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## Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable ROLAND W. BURRIS, a Senator from the State of Illinois.

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Our Eternal God, we lift grateful hearts for the great heritage of our Nation. Thank You for those who purchased our freedom with blood, toil, and tears. Give us this day a vivid vision of what You expect our Nation to become, as we accept the torches of integrity and faithfulness from those who have gone before us.

Lord, give our lawmakers a reverence for Your Name and a determination to please You with their thoughts, words, and deeds. Enable them to bear with fortitude the fret of care, the sting of criticism, and the drudgery of unapplauded toil. Direct them to the sources of moral energy so that Your strength may be linked to their limitations.

We pray in Your great Name. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable ROLAND BURRIS led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, July 15, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby

appoint the Honorable ROLAND W. BURRIS, a Senator from the State of Illinois, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mr. BURRIS thereupon assumed the chair as Acting President pro tempore.

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. Mr. President, my understanding is the clerk will report the matter before the Senate at this time.

### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

### NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 1390, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1390) to authorize appropriations for fiscal year 2010 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Pending:

Levin/McCain amendment No. 1469, to strike \$1,750,000,000 in procurement, Air Force funding for F-22A aircraft procurement, and to restore operation and maintenance, military personnel, and other funding in divisions A and B that was reduced in order to authorize such appropriation.

### AMENDMENT NO. 1469 WITHDRAWN

Mr. LEVIN. Mr. President, I withdraw Senate amendment No. 1469.

The ACTING PRESIDENT pro tempore. The Senator has that right.

### AMENDMENT NO. 1511

(Purpose: To provide Federal assistance to States, local jurisdictions, and Indian tribes to prosecute hate crimes, and for other purposes)

Mr. REID. On behalf of Senator LEAHY, myself, and others, I call up amendment No. 1511, which is at the desk.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. LEAHY, Ms. COLLINS, Mr. KENNEDY, Ms. SNOWE, Mr. LEVIN, Mrs. FEINSTEIN, Mr. SCHUMER, Mr. DURBIN, Mr. CARDIN, Mr. WHITEHOUSE, Ms. KLOBUCHAR, Mr. SPECTER, Mr. FRANKEN, Ms. MIKULSKI, Mr. MERKLEY, Mrs. GILLIBRAND, Mr. MENENDEZ, Mrs. SHAHEEN, Mr. KERRY, Mr. UDALL of Colorado, Mr. DODD, Mr. HARKIN, Mr. WYDEN, Mr. CASEY, Ms. CANTWELL, Mr. LAUTENBERG, Mr. LIEBERMAN, Mrs. BOXER, Mr. BROWN, Mr. AKAKA, Mr. SANDERS, Mrs. MURRAY, and Mr. REED, proposes an amendment numbered 1511.

Mr. REID. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. REID. I now ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There appears to be a sufficient second. The yeas and nays are ordered.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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AMENDMENT NO. 1539 TO AMENDMENT NO. 1511

Mr. REID. I now call up a second-degree amendment which is at the desk.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. KENNEDY, proposes an amendment numbered 1539 to amendment No. 1511.

Mr. REID. I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require comprehensive study and support for criminal investigations and prosecutions by State and local law enforcement officials)

At the end of the amendment, insert the following:

**SEC. —. COMPREHENSIVE STUDY AND SUPPORT FOR CRIMINAL INVESTIGATIONS AND PROSECUTIONS BY STATE AND LOCAL LAW ENFORCEMENT OFFICIALS.**

(a) STUDIES.—

(1) COLLECTION OF DATA.—

(A) DEFINITION OF RELEVANT OFFENSE.—In this paragraph, the term “relevant offense” means a crime described in subsection (b)(1) of the first section of Public Law 101–275 (28 U.S.C. 534 note) and a crime that manifests evidence of prejudice based on gender or age.

(B) COLLECTION FROM CROSS-SECTION OF STATES.—Not later than 120 days after the date of enactment of this Act, the Comptroller General of the United States, in consultation with the National Governors’ Association, shall, if possible, select 10 jurisdictions with laws classifying certain types of offenses as relevant offenses and 10 jurisdictions without such laws from which to collect the data described in subparagraph (C) over a 12-month period.

(C) DATA TO BE COLLECTED.—The data described in this paragraph are—

(i) the number of relevant offenses that are reported and investigated in the jurisdiction;

(ii) the percentage of relevant offenses that are prosecuted and the percentage that result in conviction;

(iii) the duration of the sentences imposed for crimes classified as relevant offenses in the jurisdiction, compared with the length of sentences imposed for similar crimes committed in jurisdictions with no laws relating to relevant offenses; and

(iv) references to and descriptions of the laws under which the offenders were punished.

(D) COSTS.—Participating jurisdictions shall be reimbursed for the reasonable and necessary costs of compiling data collected under this paragraph.

(2) STUDY OF RELEVANT OFFENSE ACTIVITY.—

(A) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall complete a study and submit to Congress a report that analyzes the data collected under paragraph (1) and under section 534 of title 28, United States Code, to determine the extent of relevant offense activity throughout the United States and the success of State and local officials in combating that activity.

(B) IDENTIFICATION OF TRENDS.—In the study conducted under subparagraph (A), the Comptroller General of the United States shall identify any trends in the commission of relevant offenses specifically by—

(i) geographic region;

(ii) type of crime committed; and

(iii) the number and percentage of relevant offenses that are prosecuted and the number for which convictions are obtained.

(b) ASSISTANCE OTHER THAN FINANCIAL ASSISTANCE.—At the request of a law enforcement official of a State or a political subdivision of a State, the Attorney General, acting through the Director of the Federal Bureau of Investigation and in cases where the Attorney General determines special circumstances exist, may provide technical, forensic, prosecutorial, or any other assistance in the criminal investigation or prosecution of any crime that—

(1) constitutes a crime of violence (as defined in section 16 of title 18, United States Code);

(2) constitutes a felony under the laws of the State; and

(3) is motivated by animus against the victim by reason of the membership of the victim in a particular class or group.

(c) GRANTS.—

(1) IN GENERAL.—The Attorney General may, in cases where the Attorney General determines special circumstances exist, make grants to States and local subdivisions of States to assist those entities in the investigation and prosecution of crimes motivated by animus against the victim by reason of the membership of the victim in a particular class or group.

(2) ELIGIBILITY.—A State or political subdivision of a State applying for assistance under this subsection shall—

(A) describe the purposes for which the grant is needed; and

(B) certify that the State or political subdivision lacks the resources necessary to investigate or prosecute a crime motivated by animus against the victim by reason of the membership of the victim in a particular class or group.

(3) DEADLINE.—An application for a grant under this subsection shall be approved or disapproved by the Attorney General not later than 10 days after the application is submitted.

(4) GRANT AMOUNT.—A grant under this subsection shall not exceed \$100,000 for any single case.

(5) REPORT AND AUDIT.—Not later than December 31, 2008, the Attorney General, in consultation with the National Governors’ Association, shall—

(A) submit to Congress a report describing the applications made for grants under this subsection, the award of such grants, and the effectiveness of the grant funds awarded; and

(B) conduct an audit of the grants awarded under this subsection to ensure that such grants are used for the purposes provided in this subsection.

(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$5,000,000 for each of the fiscal years 2008 and 2009 to carry out this section.

**CLOTURE MOTION**

Mr. REID. I send a cloture motion to the desk.

The ACTING PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

**CLOTURE MOTION**

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the Leahy amendment No. 1511 to S. 1390, the National Defense Authorization Act for Fiscal Year 2010.

Evan Bayh, Roland W. Burris, Benjamin L. Cardin, Patrick J. Leahy, Sheldon

Whitehouse, Jeff Bingaman, Bernard Sanders, John F. Kerry, Carl Levin, Frank R. Lautenberg, Dianne Feinstein, Tom Harkin, Robert Menendez, Richard J. Durbin, Christopher J. Dodd, Charles E. Schumer, Harry Reid.

Mr. REID. Mr. President, Senator LEVIN will give an explanation as to why the amendment was withdrawn. But my friend, the Republican leader, has the first right of recognition.

**HEALTH CARE WEEK VI, DAY III**

Mr. MCCONNELL. Mr. President, as Republicans and Democrats debate the best way to reform health care, Americans are increasingly concerned about the price tag and about who gets stuck with the bill. The Federal deficit suddenly stands at more than \$1 trillion for the first time in history, and so far this year we are spending about \$500 million a day in interest alone on the national debt. It is as if every single American gets up in the morning, walks over to the window, and tosses \$2 out into the wind every day for the next 10 years. It is not a bad analogy, but that is what we are doing. And now the advocates of a government takeover of health care are talking about spending trillions more.

So Americans are worried about cost—and they have good reason to be.

Not only are we in a tough situation fiscally, we have no idea how much this reform will really cost. We know from experience with government-run programs like Medicare and Medicaid that early estimates often grossly underestimate what they end up costing. We know that some of the estimates we are hearing about health care reform are misleading. And we also know that the administration is building up a substantial track record of its own of dubious predictions that it has used to sell its ideas to the public.

We saw it with the stimulus. In selling one of the most expensive pieces of legislation in history, the administration said it had to be passed right away, with almost no scrutiny. If we did not pass it right away, they said, the economy would collapse.

Here is what the President said about the importance of passing the stimulus bill as quickly as possible: “If we don’t act immediately, then millions more jobs will disappear, the national unemployment rates will approach double digits, more people will lose their homes and their health care, and our nation will sink into a crisis that at some point is going to be that much tougher to reverse.”

As it turns out, the administration overpromised.

They predicted the stimulus would keep the unemployment rate from approaching double digits. We passed the stimulus, and unemployment is now approaching double digits. It was supposed to keep millions of jobs from disappearing. We passed it, and since then we have lost more than 2 million jobs. It was supposed to save or create between 3 and 4 million jobs. We passed it, and now the administration is backpedaling on that prediction too. Now it

says it is “very hard to say” how many jobs have been saved or created. The stimulus was supposed to have an immediate impact. We passed it, and it has not. Despite all the predictions about its effect on the economy, the administration now says it expects unemployment to continue to rise in the months ahead.

Now, in an attempt to pass an even costlier and far-reaching government action, a government takeover of health care, the administration is making similarly aggressive claims about the dangers of not approving its plan.

The administration says that if we do not pass its health care proposal then the economy will get even worse. It says that if we do not approve its health care proposal then the quality of everyone's health care will be jeopardized. It says that if we do not pass this trillion dollar bill now, then we will miss out on a chance to save money on health care down the road.

I do not know if these claims are accurate, and I do not believe the administration is making these claims in bad faith. But I do know that Americans got burned on the stimulus, and I know that some in the administration have said that a crisis is a terrible thing to waste. So at the very least, Americans have a right to be skeptical about the administration's latest effort to rush through a major piece of legislation without allowing us to evaluate it. It is a worthwhile question: Why does the administration say we have to send them a bill that would essentially nationalize one-sixth of the U.S. economy when many parts of the legislation itself would not even go into effect for another 4 years?

Americans are right to be skeptical when administration officials say we cannot fix the economy without fixing health care, or that the Democrat plan for health care will not cause people to lose their current insurance when the CBO says it will, or that a government-run takeover of health care will not add to the ballooning national debt. After the stimulus, Americans have a right to be skeptical about all these claims, especially when they are told these reforms have to happen quickly, and especially when our experience with Medicare and Medicaid and government health care at the State level shows us that initial estimates and predictions can be way off the mark.

Senator COLLINS, for example, has discussed the problems they have had in Maine as a result of its attempt to create a government-run health plan, of what a disappointment that has been. Six years ago, Maine instituted Dirigo Health as a government option after advocates made the same promises about what it would do to bring down costs and increase access that the advocates of a nationwide government health plan are making right now in Washington.

Yet 6 years later, the Dirigo experiment has turned out to be a colossal, and extremely costly, failure. Despite

initial promises, it has not covered most of the uninsured. And yet it has led to higher taxes on thousands of Maine residents who were already struggling to pay for private coverage. In short: Dirigo turned out to cause the same problems in Maine that some of us are predicting for all Americans if Congress rushes to approve a national government plan.

Americans want us to take the time necessary to make health care less expensive and more accessible, while preserving what they like about our system. Americans want health care reform, but they do not want to give a green light to a reform that only ends up costing them more for worse care than they currently have. The fact that Americans are increasingly concerned about how much health care reform is going to cost should not be a reason to rush. It should be a reason for us to take the time to get it right.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Mr. LEVIN. Mr. President, to explain where we are, let me take a few minutes, first of all, on the procedures. Then I want to go back and make some comments about the Levin-McCain amendment, which will come back. This is temporarily withdrawn because we could not get to a vote.

The bottom line is we were here all day yesterday. We attempted repeatedly to obtain an agreement as to when we could vote on the Levin-McCain amendment.

We had a lot of time yesterday for people to make speeches. We had time the day before. We have time anytime. But we have to get to a vote on that amendment.

The reason we were not able to get to a vote is because of the next amendment, which the majority leader indicated is going to be taken up on this bill, the so-called hate crimes amendment. We have a law relative to hate crimes. This had been an important amendment to the law to add a group who had been left out, two groups previously left out of the existing hate crimes law. It would have also had an important definition of Federal interest in this hate crimes legislation.

Hate crimes legislation is not new. This body had approved hate crimes legislation a couple years ago on the Defense authorization bill. The argument was made at that time that the hate crimes bill should not be offered on a Defense authorization bill. Senator KENNEDY offered hate crimes legislation a couple years ago on the Defense authorization bill. The debate was extensive at that time as to why on this bill.

The reason it was offered on this bill is obvious. This is legislation. The Senate rules allow for amendments such as hate crimes or any other amendment to be offered on legislation that is pending before the Senate. The minority has offered many nonrelevant amendments this year on legislation. On the American Recovery and Rein-

vestment Act, there was an amendment relative to ACORN. On the DC voting rights bill, there were amendments relative to guns and to the fairness doctrine. On and on and on. The Senate rules permit nongermane, non-relevant amendments to be offered to pending legislation. It is not at all new. The opportunity to do that has been taken by many of us this year, last year, the year before and, I am sure, next year. First, it is not new. It is common in the Senate to offer amendments which are not relevant to a bill that is pending. That is allowed under our rules.

The hate crimes amendment is an important amendment. I don't think anybody would deny the importance of this amendment. With hate crimes going up in the United States, it is critically important we strengthen our hate crimes law. There are Senators who oppose the amendment. That is the reason we are here, to debate, to argue for or to argue against. But I don't think one can argue it is uncommon, unusual or improper to offer non-relevant amendments to legislation which is pending. Regardless of one's position on hate crimes, it is very difficult to argue it is not significant legislation.

Thirdly, as Senator KENNEDY so powerfully argued—and those of us who joined with him a few years ago on this amendment surely agreed—the values that are involved in this legislation, the effort to make America a better place, a place freer of hate crimes, surely is one of the values our men and women put their uniforms on and fight for. The closer we can come to a society which is freer of hate crimes, the better off we are internally, the closer we will live up to what we stand for in our basic fundamental documents and our history. It is what men and women who fight for the United States and carry out their missions are fighting for—not just physical threats to this country but for the values for which we stand, for freedom from hate, for diversity, for freedom from intimidation and violence based on one's religion, ethnicity or the other attributes listed in the hate crimes legislation.

It is important legislation. It relates to the values of this country, values which our men and women take such risks for when they go into harm's way. The rules of this body allow for it.

Somehow or other, the fact that we were going to proceed to a hate crimes amendment on this bill, even whether it was next in line or whether it was down the line in terms of amendments, the fact that it was made clear that, again, on a Defense authorization bill, as we have in the past, in the past with 60 Members of this body supporting it, the fact that that was made known in an open and honest way to Members of this body apparently precipitated a determination on the part of some that they not allow us to get to a vote on the pending Levin-McCain amendment. That prospect, that open statement

that there would be a hate crimes amendment offered on this bill became the impediment, apparently, from all we can determine, to our getting agreement for a time for a vote on Levin-McCain.

The question is, How to remove that impediment. There were two choices: Either agree not to offer the hate crimes amendment or remove the impediment. We have to now remove the impediment. There is not a willingness on the part of a significant number of Senators—and I believe a majority—not to offer a hate crimes amendment. It is pending legislation that is before us.

The amendment is an important amendment. It has been offered before. There is precedent for offering it on the Defense authorization bill. The rules allow for it, so we don't need a precedent, but there is a precedent for doing so. There are dozens of precedents for offering nonrelevant amendments to legislation which is pending before the Senate.

We will come back, obviously, to the Levin-McCain amendment. The Levin-McCain amendment is a very important amendment on this bill. We have to deal with the decision of the Armed Services Committee, on a close vote, to add F-22 planes, which uniformed and civilian leaders of the military indicate they do not want and do not need and we cannot afford. We have had some debate. We had plenty of time for others to debate it. Everyone who wanted to speak on the subject, I believe, had more than enough opportunity to do so. Last night we heard from the Senator from Georgia as to his reasons for offering the amendment in committee to add the additional F-22s. I compliment the Senator from Georgia for all the hard work he has done on our committee. It is another example of how the Armed Services Committee works together. Our Presiding Officer is a distinguished member of the committee so he knows this firsthand, how we work together, guided by one basic principle: for the good of the Nation, for the good of the men and women in the armed services. We disagree, obviously, on the Levin-McCain amendment. There is surely, however, agreement that our intentions are always to adhere to that principle—what is best for our Nation, what is best for the men and women who put on the uniform of the Nation.

So while there was committee disagreement and disagreement on this floor on the question of whether additional F-22s should be produced, the disagreement is not along party lines and rarely, if ever, is along party lines on the Armed Services Committee. I wish to, again, compliment not only the Senator from Georgia but also other members of the committee for sticking to that very important principle.

I also agree with something the Senator from Georgia said last night relative to another of our operating prin-

ciples. We have the right and the duty to challenge assumptions made in the bill sent to us by any administration and to act in accordance with our best judgment about what is right and what is in the best interests of the Nation. We are not a rubberstamp to every proposal offered by the executive branch. The Congress, hopefully, never will be.

The Senator from Georgia pointed out a number of cases where we have acted as anything but a rubberstamp to a budget request. We added funds, for instance, in this bill for a larger pay raise than the executive branch requested to honor the service of the men and women in the military who have been bearing an extraordinarily heavy burden for the country fighting in Iraq and Afghanistan. We added \$1.2 billion for a more mobile variant of the Mine Resistant Ambush Protected Vehicle, called the MRAP. This MRAP variant is called the MRAP all-terrain vehicle. The reason we did this is because we knew there was an emerging requirement for these new vehicles to support our forces in Afghanistan that had not been reflected in the budget request. I don't believe any member of the Armed Services Committee or any Member of this body should act as a rubberstamp for any budget request, and the evidence will show over and over again, year after year, that our committee does not act as a rubberstamp.

The question on the Levin-McCain amendment is whether we are right, that the leadership of our military, both civilian and uniformed, made a sound judgment when they, similar to their predecessors in the Bush administration, determined that we should end production of the F-22. The debate is not about whether we will have the capability of the F-22. It is a debate about how many F-22 aircraft we should have and at what cost.

We are talking about whether we will accept the recommendation of two Commanders in Chief, two Secretaries of Defense, plus the Joint Chiefs of Staff and their chairmen, that 187 F-22s is all we need, all we can afford, and all we should buy. Senator MCCAIN and I have made a number of arguments about why we believe stopping the F-22 program at 187 is the right thing to do. I will not repeat all those arguments now, particularly since we have temporarily withdrawn the amendment. But it is important that I clarify promptly a number of points made by the Senator from Georgia during the debate yesterday so they do not remain uncontested.

First, the Senator said that the Air Force had not been involved in any of the studies that led to determining that 187 F-22s was the correct number of aircraft to buy. A few days ago, the committee heard contrary testimony from the vice chairman of the Joint Chiefs of Staff that there are at least two studies that support the department's plans for tactical aviation, including stopping F-22 production, including a recently completed study.

This is what he said:

There is a study in the Joint Staff that we just completed and partnered with the Air Force on that, number one, said that proliferating within the United States military fifth-generation fighters to all three services was going to be more significant than having them based solidly in just one service, because of the way we deploy and because of the diversity of our deployments.

So the Vice Chairman of the Joint Chiefs referred to a recent study that led to the conclusion that Senator MCCAIN and I support. That study was partnered with the Air Force, unlike what was stated last night by the Senator from Georgia that these studies did not have Air Force involvement.

There is a strong analytical underpinning for the decision of the administration, including the Air Force. A letter from the Secretary of the Air Force and the Chief of Staff of the Air Force on this matter is one underpinning, one of the strong evidences that that conclusion is correct. The letter is already part of the record so I will quote briefly from it. The Secretary of the Air Force and the Chief of Staff of the Air Force concluded in part, as follows:

In summary, we assessed the F-22 decision from all angles, taking into account competing strategic priorities and complementary programs and alternatives, all balanced within the context of available resources. We did not and do not recommend that F-22s be included in the FY10 defense budget. This is a difficult decision, but one with which we are comfortable.

That is from the letter of the Secretary of the Air Force and the Chief of Staff of the Air Force, so it should make very clear what the Air Force's position is on the matter.

On another matter that was raised by the Senator from Georgia last night, listening to his arguments, one might conclude that the F-22 is the only aircraft we have or are planning to have that could operate effectively in the presence of very capable enemy surface-to-air missile systems. But the Department has provided contrary evidence. In his letter to myself and Senator MCCAIN on July 13, the Secretary of Defense said the following:

... the F-35 is a half generation newer aircraft than the F-22, and more capable in a number of areas such as electronic warfare and combating enemy air defenses. To sustain U.S. overall air dominance, the Department's plan is to buy roughly 500 F-35s over the next five years and more than 2,400 over the life of the program.

The key words in that sentence by the Secretary of the Defense in his letter is that there will be a "more capable" aircraft in the F-35 than the F-22 "in a number of areas such as ... combating enemy air defenses."

