

Again, the question of the French Revolution was on their minds. This person said: "Reform? Sir, don't talk of reform. Things are bad enough already."

That is apropos to this health care debate. We have costs going up right now. We don't need them to go up any more.

As another wag put it: You think health care is expensive now, wait until it is free. We all know there is no such thing as a free lunch. The money has to come from somewhere. As it turns out, in these bills, it is going to come from seniors, people who have private insurance and subsidize those on government insurance, and it is going to come from all taxpayers, including those who make less than \$200,000 a year, who the President said would not be taxed. A large percentage of the money, I think 87 percent in one case, will come from people making less than \$100,000 per year. Some of the tax provisions specifically impact primarily people who make less than \$50,000 a year. Health care reform should be about making it better for the American people, not making it worse.

It is going to be very interesting when we finally have an opportunity to review the legislation that was created behind closed doors to see whether it is going to pass these tests. We want to read it. We want to know how much it costs. We want to know that it is not going to add to the deficit or the debt. We are going to want to know that it will not result in the delay and denial of our care. In effect, we are going to want to know that the protections that are important for our constituents are in place.

I think there are some better ways to do this. Again, we will talk about those another day. We have already talked about them.

In the event you are saying, what kind of ideas are the Republicans talking about, I will mention one and stand down here.

We have been talking a lot about health care premiums and health care costs because doctors have to practice defensive medicine because if they are not careful, if they do not order a lot of tests, send their patients to a lot of different specialists, they are liable to get sued for malpractice. With this jackpot justice system we have, it costs a lot of money. The defensive medicine some have said can amount to \$100 billion or well over \$100 billion a year. There are two studies that put it over \$200 billion a year. Another study said just the cost of malpractice insurance premiums for doctors represents 10 cents on every health care dollar spent.

If we could reform medical malpractice laws, we could not only make the delivery of health care less expensive, we could make it less difficult for physicians to do what they consider to be the right thing without fear of getting sued, and we could dramatically reduce the cost of health care pre-

miums. This is a way to solve three problems that need to be solved, not cost a dime and, in fact, generate a huge amount of savings.

Why wouldn't we want to do this? As former Governor Dean of Vermont, former chairman of the Democratic National Committee, said on August 17 of this year at a townhall meeting in Virginia: The reason we haven't tackled medical liability reform is that we don't want to take on the trial lawyers.

I understand that. He is right. The Democratic majority did not want to take on the trial lawyers. But that is exactly what is wrong with Washington today.

We know what the problems are, we know what a lot of the fixes are, but we wouldn't want to take on the special interests such as the trial lawyers because that would not be good for us politically.

Republicans are saying: Yes, we do. It is time to take on those special interests. It is time to focus solutions on specific problems rather than trying to reform the entire health care system, including with a big government-run insurance company, in order to solve a problem that can be solved in a less intrusive way, less government intervention, less government expenditure, more private freedom, more money left in our pockets, and a greater assurance at the end of the day that we are going to continue to receive high-quality health care and not have it denied to us because of someone sitting in Washington, DC.

I urge my colleagues, as the days go forward, not only to review this legislation for themselves but to share those results with our constituents. They are the people for whom we work. They are the people we represent. They need to know what is in it. They need to know how much it will cost. They need to know it will not add to the deficit. They need to know it will not affect their health care. They need to know they will be protected and their benefits will not be cut, and they will be protected. It is up to us to provide that protection for them.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

HATE CRIMES

Mr. SPECTER. Madam President, I have sought recognition, briefly, to talk about the legislation on hate crimes, which was passed last Thursday as part of the Defense authorization bill, and to note the very different attitude which is present today than was present in 1997, when Senator Kennedy first took the lead in introducing hate crimes legislation, which I co-

sponsored with him at that time as well as Senators John Chafee, James Jeffords and Alfonse D'Amato, the only Republicans who appeared on the bill at that time.

There was some substantial opposition, very little appreciation of the effort to expand hate crimes to include sexual orientation and also disability. Even the Washington Post had an editorial on November 17 raising questions about the wisdom of the legislation which we had introduced.

