosecute hate crimes. I voted to pass such legislation today, and I will do so again. But laws alone cannot wipe the stain of hatred off the American landscape. To do this—to truly secure the blessings of liberty for all Americans—we must each take every opportunity to teach tolerance and act against hatred.

Mr. ROCKEFELLER. Mr. President, I believe it is vital to make a clear statement against all violent hate crimes against individuals because of race, color, religion, national origin, gender, sexual orientation, or disability. This is a basic point, and the number of hate crimes in our country is truly disturbing. When such a case claims headlines and dominates national news for a few days or a few weeks, people are troubled and sad. But we can and we should do more to oppose hate crimes.

My hope is that having leaders at all levels, including the U.S. Senate, speak against such hate crimes will send a powerful message that such violent behavior should not be tolerated. No one in our country should be afraid of violence because of their race, religion, color, national origin, gender, sexual orientation, or disability. When such crimes occur, families are devastated and entire communities are stunned and hurt.

In addition to sending a strong message, the Kennedy amendment would offer federal help to combat violent hate crimes, including up to \$100,000 in



federal grants to state and local law enforcement officials to cover the expenses of investigating and prosecuting such crimes. Federal grants would also encourage cooperation and coordination with the community groups and schools that could be affected. The bipartisan Kennedy amendment is a balanced attempt to combat hate crimes by helping state and local officials.

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

The Senator from Alaska.

Mr. STEVENS. Mr. President, I ask unanimous consent that the next series of votes be limited to 10 minutes each.

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

The Senator from Utah.

Mr. HATCH. Mr. President, I admire my colleagues. I feel very much the same as they do about these heinous crimes, but I have absolute confidence that our State and local governments are taking care of them.

The problem with the Kennedy amendment is that it is unconstitutional and it is bad policy.

First, the Kennedy amendment is unconstitutional because it seeks to make a Federal crime of purely private conduct committed by an individual against a person because of that person's race, color, religion, national origin, gender, disability, or sexual orientation. This broad federalization of what are now State crimes would be unconstitutional under the commerce clause, the 13th amendment, the 14th amendment, and, possibly, the 1st amendment. This is clear in light of the Supreme Court's recent decision just last month in *United States v. Morrison*.

As Senators, we have a real duty to consider whether the legislation we enact is constitutional, and not just try to get away with all we can and hope the Supreme Court will fix it for us.

Secondly, the Kennedy amendment is bad policy. It would make a Federal crime out of every rape and sexual assault—crimes committed because of the victim's gender—and, as such, would seriously burden Federal law enforcement agencies, Federal prosecutors, and Federal courts.

In addition, the Kennedy amendment would not permit the death penalty to be imposed, even in cases of the most heinous hate crimes, such as the Byrd case, where State law permits prosecutors to seek the death penalty.

Finally, the Kennedy amendment, by broadly federalizing what now are State crimes, would allow the Justice Department to unnecessarily intrude in the work of State and local police and prosecutors without any real justification for doing so right now. That is why we need to do this study while at the same time providing monies to help the State and local prosecutors to do a better job.

The Kennedy amendment is unconstitutional, and it is bad policy. I urge my colleagues to vote against it.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to amendment No. 3473. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Oklahoma (Mr. INHOFE) is necessarily absent.

The VICE PRESIDENT. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 42, as follows:

[Rollcall Vote No. 136 Leg.]

YEAS—57

Akaka	Feingold	Mack
Baucus	Feinstein	Mikulski
Bayh	Graham	Moynihan
Biden	Harkin	Murray
Bingaman	Hollings	Reed
Boxer	Inouye	Reid
Breaux	Jeffords	Robb
Bryan	Johnson	Rockefeller
Burns	Kennedy	Roth
Chafee, L.	Kerrey	Sarbanes
Cleland	Kerry	Schumer
Collins	Kohl	Smith (OR)
Conrad	Landrieu	Snowe
Daschle	Lautenberg	Specter
DeWine	Leahy	Stevens
Dodd	Levin	Torricelli
Dorgan	Lieberman	Voinovitch
Durbin	Lincoln	Wellstone
Edwards	Lugar	Wyden

NAYS—42

Abraham	Enzi	Lott
Allard	Fitzgerald	McCain
Ashcroft	Frist	McConnell
Bennett	Gorton	Murkowski
Bond	Gramm	Nickles
Brownback	Grams	Roberts
Bunning	Grassley	Santorum
Byrd	Gregg	Sessions
Campbell	Hagel	Shelby
Cochran	Hatch	Smith (NH)
Coverdell	Helms	Thomas
Craig	Hutchinson	Thompson
Crapo	Hutchison	Thurmond
Domenici	Kyl	Warner

NOT VOTING—1

Inhofe

The amendment (No. 3473) was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3475

The VICE PRESIDENT. Under the previous order, the Senate will now debate for 4 minutes evenly divided the Dodd amendment relating to Cuba. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, this amendment establishes a 12-member bipartisan commission to review Cuba policy and make recommendations with respect to how that policy might be altered to best serve the interests of the United States.