I think we all agree our military needs to maintain air dominance. But as the Secretary's letter points out, the F-22 aircraft is not the only aircraft the Department is relying upon to contribute to making that air dominance a reality. In fact, in certain areas, such as electronic warfare and combating surface-to-air missiles, the Department of Defense is counting on

the F-35 fleet to meet those missions with greater effectiveness even than with the F-22.

The Senator from Georgia, last night, argued that proposing cuts in a number of areas—just like the committee 13-to-11 vote indicated and his proposal accomplished—that shifting funds to the F-22 program and shifting money from other areas was not doing any harm to other programs within the Defense Department.

I have previously talked about the specifics relative to this issue, and I wish to summarize the difference on this point very briefly, as, again, we will be coming back to this issue. It is withdrawn temporarily, but, obviously, we will return to this issue and resolve this issue prior to the determination of this bill.

First, we did not assume any first-year savings from acquisition reform or business process reengineering. Both these initiatives will yield savings. The Senator from Arizona and I, and with the support of our colleagues on the Armed Services Committee, all unanimously supported acquisition reform.

At the time we adopted that, and at the time the President signed our bill, we indicated there will be significant savings from reforming the acquisition system. But those savings do not occur in 2010. Nobody has alleged, and there is no support for any conclusion, that savings from acquisition reform are going to occur in the first year it is in effect. As a matter of fact, its main thrust is to apply to new weapons systems to make sure their technologies, for instance, are mature so we do not end up producing equipment that has technologies incorporated in it that have not been adequately tested.

So we are not going to see savings in fiscal year 2010, as the Senator from Georgia assumed in his amendment that was adopted barely by the committee to fund the F-22 add-on. The result is \$500 million he assumed from savings ends up as across-the-board real program cuts.

I also would point out that the cost estimate of S. 1390 that we just received from the Congressional Budget Office did not assume any savings from those initiatives. Those, again, were savings which helped to fund the additional F-22s—alleged savings. They are phantom savings in the first year.

Secondly, on the operation and maintenance reductions that were used to fund the F-22 add, the original committee position on this matter—O&M, operation and maintenance reductions—was developed consistent with the Government Accountability Office analysis. The reductions, however, that were taken in operation and maintenance by the Senator from Georgia when he offered this amendment in committee to add the F-22s go far beyond what was indicated by the Government Accountability Office's analysis and far beyond what is prudent.

Finally, relative to the offsets that were taken, the \$400 million cut applied

to the military personnel funding top line will greatly complicate the Department's ability to manage the All-Volunteer Force and to provide for bonuses and incentives that will be needed to support the force. It might even be troublesome enough that the Department of Defense would be forced to ask for a supplemental appropriations—something we wanted to get away from this year and finally have.

So one other thing is, there are some who suggest: Well, the F-35 is just a paper airplane that is the future. We have the F-22 now. The F-35 is not here yet. It is here. There are—in this budget alone, in the fiscal year 2010 budget, which is the fourth year, by the way, of production of the F-35—there are 30 F-35s being produced for the military. So this is not a future deal when we talk about F-35s. This is a here-and-now deal. We are already into low-rate initial production. There are already at least five test aircraft flying, and we have 30 F-35s funded in this bill which is before this body now.

Let me summarize the situation relative to the Levin-McCain amendment that would strike the additional funding for the F-22s, the additional planes that the military does not want, does not need, and says we cannot afford.

First, the F-22 is a very capable aircraft. There should be no doubt about it. We have them. We need them. And they are valuable.

Next, the Air Force has already bought, and will pay for, 187 F-22 aircraft. So the debate is not about whether we will have that capability of the F-22 for the next 20 years. We will. We should, and we will. The debate is over how many F-22s are enough to meet the Nation's requirements. Two Presidents—President Obama and President Bush—two Secretaries of Defense, three Chairmen of the Joint Chiefs, current members of the Joint Chiefs of Staff all agree that 187 F-22s is all we need to buy and all we should buy.

The debate also concerns what damage will be done if we do not reverse the cuts that were taken to pay for the additional F-22s—to pay for the \$1.75 billion in the F-22 add. Those cuts are \$400 million to military personnel accounts, \$850 million to operations and maintenance accounts, and \$500 million across-the-board reductions to the Department of Defense budget.

We received a letter from the President this week saying he will veto the Defense authorization bill if it includes the F-22 production.

So our amendment is a critically important amendment. It involves a lot of money, and there is a lot of principle involved as to whether we should continue to be building weapons we no longer need and we have enough of. We need the F-22. There is no doubt about that. But we have enough of the F-22, according to all our military leaders—civilian and uniformed leaders alike.

But we cannot get to a vote, and that is the fact of the matter. We have wait-

ed for an agreement to get to a vote on the Levin-McCain amendment. Repeatedly, I have asked whether we can set a time for a vote, and the answer has come back: We cannot set a time for a vote. It is clear that for some reason, which, frankly, I do not fully understand—the reason we are not permitted to get to a vote on the Levin-McCain amendment is because of the prospect, the fact that either the next amendment or somehow down the line on this bill there is going to be offered a hate crimes amendment.

How that and why that should result in a denial of an opportunity to vote on the Levin-McCain amendment escapes me, I must say. Because we are going to get to the hate crimes amendment whether we are allowed a vote on the F-22 amendment. Not allowing us a vote, not agreeing to a time for a vote on the Levin-McCain amendment does not obviate the fact there is going to be a hate crimes amendment offered. As a matter of fact, it is now the actual amendment before us. And everyone knew that.

So I do not understand the logic behind the refusal to permit a vote on an amendment—the Levin-McCain amendment—because of objection to going to a vote on hate crimes, when we are going to that hate crimes amendment anyway and when we are going to have to come back to the Levin-McCain amendment. Everybody knows it. We are going to have to resolve both those amendments. So the decision some made to deny us an opportunity to vote at this time on Levin-McCain simply stymies this body from doing what it is going to do.

There are many people who disagree with the Levin amendment. Fine. There are many people who disagree on the hate crimes amendment. That is their right. But what is undeniable is, we are going to resolve both, one way or the other. We are going to resolve both of those and hopefully a lot of other material and a lot of other amendments. They are both going to be resolved, one way or the other, on this bill. Argue both sides, argue neither side, but you cannot argue, it seems to me, that we should not allow a vote on the first amendment before us—Levin-McCain—because of opposition to another amendment which is going to be offered.

I know there is strong opposition to hate crimes. I understand it. I understand why people say it should not be on this bill, despite the rules which allow it. I respect the right to disagree with it. But I do not understand the logic or the strategy which denies us the opportunity to vote on an amendment which has been thoroughly debated—the Levin-McCain amendment—because there is another amendment down the line which is going to be offered which people object to, when they know it is coming up. Despite strong feelings that it should not come up, it is coming up. It is now before us. Everyone knew it was going to come up.

So now we are stymied. We are stymied from resolving an amendment which has to be resolved, one way or the other—Levin-McCain—because of objection to another amendment being offered. I don't get the logic. I don't understand the strategy. I understand the feelings and I respect the feelings, although I disagree with people who oppose the Levin-McCain amendment and I disagree with people who oppose the hate crimes amendment. So I understand the feelings. I don't share the feelings, but I respect them, and I respect their right to fight against these amendments. But for the life of me, I do not understand why we are denied an opportunity to vote on Levin-McCain because of an objection to another amendment. All it does is slow down this body. It stymies this body from resolving issues which are going to be resolved. As certain as this body is here, this is going to be resolved. These are going to be resolved like a lot of other amendments. I don't know how they will be resolved. That is not certain; it never is. But they will be resolved because that is the nature of the Senate, to resolve these issues.

Again, I thank my good friend from Arizona. I know there are differences on the question of whether hate crimes ought to be offered on this bill. I respect him deeply, and I respect his positions and his right to hold them. While I surely disagree with the decision that has been made to not permit us to move at this time to a resolution of Levin-McCain, I nonetheless have a great understanding of the feelings here. I appreciate them and I respect them.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona is recognized.

Mr. McCAIN. Mr. President, I know there are a lot of other issues that are consuming the interests of my colleagues and the American people, such as the confirmation hearings of Judge Sotomayor; the HELP Committee, of which I am a member, is reporting out one of the most massive takeovers and expenditures of taxpayer dollars in history; and we have this bill on the floor, and there are other issues. So it has probably gone unnoticed that we have seen another really—if not unprecedented, certainly highly unusual action on the part of the majority.

Frankly, to my colleagues on this side of the aisle and the American people, elections have consequences. What we have just seen is an amendment before this body and a piece of legislation before this body that I think one could argue is probably of more importance than any other we consider because it authorizes the measures necessary to preserve the security of this Nation, care for the men and women who are serving in the military, and meet the future threats we will face in the 21st century.

So what has happened here is that the majority leader, with the agree-

ment of my friend from Michigan, whom I highly respect and regard, has made it clear that their highest priority is not that. Their highest priority is a hate crimes bill—a hate crimes bill that has nothing to do whatsoever with defending this Nation.

My friend from Michigan just complained that we haven't had a time for the vote. Of course we haven't had a time for the vote on the Levin-McCain amendment because we have been made aware that a hate crimes bill—and by the way, not an ordinary, small, specific amendment, but 17 pages, plus 6 additional pages, encompassing a piece of legislation that is before this body that has never moved through the Judiciary Committee. It has not moved through the Judiciary Committee, the appropriate committee of oversight.

So the majority leader of the Senate comes to the floor, after prevailing upon the distinguished chairman to withdraw his amendment—an amendment of some consequence, a \$1.75 billion expenditure, and, far more important than even the money, a real confrontation between special interests and the national interests—so that we can move to the hate crimes bill.

The hate crimes bill is not without controversy, I say. In fact, it is interesting that on June 16, 2009, the U.S. Commission on Civil Rights sent a letter to the Vice President and to the leaders of the Congress opposing the hate crimes bill.

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

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

COMMISSION ON CIVIL RIGHTS,  
Washington, DC, June 16, 2009.

Re S. 909.

Hon. JOSEPH BIDEN, Jr.,  
*President, U.S. Senate,*  
Hon. ROBERT C. BYRD,  
*President Pro Tempore, U.S. Senate,*  
Hon. HARRY REID,  
*Majority Leader, U.S. Senate,*  
Hon. MITCH MCCONNELL,  
*Minority Leader, U.S. Senate,*  
Hon. RICHARD DURBIN,  
*Majority Whip, U.S. Senate,*  
Hon. JON KYL,  
*Minority Whip, U.S. Senate,*  
Hon. PATRICK LEAHY,  
*Chairman, Senate Judiciary Committee,*  
Hon. JEFF SESSIONS,  
*Ranking Member, Senate Judiciary Committee.*  
Hon. RUSSELL FEINGOLD,  
*Chairman, Senate Judiciary Subcommittee on the Constitution,*  
Hon. TOM COBURN,  
*Ranking Member, Senate Judiciary Subcommittee on the Constitution.*

DEAR MR. PRESIDENT AND DISTINGUISHED SENATORS: We write today to urge you to vote against the proposed Matthew Shepard Hate Crimes Prevention Act (S. 909) ("MSHCPA").

We believe that MSHCPA will do little good and a great deal of harm. Its most important effect will be to allow federal authorities to re-prosecute a broad category of defendants who have already been acquitted by state juries—as in the Rodney King and Crown Heights cases more than a decade ago. Due to the exception for prosecutions by "dual sovereigns," such double prosecutions

are technically not violations of the Double Jeopardy Clause of the U.S. Constitution. But they are very much a violation of the spirit that drove the framers of the Bill of Rights, who never dreamed that federal criminal jurisdiction would be expanded to the point where an astonishing proportion of crimes are now both state and federal offenses. We regard the broad federalization of crime as a menace to civil liberties. There is no better place to draw the line on that process than with a bill that purports to protect civil rights.

While the title of MSHCPA suggests that it will apply only to "hate crimes," the actual criminal prohibitions contained in it do not require that the defendant be inspired by hatred or ill will in order to convict. It is sufficient if he acts "because of" someone's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or disability. Consider:

Rapists are seldom indifferent to the gender of their victims. They are virtually always chosen "because of" their gender.

A robber might well steal only from women or the disabled because, in general, they are less able to defend themselves. Literally, they are chosen "because of" their gender or disability.

While Senator Edward Kennedy has written that it was not his intention to cover all rape with MSHCPA, some DOJ officials have declined to disclaim such coverage. Moreover, both the objective meaning of the language and considerable legal scholarship would certainly include such coverage. If all rape and many other crimes that do not rise to the level of a "hate crime" in the minds of ordinary Americans are covered by MSHCPA, then prosecutors will have "two bites at the apple" for a very large number of crimes.

DOJ officials have argued that MSHCPA is needed because state procedures sometimes make it difficult to obtain convictions. They have cited a Texas case from over a decade ago involving an attack on a black man by three white hoodlums. Texas law required the three defendants to be tried separately. By prosecuting them under federal law, however, they could have been tried together. As a result, admissions made by one could be introduced into evidence at the trial of all three without falling foul of the hearsay rule.

Such an argument should send up red flags. It is just an end-run around state procedures designed to ensure a fair trial. The citizens of Texas evidently thought that separate trials were necessary to ensure that innocent men and women are not punished. No one was claiming that Texas applies this rule only when the victim is black or female or gay. And surely no one is arguing that Texans are soft on crime. Why interfere with their judgment?

We are unimpressed with the arguments in favor of MSHCPA and would be happy to discuss the matter further with you if you so desire. Please do not hesitate to contact any of us with your questions or comments. The Chairman's Counsel and Special Assistant, Dominique Ludvigson, is also available to further direct your inquiries.

Sincerely,

GERALD A. REYNOLDS,  
*Chairman.*  
ABIGAIL THERNSTROM,  
*Vice Chair.*  
PETER KIRSANOW,  
*Commissioner.*  
ASHLEY TAYLOR, JR.,  
*Commissioner.*  
GAIL HERIOT,  
*Commissioner.*  
TODD GAZIANO,  
*Commissioner.*



Mr. MCCAIN. The U.S. Commission on Civil Rights sends a letter saying:

Dear Mr. President and distinguished Senators: We write today to urge you to vote against the Matthew Shepard Hate Crimes Prevention Act.

That is basically the bill the majority leader has just inserted into the process of legislation designed to defend this Nation's national security. Of course there are strong feelings on it. This is a complete abdication of the responsibilities of the Judiciary Committee but, more importantly, could hang up this bill for a long period of time. While we have young Americans fighting and dying in two wars, we are going to take up the hate crimes bill because the majority leader thinks that is more important—more important—than legislation concerning the defense of this Nation. I am sure the men and women in the military serving in his home State would be interested to know about his priorities.

So here we are. Now we will go through—I am sure the majority leader will file cloture, we will go through 30 hours of debate, and we will have another vote. All of this is unnecessary. Why couldn't we move the hate crimes bill—remember, this is not a single-shot amendment on a specific small issue; this is a huge issue, the whole issue of hate crimes. It is a huge issue. It deserves hearings and debate and amendment in the Judiciary Committee. But what are we going to do? For reasons that I guess the majority leader can make clear because I don't get it, he wants to put it on the national defense authorization bill and pass it that way. He will probably succeed, and he will call it "bipartisan." The last time I checked, it has 44 Democratic cosponsors and 2 Republicans. That is the definition, by the way, around here of bipartisan bills. That is the way the stimulus package was bipartisan. That is how the omnibus spending bill was bipartisan. And I am pretty confident that if health care "reform" passes, it will probably be in another "bipartisan" fashion.

So we will have some hours of debate. We will have more exacerbated feelings between this side of the aisle and that side of the aisle. I would imagine that the hate crimes bill, given the makeup of this body, may even be put on a defense authorization bill—a huge issue. A huge issue will now be placed on a defense authorization bill and passed through the Congress and signed by the President. That is a great disservice to the American people. The American people deserve debate and discussion and hearings and witnesses on this legislation. They deserve it. They don't deserve to have a hate crimes bill put on this legislation which has no relation whatsoever to hate crimes.

I will probably have a lot more to say about this in the hours ahead. I have been around this body a fair amount of time. I have watched the Defense authorization bill wind its way through Congress, and occasionally, including

at other times, I have seen amendments put on bills which are non-germane, but I haven't seen the majority leader of the Senate—the majority leader of the Senate, whose responsibility is to move legislation through the Senate—take a totally nonrelevant, all-encompassing, controversial piece of legislation and put it on a bill that is as important to the Nation's security as is this legislation. We are breaking new ground here, let's have no doubt about it. It is one thing to sometimes have one Member or two or others propose amendments that happen to be their pet project or their pet peeve. It is an entirely different thing—it is an entirely different thing, and I have never seen it before—that the majority leader of the Senate comes to the floor and introduces an irrelevant piece of legislation that is controversial, that is fraught with implications for this and future generations, to a bill that is totally nonrelevant. After 30 hours of debate, we will have a vote on closing that debate and including it in the legislation. I am deeply, deeply disappointed, and I question anyone's priorities who puts this kind of legislation ahead of the needs of the men and women who are serving our military with bravery, courage, and distinction.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DURBIN. Mr. President, we are currently on the Department of Defense authorization bill and an amendment that has been offered by the Democratic majority leader relative to the creation of a new Federal crime of hate crimes.

Earlier, the Senator from Arizona, Mr. MCCAIN, came to the floor to question the wisdom of adding that kind of legislation to a bill related to the Department of Defense. Most people, when they hear that argument, would say: Why don't they do these bills separately? It turns out that under the Senate rules, oftentimes there are few opportunities to move a bill forward. It is not at all unusual for Senators to come forward and offer what appears to be, and may in fact be, an unrelated amendment to a bill that is likely to pass and be signed by the President. Too often, we pass bills that die in transit to the House or once over in the House never see the light of day. They have the same complaint about the Senate.

This is legislation, hate crimes legislation, which we believe is timely, important, and which we want to make part of this debate and ultimately would like to offer it to the President

for signature. It has been debated in the House of Representatives, and it is a bill that I think we can quickly come together with the House on and agree on common terms. So it is an important opportunity.

I might say to Senator MCCAIN that I have offered what we would call unrelated amendments in the past, and he has as well. Going back many years, in 1993 Senator MCCAIN offered a line-item veto amendment to a bill involving voter registration. He also offered that same amendment to research bills and to a bill involving the travel rights of blind individuals. He had a supermajority requirement to increase taxes added to a bill—unrelated—on the subject of unemployment compensation. So it is not unusual. I have done it. Senator MCCAIN has done it.

In fact, this year we have seen it happen repeatedly. In fact, most of the amendments have come from the other side of the aisle. Senator VITTER—on a bill that tried to put the economy back on track—offered an amendment that was critical of an organization known as ACORN. It had nothing to do with the stimulus package. It was his personal feeling about that organization that led to the amendment. Senator ENSIGN of Nevada offered a controversial amendment which, in fact, stalled a bill that was relating to the voting rights of the citizens of the District of Columbia. Senator ENSIGN's amendment dealt with gun control, which didn't have a direct bearing on the question of DC voting rights. Senator DEMINT raised the question of the fairness doctrine of the Federal Communications Commission—another amendment to the DC voting bill. Senator THUNE of South Dakota offered an amendment relative to concealed firearms, again on the DC voting rights bill.

The list goes on. To suggest what was done this morning is unusual is to ignore the obvious. For the better part of this year, amendments have been coming from the Republican side of the aisle that are unrelated to the subject matter of the bill, and that has been a fact of Senate life.

This amendment being offered by Senator REID, as well as many others relative to hate crimes, is a very important one. I would like to speak to it.

I speak in strong support of the passage of this hate crimes legislation. We plan on voting on it as an amendment to the Defense authorization bill. For several years, the Senate has taken up these two measures, and for several years both the House and the Senate have passed the hate crimes bill only to see it blocked by filibuster threats or veto vows.

We are fortunate to have a new President who supports this hate crimes legislation. When the House of Representatives took up this legislation just a couple months ago, President Obama issued a statement which said:

I urge Members on both sides of the aisle to act on this important civil rights issue by

passing this legislation to protect all our citizens from violent acts of intolerance.

What a difference a year has made. When Congress took up the hate crimes bill last Congress, President Bush called it “unnecessary and constitutionally questionable.” He promised to veto it.

The American people said last November that they wanted a President who will take our country in a different direction. President Obama is doing that, and he is doing it on this issue as well.

The hate crimes bill has another important supporter who, sadly, cannot be with us on the floor today, and that is Senator TED KENNEDY of Massachusetts, who has been our leader on this issue for over 10 years. I wish he were here to make another impassioned speech for its passage. Nobody speaks to this issue with more authority and clarity than Senator KENNEDY. Senator KENNEDY has been called the heart and soul of the Senate. Passing this bill will honor the great work he has given in his public career to the cause of civil rights.

The Kennedy hate crimes bill now before us is one of the most important pieces of civil rights legislation of our time. I am proud to cosponsor it. I generally believe Congress should be careful in federalizing crime. In the case of hate crimes, there is a demonstrated problem and a carefully crafted solution.

Here is the problem—in fact, it is twofold. First, the existing Federal hate crimes law, passed in 1968 after the assassination of Dr. Martin Luther King, covers only six narrow categories. In order for the current law to apply, a person has to be physically assaulted on the basis of race, national origin, or religion, while engaging in one of the following specific activities: using a public accommodation, serving as a juror, attending a public school, participating in a government program, traveling in interstate commerce, or applying for a job.

The Kennedy hate crimes bill now being considered would expand coverage so that hate crimes could be prosecuted wherever they took place as long as there is an interstate commerce connection, such as the use of a weapon. Federal prosecutors would no longer be limited to the six narrow areas I mentioned earlier in the bill passed some 41 years ago.

Secondly, the bill would expand the categories of people covered under the Federal hate crimes law. The current law provides no coverage for hate crimes based on a victim’s sexual orientation, gender, gender identity, or disability. Unfortunately, statistics tell us that hate crimes based on sexual orientation are the third most common after those based on race and religion. About 15 percent of all hate crimes are based on sexual orientation. Our laws cannot ignore this reality.