One of the concerns raised by the Post was that:

A victim of a biased-motivated stabbing is no more dead than someone stabbed during a mugging.

It seems to me, that missed the point. But even the Washington Post, at that time, challenged the rationale for expanding hate crimes. The Post also raised a comment about the disturbing aspect of the legislation is the lower threshold for Federal involvement, in any case.

Having had some experience as a district attorney, and knowing the practices of district attorneys having jurisdiction over a county—for example, my job was both the city and county of Philadelphia—that DAs do not have, in some areas, a very broad perspective.

Where the climate for a district attorney, an elected position, is not conducive to pursuing someone who has undertaken something which has a racial bias, a racial motivation or a motivation for a difference in sexual orientation, the cases are not brought.

That is precisely the kind of an area which warrants hate crimes legislation on the Federal level. But it has been a long battle, and the issue went through quite a few conferences. Thanks to the leadership of our distinguished majority leader, Senator HARRY REID, we have persisted. Senator REID has kept this issue front and center in the Senate, and Senator LEAHY, as chairman of the Judiciary Committee, and I in the past, in 2005–2006 in the 109th Congress, were pushing ahead on hate crimes legislation.

Senator LEVIN, as chairman of the Armed Services Committee, is to be commended for fighting it through and finally getting it through the conference. So it is quite a landmark move that the Congress has finally acted on it as we did last Thursday. There is a recognition that the Post was off base when it said:

A victim of bias-motivated stabbing is no more dead than someone stabbed during a mugging.

That suggests a misunderstanding of hate crimes, as Senator Kennedy and I wrote in an op-ed that:

Random street crimes don't provoke riots; hate crimes can and sometimes do.

A hate crime is broader than simply an attack against a victim, against the African American who was dragged through the streets in a small town in Texas which gave rise to the impetus for hate crimes legislation or the brutal attack on Matthew Shepherd in

Wyoming. So this legislation is highly significant.

I ask unanimous consent that the text of the Washington Post editorial of November 17, 1997, and the reply op-ed piece by Senator Kennedy and myself, dated December 1, 1997, be printed in the RECORD.

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

THE “HATE CRIME” PROBLEM

[From the Washington Post, Nov. 17, 1997]

Bill Clinton, at a White House conference last week, declared his support for a proposal by Sens. Edward Kennedy and Arlen Specter to broaden federal jurisdiction over that category of violence dubbed “hate crime.” Federal law already permits judges to lengthen the sentences of defendants convicted of such crimes, defined as those in which a victim is targeted because of a particular identity. The Hate Crimes Prevention Act would go a step further than merely toughening sentences; it would significantly widen the Justice Department’s latitude to prosecute local violent crimes that were motivated by bigotry. The bill is a can of worms.

The proposal is crafted as an amendment to a civil rights statute that makes it a crime to interfere violently with anyone’s exercise of certain federally protected activities because of that person’s race, religion or ethnicity. This law sometimes has enabled the federal government to prosecute violent civil rights abuses when state authorities were unable or unwilling to do so. The new proposal would add a section explicitly including sexual preference, gender and disability status within the law and allowing the government to prosecute bias-motivated attacks even when the victims are not engaged in a federally protected activity. It would open the door, proponents concede, for certain rapes and domestic violence cases to be prosecuted federally as hate crimes.

Folding sexual preference into the protection of the existing statute is clearly a good idea. The civil rights of gays and lesbians, after all, are sometimes targeted violently, and the federal government’s anachronistic lack of authority to punish perpetrators of these assaults should be corrected. The disturbing aspect of the legislation is the lower threshold for federal involvement in any case. The government has an abiding interest in preventing attacks on the civil rights of its citizens. On the other hand, rape, murder and assault—no matter what prejudice motivates the perpetrator—are presumptively local matters in which the federal government should intervene only when it has a pressing interest. The fact that hatred lurks behind a violent incident is not, in our view, an adequate federal interest. The other conditions for federal involvement outlined in the proposal could prove too malleable to the Justice Department’s desire to involve itself in a given case. We don’t suggest that the proposal would lead to widespread federal involvement in routine criminal matters, but it is too permissive—and for the wrong reason.

