

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.

I say that for several reasons. First is the matter of cost. The Nation cannot afford the health care system we have now. Last year, the Nation's health care costs totaled \$7,400 for every man, woman, and child in this country, for a total of \$2.4 trillion. We spent 15 percent of our gross domestic product on health care in 2006—the highest country by far. Switzerland, which is No. 2, spends 11 percent, and the average of the OECD nations is 8½ percent. We spend approximately twice as much as the industrial nations of the world spend on health care. And we don't have the results to warrant this type of expenditure. Of the 191 countries ranked by the World Health Organization, we are ranked 37th on overall health systems performance—behind France, Canada, and Chile, just to mention a few. We rank 24th on health life expectancies, and we ranked No. 1, by far, on health care expenditures. Between 2000 and 2007, the median earnings of Maryland workers increased 21 percent. Yet health insurance premiums for Maryland families rose three times faster than the median earnings in that same time period.

So we can't afford the cost of health care in America. It is crippling our economy, and our budgets are not sustainable. We are having a hard time figuring out how we are going to bring down the Federal deficit. When we look at the projected numbers, if we don't get health care costs under control, it is going to be extremely difficult to figure out how to balance budgets in the future. We need to bring down the cost of health care if America is going to be competitive in this international competitive environment.

For all those reasons, we need to do it. Yet we know we have 46 million Americans—despite how much money we spend—who don't have health insurance, and that is 20 percent higher than 8 years ago. We are running in the wrong direction. In my State of Maryland, 760,000 people do not have health insurance. Every day, people in Maryland and around the Nation are filing personal bankruptcy because they can't afford the health care bills they have. We have to do something about this.

I wish to thank and congratulate President Obama for bringing forward a reform that I hope will be embraced by this body. It certainly has been embraced by the American people. They understand it. We build on our current system. We want to maintain high quality. And I say that coming from a State that is proud to be the home of Johns Hopkins University and its great medical institution; the University of Maryland Medical Center, with its discoveries; and certainly NIH. This is a State—a nation—that is proud of its medical traditions of quality. We want to maintain choice. I want the constituents in Maryland and around the country to not only choose their doctor and their hospital but to choose the health care plans they can participate

in, and we certainly want to make sure this is affordable. So for all those reasons, we want to build on the current system.

Let me talk about one point that has gotten a lot of attention, and that is whether we should have a public option. I certainly hope we have a robust public insurance option, and I say that for many reasons. Public insurance has worked in our system. Just look at Medicare. If the Federal Government did not move for Medicare, our seniors would not have had affordable health care coverage, our disabled population would not have had affordable health care coverage. I don't know of a single Member of this body who is suggesting that we repeal Medicare, and that is a public insurance option.

A public insurance option does not have the government interfering with your selection of a doctor. The doctors and hospitals are private. We are talking about how we collect pay for these bills. And Medicare has worked very well, as has TRICARE for our military community. So we want to build on that experience.

The main reason we want a public insurance option is to keep down cost. That is our main reason. We know Medicare Advantage is a private insurance option within Medicare. I am for a private insurance option in Medicare, but I oppose costing the taxpayers more money because of that. We know Medicare Advantage costs between 12 to 17 percent more for every senior who enrolls in the private insurance option. The CBO—Congressional Budget Office—tells us that cost is \$150 billion over 10 years. So this is a cost issue.

I remember taking the floor in the other body when we were talking about Medicare Part D, the prescription drug part of the Medicare system. I urged a public insurance option at that time, on the same level playing field as private insurance so that we could try to keep the private insurance companies honest and have fair competition. We didn't do that. As a result, the Medicare Part D Program is costing the taxpayers more than it should.

So my main reason for saying we need to have a public insurance option is to keep costs down, but it also provides a guaranteed reliable product for that individual who is trying to find an affordable insurance option, for that small business owner who today finds it extremely difficult to find an affordable, reliable product available in the private insurance marketplace. Maybe the private insurance marketplace will be up to the challenge with 46, 47 million more people applying for insurance in America. I want to make sure they are. And having a public insurance option puts us on a level playing field and allows the freedom of choice for the consumer as to what insurance product they want to buy and the freedom of choice to choose an insurance product that allows them to choose their own private doctor and hospital.