Let me address some of the arguments that have been made against

this hate crimes bill. Some of my constituents—in fact, most of those who write in opposition to the bill—are writing either personally or on behalf of churches. There are people who believe this bill would be an infringement on religious speech. Their concern is that a minister could be prosecuted if he sermonizes against homosexuality, and after that a member of his congregation assaults someone on the basis of their sexual orientation. I understand their concern, but it is misplaced.

The chair of the Judiciary Committee, Senator PATRICK LEAHY, held a hearing last month on the hate crimes bill. Attorney General Eric Holder was the star witness. I attended the hearing and asked the Attorney General point-blank whether a religious leader could be prosecuted under the facts I just described. I talked to him about a minister in a church who might stand before his or her congregation and argue that the Bible states clearly, from their point of view, that persons engaged in homosexual conduct are sinners, and if after that sermon someone sitting in the congregation, in anger, turns and strikes someone who is gay, can the minister be held responsible for inciting this person to strike someone of a different sexual orientation. This is what the Attorney General said in response to this hypothetical question I raised:

This bill seeks to protect people from conduct that is motivated by bias. It has nothing to do with regard to speech. The minister who says negative things about homosexuality, about gay people, this is a person I would not agree with, but is not somebody who would be under the ambit of this statute.

Based on that representation from the Nation’s top law enforcement officer, I hope some from religious communities who have been writing to my office will understand that my response to them over the months and years that they have been writing is consistent with the interpretation of this hate crimes bill by the Attorney General of the United States.

It is also important to point out that the Kennedy hate crimes bill requires bodily injury. It does not apply to speech or harassment. It does not apply to those who would carry signs with messages of their religious beliefs. Attorney General Holder assured the Senate that, unless there is bodily injury involved, no hate crimes prosecution could be brought. I don’t know how he could have been clearer or more definitive. I am certain that some who don’t want to accept the clear meaning of his words will dispute him, but he was very clear for all of the people of good faith who would listen.

And listen to the words of Geoffrey Stone, a first amendment scholar at the University of Chicago Law School:

It is settled First Amendment law that an individual cannot constitutionally be punished for attempting to incite others to commit crimes, unless the speaker expressly incites unlawful conduct and such conduct is

likely to occur imminently. The last time the Supreme Court upheld a criminal conviction for incitement was more than a half century ago.

I also note that 24 States—nearly half of the States in America—have hate crime laws on the books that include sexual orientation, and religious leaders are not being prosecuted in those States. That is just not the purpose of the hate crimes laws. Prosecutors aren’t going around looking to put ministers or people with religious beliefs contrary to certain sexual orientations in jail.

Moreover, I think it is time that many people in the religious community would come forward and support this legislation. They should take comfort in knowing that if they believe intolerance and hate are not part of their spiritual message, this law is a good law in support of their beliefs.

This law would go beyond the six narrow areas I covered earlier. It would be an important consideration since 20 percent of all hate crimes are committed on the basis of a person’s religion. This hate crimes law will actually protect those discriminated against because of their religious belief. That should be another reason for those of faith to come forward and consider supporting it.

Another criticism of the Kennedy bill is one that has been around for a long time. It is an argument about States’ rights. They argue there is no need to pass a Federal hate crimes law because the States can do the job on their own.

This argument is remarkably similar to one we faced almost a century ago when Congress debated an antilynching law. Between 1881 and 1964 there is evidence that almost 5,000 people—in fact, 4,749—were lynched in the United States. Predominantly the victims were African Americans. Yet Congress resisted addressing this problem for generations.

Let me read some quotes from a 1922 CONGRESSIONAL RECORD when Congress debated whether to pass a bill making lynching a Federal crime. One Member of Congress said:

The great body of the good people of the country know that the Federal Government should let the States solve these purely local questions. They know that peace and confidence cannot come from distrust and suspicion and that this Congress cannot, by statute, change God’s eternal laws.

Another House Member said:

The question is whether or not we shall duplicate the State function by conferring the same power upon the Federal Government as to this class of crimes. Ours is a government of divided Sovereignties.

The arguments this year against the hate crimes bill sound very similar to the arguments in 1922 against the antilynching law.

We can all agree that criminal law is primarily a State and local function. It is estimated 95 percent of prosecutions for crimes occur at that level. But there are some areas of criminal law in which we have agreed the Federal Government can and should step in to help.



There are over 4,000 Federal crimes, 600 of which have been passed in the last 10 years. Hate crimes are a sad and tragic reality in America. Last month's horrific shooting, not far from here, at the Holocaust Museum in Washington, DC, was the most recent reminder that hate-motivated violence still plagues our Nation.

Earlier this year in my home State of Illinois, two White men in the town of Joliet used a garbage can to beat a 43-year-old Black man outside a gas station while yelling racial epithets and stating: "This is for Obama." The victim sustained serious injuries, lacerations, and bruises to his head.

Last year, a University of Illinois student was walking near his college campus with three friends when an attacker, yelling antigay slurs, pushed him so forcefully he was knocked unconscious and suffered a head injury.

These are incidents in my home State, which I am proud to represent, but I am not proud of this conduct, and I do not think America should be proud of this kind of intolerance and assault—physical assault—that has taken place.

According to FBI data, which is based on voluntary reporting, incidentally, there are about 8,000 hate crimes in America every year. Some experts estimate the real number is closer to 50,000.

The Kennedy hate crimes bill will not eliminate hate crimes in America, but it will help ensure these crimes do not go unpunished.

When Senator KENNEDY introduced the hate crimes bill in April, here is what he said—for TED, whom I wish could be with us today, I will repeat his words so he is part of the RECORD in support of this bill. Here is what he said:

It has been over 10 years since Matthew Shepard was left to die on a fence in Wyoming because of who he was. It has also been 10 years since this bill was initially considered by Congress. In those 10 years, we have gained the political and public support that is needed to make this bill become law. Today, we have a President who is prepared to sign hate crimes legislation into law, and a Justice Department that is willing to enforce it. We must not delay the passage of this bill. Now is the time to stand up against hate-motivated violence and recognize the shameful damages it is doing to our Nation.

In the words of Senator KENNEDY, and in my own words as well, I urge my colleagues to support this important legislation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mrs. FEINSTEIN. Mr. President, it is my understanding that we are now on the hate crimes amendment which

takes the form of the Hate Crimes Prevention Act introduced by Senator KENNEDY. I wish to speak on that amendment.

I begin by commending and thanking Senator KENNEDY for his leadership and dedication on this issue for a long time. He has been the leader, he has been persistent, and I know he remains fully supportive.

This has been offered as an amendment to the Defense authorization bill. The reason is because it is so long overdue.

This amendment will expand the Federal definition of a hate crime so that the Federal Government can prosecute crimes committed because of a person's gender, gender identity, disability, or other sexual orientation.

It would increase the Justice Department's authority to prosecute by removing old restrictions that say a hate crime must involve a victim who is attacked because of hate and attacked while voting, attending a public school, serving on a jury or involved in another specially designated activity. So the application of the existing legislation is highly limited, and this would remove that limitation.

It would authorize \$5 million in Federal grants to help States, localities, and Indian tribes investigate and prosecute hate crimes. It would also allow the Federal Government to give important technical, forensic, and prosecutorial assistance to States and localities that prosecute these kinds of crimes.

It would authorize the Department of Justice to begin programs to combat hate crimes committed by children and teenagers. This is important because this is a rising area of concern.

It would allow law enforcement to gather more data about violent hate crimes so we know how big the problem is and can work to fight against it.

Let me give a little bit of history. I have been working on hate crimes since I joined the Senate and the Judiciary Committee almost 17 years ago. I know the history of this amendment very well. In the 103rd Congress, I introduced the Hate Crimes Sentencing Enhancement Act to substantially increase criminal sentences whenever a crime was committed on Federal land that had an element of hatred to it relating to race, color, religion, national origin, ethnicity or sexual orientation. The bill was actually enacted into law in 1994, and it was an important first step.

In the 105th Congress, Senator KENNEDY introduced the Hate Crimes Prevention Act for the first time, and I was one of 33 cosponsors. That was 1997, and this is the bill we are still talking about today, 12 years later. In the 106th Congress, Senator KENNEDY reintroduced the bill. The bill was bipartisan, it had 43 cosponsors, but it did not pass.

In the 107th Congress, 2 years later, Senator KENNEDY reintroduced it again. It was bipartisan, and this time

it had 50 cosponsors. In July of 2001, it was reported out of the Judiciary Committee, but a cloture vote in 2002 failed by a vote of 54 to 43. That was 7 years ago. One-half of the Senate was cosponsoring this bill, but we lost by six votes on a cloture vote.

Senator KENNEDY reintroduced the bill in the 108th, the 109th, and the 110th Congresses. Each time there was broad and bipartisan support, but the bill did not pass. In this Congress, the bill has 45 cosponsors. The Attorney General has testified in support of it, and a similar bill has already passed the House. I believe it is time to pass this legislation.

Let me be candid and say I still do not understand the opposition to the bill. It does not criminalize speech. It only applies to violent acts. These are acts where the victim is targeted because of who they are—because of their race, or national origin, or disability, or religion, or gender, or their sexual orientation. We should have passed this bill many years ago.

According to the FBI, hate crimes occur in the United States at a rate of approximately one for every single hour of the day. FBI statistics are not complete because they rely on voluntary reporting from local law enforcement agencies, but they are, nonetheless, I think, chilling and compelling. In 2007, 7,264 hate crimes incidents were reported to the FBI with a total of 9,535 victims. Approximately 50 percent of the victims were attacked because of their race, 18 percent because of their religion, 16 percent because of their sexual orientation, 13 percent because of their ethnicity or national origin, and 1 percent because of a disability.

The nonprofit Southern Poverty Law Center estimates that if we had information about all the hate crimes that occur in the United States, the total number would be close to 50,000.

These crimes come in all sizes and all shapes, but they have one common theme: They leave people terrified, hurt, even dead, and they rip communities apart.

I think we all remember the story of James Byrd, Jr., a 50-year-old Black man, who was savagely murdered in Jasper, TX, in 1998, 11 years ago, while this bill was under consideration. Mr. Byrd was walking home from his parents' home late one night. He was picked up by three White men in a pickup truck. They took him to the woods, they savagely beat him, they chained him to the back of the truck, and they dragged him 2 miles to his death. His torso was found at the edge of a paved road. His head and arm were found in a ditch a mile away. The three men were later discovered to be Ku Klux Klan supporters, bearing racist tattoos.

A crime like this is not just tragic for the victim and his family but it makes an entire group of people terrified to leave their homes at night, and

it tears communities apart in a potentially irreparable way. This is a heinous crime. Hate was the driving motivation and the law and the punishment ought to reflect that.

Mr. Byrd was killed 11 years ago, and things have not gotten better. Let me tell you about three trends I find particularly disturbing. First, hate crimes targeting Hispanic Americans rose 40 percent between 2003 and 2007. FBI statistics show these crimes are rising every single year. In 2003, 426 crimes against Latinos; in 2004, 475; 2005, 522;—see it ratcheting up—2006, 576; and 2007, 595. That is a 40-percent increase in 4 years.

The Leadership Conference on Civil Rights has reported that this increase in violence correlates with the heated debate over comprehensive immigration reform, and we have all heard the talk shows that preach hatred. This is part of the result. Regardless of the reason, though, for the trend, it is unacceptable for us to stand by and let these crimes increase.

Another example: In Shenandoah, PA, this year, a 25-year-old Mexican immigrant and father of two was beaten to death by a group of high school football players who yelled ethnic slurs as they punched and kicked him. They beat him until he was unconscious and convulsing. He died 2 days later from those injuries.

Just last week, a Latina janitor in Ladera Ranch, CA, was doing her maintenance round when two men hit her on the head and stabbed her with a switchblade while yelling racial slurs at her. Another hate crime last week.

These are brutal, and the victims are attacked because of who they are—their skin color, their religion, their heritage—and their attackers' hate and vengeance.

There is a second troubling trend. The FBI reported 1,265 hate crimes against gay men and lesbians in 2007, and these are only the crimes reported. Many more crimes against this particular community are believed to go unreported to local law enforcement. The FBI has been reporting at least 1,000 hate crimes against this community every single year since 1995.

These crimes are equally chilling. Last December, a woman in my State, in the San Francisco Bay area—in Richmond, CA—who happened to be lesbian, was attacked by four men when she got out of her car, which had a gay pride sticker on its license plate. They raped her and made comments about her sexual orientation. Then they drove her 7 blocks away and raped her over and over again before leaving her naked on the ground near a burned-out apartment complex.

This is the United States of America. In my State, too, in Oxnard, CA, a 15-year-old openly gay boy named Larry King was harassed and bullied by his classmates for many years. One day, in 2008, he was sitting in an English class in school, when a fellow classmate stood, took out a handgun and shot

him in the head. Larry King died in the hospital a few days later.

It is essential we give law enforcement all the resources we need to investigate, to solve, to prosecute, and to punish these crimes.

Finally, there is a third area I am very concerned about. Most of the worst of these crimes are being committed today by young people. On election night, just last year, four young men between the ages of 18 and 21 drove to a predominantly African-American neighborhood in Staten Island, where they brutally beat a Black teenager who was walking home from watching the election results. They went on to assault another Black man, and they used their car to run over a third man they believed to be black. They injured this man so badly he was left in a coma.

In Shenandoah, the individuals who savagely beat a 25-year-old Mexican immigrant to death were all 21 or younger. And in Oxnard, the boy who shot Larry King was 14 years old. Imagine being consumed by hatred at 14 years old and what that means for the future of your life.

Why would anyone oppose giving the Department of Justice more resources to fight these crimes? These hate crimes are terrifying. These are the daily lives of Americans we are talking about—innocent people who are walking to work, driving home at night, working or, yes, sitting in our Nation's school classrooms.

This legislation is important. It will allow the Federal Government to prosecute where States or localities are not willing to. It will allow the Justice Department to assist States and localities that want to prosecute but don't have the resources or expertise they need. It does not criminalize speech. It only applies to violent acts, not expressive conduct. It is bipartisan and supported by a majority of Congress.

Twenty-six State attorneys general are advocating for it and so are more than 41 civil rights groups, 55 women's groups, 79 Latino groups, 16 gay rights groups, 63 religious organizations that represent hundreds of individual congregations, by the International Association of Chiefs of Police, the Federal Law Enforcement Officers Association, the Major Cities Chiefs of Police, the International Brotherhood of Police Officers, the United States Conference of Mayors, the American Veterans Committee, and many others.

This legislation is long overdue. There is a problem out there. It deserves to be solved. It deserves to be deterred. It deserves to be punished. This bill is long overdue.

I thank Senator KENNEDY for his long history of leadership on this issue. Indeed, if we are able to pass this bill today, or whenever we vote, it will, in fact, be a major tribute to him.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. McCain. Mr. President, I wish to repeat and emphasize the unprece-

dented fashion that we are now addressing legislation that concerns our Nation's security and the well-being and welfare of the men and women who are serving it.

I always thought the job of the majority leader of the Senate was to move legislation through the Senate. Obviously, the majority leader has come to the floor of the Senate and, at the request of the majority leader, the chairman of the committee has taken out an amendment that addresses a \$1.75 billion F-22 amendment that the President has placed his personal stamp on passing, that the Secretary of Defense has viewed as one of his highest priorities, as did the Secretary of the Air Force and other administration officials. What did we do? We come to the floor and withdraw the amendment, withdraw it so we can take up a major piece of legislation.

I am reminded that there are amendments proposed by various Members of this body who believe their amendments need to be proposed and believe there is no other avenue but to put them on pending legislation. The majority leader of the Senate can bring up legislation wherever he wants to. That is the privilege of the majority. That is the right of the majority.

Here we are trying to address an issue of paramount importance to the well-being of the men and women of the United States of America. Here we are trying to address an issue of \$1.75 billion, which has far more importance, in many respects, than the actual cost of the F-22s themselves, and without a hearing in the Judiciary Committee, without a bill reported out by the Judiciary Committee, which is the committee of oversight, the majority leader of the Senate has one very important amendment pulled and then puts in a piece of legislation which is far-reaching in the consequences and very controversial.

I introduced into the RECORD a little while ago the U.S. Commission on Civil Rights opposes this legislation. Doesn't this legislation, the hate crimes bill, deserve the amending and debate process that legislation is supposed to go through—committees and then on the floor of the Senate, open to amendments? No, it has been inserted now on the Defense authorization bill, and within a short time, I am sure the majority leader will come to the floor and file a motion for cloture to cut off debate on an issue of significant importance to all Americans and railroad it through on a "bipartisan basis," with possibly two Republican votes.

That is not the way this body should work. It is an abuse of power. It does not make for comity on both sides of the aisle. In fact, those of us who are committed to seeing this authorization bill done as quickly as possible because we are worried about the security of this Nation take great offense when the majority leader of the Senate, whose job is to move legislation through the Senate, brings extraneous

and unrelated legislation to a bill as important as this to the men and women of this country and our Nation's security. To somehow equate that with other amendments that have been proposed, from time to time, by Members on both sides, I think is not an appropriate comparison. I resent it a great deal. It is not good for the health of this body, in my view.

Perhaps there is precedent for this. Perhaps there is precedent when a Defense authorization bill, an issue probably, as I say, of the highest criticality, with an amendment on it that the President of the United States has fully weighed in on and committed on, is taken off the floor, is taken away from consideration in order to put in an extraneous and very controversial full package of legislation.

The hate crimes bill before us is not an amendment. It is legislation. It is an encompassing bill, 20-some pages long. We are going to have about 30 hours of debate, a discussion on it, the majority leader will come and cut off debate and we will probably pass it, thereby exacerbating a situation where those of us who oppose this legislation—and it is important legislation—will be faced with a dilemma of choosing between a bill which will harm, in my view, the United States of America and its judicial system and defending the Nation. I do not think that is fair to any Member of this body.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

AMENDMENT NO. 1521

Mr. ENSIGN. Mr. President, yesterday Senator BROWN and I introduced bipartisan and commonsense legislation as both an amendment to the National Defense Authorization Act and as a stand-alone bill. This is not the first time we have worked together on legislation. I would like to recognize and thank the junior Senator from Ohio for the bipartisan manner that both he and his staff have worked on this particular issue.

In particular, I would also like to thank the Nevada Office of Veterans Services and the National Association for State Veterans Homes for bringing this matter to our attention.

As stated, our legislation is both bipartisan and common sense. Currently, an individual is allowed into a State veterans home if the individual is, No. 1, an eligible veteran as defined by the U.S. Code; No. 2, the spouse of an eligible veteran; or, No. 3, a Gold Star parent.

The problem, though, arises in the way that the Veterans Affairs Department defines a Gold Star parent. Under current regulations, an eligible parent is one who has lost all of their children while serving their country. I know it doesn't make sense, but that is the way the definition is. As a consequence, state veterans homes are forced to deny admissions to Gold Star parents if they have any surviving children. Losing a child in war is a stunning and

life-altering event for anyone. Senator BROWN and I believe that for these families, having one child make the supreme sacrifice in service to our country is sacrifice enough to authorize the surviving parent's elder care in a State veterans home later in life. Our legislation would change that to permit entry into a VA nursing home to any parent who lost a son or daughter in war while fighting to protect our freedoms and our very way of life.

As most people are aware, State veterans homes were founded for servicemembers following the American Civil War. They have become institutions that our veterans and their dependents have come to rely on for nearly 150 years. Currently, there are 137 State veterans homes in all 50 States and Puerto Rico that, on a daily basis, provide hospital, rehabilitation, long-term care, Alzheimer's care, and end-of-life care to approximately 30,000 veterans and dependents.

I would also like to take this opportunity to recognize the Nevada State Veterans Home in Boulder City, NV, for the great work they do. U.S. News and World Report recently rated this veterans home as a 5-star facility and the top nursing home in my home State of Nevada. I think it is only fair that the parents who have lost a son or a daughter have access to first-class facilities such as this.

I thank, once again, the junior Senator from Ohio and ask my other colleagues to support this important legislation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. SHAHEEN. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. HAGAN). Without objection, it is so ordered.

Mrs. SHAHEEN. Madam President, I rise in support of strengthening our Federal hate crimes clause to include crimes motivated by a victim's sexual orientation, gender, gender identity or whether the victim has a disability. By passing the Matthew Shepard Hate Crimes Prevention Act, we will take a long-overdue step toward ensuring that our law enforcement officials have the resources they need to prevent and properly prosecute some of the most toxic and destructive violent crimes we face. I also thank my colleagues who have worked tirelessly to see this important legislation enacted into law. For the better part of the last decade, Senator KENNEDY, along with Senators LEAHY, COLLINS, and SNOWE, have shown leadership on this issue, even when the odds of success were small. Their diligence is one of the reasons this legislation today enjoys the support of more than 300 law enforcement, civil rights, civic, and religious organizations. As a new Member of the Sen-

ate, I am proud to join them this year as an original cosponsor of the Matthew Shepard Hate Crimes Prevention Act. I truly hope my colleagues will join me to pass this amendment.

In 1998, Matthew Shepard, a 21-year-old college student, was beaten and murdered just because he was gay.

The brutality of this crime captured the attention of the Nation. It was an attack not just on Matthew and his family but on an entire community. I had the opportunity a couple of years ago to meet Judy Shepard, Matthew's mother.

I applaud her willingness to try and make something positive out of such a terrible tragedy. She has been a tireless advocate to try and get hate crimes legislation passed and to point out the impact of these violent acts on families across this country.

The Matthew Shepard attack sent a message of hate and intolerance to LGBT youths and their families and instilled in countless young Americans a sense of fear simply because of their sexual orientation.

Despite this, Matthew's murderers were not charged with a hate crime because no such law exists in Wyoming or on the Federal level. It is impossible to know for certain the full effect of crimes motivated by hate on the communities they target. What is certain is that hate crimes rob the members of these communities of a sense of security, and the impact is real.