The president’s White House Conference on Hate Crimes, as it turned out, was less a discussion of these offenses than a kind of pep rally against the dreaded emotion itself.

That’s fine as a bully-pulpit exercise, but the federal focus on what are called hate crimes must not wander too far from criminality. While the government has a simple obligation to protect us from crime, its relationship with hatred is necessarily more complicated. Government officials can denounce hatred and pass anti-discrimination laws, but when push comes to shove, most

expressions of ugly intolerance are protected by the First Amendment. Proponents of the new measure argue that a swastika painted on a synagogue has a deeper impact on a community than does a routine act of vandalism, and that’s true as far as it goes. But the victim of a bias-motivated stabbing is no more dead than someone stabbed during a mugging. Ultimately, we prosecute crimes, not feelings. Guiding how people feel about one another is only marginally a law enforcement concern.

[From the Washington Post, Dec. 1, 1997]

WHEN COMBATING HATE SHOULD BE A FEDERAL FIGHT

(By Edward M. Kennedy and Arlen Specter)

The Post’s Nov. 17 editorial criticizing the measure we have introduced on hate crimes reflects a misunderstanding of our proposal to close the gaps in federal law and a failure to recognize the profound impact of hate crimes.

Hate crimes are uniquely destructive and divisive because they injure not only the immediate victim, but the community and sometimes the nation. The Post’s contention that a victim of a bias-motivated stabbing is no more dead than someone stabbed during a mugging suggests a distressing misunderstanding of hate crimes. Random street crimes don’t provoke riots; hate crimes can and sometimes do.

The federal government has a role in dealing with these offenses. Although states and local governments have the principal responsibility for prosecuting hate crimes, there are exceptional circumstances in which it is appropriate for the federal government to prosecute such cases.

Hate crimes often are committed by individuals with ties to groups that operate across state lines. The Confederate Hammerskins are a skinhead group that began terrorizing minorities and Jews in Tennessee, Texas and Oklahoma a decade ago.

Federal law enforcement authorities are well situated to investigate and prosecute criminal activities by such groups, and the federal government has taken the lead in successfully prosecuting these skinheads.

Hate crimes disproportionately involve multiple offenders and multiple incidents and in such cases, overriding procedural considerations—including gaps in state laws—may justify federal prosecution.

In Lubbock, Tex., three white supremacists attempted to start a local race war in 1994 by shooting three African American victims, one fatally, in three separate incidents in 20 minutes. Under Texas law, each defendant would have been entitled to a separate trial in a state court, and each defendant also might have been entitled to a separate trial for each shooting. The result could have been at least three, and perhaps as many as nine trials, in the state courts, and the defendants, if convicted, would have been eligible for parole in 20 years. They faced a mandatory life sentence in federal court.

Federal and local prosecutors, working together, decided to deal with these crimes under federal laws. The defendants were tried together in federal court, convicted and are serving mandatory life sentences. The victims and their families were not forced to relive their nightmare in multiple trials.

Federal involvement in the prosecutions of hate crimes dates back to the Reconstruction Era following the Civil War. These laws were updated a generation ago in 1968, but they are no longer adequate to meet the current challenge. As a result, the federal government is waging the battle against hate crimes with one hand tied behind its back.

Current federal law covers crimes motivated by racial, religious or ethnic prejudice.

Our proposal adds violence motivated by prejudice against the sexual orientation, gender or disability of the victim. Our proposal also makes it easier for federal authorities to prosecute racial violence, in the same way that the Church Arson Prevention Act of 1996 helped federal prosecutors deal with the rash of racially motivated church arsons.

The suggestion in the editorial that our bill tramples First Amendment rights is ludicrous. Our proposal applies only to violent acts, not hostile words or threats. Nobody can seriously suggest that the neo-Nazis who murdered Fred Mangione in a Houston night-club last year because they “wanted to get a fag” were engaged in a constitutionally protected freedom of speech.

