

Yoo for doing what any government lawyer is expected to do: provide his legal opinions to the people he worked for, the policymakers of the U.S. Government.

The Supreme Court has said, in no uncertain terms, that government lawyers need immunity from suit in order to avoid “the deterrence of able citizens from acceptance of public office” and the “danger that fear of being sued will dampen the ardor of . . . public officials in the unflinching discharge of their duties.”

In other words, by encouraging this lawsuit, Mr. Koh was effectively deterring his students from doing precisely what Yale otherwise recommends that they do: enter public service.

Elections have consequences. I understand and generally support the prerogative of the President to nominate individuals for his administration he deems appropriate as long as they are within the spectrum of responsible views. However, because of the importance of his position in representing the United States in the international community with respect to treaties and other agreements, his own words and actions demonstrate to me he is far outside the mainstream in such a way that his appointment as State Department Legal Adviser could damage U.S. sovereignty.

So I oppose his nomination. I urge my colleagues—all of us who take an oath to support and defend the Constitution and who appreciate there are always challenges to America’s sovereignty—to closely examine Mr. Koh’s record and determine whether he would be a representative not only whom they could be proud of but whom they could rely upon in representing the American public interest.

At the end of the day, our sovereignty depends upon the American people. We govern with the consent of the governed. Our government does not start with rights. We had a group of people in America who gave their government certain limited rights in order for their common good. So the American people are our bosses. They pay our salary. We need to listen to them.

When I talk to my constituents—at least in recent months—I notice a theme that is recurring, and it is troublesome to me first of all because it is the kind of thing that sometimes is influenced by people who have less character than those of us in this body and others who may disagree with each other but seriously approach these issues. It is the idea that little by little the people are losing sovereignty, and that the country of America is giving up its sovereignty to others. Who are the others?

I am not a conspiratorial person. That is why I say some of the people who promote this idea do not do so for the right reasons, and I do not like to see them paid attention to by our constituents. But every time we adhere to a U.N. resolution or sign a treaty with another country or agree to abide by

the terms of a trade agreement, or something of that sort, to some extent we are giving up a little bit of our sovereignty. As long as we do all of those things with the consent of the governed and as long as we do it through the representative process where we pass a law or we confirm a treaty, ratify a treaty, it is done in the right way. We may make a mistake, we may go too far sometimes, but that is the decision we make. We have the right to make mistakes too. But when we go outside the legal framework of the country to cede a little bit of our sovereignty, as Mr. Koh says is OK, then we have abused the confidence the American people have placed in us and we have gone beyond our legal ability as representatives of the people to give up this little degree of sovereignty.

What I am concerned about, because of his position, which is the direct link between the United States and all of these international organizations and countries which our country necessarily deals with, is that he cares less about the protection of American sovereignty than the vast majority of the American citizens. In fact, he has a point of view which regards that as less important than conforming to international norms and even being in line with popular opinion internationally. As I said before, it is nice to be liked, but at the end of the day, the United States should not be about popular opinion.

We could probably be more popular with 100 countries in the United Nations if we stopped harping on things such as clean elections and free speech and the right to assembly and so on because my guess is there are probably 50 to 100 countries in the United Nations that don’t respect their citizens’ rights nearly as much as we do. In fact, the number is probably larger than that. They are uncomfortable with the example of a country such as the United States which sets on such a high pedestal our American citizens’ rights, that we not only protect those rights for our citizens, but we hold them out to the rest of the world as something that would be beneficial for their citizens as well. This makes them uncomfortable, and rightly so, because sometimes, as we are seeing in Iran today, people decide that it is a good thing to decide to exercise those rights and they feel the denial of that ability by their governments is wrong. They are even willing to risk their lives, as our forefathers did, to assert those rights. That is how important they are.

How odd it is, therefore, to come across such an intelligent—and he certainly is intelligent—man such as Mr. Koh who has a very different point of view about these important American rights, who believes it is more important for us to be in the mainstream of international thinking even though that mainstream represents a view of rights far less than the United States views our rights; it is far more important for us to be well viewed in the

international community than it is to strictly adhere to those rights that are embodied in our Constitution. That is extraordinarily troubling to me. Some of his views are breathtaking as they have been asserted.