Among LGBT youth in this country, the suicide rate is four times higher than their straight peers, as many struggle to find their place in their families and their communities. While reducing bigotry and increasing tolerance will require a comprehensive effort, it is an effort that will take time. But addressing our outdated hate crimes law is one very important component.

As Governor, I was proud to sign legislation that expanded New Hampshire's hate crimes to include sexual orientation. Unfortunately, many States still lack such laws, which is why this bill is so critical.

By expanding the definition of hate crimes and by easing access to resources for local and Federal law enforcement officials to prosecute these crimes, we can hopefully help prevent these crimes and send a message that hate and bigotry in any form have no place in our society.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DURBIN. Madam President, pending before the Senate is the National Defense Authorization Act which is an annual bill considered by

the Senate which basically authorizes the spending of money and certain policies for the Department of Defense. There is a lot of work that goes into this bill. It is put in primarily by the chairman of the committee, CARL LEVIN of Michigan, and by JOHN MCCAIN of Arizona. This bill looks to be over 1,000 pages long. They have put a lot of effort into this bill and are anxious to pass it.

An issue came up, an important issue about the F-22 airplane. This is a fighter plane that the current administration and others have said should be discontinued. Whenever a fighter plane is being built and is being discontinued, there are people who resist because each one of these Defense projects involves a lot of people, a lot of jobs, a lot of contracts that are important to businesses and families and communities. So there is resistance. But on the F-22 fighter plane, President Obama has gone so far as to say in writing: If you include more planes beyond the 187 allocated in previous legislation, I will veto the bill. That, of course, would call for a supermajority to override the veto, which is not likely to occur. So it is a promise or a threat from a President we have to take seriously.

The bill currently contains an amendment which expands the number of F-22 fighter planes that was adopted narrowly in the Armed Services Committee. The chairman and the ranking Republican have the same position as President Obama. They want to reduce or hold fast to the number of airplanes currently projected to be built and not to expand it, as this bill does. So they offered an amendment to stand with President Obama and delete the section of the bill which would call for more planes. That amendment, No. 1469, was offered on Monday to be considered by the Senate. A number of Members have come to support the amendment, and I am one of them. I support the President's position and the position of Senators LEVIN and MCCAIN. There are others who oppose this amendment, clearly.

At one point, Senator LEVIN said: Let's move this to a vote. Senator MCCAIN agreed, as we should. It had been pending for 2 days. Everyone knows what is at issue. It is contentious and clearly controversial, but we deal with those issues. That is part of our job.

At that point, the process broke down. The Republican side of the aisle objected to calling the amendment. That is when the bill came grinding to a halt. That is when Senator LEVIN said: We know that after this amendment on F-22s, we will go to an amendment on hate crimes legislation on the same bill. So he withdrew this amendment.

Clearly, the answer to this—one I hope we can work out at the leadership level—is for Republicans to agree that we have a vote on the F-22 airplane. We should. Senator MCCAIN is anxious for

that to happen so the bill can move forward. Once that vote is out of the way, we should schedule a reasonable time for debate and a vote on the hate crimes legislation, which is not new. We have considered this before. But we are bogged down.

At this point, tempers are flaring a little bit because this important bill is being held up over those two issues: whether the F-22 amendment by Senators LEVIN and MCCAIN will come to a vote and whether the hate crimes legislation offered by Senator REID will also then be considered and voted on. I hope both those occur. There is no reason why they should not. Those who think they might lose the F-22 amendment are resistant to calling it for a vote. But there will come a day when we have to face this issue with a vote. That is ultimately what the Senate is here for.

I might say about nonrelevant amendments, a position made on the floor by my friend from Arizona and others, it is a hard argument to understand in light of what we have been through.

I ask unanimous consent to have printed in the RECORD a long list of nonrelevant amendments offered this year by the Republican side of the aisle to a series of bills considered on the floor.

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

REPUBLICAN NON-RELEVANT AMENDMENTS  
2009

Vitter #107 (ACORN) to H.R. 1, The American Recovery and Reinvestment Act; Ensign #575 (DC Guns) to S. 160, DC Voting Rights; DeMint #573 (Fairness Doctrine) to S. 160, DC Voting Rights; Thune #579 (Concealed Firearms) to S. 160, DC Voting Rights; Cornyn #674 (Union Dues) to H.R. 1105, Emergency Supplemental Omnibus Appropriations; Vitter #621 (Congressional Pay) to H.R. 1105, Emergency Supplemental Omnibus Appropriations; Thune #662 (Fairness Doctrine) to H.R. 1105, Emergency Supplemental Omnibus Appropriations; Thune #716 (Charitable Donations Deduction) to H.R. 1388, National Service; Vitter #705 (ACORN) to H.R. 1388, National Service; Inhofe #996 (National Language) to S. 386, Fraud Enforcement; Vitter #991 (TARP) to S. 386, Fraud Enforcement and Recovery Act; Coburn #982 (TARP) to S. 386, Fraud Enforcement and Recovery Act; Thune #1002 (TARP) to S. 386, Fraud Enforcement and Recovery Act; DeMint #994 (TARP) to S. 386, Fraud Enforcement and Recovery Act; Coburn #983 (IG—Fannie Mae/Freddie Mac) to S. 386, Fraud Enforcement and Recovery Act; Vitter #1016 (TARP) to S. 896, Helping Families Save Their Homes Act; Thune #1030 (TARP) to S. 896, Helping Families Save Their Homes Act; DeMint #1026 (TARP) to S. 896, Helping Families Save Their Homes Act; Coburn #1067 (Guns in National Parks) to H.R. 627, Credit Cardholders; Coburn #1068 (Guns in National Parks) to H.R. 627, Credit Cardholders; Hutchinson #1189 (Auto Dealers) to H.R. 2346, Iraq/Afghanistan Supplemental Appropriations; Vitter #1467 (Rx Drug Reimportation) to H.R. 2892, Homeland Security Appropriations.

Mr. DURBIN. They run the range of things. I talked earlier about some of these amendments: an amendment relating to the regulation of guns in the

District of Columbia put on the voting rights bill; an amendment relating to the fairness doctrine and telecommunications on the same DC voting rights bill; an amendment related to congressional pay on the Omnibus appropriations bill. The list goes on and on. I won't go beyond including it in the RECORD.

What the majority leader did today with the hate crimes legislation is not unlike what has been done repeatedly by the Republican side of the aisle over the last several months. Ultimately, these came to a vote. They were considered and voted on. That is all the majority leader is asking for, to bring the hate crimes legislation to a vote on this legislation.

There is clearly a way out of this. It is for the Senate to do its job, to vote on the Levin-McCain amendment on the F-22 fighters up or down. Let's see who prevails, understanding that if this provision stays in the bill and Levin-McCain fails, the President will veto the bill. That is a pretty ominous prospect.

Also keep mind that the hate crimes legislation is timely. It has passed the House of Representatives and should be considered by us.

I would like to say a word on it and ask unanimous consent to have printed in the RECORD a publication by an organization known as Third Way which consists of statements of support from religious leaders for the Senate hate crimes bill.

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

STATEMENTS OF SUPPORT FROM RELIGIOUS  
LEADERS FOR THE SENATE HATE CRIMES BILL

Dr. David P. Gushee, Distinguished University, Professor of Christian Ethics, Mercer University: As a Christian, I believe in the immeasurable and sacred worth of every human being as made in the image of God and as the object of God's redeeming love in Jesus Christ. In our sinful and violent world, there are tragically very many ways in which this sacredness is violated. This bill deserves Christian support because its aim is to protect the dignity and basic human rights of all Americans, and especially those Americans whose perceived "differentness" makes them vulnerable to physical attacks motivated by bias, hatred and fear. The bill simply strengthens the capacity of our nation's governments to prosecute violent, bias-related crimes. I am persuaded that the bill poses no threat whatsoever to any free speech right for religious communities or their leaders. Its passage will make for a safer and more secure environment in which we and all of our fellow Americans can live our lives. For me, the case for this bill is settled with these words from Jesus: "As you did it to one of the least of these, you did it to me" (Mt. 25:40).

Rev. Dr. Derrick Harkins, Senior Pastor, Nineteenth Street Baptist Church, Washington, DC: A strong Biblical imperative that I believe stands at the heart of my Christian faith is the preservation and protection of the inherent dignity of all persons. The Scriptures are replete with examples of God's concern and compassion for those seen as "other" by many. As an American, I know the protection of personal dignity and human rights is a principle that makes us

that much stronger as a nation, and certainly does not stand at odds with freedom of expression. Passage of the Hate Crimes Bill will help to ensure the safeguards of the law for those who are victimized by acts of bias and hate. I welcome the opportunity to support this bill as an expression of my Christian witness, and my belief in our nation's highest aims for all its citizens.

Dr. Joel C. Hunter, Senior Pastor, Northland—A Church Distributed: I would think that the followers of Jesus would be first in line to protect any group from hate crimes. He was the one who intervened against religious violence aimed at the woman caught in the act of adultery. He protected her while not condoning her behavior. This bill protects both the rights of conservative religious people to voice passionately their interpretations of their scriptures and protects their fellow citizens from physical attack. I strongly endorse this bill.

Rev. Gabriel A. Salguero, Executive and Policy Advisor, The Latino Leadership Circle: At the heart of the Christian gospel is the belief in the intrinsic dignity of all humanity. When people are targeted for acts of violence the Church must speak out. I support the Hate Crimes bill because it provides room for free speech and religious conviction while protecting groups of people from acts of violence. As a Christian who values both love and truth I support a bill that protects the vulnerable while allowing ministers to speak freely about their faith and moral convictions. The Hate Crimes bill does not call for the sacrifice of either dignity nor conviction. It is my prayer that we continue to find ways forward that honors both freedom of speech and protection for all our citizens.

Mr. DURBIN. Madam President, those who spoke in favor of the bill should be noted, their identities should be noted, because there is some argument, at least in the mail I have received from some religious leaders against the bill. Dr. David Gushee, distinguished university professor of Christian ethics at Mercer University, has a well-thought-out statement in support of the bill; Rev. Derrick Harkins, senior pastor of the Nineteenth Street Baptist Church in Washington, DC, the same; Dr. Joel Hunter, senior pastor at Northland, has also come out in support; and Rev. Gabriel Salguero, executive and policy adviser of the Latino Leadership Circle.

The point I tried to make earlier and the one their support makes is that there are religious leaders who believe this bill is necessary to protect those who may be subjected to physical violence because of religious belief—we don't want that to occur—that intolerance is not consistent with American values.

Secondly, to those who argue that if we include sexual orientation in this bill, a pastor who sermonizes against homosexuality based on his interpretation of the Bible could be arrested for it, that is not true. As I quoted earlier, the Attorney General said, clearly, hate crimes legislation is focused on physical violence—not words, not harassment, but physical violence. If the religious leader is not engaged in physical violence against someone of a different sexual orientation, they will not be subject to prosecution under this bill. That has been made clear by the

Attorney General, and the support of religious leaders indicates they understand that as well. We need to protect the people of our country against hate crimes and intolerance, but we also need to honor our constitutional guarantees when it comes to speech and religious belief. Those are consistent.

I look forward to the Senate coming to a conclusion, but I think those who have come to the floor and criticized the majority leader for this situation have not told the whole story. The whole story is the F-22 amendment by Senators LEVIN and MCCAIN was ready to be called, should have been called for a vote, and if it is scheduled for a vote, it can be dispensed with. I will support it. I have made that clear to the sponsors. Then we can move to the hate crimes legislation which the majority leader has brought before us, not unlike the many different instances this year when Republicans did exactly the same thing on the floor.

I urge those who might be off to lunch in a few minutes to use this opportunity. I see my friend from Arizona has taken the floor. I hope we can find an opportunity to work these two things out, perhaps bring to a vote the F-22 amendment, which I do support, the Levin-McCain amendment, to remove language in the bill on the expansion of the F-22 program. The sooner we can get approval from the leadership on the other side of the aisle, the sooner we can dispense with it one way or the other, up or down. Secondly, I hope we can then move to the hate crimes legislation which has been debated at length and is not unlike many of the other amendments which have been offered on the Republican side of the aisle on a variety of different bills during the course of the last few months. Bringing these two matters to a vote, perhaps we can then take up other pending matters on the Defense authorization bill on which I know the Senators from Arizona and Michigan have worked so hard.

Mrs. BOXER. Will the Senator yield for a question?

Mr. DURBIN. I am happy to yield.

Mrs. BOXER. I just have a question, while my friend has the floor. I have been waiting to speak on the hate crimes bill. I am wondering if it would be possible, because I am not sure if Senator MCCAIN has a lengthy statement, for him to work with us so we could get a time certain when I may make that statement.

Mr. DURBIN. I am going to yield the floor. Is the Senator seeking recognition?

Mr. MCCAIN. I will just take a few minutes.

Mr. DURBIN. Could I yield to the Senator from Arizona with the understanding that after he has spoken, the Senator from California would be recognized?

Mr. MCCAIN. That would be fine with me.

Mr. DURBIN. Could the Senator give an indication of how much time he may require?

Mr. MCCAIN. I am not sure what the Senator's reaction will be to what I have to say. I can't give him a specific time agreement. I am sorry. This is a vital issue we are addressing.

Mr. DURBIN. I understand it is.

Mr. MCCAIN. I will make my remarks as short as possible. I believe the Senator from Illinois has the floor; is that correct?

The PRESIDING OFFICER. The Senator from Illinois has the floor.

Mrs. BOXER. Will the Senator yield for another question?

Mr. DURBIN. I will.

Mrs. BOXER. I am trying to get a sense for timing's sake. We all have obligations in our various committees and with constituents. I am wondering if I should speak first. My statement is only about 6 minutes. Then I could yield to Senator MCCAIN. I think this hate crimes legislation is landmark legislation.

Mr. DURBIN. I think Senator MCCAIN has asked to be recognized first. If I have any response to him, I will try to make it very brief. I ask unanimous consent that after the Senator from Arizona has spoken, the Senator from California be immediately recognized.

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

Mr. DURBIN. I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I want to point out again, the legislation which is now pending has replaced the F-22, the Levin-McCain amendment. My argument is that the majority leader has put in legislation which is not relevant to the pending legislation, which is the Department of Defense authorization bill. I am perfectly willing for the hate crimes bill to come up under the regular order. Why it should be put on the Defense authorization bill, which will then not allow adequate debate and discussion of amendments, not to mention the fact that it hasn't gone through the committee of jurisdiction—frankly, I do not think it is the appropriate way of using the Defense authorization bill. In fact, I think it is highly inappropriate. Therefore, why don't we do this, I ask the Senator from Illinois: agree that as soon as the Defense authorization bill is complete, we take up the Matthew Shepard Hate Crimes Prevention Act under the regular order and do business the way the Senate should do business?

UNANIMOUS CONSENT REQUEST—S. 909

So therefore, Mr. President, I now ask unanimous consent that the pending amendment be immediately withdrawn; that no amendments on the topic of hate crimes be in order to the pending legislation; further, I ask that when the Senate completes action on the Department of Defense authorization bill, it be in order for the Senate to proceed to S. 909, the Matthew Shepard Hate Crimes Prevention Act, under the regular order.

The PRESIDING OFFICER (Mr. MERKLEY). Is there objection?

Mr. DURBIN. Reserving the right to object, Mr. President, I would say that the Senator from Arizona knows that on 16 different occasions this year Republican Senators have offered nonrelevant amendments to pending legislation. The Senator has done that himself. I have done it myself. It is not unusual or beyond the custom and rules of the Senate. And I believe Senator REID has the right to do it on this critically important legislation which we can move to with dispatch. Based on that, I do object.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCAIN. So, Mr. President, here are the facts. The fact is, the majority leader, whose job it is to move legislation through the Senate, is now blocking progress of Defense authorization—that progress through the Senate—by proposing an unneeded, irrelevant amendment, which is a large piece of highly controversial legislation.

The Senate majority leader will come to the floor and he will file cloture. Then, after some hours—with no amendments because he will probably fill up the tree—the Senate will pass a highly controversial, highly explosive piece of legislation to be attached to the authorization for the defense and the security of this Nation. That is wrong. And why—I want to put it this way: It is unanswerable that we do not just take up the hate crimes bill in the regular order and allow Senate debate and discussion. That is how the Senate is supposed to work—not put it on a major piece of legislation.

I will also point out to my friend from Illinois something he knows. It is one thing for someone who sits back there to propose an amendment to pending legislation because they feel that is the only way they can get their argument heard. The majority leader of the Senate has the authority to move whatever legislation he wants. And the majority leader of the Senate should move the hate crimes bill if he wants it considered rather than give it priority over the legislation that accounts for the national security of this country and the men and women who serve it.

So I am sure there will be all kinds of comments about the Republicans blocking a vote, blocking this, blocking that. Why don't we take up legislation in the regular order? Hate crimes has been opposed by the U.S. Commission on Civil Rights. This is a very controversial issue. By putting it on the DOD bill, we are not going to have the adequate debate, discussion, and amendment an issue such as this deserves. There is passion on both sides of the aisle.

So it is obvious, whether it is the intention or not, what is happening here is the whole process of debate and amendment will be short-circuited, because we on this side of the aisle are more than willing to take up the legislation as a separate piece of legislation, debate, amend, and discuss it, and

let the American people decide. Instead, the men and women in the military right now today are being shortchanged by putting irrelevant legislation that is highly controversial and highly complex on a bill designed for defense of this country and for the men and women who serve it.

Mr. DURBIN. Mr. President, will the Senator yield for a question?

Mr. MCCAIN. Actually, I will be glad to yield. But if the Senator wants to have a colloquy, go ahead.

Mr. DURBIN. I want to make sure Senator BOXER has her chance.

If I could make two points in the nature of a question to the Senator from Arizona.

First, Senator REID offered this amendment on behalf of Senator LEAHY, chairman of the Judiciary Committee, who is now presiding over the Sotomayor hearings. I know he supports it, and I support it as well, the hate crimes legislation, but I want to make that a matter of record.

Mr. MCCAIN. Could I respond to that?

Mr. DURBIN. Yes.

Mr. MCCAIN. It is one thing to have the chairman of the committee support it; it is another thing to have the legislation go through the committee with the proper debate and discussion and amendment. But go ahead.

Mr. DURBIN. The second point I would like to make to the Senator from Arizona is, when we asked for unanimous consent from the Republican side to move to the hate crimes legislation, there was objection. So it is not as if we have not tried to go through regular order. This seems to be the only path we can use to bring this matter to a conclusion. And I think it can be done in a responsible way quickly. It does not have to drag out over a matter of days. The Senator knows that. If we can get agreement on both sides to have a reasonable time for debate and a vote on the bill, I think that would meet the needs the Senator has suggested to get back on the substance of the Defense authorization bill.

Mr. MCCAIN. In deference to the Senator from California, I will make my answer brief, just to say I do not think—as I have said in my previous argument, it does not belong on a defense authorization bill, particularly so moved by the majority leader of the Senate. But, Mr. President, the Senator from California is waiting, and I yield the floor.

Mr. DURBIN. Mr. President, if the Senator from California will allow me to make a unanimous consent request before she speaks.

#### UNANIMOUS-CONSENT REQUEST

Mr. President, I ask unanimous consent that at 12 noon, on Thursday, July 16, the Senate proceed to vote on the motion to invoke cloture on the Leahy amendment No. 1511, with the time until then equally divided and controlled between the leaders or their designees; that if cloture is invoked on amendment No. 1511, then all

postcloture time be yielded back and amendment No. 1539 be agreed to; that amendment No. 1511, as amended, be agreed to and the motion to reconsider be laid upon the table; that upon disposition of the hate crimes amendment, Senator LEVIN be recognized to offer the Levin-McCain amendment, and that the time until 5 p.m., Thursday, July 16, be for debate with respect to the amendment, with all time equally divided and controlled between Senators LEVIN and CHAMBLISS or their designees; that at 5 p.m., Thursday, July 16, the Senate proceed to vote in relation to the amendment, with no intervening amendment in order during the pendency of the F-22 amendment; further, that the mandatory quorum be waived with respect to rule XXII.

The purpose of this unanimous consent request is to achieve just what the Senator from Arizona asked for: a timely consideration of both amendments. We will be back on the bill on his amendment. I ask unanimous consent that we accept this schedule and move forward.

The PRESIDING OFFICER. Is there objection?

Mr. MCCAIN. Mr. President, reserving the right to object, and I will object, I am not asking that there be a time agreement on hate crimes, I am asking that the hate crimes bill be brought up as a standing bill. The Senator has 60 votes. The Senator could bring it up whether this side of the aisle objects or not as a freestanding piece of legislation. I object to it being considered on the Department of Defense authorization bill. It has no place for it. It should not be there. The longer we wait, the longer the delay is in providing the men and women of the military the tools they need. So I do object. And we should take this up. I am sorry my unanimous consent request was not agreed to—that we would take it up as a freestanding bill after the consideration of the Department of Defense bill.

Mr. President, I yield the floor. I thank the Senator from California for her courtesy.

The PRESIDING OFFICER. Objection is heard.

The Senator from California.

Mrs. BOXER. Mr. President, I thank Senator MCCAIN and Senator DURBIN for moving through their debate swiftly so I would have this opportunity to speak in support of a landmark piece of legislation that has been offered as an amendment, the hate crimes prevention amendment named after Matthew Shepard.

This bill is a long time coming. I know we could make a process argument. We do it well around here. But it seems to me, we can move this Defense bill through quickly. We are doing that. We will do that. It has strong support. But we can also take care of this long-neglected, important piece of legislation whose passage will protect and defend our citizens from hate crimes.