Mr. President, I will not read the documents, but I will leave them for my colleagues' consideration: A letter signed by Howard Baker, Frank Carlucci, Henry Kissinger, Malcolm Wallop, along with 26 colleagues, 16 from

the floor, a letter from George Shultz, and one from the leading dissident groups inside Cuba calling for the commission to try to take a look at U.S.-Cuban policy.

It is time to stop, in my view, the absurd fixation we have on one individual and to remove an important foreign policy issue from the small but powerful group that doesn't allow us to think what is in our best interest as a nation. We ought to listen to foreign policy experts. This commission is not predetermined; it is not shackled. It may very well come back and recommend a continuation of the embargo. But it seems to me we ought to at least listen.

We are watching the Koreans come together. We are watching advances in the Middle East. Today, we are watching efforts around the world to bring people together to resolve historic differences.

Today, Pete Peterson, former POW, represents U.S. interests as our Ambassador in Vietnam. Does that mean we agree with the policies of the Vietnamese Government? No. We recognize, by trying to tear down the walls that have historically divided us, we can try to build a better relationship between the two countries. We will soon be voting on whether or not to have a trading relationship with China. We are watching improvements in the Middle East. Northern Ireland brings hope for resolving differences.

All I am asking with this amendment—it has been recommended by Secretaries of Defense, Secretaries of State, 26 of our colleagues, in a bipartisan letter to the President only a few months ago—is to establish a commission to examine U.S.-Cuban policies to see if we can't come up with some better answers than the historic debate which has divided us on this issue.

I urge adoption of the amendment.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH of New Hampshire. I yield myself 1 minute.

It is not our fault that Cuba is repressive. It is Castro who is to blame. Appeasing Castro by instituting the commission whose stealth objective is to lift the embargo without Castro having undertaken any reforms is nothing more than a unilateral and unwarranted concession to a regime which refuses to concede even the smallest effort to reform human rights.

This is not the appropriate vehicle for this bill, the Armed Services Committee. There are other important things with which we need to deal. Cuba should first change its policy toward its own people, and after that, the United States can change its policy toward Cuba.

I yield to Senator MACK.

Mr. MACK. Mr. President, I ask my colleagues on both sides of the aisle to vote to table this amendment. It is blatantly political in its nature. Of the 12 positions, 8 will be determined by the Democratic Party and 4 by the Republicans; 6 by the President, 2 by the majority in each of the Houses, 1 by the

minority in each. That is 8 of 12—two-thirds.

We should not, today, be telling the next President of the United States what his policy should be with respect to Cuba. This Congress and this President should not be doing that.

Third, I only had the opportunity to speak with Frank Carlucci and Howard Baker. While they accept the concept of a commission, they don't support one that is so blatantly political, and they don't support one being established at this time.

I ask my colleagues to vote against this amendment, and I move to table the amendment.

The PRESIDING OFFICER. All time is yielded back.

Mr. DODD. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.  
The question is on agreeing to the motion to table the amendment No. 3475. The clerk will call the roll.

The assistant legislative clerk called the roll.

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

The result was announced—yeas 59, nays 41, as follows:

[Rollcall Vote No. 137 Leg.]

YEAS—59

Abraham	Gorton	Nickles
Allard	Graham	Reid
Ashcroft	Gramm	Robb
Bennett	Grassley	Roberts
Bond	Gregg	Roth
Brownback	Hagel	Santorum
Bryan	Hatch	Sessions
Bunning	Helms	Shelby
Burns	Hutchinson	Smith (NH)
Campbell	Hutchison	Smith (OR)
Chafee, L.	Inhofe	Snowe
Cochran	Kohl	Specter
Collins	Kyl	Stevens
Coverdell	Lieberman	Thomas
Craig	Lott	Thompson
Crapo	Lugar	Thurmond
DeWine	Mack	Torricelli
Domenici	McCain	Voinovich
Enzi	McConnell	Warner
Frist	Murkowski	

NAYS—41

Akaka	Edwards	Lautenberg
Baucus	Feingold	Leahy
Bayh	Feinstein	Levin
Biden	Fitzgerald	Lincoln
Bingaman	Grams	Mikulski
Boxer	Harkin	Moynihan
Breaux	Hollings	Murray
Byrd	Inouye	Reed
Cleland	Jeffords	Rockefeller
Conrad	Johnson	Sarbanes
Daschle	Kennedy	Schumer
Dodd	Kerrey	Wellstone
Dorgan	Kerry	Wyden
Durbin	Landrieu	

The motion to table was agreed to.  
Mr. GRAHAM. Mr. President, I move to reconsider the vote.

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

The PRESIDING OFFICER. The Senator from California.