In addition, hate-crimes prosecution under our bill must be approved by the attorney general or another high-ranking Justice Department official, not just by local federal prosecutors. This ensures federal restraint and that states will continue to take the lead in prosecuting hate crimes.

From 1990 through 1996, there were 37 federal hate crimes prosecutions nationwide under the law we are amending—fewer than six a year out of more than 10,000 hate crimes nationwide. Our bill should result in a modest increase in the number of federal prosecutions of hate crimes.

When Congress passed the Hate Crimes Statistics Act in 1990, we recognized the need to document the scope of hate crimes. We now know enough about the problem, and it is time to take the next step.

As the Lubbock prosecution shows, combating hate crimes is not exclusively a state or local challenge or a federal challenge. It is a challenge best addressed by federal, state and local authorities working together. Our proposal gives all prosecutors another tool in their anti-crime arsenal. The issue is tolerance, and the only losers under our proposal will be the bigots who seek to divide the country through violence.

Mr. SPECTER. An additional comment or two. We have seen times change with respect to don’t ask, don’t tell. When this was put into operation, it seemed to me at the time—and I have said repeatedly in the intervening decade-plus that don’t ask, don’t tell has been in effect—that it has outlived its usefulness, its utility. I do not know that it ever had utility, but, if so, it certainly ought to be changed now.

There are men and women, regardless of sexual orientation, who serve with bravery and distinction in the military. Don’t ask, don’t tell ought to be repealed. There are limits as to what the President may be able to do through an executive order. So where congressional action is warranted, let it be enacted.

On a somewhat similar tone, times have changed with the Defense of Marriage Act since it was enacted back in 1996. Now we have seen the States of Connecticut, Iowa, and Massachusetts have legalized same-sex marriage. It is an issue where attitudes have changed very considerably. I think, just as we were finally able to get hate crimes legislation through, just as it is time to move ahead and move beyond don’t ask don’t tell, it is time to repeal the Defense of Marriage Act.

In the absence of any other Senator right now seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HARKIN. I ask unanimous consent that the order for the quorum call be rescinded.

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

SMALL BUSINESS INSURANCE PREMIUM INCREASES

Mr. HARKIN. Madam President, yesterday I got a call from my friend and my colleague from Pennsylvania, Senator SPECTER. He said: Have you read the New York Times yet?

I said: Well, no, as a matter of fact I have not.

He said: Well, there was a front page story in the New York Times on Sunday about what was happening with small businesses, in terms of their insurance rates going up unduly, huge increases.

I said: Well, no, I have not read about it. I will get the paper and read it.

It struck a chord with me because somehow, over the last several weeks, I have gotten an influx of inquiries to me personally and also into my office from small businesses in Iowa, some elsewhere but mostly from my State, wondering what was happening to the huge increases in their premiums this year.

They have always been used to increases in premiums, but these seemed unduly large. Plus, a lot of copays and deductibles were going up. So I went out and got the newspaper and read the story in the New York Times that Senator SPECTER pointed out to me. It was alarming.

As I said, I thought about all the inquiries that had come into any office. I said: Something is going on out there. Something is going on out there. So we have this health care bill now, reform, that will be going down to CBO, I guess today, for scoring.

I wish to commend Senator REID for his leadership. I was actually in Pittsburgh today giving a lecture on disability policy at the University of Pittsburgh law school, with former Attorney General Dick Thornburgh, who had endowed the law school with an endowment. They have a very strong legal scholarship program dealing with disability law at the University of Pittsburgh law school.

So I rushed back from there so I could be on the floor with Senator SPECTER to talk about this a little bit because there is something very funny going on.

When I was in the airport, I saw Senator REID had said he was sending the bill down to CBO for scoring. I commend Senator REID for his leadership and for putting in a strong public option. I am told it is basically the public option the Senator from North Carolina worked so hard on in the committee to develop. I guess he married that up with the provisions from the

Finance Committee bill that would allow States to opt out by 2014. I commend Senator REID for putting that strong public option in the bill. The vast majority of the American people want that. They see it as necessary for trying to keep some control on cost and leaving more choice and more competition for policyholders.