So it is funny, because technically speaking, of course, the Defense bill is



about our military, and we all support doing what we have to do to keep it strong and to be prepared. That is why I will support that. But there is no reason why we cannot take a little time to look at the fact that it is time for the Matthew Shepard Hate Crimes Prevention Act to really be passed. It will not slow us up really. We have just seen that Senator DURBIN has asked for a unanimous consent agreement to do this quickly. It is not going to delay. My Republican friends do not seem to mind it when they offer nonrelevant amendments to bills. They have done it 16 times this year. Oh, they do not have a problem. But if it is something they do not like, suddenly they make this process argument. Rather than debate process, why don't we just get on with it? We can do a couple of important things this week—one of them, the Defense bill, and the other, protecting our citizens from hate crimes.

The importance of the amendment that was offered by Senator LEAHY through our leader is that it would strengthen the ability of Federal, State, and local authorities to investigate and prosecute hate crimes.

It has been more than 10 long years since the senseless death of Matthew Shepard—a tragedy that showed us we have a long way—a long way—to go before we can truly say in this country there is equal justice for all.

Let's look back at what happened to Matthew Shepard 10 long years ago. Two men offered Matthew Shepard, a gay man, a ride in their car. Subsequently, Shepard was robbed. He was pistol whipped. He was tortured. He was tied to a fence in a remote rural area. And he was left to die. Mr. President, this was not a robbery. This was not a spur of the moment situation. We know from the pair's then-girlfriends, who testified under oath, that the two men plotted beforehand to rob a gay man in particular. That crime occurred because Matthew Shepard was a gay man. Well, they robbed him. They tortured him. And they killed him.

This crime should be a Federal crime. And yes, we have tried to pass that hate crimes legislation for years and years. There is always an excuse: We do not have the time. It is not relevant to the bill. Well, Matthew Shepard's family—what happened to them will never go away. The loss they carry in their hearts will never disappear. But the one thing we can do to ease their burden is to pass this legislation.

Look, we have offered this on Defense bills before. This is not the first time. We dealt with it and we voted and we moved on. So the only thing you can say as to why there is all this objection is because people do not want to vote on this bill, and they are making it more and more difficult for us to be able to get to it. I hope we will, in fact, stick to it and get this done. Again, it is not going to weigh down the Defense authorization. In my mind, again, it is something we need to do and we can do with no harm to the underlying bill.

We should be proud to support this legislation, not afraid to vote on it, not trying to postpone a vote on it. Hate crimes are particularly offensive because they are propelled by bias and bigotry. They not only inflict harm on the victims, but they instill fear in entire communities.

That is why I have—and I ask to put into the Record—a strong letter of support from my sheriff from Los Angeles, Lee Baca. I ask unanimous consent to have this letter printed in the RECORD.

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

COUNTY OF LOS ANGELES,  
SHERIFF'S DEPARTMENT HEADQUARTERS,  
Monterey Park, CA, June 25, 2009.

Hon. EDWARD M. KENNEDY,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR KENNEDY: The Los Angeles County Sheriff's Department is proud to support S-909. This bill would provide federal assistance to state and local jurisdictions for the prosecution of hate crimes.

This bill will adopt the definition of "hate crime" from the Violent Crime Control and Law Enforcement Act of 1994 which is a crime where the defendant intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person and additionally include gender identity.

This bill will also authorize the Attorney General, at the request of the state or local law enforcement agency, to provide technical, forensic, prosecutorial, or other assistance in criminal investigations or prosecutions. The Attorney General is additionally authorized to award grants to law enforcement agencies for extraordinary expenses associated with the investigation and prosecution of hate crimes.

In 2007, the Federal Bureau of Investigation (FBI) statistics indicate that 2,025 law enforcement agencies across the country reported 7,624 hate crimes involving 9,006 offenses. Of those, 7,621 were single bias incidents involving 9,527 victims and 6,962 offenders. Of the single bias incidents, 50.8 percent were racially motivated, 18.4 percent motivated by religion, 16.6 percent motivated by sexual orientation, 13.2 percent motivated by ethnicity or national origin, and 1 percent motivated by disability.

This bill is, indeed, a civil rights issue, as President Obama said, "... to protect all of our citizens from violent acts of intolerance." Hate crimes are a scourge in our society and have no place in humanity.

Thank you for sponsoring this important legislation. It is the duty of government to protect all, equally and unequivocally. Should you have any questions, do not hesitate to contact me directly.

Sincerely,

LEE BACA,  
Sheriff.

Mrs. BOXER. I want to note that Lee Baca happens to be a Republican. I want to note that this law enforcement individual is very strong on this. He says this hate crimes bill deals with a civil rights issue, and he quotes President Obama, "to protect all of our citizens from violent acts of intolerance." Lee Baca adds in his own words:

Hate crimes are a scourge on our society and they have no place in humanity.

What we are dealing with is not a Republican issue or a Democratic issue. There are gay people who are Republicans. There are gay people who are Democrats. There are gay people in the closet. There are gay people out of the closet. But I can tell my colleagues that too many gay people live in fear. They live in fear that two people or one person could attack them simply because they are gay, and that is not right in this, the greatest country in the world, and we can fix it.

I also wish to point out this bill also protects women who are attacked simply because of their gender. So this bill is about making sure women are protected and gays are protected.

I wish there was no need for this law. I wish we lived in a world where such a law would be unnecessary. We all do. One of our Founders said, if people were perfect, we wouldn't need a government. People are not perfect. There has to be right and wrong and it has to be spelled out. People who are innocent need to be protected.

A man gets in a car with two people who claim to be his friends, and he winds up robbed, tortured, and killed, and put on a fence, I might add.

So, Attorney General Holder, when he testified before the Senate Judiciary Committee, reported that the FBI said there were 7,624 hate crime incidents in 2007. That is the most recent data: 7,624 hate crime incidents.

If we pass this bill, we send a signal that the Federal Government will not stand by and watch this sort of thing happen. We send a message that we will be a backup, that we will supply the law enforcement personnel, the forensic assistance, anything the local prosecutor needs and the local police need to help them.

Eric Holder also testified that between 1998 and 2007, more than 77,000 hate crime incidents were reported by the FBI. That is one hate crime for every hour of every day for a decade, one hate crime every hour of every day for a decade.

Senator McCain—and I have full respect for him—said: Let's just do this another day.

We shouldn't wait another day. This should receive unanimous support from everyone across party aisles, and I believe it will receive tremendous support across party aisles. I do. So let's get to vote on it.

Statistics are one thing; the individual stories are horrifying. I will give my colleagues another example, the case of Lawrence "Larry" King, a 15-year-old boy from Oxnard, CA. Larry, an eighth-grader, was shot and killed by a fellow student in the middle of a classroom in February of 2008. According to news reports, the shooting occurred the day after the students had a verbal altercation about Larry's sexual orientation. The police and the district attorney classified the murder as a hate crime. The district attorney said there had never been a violent shooting like this before in Ventura County in

my State. A young life ended too soon by a violent act of hate.

My State is not immune from these crimes.

In Richmond, CA, four men were arrested and charged for brutally gang-raping a young lesbian. According to news reports, one of the attackers taunted her for being a lesbian during the attack.

After that heinous incident, a young Black man in Richmond was attacked. According to the young man's police report, his attackers yelled racial epithets and slurs as they broke six of his bones.

Finally, another example: In 2006, a man walked into an Amish school in Pennsylvania. Taking several female students hostage and releasing all the male students, he shot 10 of the girls, killing 5—killing 5—before shooting himself. The age of these girls was from 6 to 13 years old. These girls lost their lives because of a despicable act of hate based on their gender.

There is no reason to come to the floor and say we can't do this bill because we have other very important business on our plate. Of course we do. Of course we need to do the Defense bill. Of course we will do the Defense bill. The last I checked, the Defense authorization usually passes practically unanimously. This isn't a problem. So we can deal with this. We have done it before.

These stories demonstrate if America is to serve as a model for tolerance and justice, we must do everything in our power to fight hate-motivated violence, and this amendment is an important step in that fight.

So to summarize what this amendment does, it would add gender, sexual orientation, gender identity, or disability as protected categories under our hate crimes laws. Second, the amendment removes the requirement that a victim be engaged in a federally protected activity such as serving on a jury or attending a public school before the government can act. Third, and very important, the amendment provides additional Federal assistance to State and local authorities to investigate and prosecute hate crimes. I talked about the letter from my sheriff in Los Angeles County. Our law enforcement people need all the help they can get when they are trying to solve a hate crime and then trying to prosecute a hate crime. This bill will give them the assistance they deserve to have if they ask for such assistance. If they don't act, this is a backup law. This says it is a Federal crime. There is a nexus with interstate commerce, but as we know, that is not too hard to make.

So this basically says we are going to protect these individuals in our society who may be disabled and if they are discriminated against because they are a woman or a man—gender bias—or because of their sexual orientation.

Opponents of this amendment will say it punishes free speech and thought

and that every crime will become a Federal hate crime. That is patently untrue. The hate crimes prevention amendment, as I said, is narrow, and we know these crimes do occur. This isn't about punishing speech. This isn't about punishing thoughts. If all that Matthew Shepard had to deal with were taunts about his sexuality, his sexual orientation, that would be one thing. He had to deal with murderers who tortured him. That is different. If they had said something to him and walked out, that would be one thing. They acted on their hatred, and that is un-American. It is un-American.

This amendment doesn't attempt to federalize all crimes, or even hate crimes. The certification provision prevents the Federal Government from stepping into a case unless it can certify that doing so is necessary to secure justice and is in the public interest. Thus, prosecutions that normally take place at the State and local level will continue to be handled there. The difference is we will then give them as a Federal Government all the tools they need from us.

This amendment is an important step as we continue to form a more perfect union, and we can't rest until we do this—and more. We can't rest until we pass laws to create a fair workplace for all. We can't rest until we pass a law that repeals "don't ask, don't tell" and allows our capable Americans and our patriotic Americans to serve our country. We are losing some of the best and brightest from our military because they don't want to live a lie. We can't rest until we pass laws to end racial profiling in our society. We can't rest until we pass comprehensive laws to protect our children from violent crimes.

Years ago I wrote the Violence Against Children Act. I am still waiting to get it passed. When someone takes up a hand against a child and injures that child and hurts that child, that is un-American too. If there is a violent crime against a child, I believe the Federal Government ought to care and ought to help the local governments who are trying to solve that crime and punish that crime if they need help.

So we have a lot of work to do to form that more perfect union. Instead of arguing process today, why don't we have our friends come to the floor and say: This is a wonderful opportunity now to take a step forward and pass this Hate Crimes Prevention amendment, which we have been trying to do for so long, and, of course, not slow down the Defense bill. There is no need to slow down the Defense bill. We can do both.

I urge my colleagues to vote for this amendment and any kind of procedural vote it takes to make it available to us on the floor of the Senate.

I thank you very much, and I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I have sought recognition to speak briefly on the hate crimes legislation. The details of the bill have been explained. The statistics have been enumerated by a number of my colleagues. Perhaps the most impressive statistic is the one from the Attorney General on 77,000 hate crimes.

I do believe it is time we act. This issue first came before the Senate back in 1997, some 12 years ago. Senator KENNEDY was the originator. At that time, he searched for cosponsors among Republicans, and I believe it is accurate to say that I was the only one who would support cosponsorship, and we moved the legislation forward by publishing an op-ed piece in the Washington Post.

I ask unanimous consent that op-ed piece be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.  
(See exhibit 1.)

Mr. SPECTER. Mr. President, I am glad to say that since the time this issue has come before the Senate, there are now 18 Republican cosponsors. My sense is that there will be widespread, if not unanimous, support among the Democrats so that there is a very solid statement respectively in the Senate.

Ordinarily, matters of criminal prosecution are left to the States. The offense is prosecuted in the jurisdiction where it occurred. I have a strong bias for local prosecutions as a generalization and developed that concern from my own experience as a district attorney for the city and county of Philadelphia. Law enforcement ought to be local. But the brutal fact of life is that when you deal with hate crimes—and there are many examples. In 1997 when Senator KENNEDY and I first introduced the bill, there was the case of racial matters—dragging an African-American through the streets of a Texas town. There has since been many other brutal cases, one highly publicized of a gay young man, a victim of a hate crime in Wyoming.

Regrettably, discrimination for race or national origin continues until this day. There has recently been a publicized matter that occurred in Huntingdon Valley, a suburb of the city of Philadelphia, at a swim club where the swim club operators negotiated with a group representing Hispanic and African-American children, ages 5 to 11, to occupy a swimming pool, with the swimming pool's permission. When the youngsters, Hispanics and African Americans, went to swim, there was, according to the media reports—and I have spoken to people on both sides personally to find out what went on—there was animus hostility, racial comments directed at African Americans and the Hispanics, conduct which one would have thought America would have passed long ago.

But it is as current as 2 weeks ago in the suburbs of my hometown of Philadelphia, PA. The matter has moved forward. It has resulted in lawsuits being

filed. It would be my hope that a way could be found to handle the matter to the satisfaction of all parties. But I can understand if the parents of the children involved want to pursue remedies. This is a matter that could be handled by the civil rights division, which has prosecutorial authority and also has authority for mediation and reconciliation.

I cite that as an illustration of a matter that is as current as today's news on animus based on race, whether it be African Americans or Hispanics. It is my hope that this matter will receive prompt attention in the Senate and will be part of the pending legislation and it will go to conference and become the law of the land.

#### EXHIBIT 1

[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 nightclub 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.

**THE PRESIDING OFFICER** (Mrs. HAGAN). The Senator from New York is recognized.

**MR. SCHUMER**. Madam President, I rise in support of the vital legislation that is long overdue. More than a decade has passed since Matthew Shepard was brutally murdered. Yet the bill that bears his name is still not law.

The Matthew Shepard Hate Crimes Prevention Act has broad bipartisan support here in the Senate, passed handily in the House, and has the unequivocal support of the President and the Attorney General. Indeed, Attorney General Holder recently told the Senate Judiciary Committee that passage of this legislation is one of "his highest personal priorities."

It is essential that we act now to pass this amendment and make the Matthew Shepard Act the law of the land.

According to FBI statistics, more than 9,000 violent hate crimes were perpetrated in 2007. However, experts tell us that since hate crimes often go unreported, the actual number is an order of magnitude higher.

Whatever the number—all hate crimes are unacceptable. They are crimes inflicted not merely on individuals, but on entire communities. As Mr. Holder put it, "perpetrators of hate crimes seek to deny the humanity that we all share, regardless of the color of our skin, the God to whom we pray, or whom we choose to love."

Let me be clear: this legislation does not criminalize speech or hateful thoughts. It seeks only to punish action—violent action that undermines the core values of our Nation.

This legislation strengthens the ability of State and local governments to prosecute hate crimes by "providing grants to help them meet the often onerous expenses involved in investigating these crimes. It also enables the Justice Department to assist State and local governments in prosecuting hate crimes, or to step in when these governments fail to act."

Even though the aggregate number of hate crimes has slightly decreased nationally over the past decade, the number of crimes against certain groups has risen. Hispanic Americans have increasingly become the target of bigots' rage. And, according to a recent AP story, the number of fatal hate crimes against LGBT people increased by a shocking 30 percent last year.

Indeed, late last year, there was a particularly chilling hate crime perpetrated in New York against an Ecuadorian man named Jose Osvaldo. Jose, a father of two, was walking home with his arm around his brother and was viciously attacked with an aluminum baseball bat while his perpetrators yelled anti-gay and anti-immigrant slurs.

This legislation sends a clear message to those perpetrators and to all others: in America, we do not tolerate acts of violence motivated by hatred of vulnerable communities. In America, you are free to be yourself, and you should never be attacked for doing so.

What message will it send to Americans if we fail to pass this amendment? I wonder and I worry.

I urge my colleagues to support this much-needed legislation.

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

**THE PRESIDING OFFICER**. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

**THE PRESIDING OFFICER**. Without objection, it is so ordered.

**MR. CARDIN**. Madam President, I take this time to speak in favor of the pending amendment, the Matthew Shepard Hate Crimes Prevention Act. This is similar to an amendment we considered last year to try to advance the modifications of the Federal hate crimes statute.

Some have questioned whether we need this act. They claim that the instances of hate crimes in America have diminished. I wish that were the case. I wish we did not need to have a separate law to deal with hate-motivated violent acts in America.

All we need to look at is what happened at the Holocaust Museum on June 15 of this year, when Stephen Johns, a security guard, was murdered. He was murdered by someone who had extreme views. Look at Lawrence King, a 15-year-old who died on February 12, 2008, because he was gay; or look at what happened after the last elections, when two men went on a killing spree to find African Americans; or look at what happened in July 2008, when four teenagers were brutally beaten up because they were immigrants.

All we need to look at are the FBI statistics that indicate in 2007 there were 7,600 hate crimes in America. That is the reported hate crimes. We know many of these acts go unreported and the numbers are much larger. Ethnic communities are reporting an increase in violent acts motivated by hate.

Unfortunately, this law is needed, and we need to strengthen the law so it can effectively accomplish its purpose. What do I mean by that? This amendment, this law, builds on federalism. It builds on what our States are already doing to combat these crimes. Forty-five States have separate laws that deal with hate crimes—31 deal with violence against someone because of their sexual orientation, 27 include gender violence. What we need to do is strengthen our Federal law so federalism, in fact, can work.

The Federal Government has resources which the States don't always have to be able to pursue these types of violent acts. This amendment would strengthen the Federal statute so it would apply to acts of violence based upon someone's gender, sexual orientation, or disability. And it would go beyond the current Federal law, which only allows Federal involvement if the crime occurs during some protected activity.

It also provides the resources to help our States, in that the bill provides grants to State, local, and tribal law enforcement entities for prosecution, programming, and education related to hate crimes prosecution and prevention.

The bill contains a requirement that the Department of Justice certify that Federal prosecution is necessary because the States cannot or will not effectively prosecute the crime. This is to supplement the actions of the State, to work with our States, to respect what federalism should be about. Most of these matters will be handled by the State, but the Federal Government may be able to help the State, and this bill will allow us to do exactly that.

The bill also contains provisions broadening the categories of hate crimes tracked by the FBI. So these

are improvements in the law that will maintain our ability to deal with this type of outrageous activity.

Some have questioned: Well, isn't every violent crime a hate crime? The answer is no. A hate crime occurs because the perpetrator intentionally selects the victim because of who the victim is. Similar to actions of terrorism, hate crimes have a greater impact because they cannot only affect the victim, they affect our entire community. We are all diminished when someone in our community is violated because of his or her ethnic background or because of race or sexual orientation.

We need to speak to our national priorities. This amendment speaks to what America should stand for—that we will not permit or tolerate someone to be victimized because of that person's gender or race or because of that person's sexual orientation or disability.

This is a bill that has enjoyed broad bipartisan support in this body. Many of us have worked for many years in order to improve the Federal Government's ability to respond in these areas. This is the next chapter that needs to be done. I hope my colleagues will do what we did in the prior Congress and pass this amendment to the Defense authorization bill so we can move forward to strengthen our resolve against this type of hate activity in America.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. UDALL of New Mexico. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

#### HEALTH CARE REFORM

Mr. UDALL of New Mexico. Madam President, watching the Senate floor during the debate over health care reform, I cannot help but feel that some of my colleagues are a little confused. It is almost as if they have forgotten that this discussion is going on in America, not Canada. They don't want to talk about the 22,000 Americans who died in 2006 because they do not have insurance. They don't want to talk about the more than half a million Americans who file for bankruptcy after incurring unpayable medical bills. They don't want to talk about the millions of other Americans who worry that they are one layoff away from losing coverage and one heart attack away from losing everything.

No, they want to talk about Canada. I am not saying we should not sympathize with our neighbors to the north, but I wish to talk about how we can fix the health care system for the American people, for the people of New Mexico, since none of the plans we are considering would set up a Canadian system.

Let's look at how we can pass an American solution to the problems

faced by Americans. If you like the coverage you have, you should be able to keep it, and none of the plans we are considering would take away the options Americans already have. But the status quo is not enough. We need to give consumers another option. We need to give them the freedom to choose a quality, affordable, public health option. After all, what is more American than competition and choice? Even if our private market functioned perfectly, it would make sense to give consumers another choice. But our health care system doesn't function perfectly. Our system provides too little choice and too little quality at too high a price. Too many of America's health care markets are effectively monopolies, or at best duopolies. According to a recent study by the American Medical Association, most American metropolitan areas are dominated by one private insurer, and others are largely dominated by just two. In New Mexico, the top two companies have 65 percent of the market. To put that in perspective, Dell, Compaq, Gateway, HP, and IBM combine for less than 54 percent of the U.S. personal computer market. I have to believe we can offer our consumers more than two choices of health plans.

My State is a rural State, and in rural areas such as ours consumers often have less choice. They get to pay whatever the local health care plan wants or go without insurance. Insurance companies have used this monopoly power to offer less and to charge more. As consolidation has increased since 2000, insurers have raised deductibles and copayments without increasing coverage, and they have continued to make healthy profits while their customers struggle to keep up with rising costs. Premiums for employer-sponsored health care have almost doubled since 1999, but rising costs have not hurt health care company CEOs. The top 10 CEOs managed to pull down \$85.4 million in 2008.

Even worse, what competition we have doesn't keep companies honest. Instead, they compete to avoid the poor and the sick. In New Mexico, an insurance company can charge a customer more because of a health problem from 5 years ago or because he happens to be 45 years old and not 44. They can even charge a woman more because she might get pregnant. They have every incentive to do so.

When a private insurance company turns down somebody who needs help, its profits go up. When it denies needed care, it has more money for its shareholders. That is a broken system.

In New Mexico, we have seen the impact of unaffordable health care. Almost one in four New Mexicans is uninsured and nearly half our citizens have inadequate coverage. The vast majority of these people are employed, but they and their employers simply cannot afford coverage.

A constituent of mine from Cedar Crest, NM, wrote me the other day to

explain she and her husband cannot afford to offer their employees health care at a small manufacturing company they own. The rates for small businesses such as theirs are unaffordable.

Our high numbers of uninsured citizens cost the rest of us money. The average New Mexico family with insurance pays an additional \$2,300 just to cover the price of the uninsured—\$2,300. You see, if a New Mexican with diabetes has insurance, his insurance company can pay a small amount to have him receive routine tests and treatments from a podiatrist. But if a New Mexican is uninsured, he is less likely to receive checkups. As a result, he is more likely to miss the telltale signs of a circulatory problem and twice as likely to need an amputation.