I know he has met with some of our colleagues, that he is apparently, in addition to being very intelligent, very charming, and that his essential position is: Well, that is what I said in a speech, but I will recognize my obligations as a member of the administration.

I think we are all informed by our views, and if we care enough about them to speak out in a way that he has, as frequently and as forcefully as Mr. Koh has, it is difficult to believe that all of a sudden, in a moment of his confirmation, he will forget about everything he said and what he believes and conform his representation of the American people to what is a far more mainstream point of view; namely, that we should defend our Constitution to the absolute maximum extent we can, irrespective of the views of other countries around the world. That is why, at the end of the day, as I said, I hope my colleagues will review his record very carefully and will judge and eventually base their vote on his confirmation on what he has said—because he is an intelligent man who knows very well what he has said—and what, therefore, could flow from his words as actions as our representative in the State Department as its Legal Adviser.

Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BEGICH). Without objection, it is so ordered.

Mr. CARDIN. Mr. President, I ask unanimous consent to speak as in morning business for up to 20 minutes, with the time counting toward the postcloture debate time.

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

#### METRO COLLISION

Mr. CARDIN. Mr. President, I rise today to offer my condolences to the families and loved ones of those who lost their lives in the tragic collision of two Metro trains this past Monday evening. This accident is the most devastating, by any measure, in Metro’s history, and it has affected our entire region. My prayers are with those who lost their lives and my deepest sympathies are with their families, friends, and all those they touched.

I want to take a moment to praise the first responders, who worked tirelessly through the night to rescue the injured and save lives. It is during tragedies such as this that we can fully appreciate the heroism and bravery of our first responders.

At this time, we don't know the cause of the crash, and it may take considerable time for the National Transportation Safety Board to complete its investigation and make a determination. We certainly will do everything we can in this body to assist the National Transportation Safety Board in their investigation, make sure it is thorough and complete, and that we fully understand how this tragedy occurred.

News reports found that the train car that caused the fatal accident was an older model that the Federal safety officials had recommended for replacement. It didn't have the data recorder or modern improvements to stand up to a collision, and it may have been 2 months behind in its scheduled maintenance. Metro officials are replacing these aging cars that date back to the 1970s. These costly replacements are being made but at a pace that is too slow.

Funding shortfalls have caused Metro to make repairs instead of replacing aging equipment or structures throughout the system. Last year, I visited the Shady Grove Station and witnessed firsthand how they literally are using wood planks and iron rods to prop up station platforms. They have been forced to make accommodations to keep the system running in the safest possible manner.

The Washington Metro rail system is the second busiest commuter rail system in America, carrying as many as a million passengers a day. It carries the equivalent of the combined subway ridership of BART in San Francisco, MARTA in Atlanta, and SEPTA in Philadelphia each day. But more than three decades after the first train started running, the system is showing severe signs of age. Sixty percent of the Metro rail system is more than 20 years old. The costs of operations maintenance and rehabilitation are tremendous.

This is not only the responsibility of the local jurisdictions that serve Metro—the State of Maryland, Virginia, and Washington, DC—but there is also a Federal responsibility in regard to these cars. Federal facilities are located within footsteps of 35 of Metrorail's 86 stations. Nearly half of Metrorail's rush hour riders are Federal employees. This is our Metro system. We have a responsibility. Approximately 10 percent of Metro's riders use the Metrorail stations at the Pentagon, Capital South, and Union Station, serving the military and the Congress.

In addition, Metro's ability to move people quickly and safely in the event of a terrorist attack or natural disaster is crucial. The Metro system was invaluable on September 11, 2001, proving its importance to the Federal Government and the Nation during the terrorist attacks of that tragic day.

There is a clear Federal responsibility to this system.

Metro is unique from any other major public transportation system

across the country because it has no dedicated source of funding to pay for its operation and capital funding requirements. But we are close to resolving that issue.

I was proud to work alongside Senator MIKULSKI, Senator WEBB, and former Senator John Warner last year to pass the Federal Rail Safety Improvement Act, which was signed into law in October 2008. This law authorizes \$1.5 billion over 10 years in Federal funds for Metro's governing Washington Metropolitan Area Transit Authority, matched dollar for dollar by local jurisdictions, for capital improvement. The technical details of this arrangement are nearly complete, and when done, Metro finally will have its dedicated funding sources. I compliment the States of Virginia and Maryland and the District for passing the necessary legislation.