There are plenty of positive proposals, and I congratulate the leader-

ship on the Finance Committee and on the HELP Committee for the manner in which they are working to bring down health care costs—first by universal coverage. Universal coverage will bring down health care costs. We know that someone who has no health care insurance uses the emergency room. It costs us a lot of money to use the emergency room. We want to get care out to the community, and with universal coverage it will bring down costs.

Preventive health care saves money. It saves money and it saves lives. It provides better, healthier lives for individuals, but it also saves money. We know that providing a test for a person for early detection of a disease costs literally a couple hundred dollars compared to the surgery that might be avoided which costs tens of thousands of dollars. So this is about cost, about saving lives, and about a better quality of life with preventive health care. I congratulate the committees for really coming together on this issue.

Also, the better use of health information technology will not only save us money in the administrative aspect of health care but actually in the delivery of care. If we know about a person and we can coordinate that person's care, we can bring down the cost of care and prevent medical errors.

For all those reasons, I strongly concur in what our committees are doing currently to reform our health care system to bring down costs.

One last point is the need for us to work together. I do reach out to every Member of this body to say: Look, I don't know of anyone who says our system is what it should be. Everyone agrees we are spending too much money. I haven't talked to a single Senator who believes we can't cut the cost of health care. We have to bring down the cost of health care. I think all of us agree we have to do a better job in preventive care and we have to do a better job of having an affordable product for those who don't have health insurance today. We all agree on that.

Let's listen to each other and work together. This is not a Democratic problem or a Republican problem. It cries out for Democrats and Republicans to work together to solve one of the most difficult problems facing our Nation. I congratulate President Obama for being willing to tackle this problem, and I urge all colleagues to join in this debate so, at the end of the day, we can pass reform that will truly bring down the cost of health care to America, be able to say America still leads the world in medical technology, and allows that care to be available to all the people of our country.

That is our goal. We can achieve it working together, and I look forward to working with my colleagues in achieving that goal.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. HAGAN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### SOTOMAYOR NOMINATION

Mr. SESSIONS. Madam President, the individual right to keep and bear arms—I think a fundamental right guaranteed by the explicit text of the second amendment of the U.S. Constitution—is at risk today in ways a lot of people have not thought about.

Although the Supreme Court recently held that the second amendment is an individual right, which is a very important rule, many significant issues remain unresolved, which most people have not thought about.

The Supreme Court, including whoever will be confirmed to replace Justice Souter, will have to decide whether the second amendment has any real force or whether, as a practical matter, to allow it to eviscerate its guarantees.

The second amendment says that “the right of the people to keep and bear Arms, shall not be infringed.” “[T]he right of the people to keep and bear Arms, shall not be infringed.” I know there is a preamble about a well-regulated militia being important to the security of the State, but the Supreme Court has ruled on that in Heller and said that does not obviate the plain language that the right to keep and bear arms is a right that individual Americans have, at least vis-a-vis the U.S. Government.

Not all the amendments, I would say, are so clearly a personal right. The first amendment, if you will recall, protects freedom of religion and freedom of speech. It talks about restricting Congress: Congress shall make no law with respect to the establishment of a religion or prohibiting the free exercise thereof.

So some could argue that does not apply to the States. It would apply only to the Federal Government because it explicitly referred to it. However, the Supreme Court has held it does apply to the States, and the right of speech and press and religion are applicable to the States and bind the States as well.

In the case of District of Columbia v. Heller, the Supreme Court recently held that the second amendment “confer[s] an individual right to keep and bear arms.” This is consistent with the Constitution and was a welcome and long-overdue holding.

Despite this holding, however, many important questions remain. For example, it is still unsettled whether the second amendment applies only to the Federal Government or to the State and local governments as well—a pretty big question. This question will determine whether individual Americans will truly have the right to keep and bear arms because if that is not held in that way, it would allow State and local governments—not bound by the

second amendment—to pass all sorts of restrictions on firearms use and ownership. They may even ban the ownership of guns altogether.