Diabetes amputations cost almost \$39,000, and New Mexico did 366 of these procedures in 2003 for a total of \$4.2 million. When a diabetic has a limb amputated, the operation is only the beginning of the medical services he will need. For the uninsured, those costs fall on every family with insurance.

Some of my colleagues admit that the status quo does not work, but they claim a government regulator can keep the private HMOs in line; we will not need more regulation if open competition can be more effective. Others just claim that a public health care option will not work, but the evidence suggests otherwise. Experts have developed a number of viable plans to give Americans the choice of a quality, affordable public option. More than 30 State governments offer their employees a choice between private insurance and a State-backed public option, including my State of New Mexico. These States have not found this strategy unworkable. They have not seen either public or private coverage dominate the market. Their employees just have another choice. What would be wrong with that?

The truth is, this Congress has a very simple decision to make. We can stick with our current system or we can give Americans another option that guarantees quality, affordable care. Opponents of reform do not want to talk about that decision so they talk about Canada. But the decision before us has nothing to do with Canada. It is about the American people. They have been stuck in a broken system too long, and it is time to give them another choice.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. UDALL of New Mexico). Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I ask unanimous consent to speak as in morning business.

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

AUNG SAN SUU KYI

Mr. MCCAIN. Mr. President, I wish to take a few moments to address the situation in Burma.

Though it has faded from the headlines, the outrageous detention and trial of Aung San Suu Kyi, that astonishingly courageous Burmese leader, continues. Ms. Suu Kyi, who has spent the majority of the past two decades under house arrest, is being held at the notorious Insein Prison compound. She was charged with crimes following the arrival at her house of an uninvited American man who swam across a nearby lake. He then reportedly stayed on her compound for 2 days, despite requests to leave. Based on this occurrence, the regime charged Ms. Suu Kyi with crimes and ordered her to stand trial in late May. Since then, she has been jailed and awaits possible conviction and up to 5 years in prison.

Let us recall that this long-suffering woman is, in fact, the legitimately elected leader of that country. To this day, the generals refuse to recognize the 1990 elections, in which the Ms. Suu Kyi's National League for Democracy was victorious. Instead, they plan to proceed with "elections," to be held next year, that they evidently believe will legitimize their illegitimate rule. The ruling regime seeks ways to ensure that Ms. Suu Kyi and other NLD members are not free to participate in these elections, since it is the NLD—and not the military junta—that has the support of the Burmese people. As an estimated 2,100 political prisoners, including Aung San Suu Kyi, fill Burmese jails, the international community should see this process for the sham that it represents.

I once had the great honor of meeting Aung San Suu Kyi. She is a woman of astonishing courage and incredible resolve. Her determination in the face of tyranny inspires me, and every individual who holds democracy dear. Her resilience in the face of untold sufferings, her courage at the hands of a cruel regime, and her composure despite years of oppression inspire the world. Burma's rulers fear Aung San Suu Kyi because of what she represents—peace, freedom and justice for all Burmese people. The thugs who run Burma have tried to stifle her voice, but they will never extinguish her moral courage.

Earlier this month, the United Nations Secretary-General traveled to Burma in an attempt to press the regime on its human rights abuses. The ruling generals reacted in their typical fashion. They stage managed Ban Ki-moon's visit, even refusing his request to speak before a gathering of diplomats and humanitarian groups.

Instead, before leaving, he was forced to speak at the regime's drug elimination museum. He was also refused a meeting with Aung San Suu Kyi. Burmese officials stated that their judicial regulations would not permit a meet-

ing with an individual currently on trial. Incredible. Following his visit to Burma, the Secretary-General pointed out that allowing a meeting with Ms. Suu Kyi would have been an important symbol of the government's willingness to embark on the kind of meaningful engagement essential to credible elections in 2010. He is right, and the regime's refusal is simply the latest sign that meaningful engagement is not on its list of priorities.

It is incumbent on all those in the international community who care about human rights to respond to the junta's outrages. The work of Aung San Suu Kyi and the members of the National League for Democracy must be the world's work. We must continue to press the junta until it is willing to negotiate an irreversible transition to democratic rule.

The Burmese people deserve no less. This means renewing the sanctions that will expire this year, and it means vigorous enforcement by our Treasury Department of the targeted financial sanctions in place against regime leaders. And it means being perfectly clear that we stand on the side of freedom for the Burmese people and against those who seek to abridge it.

The message of solidarity with the Burmese people should come from all quarters, and that includes their closest neighbors—the ASEAN countries. The United States, European countries, and others have condemned Ms. Suu Kyi's arrest and called for her immediate release. The countries of Southeast Asia should be at the forefront of this call.

ASEAN now has a human rights charter in which member countries have committed to protect and promote human rights. Now is the time to live up to that commitment, and ASEAN could start by dispatching envoys to Rangoon in order to demand the immediate, unconditional release of Aung San Suu Kyi.

Following the visit of the U.N. Secretary-General, the Burmese representative to the U.N. stated that the government is planning to grant amnesty to a number of prisoners so they may participate in the 2010 general elections. ASEAN states should demand the implementation of this pledge to include all political prisoners currently in jail, including Ms. Suu Kyi.

Secretary of State Clinton will travel to Thailand later this month to participate in the ASEAN Regional Forum. I urge her to take up this issue with her Southeast Asian colleagues.

Too many years have passed without the smallest improvement in Burma. And although the situation there is replete with frustration and worse, it is not hopeless.

We know from history that tyranny will not forever endure, and Burma will be no exception. Aung San Suu Kyi, and all those Burmese who have followed her lead in pressing for their own inalienable rights, should know: All free peoples stand with you and support you. The world is watching not

only your brave actions but also those of the military government, where cruelty and incompetence know no bounds.

Burma's future will be one of peace and freedom, not violence and repression. We, as Americans, stand on the side of freedom, not fear; of peace, not violence; and of the millions of people in Burma who aspire to a better life, not those who would keep them isolated and oppressed.

The United States has a critical role to play, in Burma and throughout the world, as the chief voice for the rights and integrity of all persons. Nothing can relieve us of the responsibility to stand for those whose human rights are in peril, nor of the knowledge that we stand for something in this world greater than self-interest.

Should we need inspiration to guide us, we need look no further than to that astonishingly courageous leader, Aung San Suu Kyi. The junta's latest actions are, once again, a desperate attempt by a decaying regime to stall freedom's inevitable process in Burma and across Asia. They will fail as surely as Aung San Suu Kyi's campaign for a free Burma will one day succeed.

Mr. President, I ask unanimous consent to have printed in the RECORD an article from BBC News entitled "Inside Burma's Insein Prison" and an AP article entitled "Myanmar junta stage-manages visit by UN chief."

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

[From BBC NEWS, May 14, 2009]

#### INSIDE BURMA'S INSEIN PRISON

Burmese pro-democracy leader Aung San Suu Kyi is being held in the notorious Insein jail in Rangoon, after being charged with violating the terms of her house arrest.

Human rights campaigners say incarceration at the top security prison, which is known as the "darkest hell-hole in Burma", could be tantamount to a death sentence—especially as the 63-year-old's health is known to be fragile.

Bo Kyi, now joint secretary of Assistance Association for Political Prisoners (Burma), has firsthand experience of life in Insein jail.

He was jailed for more than seven years for political dissent, and was kept in solitary confinement for more than a year, in a concrete cell that was about 8ft by 12ft (2.5m by 3.5m).

There was no toilet in the cell—just a bucket filled with urine and feces. He slept on a mat on the floor.

Mr Kyi says he was tortured and beaten by the prison guards. He was shackled in heavy chains, with a metal bar between his legs, which made it difficult to walk.

Every morning for about two weeks, he says he was made to "exercise"—forced to adopt awkward positions and if he failed he was brutally beaten.

During this time he was not allowed to shower and was forced to sleep on bare concrete.

#### DISEASE RIFE

He was later moved from isolation and shared an overcrowded cell with four other political prisoners.

He says the prison has the capacity to house 5,000-6,000 prisoners. He estimates there are currently some 10,000 in detention.

Once a week they were able to wash their clothes. But during the stifling summers he said there was no water to bathe.

With only three prison doctors to treat 10,000 inmates, he says diseases such as tuberculosis, scabies and dysentery were rife. Mental illness was also widespread.

Bo Kyi says Aung San Suu Kyi is most likely being held in a special compound built for her detention in 2003, which has a wooden bed and a toilet.

Although the conditions there are probably not as bad as in the rest of the prison, he says he is still extremely concerned for her well-being.

#### "TOTALLY UNACCEPTABLE"

Ms Suu Kyi has spent more than 11 of the past 19 years in some form of detention under Burma's military government.

She was jailed at Insein prison in May 2003, after clashes between opposition activists and supporters of the regime.

Her latest period of house arrest was extended last year—a move which analysts say is illegal even under the junta's own rules. It is due to expire on 27 May.

Human rights activist Debbie Stothard, from the pressure group Altsean-Burma, has urged the international community to intervene in trying to secure Ms Suu Kyi's release.

"Many people have died when they have been detained in Insein, that's a proven fact."

"The fact that Aung San Suu Kyi . . . now might be subject to a life-threatening detention condition—it's totally unacceptable," she said.

"It's totally unjust and it's time that Asean, China and the rest of the international community finally put their foot down."

Many analysts believe that pro-democracy leader's arrest is a pretext by the military regime to keep her detained until elections expected in 2010.

[From AP, July 6, 2009]

#### MYANMAR JUNTA STAGE-MANAGES VISIT BY UN CHIEF

(By John Heilprin)

YANGON, MYANMAR.—Myanmar's ruling junta wanted Ban Ki-moon to go into a grandiose drug museum through the back door to prevent the U.N. secretary-general from making a rock-star entrance.

Ban eventually did walk through the front door—a small victory after he had lost far bigger battles, notably a hoped-for meeting with jailed democracy leader Aung San Suu Kyi (pronounced ong sahn SUE CHEE).

After a two-day visit in which the generals tried to stage-manage the world's top diplomat at every step, Ban left the country with few prospects of even slightly loosening the iron grip on power held by military regime and its junta chief, Senior Gen. Than Shwe.

If people saw Ban acting independently in Myanmar "that would cause Than Shwe to lose face," said Donald Seekins, a Myanmar expert at Japan's Meio University. "So they want to manipulate him."

By snubbing Ban, the country's military rulers lost an opportunity to improve its standing among many of the world's nations that view the struggling country with rich reserves of gas and minerals as a pariah.

Inside Myanmar, Suu Kyi's opposition party said Than Shwe (pronounced Tahn SHWAY) showed he is unwilling to permit real change ahead of the 2010 elections, which would be the first in two decades.

Ban had asked to make his closing speech to diplomats and humanitarian groups Saturday at a hotel, but the junta refused and forced him to instead speak at the government's Drug Elimination Museum.

Ban's staff didn't want his presence there—where a wax figure depicts a military intelligence chief chopping opium poppies, which Myanmar views as a scourge introduced by colonialists—to appear like another prop furthering the government's agenda.

"They fought us over every last detail," said a U.N. official who took part in organizing the trip, speaking anonymously and out of protocol because of the sensitivity of the matter.

Ban—whose mild-mannered facade belies a toughness and occasional temper—would have preferred a tete-a-tete with Than Shwe to having note-taking aides around, an example of his belief in his ability to sway recalcitrant world leaders if only he can get them alone in a room.

But Than Shwe's idea of a tete-a-tete was to pit himself and the other four generals who together make up the ruling State Peace and Development Council against Ban and some high-ranking U.N. deputies in the rarely visited capital of Naypyitaw, according to U.N. officials.

The 76-year-old Than Shwe suggested that Ban might not be invited back until after the elections.

Ban said Than Shwe promised to hand over power to civilians after the elections. But the generals refused to follow U.N. recommendations intended to prevent sham elections, including publishing an election law and freeing Suu Kyi and 2,200 other political prisoners to ensure general participation.

"Only then will the elections be seen as credible and legitimate," Ban told reporters Monday in Geneva, Switzerland.

The government refused to honor the results of the 1990 elections after Suu Kyi's party won in a landslide. The junta tolerates no dissent and crushed pro-democracy protests led by Buddhist monks in September 2007.

At the end of the trip, Ban tried to defuse the notion he was returning empty-handed.

He said the visit was an opportunity to plant seeds that could blossom later and that he was dutifully relaying the international community's message the elections must be seen as credible.

In the meantime, Ban said he will keep talks alive with Than Shwe through the so-called Group of Friends on Myanmar.

That approach hasn't nudged Myanmar on key issues. Nor have eight previous visits by Ibrahim Gambari, Ban's top envoy to Myanmar, produced many results.

"Than Shwe is using the United Nations as a way of buying time or distracting people from the main issues, so it isn't very constructive," Seekins said. "I don't think Than Shwe is willing to make political concessions, especially concerning Aung San Suu Kyi. I think he would really like to put her away in jail and not have to worry about her."

In the absence of Suu Kyi, it was left to Ban to deliver unusually stinging remarks about the government, its pummeling of human rights and the urgent need to set a new course.

When he took the stage at the museum, it was a rarity in the military's half-century of dominance—an outside political figure allowed to say what he wants.

And after much haggling, Ban's black Mercedes was allowed to pull up to the front door of the museum. There, his motorcade disgorged a small entourage of aides and a half-dozen international journalists. Local press awaited him inside.

That also ensured an audience for him in Myanmar and beyond—another small victory.

Mr. MCCAIN. Mr. President, from the story of the Burmese prison, let me quote:



Human rights campaigners say incarceration at the top security prison, which is known as the “darkest hell-hole in Burma”, could be tantamount to a death sentence—especially as the 63-year-old’s health—

Referring to Aung San Suu Kyi’s health—

is known to be fragile.

Bo Kyi, now joint secretary of Assistance Association for Political Prisoners (Burma), has firsthand experience of life in Insein jail.

He was jailed for more than seven years for political dissent, and was kept in solitary confinement for more than a year, in a concrete cell that was about 8ft by 12ft. . . .

There was no toilet in the cell—just a bucket filled with urine and faeces. He slept on a mat on the floor.

Mr. Kyi says he was tortured and beaten by the prison guards. He was shackled in heavy chains, with a metal bar between his legs, which made it difficult to walk.

Every morning for about two weeks, he says he was made to “exercise”—forced to adopt awkward positions and if he failed he was brutally beaten.

During this time he was not allowed to shower and was forced to sleep on bare concrete.

It goes on.

So she is there in that prison. I hope and pray the treatment she is receiving is not anywhere along the lines of what this prison is well known for.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, first, I commend my colleague from Arizona, Senator MCCAIN, for his great leadership and for his important words about Burma. No one would know better than Senator MCCAIN about the human rights violations of someone held in a prison such as that.

As he is aware, on a bipartisan basis, the women Senators have come together to support Aung San Suu Kyi and her fight in Burma.

I would also add, I recently met with a Burmese community in my State. They are concerned about their relatives there and everything that is happening in that country. We have someone in our office whose relatives are in Burma.

So I thank the Senator for his words and also for his leadership on the amendment, the Levin-McCain amendment to strike the \$1.75 billion added to the bill that is on the floor to purchase additional F-22 aircraft that have not been requested by the Pentagon.

This is a very difficult issue for many people in this Chamber, including the Senator from Arizona. But we all know in the end what counts is to do the right thing for our troops and for our national security.

This amendment truly gives us an important choice: Will we continue to pour billions into unproven weapons systems, despite repeated cost overruns and program delays or are we going to make the hard choices necessary to ensure that our troops in the field have what they need to fight present and future conflicts?

These F-22s, we know, possess unique flying capabilities, but not one has

ever flown over Iraq or Afghanistan. We have much more pressing needs. Both the past President and the current President support this amendment. I hope my colleagues will support it as well.

I am actually here to speak in support of the Matthew Shepard Hate Crimes Prevention Act. I am a cosponsor of this legislation which will help us fight hate crimes and make our communities safer.

Among other things, the bill would impose criminal penalties for targeting a victim on the basis of race, religion, sexual orientation or disability.

I wish to thank Senator LEAHY for his work on this bill and, of course, Senator KENNEDY for his work and leadership on the issue over the years.

I have been involved with this piece of legislation for many years. If you go way back to 2000, when I was the county prosecutor for Minnesota’s largest county, I was actually called to Washington for the first time to take part in a ceremony in which the bill was introduced.

I remember this moment well because there I was with the President at the time, President Clinton, and Attorney General Reno. We were ready to walk in for this ceremony to introduce the hate crimes bill. I was standing outside, and the military band struck up “Hail to the Chief” because the President was entering the room. I started to walk, and all of a sudden I felt this big hand on my shoulder, and this voice said: I know you are going to do great out there, but when they play that song I usually go first.

It is something I will never forget.

So here I am now, 9 years later, with this same bill. We are working very hard to get this bill passed. I am hopeful we will be able to do that.

What I remember most about that day back in 2000, however, was the meeting I had with the investigators in the Matthew Shepard case. They were two burly cops from Wyoming, and they talked about the fact that until they had investigated that horrible crime, they had not considered what the victim’s, Matthew Shepard’s, life was like.

When they got to know the family in the case, when they got to know the mom, and they got to know the people surrounding Matthew Shepard, their own lives changed forever.

I hope by passing this bill we can prevent other Matthew Shepards from being targeted and deter hate crimes.

Attorney General Eric Holder recently appeared before the Senate Judiciary Committee to talk about his support for this bill, and he gave us some somber statistics. He reported that “there have been over 77,000 hate crime incidents reported to the FBI” from 1998 to 2007 or “nearly one hate crime every hour of every day” for the past decade.

In my State of Minnesota, there were 157 reported offenses in 2007. But when I think about this issue, it is not just

about the statistics. It is about the victims of these crimes.

When I was county prosecutor, we had a number of cases that were clearly motivated by hate. That was one of the reasons, actually, I was chosen to go out to Washington. And part of it was we had worked well with the Federal prosecutors on some of the cases.

We had the case of a 14-year-old African-American boy who was minding his own business, and a guy who did have some mental health issues told his friends: I am going to go out and—he used a different word—but shoot a Black kid on Martin Luther King Day. And he did. And he almost killed this little 14-year-old boy. But he survived, and we prosecuted the case.

I also think about a young Hispanic man. He was working in a factory, and his boss got mad at him because he did not speak English and he was speaking Spanish at work. His boss took a 2 by 4 and hit him over the head, resulting in bleeding in his brain and brain damage—all for speaking Spanish.

I also think about the case we had with a Hindu temple that was severely vandalized by young kids. And I think about the case of a Korean church that had all kinds of hateful graffiti written on it. Some of these cases, as I said, were major attempted murder cases. Some of them were simply graffiti cases. But to the people in that church, to the people in that temple, it meant something much more.

That is why I was glad, at least in a few of these cases, we were able to use our State hate crimes legislation. Those were cases in Minnesota—a place where you might not think you would see these kinds of cases. But we did.

This bill in front of us, the Matthew Shepard hate crimes bill, will strengthen the ability of Federal, State, local, and tribal governments to investigate and prosecute hate crimes. It increases the number of personnel at the Treasury Department and the Department of Justice working on hate crimes. It gives grants to State and local law enforcement officials investigating and prosecuting hate crimes. It authorizes the Attorney General to provide resources and support to State, local, and tribal law enforcement officials for hate crime investigations and prosecutions.

In addition, this bill authorizes the Federal Government to step in when needed and prosecute hate crimes, when needed, after the Justice Department certifies that a Federal prosecution is necessary. While most of these cases will continue to be handled by State and local jurisdictions, the bill provides a Federal backstop for State and local law enforcement to deal with hate crimes that otherwise might not be effectively investigated and prosecuted or for when States request assistance. It is a backstop. Think about how many other areas of the law where we have these kinds of backstops. In the gun area, as the Presiding Officer is aware from his work in the State of

New Mexico, sometimes we have overlapping jurisdictions. The gun crime is a perfect example. State laws can apply, but sometimes the Feds will come in or you will want them to come in and handle the case. The same with drug crimes. It helps to have that Federal backdrop for the investigating power, for the sentencing power, and for many other things. So this bill won't usurp the role of local law enforcement but, rather, supplement it when needed.

Finally, I wish to note that this legislation has the support of numerous law enforcement organizations, including the International Association of Chiefs of Police, the Major Cities Chiefs, and the National District Attorneys Association.

For years we have recognized the need for this legislation. I think back to 2000 when I was standing outside of the East Room with President Clinton when it was first introduced. For years we have known we need this legislation, but year after year the forces of reaction have stalled and blocked and tried to do everything they can to make it go away. This must end.

A little over 40 years ago, Robert Kennedy broke the news to a crowd in Indianapolis that Martin Luther King, Jr., had just been assassinated. During his speech, Kennedy called on the crowd and the country to make an effort, to understand and to comprehend, and to replace that violence, that stain of bloodshed with an effort to understand with compassion and love. We should answer his call today.

I look forward to the day—and I hope it will be very soon—when the Hate Crimes Prevention Act becomes law. It is long overdue. I urge my colleagues to support it.

Thank you very much, Mr. President.

I yield the floor, and 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. DORGAN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. DORGAN. Mr. President, we are on the Defense authorization bill, apparently stranded, unable to vote on an amendment that had been offered dealing with the issue of the F-22. The F-22 airplane is a remarkable airplane. I have talked to pilots who have flown it. I have seen it at Edwards Air Force Base. It is an extraordinary airplane.

It costs a lot of money. We have built as many as the Defense Secretary wants built at this point. The Chairman of the Joint Chiefs, the Defense Secretary, the head of the Air Force, has indicated they want to cap the F-22 at that number—I believe it is 187—and do not wish to build more. They say that is all we need. That is all we want.