Earlier this year, as a regional delegation, along with our new colleague, Senator MARK WARNER, we requested that the Appropriations Committee provide the first \$150 million. While this is a substantial downpayment, it is not nearly enough to fulfill all of Metrorail's obligations. At the time of the bill's passage, Metro had a list of ready-to-go projects totaling about \$530 million and \$11 billion in capital funding needs over the next decade. Yesterday, I joined with my colleagues from Maryland and Virginia in sending another letter to the chairman and ranking member of the Appropriations Committee reiterating our urgent request for a first-year installment of \$150 million in funding for WMATA. Earlier today, I was pleased to announce \$34.3 million in additional funding for the purchase of new Metro cars. This was the last installment of a 3-year, \$104 million commitment. However, only a steady, major stream of funding will help WMATA make the investments needed to reassure the commuters, locals, tourists, families, and all Americans who ride Metro that the system is as safe and reliable as it can possibly be. I find it unacceptable that the transit system in our Nation's Capital does not have enough resources to improve safety and upgrade its aging infrastructure. While we may not know the cause of Monday's tragic collision for some time, it shined a spotlight on the dire need for improvements and upgrades to the Metrorail's infrastructure.

Again, on behalf of all our colleagues, I extend our deepest sympathies to all those affected by this horrific accident, in particular the families and loved ones of those who were killed. I hope my colleagues will join together, working with the Virginia Senators and Maryland Senators, to ensure that this body does everything it can to make sure a similar tragedy is never repeated.

#### HATE CRIMES LEGISLATION

Madam President, I next wish to talk about the urgent need to pass the Matthew Shepard Hate Crimes Prevention

Act of 2009. We passed this 2 years ago, and unfortunately we were unable to reconcile it with the other body.

In the last 2 years, we have had constant reminders of the need to pass this legislation. Just this past June 15, Steven Johns, a security guard at the U.S. Holocaust Museum, lost his life to a person who was deranged but who also was acting under hate. On February 12, 2008, Lawrence King, a 15-year-old student, lost his life because he was gay. On election night, we saw two men go on a killing spree against African Americans because America elected its first African-American President. In July of last year, four teenagers killed a Mexican immigrant and used racial slurs, making it clear it was a hate crime. In 2007, there were 7,600 reported hate crimes in America—150 in my own State of Maryland. So we need to do something about this. The trends have not been positive. They have been negative. Crimes against Latinos, based upon hate, have increased steadily since 2003. In 2007, we saw the highest number of hate crimes against lesbians, gays, bisexual and transgendered, up 6 percent from the year before. The number of supremacist groups in America has increased dramatically. There has been an increase in anti-Semitism between 2006 and 2007. The list goes on and on.

My point is this: We are seeing a troubling trend in America, with increased violence caused by hate-type activities. We need to act. The Federal Government needs to act. The Matthew Shepard Hate Crimes Prevention Act of 2009 will do just that. It expands the current hate crimes legislation we have on the Federal books so that it covers not just protected Federal activities but all activities in which a hate crime is perpetrated, and it extends the protections against hate crimes generated by gender, disability, gender identity, and sexual orientation. It will supplement what the States are doing. Many States are aggressively pursuing these matters. In fact, 45 States and the District of Columbia have passed their own hate crimes statute, and 31 include sexual orientation as a protected right.

The reason we need the Federal law is that the Federal Government has the resources and the capacity to respond when many times the States cannot. And I want to make it clear that this bill fully protects first amendment rights. This protection is against violent acts, not against speech. Hate crimes not only affect the victim, but they affect the entire community. It is time for us to act, and I hope we will soon pass the Matthew Shepard Hate Crimes Prevention Act of 2009.

#### HEALTH CARE REFORM

Lastly, I wish to talk about health care reform. There has been a lot of debate in this body, a lot of conversation about health care reform and what we need to do. I hope the only option that is not on the table is the status quo. We cannot allow the current system to continue.