As a matter of fact, this would be a great help to small businesses, because small businesses could go on the exchange, and they would have that public option also available to them. I have said many times: The two biggest winners I can see in the health reform bill are small businesses and the self-employed. Small businesses are at the end of the line. They have been whipsawed all over the place. They have no bargaining power. The same with the self-employed. This bill will turn the tables by providing the exchanges and providing more help for small businesses. They will be much better able to negotiate and to pick and choose among different policies rather than what they have now.

Now in many cases they get one or two, and that is about it in a lot of States, one or two different insurance companies. In the New York Times article, some suggest the insurance companies are raising their rates to generate as much revenue as possible before health reform obliges them to change the way they do business.

Isn't that interesting. They are anticipating health reform passing so they want to jack up their premiums as much as possible before that happens. Others assert the industry is responding to Wall Street's demands for ever higher profits in the health insurance industry, that Wall Street is putting pressure on them to increase profit margins.

Again, I always have to ask: Why are we doing health reform? Are we doing health reform to help the health insurance industry or are we doing health reform to help the American people? That had to be our first response, that we are here to help the American people, not to help the health insurance industry.

I have had many small businesses tell me how tough it has been. I have a small newspaper in Iowa with 12 employees. The owner Art Cullen recently turned 50. Their insurance premiums for his small business jumped by 58 percent in 1 year and more than 100 percent in 2 years. They have a \$5,000 deductible.

I asked Art: Why don't you get another company? He said: I can't. I only have one in this area that will offer insurance. So that is why we need the exchanges, why we need health reform, so that Art Cullen and his small business can join with other small businesses on these exchanges to get a better deal.

Mike Landearu owns a muffler shop. He has 10 employees. He offers insurance to them, but his premiums have jumped 66 percent in the last 3 years. His deductibles have gone from \$4,000

to \$16,000. Mike is expensive. He was born with a congenital heart disease, so he dropped himself from his company's policy. He is the owner, taking himself out of the pool. But he can't get any kind of individual insurance because of his preexisting condition. Now he is worried he will have to sell the small business, all because of excessive health insurance costs.

This is unconscionable. As we speak, the majority leader is sending his bill down to CBO. And make no mistake, the bill we are bringing to the floor will offer real solutions for small businesses. It will enable them to purchase insurance through an exchange so they can choose among multiple plans at lower costs than are now available in the small group market. Small businesses and the self-employed can go on the exchanges and, if they want, they also are eligible for the public option.

It will sharply reduce administrative overhead that drives up the cost of insurance through such practices and medical underwriting and preexisting condition exclusion clauses. We provide a new small business tax credit to make insurance more affordable for the most vulnerable small businesses. We make new investments in wellness and disease prevention for all businesses, including small businesses.

In addition, we will put a stop to the outrageous and unacceptable insurance industry practices that harm the ability of small employers to cover their workers. We will require that insurance companies document how much of each premium dollar is going for medical expenses. We will require that insurance companies document how much of each premium dollar goes for medical expenses, and we are going to require rebates for excessive overhead charges. We will end the broken status quo where insurance executives make tens of millions of dollars in salaries and bonuses while their small business customers go out of business because they can't afford health insurance. We will end the exceptional and unwarranted antitrust exemptions the industry has enjoyed without public benefit for far too long. We will end the ability of insurers to jack up premiums by as much as 160 percent, which is what they did for one small business, because they thought the group was "getting too old." Therefore, they jacked up their premiums by 160 percent.

I thank Senator SPECTER for having a keen eye and for giving me a heads up on this yesterday. There is something happening out there right now all over this country. Small businesses are being inundated with higher costs and huge increases in their insurance premiums. To America's small business community, we have a simple message: Help is on the way. We will get this health reform bill done, and we are going to help small businesses and the self-employed.

I hope they can hang on long enough so we can get this bill through, hopefully before the end of the year, so that