There is a \$1.75 billion fund that was put in this bill, now, as an amendment in the Armed Services Committee, to build more F-22s. So the amendment by the chairman of the committee and by Senator MCCAIN, the ranking member, was to take the \$1.75 billion out of the bill. I support the amendment—not because I don't like the airplane, I do; but if those who are in charge of the Pentagon, Secretary Gates; Admiral Mullen; the head of the Air Force, Secretary Donnelly; General Schwartz and others say we do not want anymore F-22s, don't need anymore F-22s to do the mission that we believe is necessary for that airplane, and instead we want to move toward the Joint Strike Fighter—if that is their judgment, in my judgment we ought not put another billion back into this bill. Yet that is what happened in the subcommittee.

I wish to call attention to the fiscal policy and where we are in this country. President Obama has been in office a relatively short period of time. He inherited an unbelievable mess. There is no question about that. We are in the deepest recession since the Great Depression. There is a substantial decrease in revenues and increased spending this year as a result of this very steep recession. Social service costs are going up, and there's more unemployment, more food stamps and so on. I believe there is close to a 20-percent reduction in revenue for the government and close to a 20-percent increase in spending. On top of that, Congress passed a stimulus or economic recovery program. All of this has driven the deficit up in this fiscal year, a very sizable deficit. That deficit will be very sizable next year and the year after.

It begins to go down and then goes back up in the outyears. This is a fiscal policy that is not sustainable for our country. It just is not. It is not a Democratic or Republican policy that is not sustainable, it is a fiscal policy of trillions and trillions of dollars of red ink that we must change.

If we cannot even deal with the issue of adding \$1.75 billion to build more planes that the Defense Department says they do not want, we will hardly be able to deal with the more difficult fiscal problems in the future. So I support the amendment offered by the chairman and the ranking member. I hope we get a chance to vote on that amendment.

The issue of spending money we do not have, often on things we do not need, is not new in any committee in this Congress. There are plenty of areas where we can take a pretty big slice out of spending. You can do it, not with just big programs, you can do it with smaller programs. I brought to the floor a couple charts that show an issue that, in my judgment, is flatout total, complete, thorough government waste. I have tried, now, about 5 years in a row to get rid of it and have been unsuccessful. I finally got an amendment this past week added to an appropriations bill that shuts down the fund-

ing. But now we will see, there will be a big fight on the floor to restore the funding. Let me tell you what this is.

Again, we are not talking about a lot of money. In my hometown, this would be a lot of money, but my hometown is 300 people, so \$20, \$30 million is a lot of money.

This is a picture of Fat Albert, which is an aerostat blimp or aerostat balloon. This is Fat Albert, purchased by the government. In fact, we purchased a couple of them so we can put it way up in the air on a tether, and it would broadcast television signals into the country of Cuba because the Castro brothers run an operation down there that doesn't provide any freedom to the Cuban people, so we are sending them television signals to tell them how wonderful things are in the United States and how awful things are in Cuba.

Actually, the Cuban people do not need those television signals to know that because they can simply listen to Miami radio, or they can listen to what is called Radio Marti, which actually gets into the market in Cuba. We broadcast Radio Marti. I don't object to that. It costs a fair amount of money. I don't object to that. We get radio signals into Cuba to tell the Cuban people what is going on in our country and the problems they face in their country.

I have been to Cuba. I think the Cuban people know pretty much the problems they face with the Castro regime, a regime that squeezes the freedom out of the Cuban people.

But here is the deal. We have aerostat balloons, first of all, to put television signals into Cuba. The problem is we have spent a quarter of a billion dollars doing it and the Cubans can't get the TV signal. Why? Because the Castro government jams it easily. They jam it just like that. We used to broadcast from 3 in the morning to 7 in the morning a signal no one can see, so we use these balloons on a big tether and broadcast a television signal to people who can't see it. We kept spending money thinking it was a great thing to do, broadcasting a television signal nobody can see. In fact, one of these balloons got loose, got off its mooring, and wound up somewhere in the Everglades. They had a devil of a time trying to catch this balloon; and another balloon disappeared in a hurricane, and they have never seen it since.

They decided, you know what, we can actually clip the American taxpayer for more than a balloon. What we will do is buy an airplane and broadcast the television signal the Cuban people can't see from an airplane, so the American taxpayers bought an airplane. It flies, I think, 5 or 6 days a week, broadcasting television signals into Cuba that the Cubans block, that no one can see.

You talk about ignorant? At a time when we are deep in debt, spending money we don't have to broadcast television signals to people who can't get it? That is unbelievable to me.

Here is what the Cuban people see. All of us have seen bad television with snow covering the entire screen. Here is what is broadcast—it is programs with caricatures of the Castro brothers. The Cubans don't need to be reminded the Castro brothers are a scourge in that government.

Let me describe what John Nichols, who is a professor of communications and international affairs at Penn State University, has said:

TV Marti's response to this succession of failures over a two-decade period has been to resort to ever more expensive technological gimmicks, all richly funded by Congress. And none of these gimmicks, such as the airplane, have worked . . . It's just the laws of physics. In short, TV Marti is a highly wasteful and ineffective operation. . . .

Even as I speak, I assume our airplane is broadcasting a television signal to the Cuban people who cannot receive it.

TV Marti's quest to overcome the laws of physics has been a flop.

John Nichols says, the same witness.

Aero Marti, the airborne platform for TV Marti, has no audience currently in Cuba, and it is a complete and total waste of \$6 million a year in taxpayer dollars. The audience of TV Marti, particularly the Aero platform is probably zero. . . .

Talking now about the airplane platform.

We are talk about the GAO report.

The best available research indicates that TV Marti's audience size is small . . . telephone surveys have reported less than 1 percent had watched TV Marti over the last week.

I don't know what 1 percent is. I don't know what less than 1 percent is. That is minuscule, right? But I have offered an amendment that takes out about \$15 million to support TV Marti, which is a program that has now wasted about a quarter of a billion dollars sending television signals to Cuba that no one in Cuba can see. You know what, it is very hard to get this kind of thing stopped.

The reason I wish to mention it today is we are on the floor talking about \$1.75 billion for the F-22. We are, I assume—almost everyone here is supporting the next generation fighter we are building, the Joint Strike Fighter. But the Pentagon says they want to stop and not order anymore of the F-22s. It is a reasonable thing, to me, that being deep in debt, choking on red ink, at least we might want to accept the recommendation of not building that which they do not want. At least with respect to Aerostat balloons and airplanes and television signals to Cuba that no one can see, the very least the taxpayers should expect of us is that perhaps we would stop spending money sending television signals to no one. Maybe that is not too much to ask.

Let me ask consent to speak in morning business for 5 minutes on a different subject.

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

#### FINANCIAL CRISIS INQUIRY COMMISSION

Mr. DORGAN. Mr. President, today House and Senate leaders appointed members for a Financial Crisis Inquiry Commission. That is the title, the Financial Crisis Inquiry Commission. I have been calling for both a commission and also a select committee of the Congress because I think that we have a requirement and responsibility to establish what is the narrative that has caused this economic and financial crisis in this country. We are in a deep financial crisis and have been for some long while.

This didn't happen as a result of some giant hurricane or some tornado or some flood, or some other natural disaster visiting our country. No, this was not a natural disaster. This happened as a result of decisions being made by human beings here among us. The question is who? And what decisions? How did this happen? What is the narrative that has caused the most significant crisis since the Great Depression?

Very smart economists have said, you know what, over a long period of time from the Great Depression forward, we created stabilizers in this country so we would not see steep recessions or certainly not a depression in our future. We are evening things out, they would say, and that was probably true for a while, but this recession is deep, this hole is steep. The question is, What caused it? What happened.

I support the creation of a commission today. I offered legislation in January of this year, called the Taxpayer Protection Act, which called for the creation of a commission to investigate this financial crisis. My colleagues, Senator CONRAD and Senator ISAKSON, similarly offered a commission proposal, a piece of legislation during debate earlier this year. I support the notion of going forward. The appointments today to this Commission are welcome. I hope the Commission does all that is necessary to uncover what has happened here.

I still believe we need a Select Committee in the Senate. The New York Times said it in an editorial, nothing can substitute for the work the Senate must do itself. I say that because we now have, in recent days, additional news items in the paper you read. Let me pick one. I don't mean to pick this company out just to be punitive, but it is a good example in recent days: Wells Fargo.

Wells Fargo is a FDIC-insured bank. It is one of the biggest banks in America:

Wells Fargo to expand securities business. It plans to grow and invest in securities activities that it largely inherited from Wachovia. The business is to be called Wells Fargo Securities.

What is Wachovia? Wachovia is a bank that was failing because Wachovia had all kinds of problems. Wachovia was a bank that had purchased Golden West Financial, which had about \$120 billion, we are told, in toxic option adjustable rate mortgages.

By the way, related to this, I saw in the newspapers the other day that pick-your-payment mortgage plans have actually now had a higher default rate than other subprime mortgage loans. Think of that. You look at that and think, What was the pick-your-payment plan? That was the plans put out by these mortgage companies—sophisticated, exotic plans—saying to people, you know what, pick your own payment. You tell us what you will pay and we will write a mortgage around it.

So we had all of these strange plans out there, exotic plans, some of which were creating an unbelievable bubble of speculation. We had bank holding companies buying them and we had FDIC-insured banks actually trading them. Pretty soon you got toxic assets lying in the belly or the gut of these financial institutions, and they are going to go belly-up unless somebody else buys them.

So Wells Fargo buys Wachovia, and then Wells Fargo announces that, well, our investment banking and our capital markets businesses are now going to operate under a new name, "Wells Fargo Securities."

The question is this: With the biggest banks in the country operating, in many cases with holding companies engaged in real estate and securities issues, having demonstrated now that these holding companies do not have firewalls that are much thicker or much more beneficial than tissue paper, are we still going to continue to see all of this?

Are we still going to see FDIC-insured institutions, for which the taxpayers are ultimately responsible for failure, talking about: We are going to get involved in more risk trading, more securities?

Wachovia. Well, Wachovia Bank, I have spoken of them before. Wachovia Bank was one of those banks buying sewer systems in Germany. Why? Because an American bank wanted to own a sewer in a German city? No. They wanted to avoid paying U.S. taxes, so they did sale-lease back transactions with German sewer systems.

That is part of a culture issue with companies, it seems to me, when you do that sort of thing. But now we have Wells Fargo that bought Wachovia, announcing the best part of what they bought was Wachovia's securities business. The fact is, Wachovia was not going to make it. That is why Wells Fargo purchased them.

We ought to be asking a couple of questions these days about the Administration's announced plans for new financial reform, which I welcome by the way. This President inherited this mess, so he is talking about financial reform, and I welcome that discussion.

One, I think we ought to have a healthy and robust discussion about whether the Federal entity that shall become the systemic risk regulator in this country should be the Federal Reserve Board.

Not me. Not me. The Federal Reserve Board is what has helped cause this

problem. I mean, the Federal Reserve Board acted blindly for over a decade. In addition, the Federal Reserve Board by itself is almost totally unaccountable to anyone and operates in very substantial secrecy.

Why would we decide to have an agency that has failed over the last decade or so in managing and supervising the financial industry in this country, that watched the creation of these big holding companies, watched what happened with the mortgage companies with unbelievably speculative instruments, watched the advertisements on television saying: If you have been bankrupt, slow pay, no pay, got bad credit, come to us. We will give you a loan—the Federal Reserve watched all of that and did nothing. Now we are going to be told they are the ones to save us with respect to systemic risk in our economy? I do not think so. That is No. 1; the Federal Reserve Board is going to be the entity to deal with systemic risk? Boy, there is no evidence, at least in recent years, to suggest that makes much sense.

No. 2, no discussion yet, and there might be, on this issue of too big to fail. Does it matter that we have allowed the creation of entities in the financial sector that are too big to fail? In my judgment it matters because if they are too big to fail, then the American taxpayer bails them out. That is what happened last fall.

The Treasury Secretary leaned over the lectern to us one Friday and said: Look, if you do not pass a bailout bill in 3 days, a three-page bill giving me \$700 billion, this economy is going to fall off a cliff.

Well, I did not believe it. I did not vote for the bailout. But the fact is, all of this was because some of the largest financial institutions in the country, he said, were in deep trouble.

Why were they in trouble? Because they loaded up with substantial risk. Congress, in the last decade, has passed laws that allowed them to do that. They said this is modernization. But when we create institutions that are too big to fail and then they load up with substantial risk, especially those that are FDIC-insured with holding companies now, engage in securities, and that is exactly what Wells Fargo is announcing: We bought Wachovia. Now we will take the securities on with Wachovia and decide to juice it up.

Should we continue with the doctrine of too big to fail? I do not believe so. Yet in the intervening months, the last 8 months or so, the very institutions that were judged too big to fail and were required to get bailouts from the American taxpayer are still engaged in merging with other institutions, making them bigger and even less able to fail.

So is there someone willing to intervene to say too big to fail has to change? Must we perhaps at least have a discussion about breaking up some institutions that are too big to fail? What about very large strong regional

interests that are not too big to fail? I am just asking the question because nobody, in talking about financial reform that I am aware of these days, is willing to address the question of too big to fail. And you cannot address this question of financial reform without including it.

All of us want the same thing for this country. We want this country to recover. We want our economy to expand and grow and create jobs and be healthy again. The fact is—I have talked about this many times. I taught economics briefly in college. The fact is, all of the charts and graphs and indices are irrelevant as compared to the confidence of the American people.

When the American people are confident about the future of this country and about their future, about their job, about their family, then they do things that manifest that confidence. They buy some clothes, buy a car, take a trip, buy a house. They do the things that expand the economy because they are confident about the future.

When they are not, they do exactly the opposite and that contracts the economy. The question is, how do we give the American people confidence going forward that things are going to be better? Month after month, because unemployment has a long tail even past recovery, we see hundreds of thousands of people having lost their jobs. Obviously, those folks do not have a lot of confidence. They feel helpless and hopeless.

How do we give people confidence we are going to fix things that are wrong so this will not happen again? That is where this issue of financial reform comes in. Part of that confidence, it seems to me, can come from this institution, from the Congress and the President. Part of it can come from the people watching this institution.

Take a look at this amendment, an amendment that says: Let's not spend \$1.75 billion we do not have on something the Pentagon says they do not want.

Confidence can come from affirmative action on that. Part of that confidence could come from 100 or 1,000 of these examples, a little program called TV Marti, broadcasting television signals to people who cannot see it, and doing it for 5, 10, 15 years and spending a quarter of a billion dollars. Part of that confidence could come from the American people taking a look at our deciding to shut these kinds of things down and trimming back government that has become bloated. So we can do some of this to create confidence.

But another part of it, it seems to me, has to come from the administration's judgment about what is real reform in financial reform. That must include, in my judgment, the issue of too big to fail. It must include effective regulatory oversight so we do not have the kind of activities going on that we saw for the last 10 years: financial institutions engaged in unbelievable practices with no one minding the

store and no one watching who were the referees of the system, wearing striped shirts and whistles and blowing the whistle when they saw a foul in the market system. We cannot continue that. We need effective regulation. We need effective reform. When we get that, the American people will feel: You know what. They fixed that which caused this serious problem, and we feel better about the future of this country.

We have a lot to do in a short time. Some big issues of health care, energy, and climate change, and others. I am going to visit about the issue of climate change tomorrow. But we have very big issues that have great consequences for this country. But at the moment, we stand in a very deep recession.

The American people are concerned about the future and want some assurance that all of us are doing the things necessary to put the country back on track.

One step today is the amendment that was offered by the chairman and the ranking member of this committee. It is \$1.75 billion. That is a lot of money. But step after step after step in the right direction can give people confidence about the future of this country.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ISAKSON. I ask unanimous consent to speak for 10 minutes in morning business.

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

#### FINANCIAL MARKETS COMMISSION

Mr. ISAKSON. Mr. President, almost 7 months ago, Senator CONRAD from North Dakota and myself began an adventure attempting to convince this body and the one across the hall to create a Financial Markets Commission to study and do a forensic audit of what happened to our financial markets in 2007, 2008, and 2009. All of us recognize we have been through a catastrophic financial collapse with many potential components contributing to the gravity. It is not over yet.

I commend Leader REID and Leader MCCONNELL, Leader BOEHNER in the House, and Speaker PELOSI and others who had the authority under the legislation for announcing their appointments today to the Commission. I particularly commend the majority on the appointment of Ms. Born to the Commission. It was her outspoken words prior to the collapse that should have warned us better, or we should have paid more attention to, about the overleveraging of the economy and the underwriting of risk. Nonetheless, the

collapse has happened. The recession is here. Unemployment in Georgia today topped 10 percent. We are seeing predictions that it will top 10 percent for the entire country within the days ahead. It is critically important that we find out what went wrong, what the contributing factors were, and recommend back to the Congress those actions we need to take to ensure this never happens again.

For my children and grandchildren, if I have one last legacy, it is to say, when it was on my watch, we found out what the problem was, we corrected past errors, and we gave a little more security to their investments and future in the days to come.

I have my opinions as to what went wrong, but I know I am not smart enough to have all the answers. There are others who think they know what has gone wrong. We already have from the White House as well as from the Senate some who are making recommendations over creating czars or authorities or things to address the financial collapse. It would be a mistake beyond words for us to do that now in the absence of all the facts. This Commission has the authority, the money, and the power to get to the bottom of the problem. We gave them a \$5 million budget, an 18-month timetable, and subpoena powers. As evidenced by those who have been named today, we have some of the best financial minds in the country—not elected officials, not members of government, some former servants, but some of the best minds in the business to begin the process of studying the collapse that began in 2007, continued through 2008, and in a protracted way continues today.

It is important that we get all the facts. There is plenty of blame to go around. Members of the House, in 1999, such as myself, who voted overwhelmingly for the repeal of Glass-Steagall—that very well could be one of the things the Commission finds was where we had too much deregulation in financial services. We ought to know that and what contribution it may have had. I have grave suspicions over the role Moody's and Standard & Poor's, the ratings agencies, played. I wonder, why should the agency that rates the security be paid by the creator of the security? They ought to be paid by the person buying the security if they are looking for a surety. And why were credit default swaps unregulated? Why did they fall outside the purview of government? What is it about FASB rule 114 that is hurting so bad in the community banking system today because of the devastation of mark-to-market on real estate? And congratulations on the change by FASB of rule 157, which has lessened some of the pressure on mortgage-backed securities and the valuation of those, which has helped some bigger institutions. But there are lots of things that could have gone wrong and some that did. We need to have all of them on the table, the

best minds in the business looking at it, and we need to have a bipartisan, unfettered, comprehensive recommendation on what we need to do to ensure that it never, ever happens again.

I urge the President and our leadership to be cautious in moving ahead regulatorily without first getting the facts together. We are in an environment now where everybody does know what the rules are as they exist. In the few months ahead, long before this Commission reports, a lot of decisions will be made that will be dependent and predicated upon the environment the investment community thinks they are operating in or at least knows they are operating in today.

We have some bumps ahead. Commercial mortgage-backed securities are the next shoe to drop in this economic compromise we have been through, although those mortgage-backed securities are not in trouble as much because of their underwriting as they are from the effects of the poor underwriting of the residential mortgage-backed securities that caused a collapse of those markets and those securities. That comes ahead of us.

We have another wave of adjustments in terms of residential mortgages. That is not over. We have the pending problem of the number of mortgages in foreclosure, more performing, good loans at one time than subprime-originated loans at their beginning, meaning the unemployment rate and the protracted decline of the economy is contributing to people who were paying and are falling behind on payments on their houses. Now, because values have declined, they recognize they are better off to leave than to try to sell the house because they can't get anything out of it. We must put an end to this decline. We can best do it by having all the facts necessary at our disposal to know what went wrong when, who did wrong where, and what we need to do as quickly as possible to prohibit this from ever happening again.

I spent 33 years of my life in the private sector in the real estate business. I know lots of people in that business, and I know how much the families they represent, the customers they have had, and the families themselves have suffered in the months past and the pending suffering yet to come.

This is the most important thing this Senate and Congress can do, to do a forensic audit and diagnosis. Let the chips fall where they may and then make the corrections necessary so it never happens again.

I am happy to commend our leadership for their expeditious appointment of highly qualified and talented people. I hope all in this body will pay close attention to what they say and do and not rush to judgment thinking we know the answer, when all of us really know this Commission is essential to finding out what really did happen and what we really do need to do.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. UDALL of Colorado. Thank you, Mr. President.

Mr. President, I rise today as a member of the Armed Services Committee in the Senate to support this bipartisan bill in front of us that is critically important to our national security.

I applaud Chairman LEVIN and Ranking Member MCCAIN for their leadership in guiding this bill to the floor today. They have done a tremendous job. I also want to acknowledge the expert staff they have been ably supported by who serve on the committee the Acting President pro tempore and I are both so honored to be a part of.

I am particularly grateful to them for including provisions important for Colorado, including \$560 million in authorized military construction.

I would like to highlight in particular the military construction dollars for Fort Carson, which is in the wonderful city of Colorado Springs and the County of El Paso. Millions of dollars have been allocated to Fort Carson for military construction projects to prepare to expand the post so it could house a 47th Brigade Combat Team, and millions more are in the pipeline for fiscal year 2010.

But the future of that funding was put in doubt when Defense Secretary Gates announced earlier this year that the Army would not create a new brigade combat team at Fort Carson.

I remain disappointed that brigade will not be coming to Fort Carson, at least in the near future. But I understand Secretary Gates's concern that we need to fill out the brigades we have, expand the amount of dwell time service members have between deployments, and meet readiness requirements before we create new brigades.

Still, I wanted to ensure that Fort Carson and the Colorado Springs community are not punished because of the Army's decision. Many of the soldiers at Fort Carson live and work in substandard buildings. They still need new barracks, mess halls, vehicle maintenance shops, and other infrastructure—even if that new brigade combat team will not be located there.

A number of facilities were scheduled to be replaced in future years anyway, so with the dollars we have kept in the bill, the 43rd Brigade Combat Team will get its updated facilities a few years early. I am pleased the committee worked with me to preserve the most important construction dollars at Fort Carson. This ensures the soldiers at Fort Carson will have the quality of life they deserve.