So we are talking about a very important issue. Remember, the District of Columbia basically banned firearms. It is a Federal enclave, in effect, with Federal law. And the Supreme Court held that the Federal Government could not violate the second amendment, was bound by the second amendment, and that legislation went too far. But they, in a footnote, noted they did not decide whether it applies to the States, cities, and counties that could also pass restrictions similar to the District of Columbia.

President Obama, who nominated Judge Sotomayor, has a rather limited view of what the second amendment guarantees.

In 2008, he said that just because you have an individual right does not mean the State or local government cannot constrain the exercise of that right—exactly the issues the Supreme Court has not resolved yet. Can States and localities constrain the exercise of that right in any way they would like?

In 2000, as a State legislator, the President cosponsored a bill that would limit the purchase of handguns to one a month.

In 2001, he voted against allowing the people who are protected by domestic violence protective orders—because they felt threatened—he voted against legislation that would allow them to carry handguns for their protection.

So there is some uncertainty about his personal views.

Let's look at Judge Sotomayor, whom the President nominated, and her record on the second amendment. That record is fairly scant, but we do know that Judge Sotomayor has twice said the second amendment does not give you and me and the American people a fundamental right to keep and bear arms.

The opinions she has joined have provided a breathtakingly, I have to say, short amount of analysis on such an important question to the U.S. Constitution. And the opinions she has written lack any real discussion of the importance of these issues, in an odd way.

Judge Sotomayor has gone from sort of A to Z without going through B, C, D, and so forth. For example, in her most recent opinion in January of this year—Maloney v. Cuomo—which asked whether the Supreme Court's protection of the right to bear arms in DC—the Heller case—would apply to the States, she spent only two pages to explain how she reached her conclusion. Her conclusion was that it did not.

The Seventh Circuit dealt with this same question and reached the same conclusion, but they gave the issue the respect it deserved and had eight pages discussing this issue, at a time when Judge Sotomayor only spent about two pages on it and not very much discussion at all.

The Ninth Circuit reached a different opinion. They say the second amendment does apply to individual Americans and does bar the cities of Los Angeles or New York or Philadelphia from barring all hand guns because you have an individual constitutional right to keep and bear arms. So the Ninth Circuit disagreed, and they had 33 pages in discussing this important issue.

Further, in deciding that the second amendment applies to the people, the majority in the Supreme Court dedicated, in Heller, 64 pages to this important issue. Including dissents and concurrences on that decision, the entire Court generated 157 pages of opinion. Judge Sotomayor wrote only two pages in a very important case as important as Heller. Judge Sotomayor's lack of attention and analysis is troubling.

These truncated opinions also suggest a tendency to avoid or casually dismiss constitutional issues of exceptional importance. Other examples might include the New Haven firefighters case, Ricci v. DeStefano, which is currently pending before the Supreme Court on review, and the fifth amendment case of Didden v. Village of Port Chester, which was recently discussed in the New York Times. It dealt with condemnation of a private individual's property. All those were serious constitutional cases. They had the most brief analysis by the court, which is odd.

I do not think it is right for us to demand that we know how a judge will rule on a case in the Supreme Court. I am not going to ask her to make any assurances about how she might rule. But I do think it will be fair and reasonable to ask her how she reached the conclusions she reached and perhaps why she spent so little time discussing cases of fundamental constitutional importance.

I am not the only one who has been troubled by the second amendment jurisprudence of Judge Sotomayor. As I mentioned previously, the Ninth Circuit disagreed with her opinion and held that the second amendment is a fundamental right applicable to the States and localities.

Additionally, in a June 10 editorial, the Los Angeles Times—a liberal newspaper—disagreed with her view in Maloney as to whether the second amendment applies against States and localities.

Moreover, in a June 10 op-ed in the Washington Times, a leading academic argued that the decision in Maloney was flawed.

So these are critical questions that will determine whether the people of the United States have a fundamental right guaranteed by the Constitution to keep and bear arms. So I think it is important and it is more than reasonable for the Senators to analyze the opinions on this question and to inquire as to how the judge reached her decisions and what principles she used in doing so.

I would say we are moving forward with this confirmation process. It is a