CONGRATULATING THE LOS ANGELES LAKERS ON WINNING THE 2000 NATIONAL BASKETBALL ASSOCIATION CHAMPIONSHIP

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent the Senate pro-

ceed to the immediate consideration of S. Res. 324, introduced earlier today by Senator BOXER and myself.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 324) to commend and congratulate the Los Angeles Lakers for their outstanding drive, discipline, and mastery in winning the 2000 National Basketball Association Championship.

There being no objection, the Senate proceeded to consider the resolution.

Mrs. FEINSTEIN. Mr. President, I join my distinguished colleague from California, Senator BARBARA BOXER, in commending and congratulating the Los Angeles Lakers for their outstanding season which was culminated last night in winning the 2000 National Basketball Association Championship.

Without a doubt, the Los Angeles Lakers are one of the finest franchises in the history of professional sports. In defeating a gritty and hard-nosed Indiana Pacers team last night, the Lakers captured their twelfth NBA Championship in the true spirit of their "Showtime" years.

The Los Angeles Lakers are a true sporting dynasty. They are the second winningest team in NBA history. Their record of 67-15, the best regular season record in the NBA's Eastern and Western Conference.

Led by coach Phil Jackson, Shaquille O'Neal and Kobe Bryant the Lakers are a formidable opponent. Shaquille O'Neal was named league Most Valuable Player, led the league in scoring and field goal percentage, won the IBM Award for greatest overall contribution to a team, and became just the sixth player in the game's history to be a unanimous selection to the All-NBA First team.

Shaquille O'Neal also was named Most Valuable Player of the 2000 All Star game scoring 22 points and collecting 9 rebounds. And he also dominated the 2000 playoffs scoring 38 points per game in the NBA Finals on his way to winning the Most Valuable Player award.

Another top player was the 21-year-old phenom, Kobe Bryant, who overcame injuries to average more than 22 points a game in the regular season and be named to the NBA All-Defensive First Team. Kobe Bryant's eight point performance in the overtime of game 4 led the Lakers to one of the most dramatic wins in playoff history.

Coach Phil Jackson, winner of seven NBA Championship rings and a playoff winning percentage of .718, has proven to be one of the most innovative and adaptable coaches in the NBA.

And when you add to this terrific trio and strong supporting cast—including Glenn Rice, A.C. Green, Ron Harper, Robert Horry, Rick Fox, Derrick Fisher, Brian Shaw, Devean George, Tyrronn Lue, John Celestand, Travis Knight, and John Salley—the recipe for a championship was written.

I also congratulate team owner Dr. Jerry Buss, General Manager Jerry West and all the others who worked so hard to return the championship magic to the City of Angels. But most of all, I would like to congratulate the myriad of Lakers fans who have pulled for this team through it all.

The 1999-2000 Los Angeles Lakers will go down in history with those legendary teams of the past. And we can add the names of Shaquille O'Neal and Kobe Bryan to the tapestry of Laker greats: George Mikan, Wilt Chamberlain, Jerry West, Elgin Baylor, Kareem Abdul-Jabbar, and the incomparable Earvin "Magic" Johnson.

These Lakers demonstrated immeasurable determination, heart, stamina, and an amazing comeback ability in their drive for the championship. They have made the City of Los Angeles and the State of California proud.

The Los Angeles Lakers have started the 21st century meeting the high standards they established in the 20th century. In the years ahead, I have no doubt that this team will add numerous championship banners to the rafters of the Staples Center.

Senator BOXER and I thought it would be fitting of offer this resolution today.

I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and that any statements related thereto be printed in the RECORD, with no intervening action.

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

The resolution (S. Res. 324) was agreed to.

The preamble was agreed to.  
The resolution, with its preamble, reads as follows:

S. RES. 324

Whereas the Los Angeles Lakers are one of the greatest sports franchises ever;

Whereas the Los Angeles Lakers have won 12 National Basketball Association Championships;

Whereas the Los Angeles Lakers are the second winningest team in National Basketball Association history;

Whereas the Los Angeles Lakers, at 67-15, posted the best regular season record in the National Basketball Association;

Whereas the Los Angeles Lakers have fielded such superstars as George Mikan, Wilt Chamberlain, Jerry West, Elgin Baylor, Kareem Abdul-Jabbar, Earvin "Magic" Johnson, and now, Shaquille O'Neal and Kobe Bryant;

Whereas Shaquille O'Neal led the league in scoring and field goal percentage on his way to winning the National Basketball Association's Most Valuable Player award, winning the IBM Award for greatest overall contribution to a team, and becoming just the sixth player in the history of the game to be a unanimous selection to the All-National Basketball Association First Team;

Whereas Shaquille O'Neal was named Most Valuable Player of the 2000 All Star game, scoring 22 points and collecting 9 rebounds;

Whereas Shaquille O'Neal dominated the 2000, playoffs averaging 38 points per game and winning the Most Valuable Player award in the National Basketball Association Finals;