The bill also includes language I offered in the committee with Senator

LIEBERMAN that studies the benefits and risks of reducing the planned number of BCTs from 48 to 45. The relationship between the number of brigades and dwell time and demands on specific military occupational specialties, so-called MOSSs, is complicated. I want to make sure the reduction of BCTs results in the upsides we expect and does not present unforeseen problems or downsides.

Staying on the topic of what is important in the bill to Colorado, there is \$246 million in funding to keep the cleanup of the Pueblo Chemical Depot on track. This will allow the destruction of weapons there and the cleanup at the depot to be completed by the congressionally mandated date of 2017. Significantly, the bill funds the disposal, onsite, of these hazardous wastes left after the chemical treatment of the mustard agent. I worked with the people of Pueblo to fight a proposal to ship this waste offsite, so I am glad the bill underscores the DOD's commitment to onsite disposal. It is the safest thing to do and makes the most sense.

Finally, in regards to Colorado, the committee approved an amendment I offered regarding reimbursement for health care providers, such as Pikes Peak Behavioral Health Group in Colorado Springs. This center, and many centers like it, want to help our soldiers and their families, but TRICARE—which is the civilian health care system for military personnel and their dependents—cannot keep up with the high costs of medical care, and sometimes providers are not reimbursed at all for their necessary services.

In particular, TRICARE providers are not reimbursed for providing case management services for soldiers with PTSD and traumatic brain injury, known as TBI. If we help these soldiers stay in treatment, if we make sure they get their medical appointments, and if we generally coordinate their care, we end up reducing costs, and we help those soldiers and their families who are facing these challenges with mental health function in their communities.

So this amendment directs the Defense Secretary to assess the efficacy and cost of case management services for those with serious mental health problems. My hope is the study will show the benefits of case management and then help further the DOD consider covering this important service under TRICARE.

If I might, let me turn to the broader legislation because it includes many provisions that do not directly relate to Colorado.

The bill supports our service members, and it keeps Americans safe. It authorizes \$679 billion for defense programs, with \$129 billion going to our ongoing operations in Afghanistan and Pakistan.

First and foremost, the bill focuses on our military's readiness needs. We need to do all we can to help make sure

our men and women in uniform—who voluntarily put their lives on the line for us, and who have been stretched to the limit by repeated deployments—have the training, the equipment, and the facilities necessary.

To help our men and women in uniform support themselves and their families, the bill provides a 3.4-percent, across-the-board pay raise, as well as an extension of stop-loss pay for 2 more years. That is an important number.

Importantly, this bill gives Afghanistan the attention it deserves. I had the great privilege of traveling to that part of the world recently, and I think there is a window of opportunity to try to arrest deteriorating security conditions in both countries and to work with the civilian governments in Afghanistan and Pakistan to achieve stability and security in this all-important region.

This is not about “staying the course.” This is about finally committing resources and attention to an area that is a critical front in the war against Islamic extremism and correcting the mistakes and missteps of recent years.

That is what the bill would do. It would refocus our attention on this important region. It would protect our troops in harm's way by providing funds for MRAP all-terrain vehicles to be deployed in Afghanistan and additional Blackhawk helicopters to give mobility to our troops.

Our bill also supports the training and equipping of the Afghan Security Forces, as well as efforts to help the Pakistani Government understand and implement a counterinsurgency strategy on the part of their military forces.

Moreover, our bill cares for our wounded warriors. It expands TRICARE benefits for certain military retirees. It requires mental health assessments of service members prior to deployment, and it calls for an increase in the number of military and civilian behavioral health personnel.

We also include a comprehensive review of the activities of the Department of Defense for the prevention, diagnosis, and treatment of substance abuse disorders among service members. This is particularly important in light, today, of a report that has been released—the EPICON study—that directly focuses on Fort Carson.

This is a study that was initiated last year to examine the records of Fort Carson soldiers who have been involved in violent crimes since returning from Iraq and Afghanistan. The Army Surgeon General, Lieutenant General Schoomaker, put together a team of experts to identify any commonalities among the violent crimes.

I had a chance to sit down with General Schoomaker yesterday. He and his team have concluded that although risk factors alone do not explain a “clustering” of crime in the 4th Brigade Combat Team of the 4th Infantry Division—the 4 of the 4—a combination of factors converged to increase the

risk that these soldiers would be engaged in violent crime.

One concern General Schoomaker expressed was that the stigma and lack of referral to the Army Substance Referral Program for required substance abuse screening may have increased the overall risk of violent behavior. The general talked about the need to reduce barriers to treatment for alcohol and drug abuse, which is an Army-wide concern. He mentioned pilot projects ongoing at a number of posts where soldiers who “self-identify” a substance abuse problem can get treatment without the knowledge of their commanders, helping them seek treatment without fear of appearing weak in the eyes of their superiors. I will be urging the Army to establish a similar pilot program at Fort Carson.

Mr. President, let me turn to the bill and what is notable for what it does not include. There are policies that are difficult to change because they are antiquated and no longer reflect the reality of our society. The failed policy, “don't ask, don't tell,” is a good example. But the fact that it will be difficult to repeal does not mean we should not try.

Since the implementation of this program in 1993, the Armed Forces have discharged over 12,000 brave and qualified combat troops—code-breakers, medical and intelligence specialists, and skilled translators—simply for being gay. This includes over 300 service personnel who have been discharged since President Obama took office.

Mr. President, this is 2009. I believe this discriminatory policy undermines the strength of our military and the fairness of our great Nation. We are engaged in two wars. It is counterproductive to discharge service members who have critical skills to winning these wars, even as the military has to spend scarce dollars to replace them. In my opinion, we need to bring the injustice of this policy to the forefront now, and I plan to work with my colleagues and with the administration to see that we accomplish, in a timely manner, the full repeal of “Don't Ask, Don't Tell.”

There are things this bill doesn't include that it shouldn't include, such as spending on underperforming, unnecessary, and outdated weapons systems. It took courage for Secretary Gates to make the recommendations he did, since it is never easy to stop spending programs in our Defense budget. But we need to stop funding programs that significantly exceed their budget and we need to stop spending limited dollars to buy more capability than the Nation needs.

There are also provisions in this bill that shouldn't be included, such as additional spending on the F-22. I voted in committee against an amendment to add \$1.75 billion to the bill to purchase F-22 aircraft that the military does not



want, does not need, and says we cannot afford. The F-22 is a valuable, capable aircraft, but the question is whether we need more than 187 F-22s to meet the Nation's requirements, and there is bipartisan agreement that we do not. Presidents Obama and Bush, two Secretaries of Defense, three Chairmen of the Joint Chiefs, and current members of the Joint Chiefs agreed that 187 aircraft are sufficient.

So let me conclude by saying that this is a good bill. It is a bill that balances the need to sustain our current war-fighting abilities with the need to prepare for the next threat to our national security. It is critical that we are able to meet the operational needs of our military today, even as we continue to prepare our men and women in uniform to be the best trained and equipped force in the world.

This is a good bill for our Nation and for my home State of Colorado; it is a carefully drafted and considered bipartisan bill, and I urge its passage.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I thank the Senator from Colorado, not just for his statement and for his support for this bill but for his work on this committee. He has made a major contribution already. We look forward to his continuing work with us. As he knows and has so well expressed, this is a bipartisan effort on the part of the committee. It is important that we continue that way, and his instincts have shown already very dramatically that those are his views as well.

So I thank him very much, not just, again, for the support of an amendment that we plan on getting back to as soon as we dispose of the hate crimes bill but also, and even more importantly, for his great work on our committee.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma is recognized.

#### TRIBUTE TO NORM COLEMAN

Mr. INHOFE. Mr. President, I wish to pause for a moment. I know we are on the bill, and I am most anxious to proceed with the Defense authorization bill, having served on the committee since 1994 and before then in the House. It is imperative now that we get as robust a bill as possible.

Before doing that, let me mention one thing because I haven't yet spoken about this. I have been watching several of our colleagues who have come to the floor to speak about a great Senator, Norm Coleman, who is no longer seated in the Senate but who is a remarkable character.

A good friend of mine, Paul Weyrich, who recently died, wrote an op-ed piece, and it is called "The Workhorses and the Show Horses." He talked about so many of the Members of the House and the Senate who are out there just to make themselves look good. They are the ones who are show horses. Then

there are the workhorses. We talk about someone such as Norm Coleman, who was always there and getting deeply involved in issues, many of which are not popular issues if you are using them to run for reelection. I am thinking of a close friend, a mutual friend of ours named Ward Brehm. Ward Brehm and I have been working together for a long time on some things in Africa, as the Chair is aware, and he was talking about being from Minnesota and how much involved Norm Coleman got in various international affairs issues that don't have any votes behind them, but he was willing to do it. Every time you turned around, he was willing to do things that other people weren't willing to do.

I remember several years ago when he and I met with a delegation from Burundi and Rwanda and the DRC. This was a group that was over here in conjunction with the National Prayer Breakfast. He and I always worked together during the time that we had the National Prayer Breakfast. We would get these people to come all the way over here from different countries, but we kind of concentrated on Africa. I remember him standing there talking about, for a long period of time—keep in mind he is a Jew. I was never real clear where in New York he was from—I think the Bronx or someplace. But anyway, he was very strong in the Jewish community, and I am not. I am on the Christian side. But we would always get together and talk to them about Jesus and talk to them about loving God. And then when he would pray—at the end of these things, we would offer a prayer, and he would end up giving a prayer in Hebrew—an amazing guy.

At the National Prayer Breakfast African dinner 2 years ago—I had sponsored the dinner that was for all the Africans who had come over for the Prayer Breakfast and stayed for the African dinner—he was a major player in that. So these are things people didn't know about Norm Coleman.

The idea is scripturally based; it is Acts 2:42. It is kind of a genesis of these weekly Prayer Breakfasts in the Senate. On Wednesday mornings, we had a Prayer Breakfast and about 20, 25 Senators showed up every Wednesday and Norm Coleman was the chairman of that and was always in these groups. But he was also one who was helping us in forming these same groups with members of Parliament from all over Africa. He was a tireless worker in that effort, which was not something out there to get any votes.

I talked to him the other day, having gone through this election and then the 8 months or so, whatever it was, in recounting and all of that. I told him that many years ago I was mayor of Tulsa, and I did a pretty good job, I thought. I was supposed to win hands down. Someone came out of obscurity and because of a set of circumstances that should have gotten votes, not lost votes, I had lost unexpectedly on that Tuesday.

Well, we had scheduled our Tulsa Mayor's Prayer Breakfast the next morning. Bill Bright, who died not too long ago, came by as the speaker. Keep in mind, here he was the speaker at the Mayor's Prayer Breakfast the morning after I lost the election. He gave the most brilliant speech. I remember how he said it and the words he used. He said: A lot of times we think in terms of what is happening to us today, looking at our own careers, but, he said, God is still up there and there is a plan for all of us. He said in a very clear way that I thoroughly understood, the day after I lost the election I wasn't supposed to lose, that God opens a window and he closes a door and that window is going to be bigger. I can tell you right now I wouldn't be doing what I am doing today if it had not been for that.

So I would just say about my friend, Norm Coleman, God has a plan in mind for you, Norm, and it is one we will look back someday and say perhaps this is the best thing that could have happened to you. In the meantime, we love you, Norm, and God bless you.

#### AMENDMENT NO. 1511

I wish to also speak in terms of a program that I think a lot of people don't understand, and on which I know there is honest disagreement.

The F-22, people have said, is something like a Cold War aircraft. It is not. To quote Secretary Donnelly and General Schwartz both, because they both said the same thing, they said the F-22 is unquestionably the most capable fighter in our military inventory, not just air to air, as some on this floor have insinuated, but also precision attack air to ground, as well as intelligence collection. In contrast, almost every other piece of military equipment in our inventory today—air, land, and sea—is Cold War equipment that needs to be replaced.

I think about the Bradley vehicle. It has been around since the 1960s. I think about the Abrams tank. It has been around since the 1970s. I think about the Paladin, even though we have had about five major upgrades on the Paladin, that is our artillery beast, and that was actually World War II technology where you had to get out of the thing after every shot and swab the breach. You hear that and people can't believe it. Well, fortunately, we are going to go through an improvement on that. But the point I am trying to make is most of the stuff we have is Cold War stuff and to find that F-22 isn't needed because it wasn't flown in Iraq and Afghanistan, I think, is pretty narrow-minded. We have a lot of people we have to defend America against for contingencies that we don't know are out there and we don't know what our needs are going to be. The need certainly wasn't there in terms of Afghanistan and Iraq, but we don't know where the next enemy is going to be coming from or what the next contingency is. I wish we did. I can remember being on the House Armed Services

Committee my last year there in 1984. We had people testify. They said—these are smart people. They said: You know, in 10 years, we will no longer need ground capability. And look what has happened since that time.

So no matter how smart our people are, there is no way we are going to be able to determine where the next guy is going to come from and what our capability is going to have to be. Is it going to be in the air, sea, strike vehicles, lift capacity, cannons? So we need to keep that in mind because the only thing we have in the form of a fifth-generation fighter is the F-22, and it is uniquely designed and equipped to penetrate a hostile environment and be a savage air dominance for our ground forces. The F-22, I look at it as an investment in the future, not just 10 years down the road but 20 years and beyond. What we build today is going to have to be able to determine and deter and defeat adversaries for decades. Just look at the age of our entire military today. We talked about all these vehicles, but we have such things as the national security in long term, 40 years. We can't even see what we are going to need 10 years from now.

Now we talk about the F-35. Well, the F-35 is great. I am a strong supporter of the F-35 and working on it and getting it up as fast as possible. Its mission requirements are not the same as the F-22. The F-22 is out flying today, and we have that capability today. Only five F-35s are flying, and it is still in the testing period. It is impossible to assess the full capabilities of the F-35 until operational tests are completed in, I think, 2014. Well, that is 2014. This is 2009. There is a lot of time between now and 2014.

While we discuss cutting the only fifth-generation fighter in production today, China and Russia are continuing to move forward with the development of their fifth-generation fighters. I think they call the Chinese one the J-12 and the Russian is the T-50. They are out there right now talking about building these things. Today our Legacy, our F-15s, F-16s, F-18s are less capable than other fourth-generation fighters, such as the SU-27 and the SU-30 series aircraft.

I might remind the President that we have—we already know other countries are buying these capable fourth-plus generation aircraft that are better than what we have now, except for the F-22. We know of one sale, and I remember this—it has been quite awhile ago now—for F-27s from China, 240 of these. Now they are talking about cutting our number of F-22s—and I will talk about the numbers in a minute—down to the 187 and stopping the amendment that would increase that by seven vehicles. I don't want to see our Legacy fighters outmatched by fifth-generation fighters developed by China and Russia. I have always said our pilots are better, our training is better, but they have to have at least comparable equipment to survive.

So our air-to-air threat is only one aspect of the threat our Air Force faces today. Our surface-to-air threat remains to be a real serious problem. You just think about what the Russians are making now, the S-300s and the Chinese 4000s. They are capable of tracking up to 100 targets and getting as high as 90,000 feet in the air.

Now, that is priceless. These systems that make penetrating hostile airspace difficult and deadly for a legacy aircraft, including unmanned vehicles, such as our Predator, which has performed brilliantly, are uncontested facts. Only the F-22, with its advance stealth technology and weaponry and supersonic speeds, can successfully penetrate what we call denied airspace, hunt and destroy strategic ground targets during the day or night, and collect and provide battle intelligence and awareness, and maintain our superiority in the air.

The Air Force officials have repeatedly stated no less than 243 F-22s would be sufficient to maintain a moderate level of risk. We are talking about the deaths of Americans. If that is the goal, that is what we should have. In the beginning, it was 750 F-22s. We have slowly gone down. That is what this amendment is about today.

GEN John Corley, Commander of the Air Force Combat Command, said:

At Air Combat Command, we have held the need for 381 F-22s to deliver a tailored package of air superiority to our Combatant Commanders and provide a potent, globally arrayed asymmetric deterrent against potential adversaries. In my opinion, a fleet of 187 F-22s puts the execution of our current national military strategy at high risk in the near to mid term. To my knowledge, there are no studies that demonstrate that 187 F-22s are adequate to support our national military strategy. Air Combat Command analysis, done in concert with the Headquarters Air Forces, shows a moderate risk force can be obtained with an F-22 fleet of approximately 250 aircraft.

So we are talking about a bare minimum number, and whether it is 243 or 250, that should be a bare minimum number.

While the F-22 hasn't deployed to Iraq or Afghanistan, a theater security package of six F-22s are on a continuous rotation to Guam in the Pacific Theater of Operations and have been forward deployed in Japan.

Why? Because it is the only fighter capable of stealthy penetration of North Korea's air defenses.

Finally, there continues to be allegations about the costs and operations of the F-22—to include an article last week in the Washington Post. The bottom line is, these allegations are false or intentionally misleading. The F-22 cost per flying hour is \$19,750, not more than \$44,000, as they were trying to say. The F-22 maintenance trends have improved from 62 percent to 68 percent. The F-22 skin is not vulnerable to rain. Finally, the fly-away cost for F-22s multiyear this Congress approved is \$142.6 million, not \$350 million.

One final point on all of these supposed studies about the F-22: We have

been through this before with the approval of the multiyear and are going through it again. I have been briefed on both classified and unclassified studies, and while the range of numbers varied, each study concluded that 183 F-22s is not enough. So we need to continue to build the F-22s and look at exporting this aircraft to our allies. Fortunately, some of that is taking place today. Japan, Australia, and Israel have expressed considerable interest in the purchase of F-22s.

Nations around the world realize the F-22A Raptor is the only operational fighter-bomber available that can successfully defeat and destroy air and ground threats of today and tomorrow.

So what we are talking about is—in the markup, we increased the number by seven aircraft. The chief mover of this, I have to say, was Senator SAXBY CHAMBLISS. As I told him, this is not enough. He agreed, but it was the most we thought we could do.

I believe when the time comes for an amendment to cut that number down, we need to give serious consideration to that amendment and not allow it to pass.

There is an expectation of the American people—and I have gone through this before with other airframes and other ground platforms—the American people think we give our kids who go into battle the very best of everything. I can tell you that is not true. I gave an example. There are five countries, including South Africa, that make a better non-line-of-sight cannon than we have today.

To me, that is unacceptable. It is unacceptable to the American people when we explain that is the situation. The F-15, F-16, and the F-14 have done a great job, but they need to move on to the fourth and fifth generation, and the only way to do that is with the F-22, which has been a success story.

#### GUANTANAMO BAY

I have another interest I want to share today, and that has to do with Gitmo. People are probably tired of hearing me talk about Gitmo, but I think we are about to make a mistake. The administration is making the demand that we close Gitmo. I have stood on the floor of the Senate many times and talked about my experiences there—the fact that anybody who wants to close Gitmo, if you ask why, they will say that for some reason people associate that with the types of torture that allegedly went on at Abu Ghraib and all of that.

This has nothing to do with that. There has not been a documented case of waterboarding at Gitmo. It is a state-of-the-art prison.

When President Obama talked about the 17 locations in America where we can take terrorists and relocate them from Gitmo to America, one happened to be Fort Sill in my State of Oklahoma. I went down to Fort Sill, and there was a lady in charge. She is a young major in charge of the prison where they would put these terrorists.

She said, "I don't understand what people are thinking." This young lady, named SMA Carter, said she had two tours at Gitmo, and it is designed for terrorists. They have a court system where they can do tribunals.

We have six classifications of security in Gitmo. It is one of the few good deals the government has. We have had it since 1903. I have told the Presiding Officer this before. We only pay \$4,000 a year for it. Do you have a better deal than that in government? There isn't one.

I have to say the terrorists are still at war with the United States, and we are legally entitled to capture and hold enemies and fighters in the hostilities. We detain terrorists and supporters to prevent them from returning to the battlefield, saving the lives of our service men and women and the lives of civilians who are innocent victims. I have spent a lot of time there. I am familiar with some of the terrorists there who are really bad people. They want to kill everybody who is listening right now. That is their mission in life.

We have had about 800 suspected al-Qaida and Taliban terrorists who have been sent to Gitmo since 9/11—people who are really bad. I looked through there, and we saw Khalid Sheikh Mohammed. He was the architect of 9/11. There was also the guy who was the explosives trainer for 9/11, who provided information on the September 2001 assassination of the Northern Alliance leader, Masood, and on the al-Qaida organization's use of mines. There was also the terrorist financier who provided detailed information on Osama bin Laden's front companies. There was the Taliban fighter linked to al-Qaida operatives connected to the 1998 East Africa Embassy bombings. Remember that, in Tanzania and Kenya? Down there we also had an al-Qaida explosives trainer who designed a prototype shoe bomb for destroying airplanes, as well as a magnet mine for attacking ships.

These people are unlike the types of prisoners we have had in other wars. If we look back during any of our wars, we had soldiers fighting for their countries. These people are not soldiers fighting for a country. They are fighting for a cause, and that cause is to destroy us.

To date over 540 prisoners have been transferred or released, leaving approximately 230 at Gitmo. They include members of al-Qaida and related terrorist organizations, planners of major terrorist attacks worldwide, including 9/11. These are the types of people there.

The intelligence gained from detainees at Gitmo helped the United States and its allies identify, exploit, and disrupt terrorist operations worldwide, saving untold lives. There have been a number of terrorist attacks. For a long time, they were classified, but most are no longer classified.

In 2007, the Senate voted 94 to 3 on a nonbinding resolution to block detain-

ees from being transferred to the United States, declaring:

Detainees housed at Guantanamo should not be released into American society, nor should they be transferred State-side into facilities in American communities and neighborhoods.

On May 20, 2009, the Senate voted 90 to 6 on a bipartisan amendment by myself and Senator INOUE to prohibit funding for the transfer of Gitmo detainees to the United States. Unfortunately, the supplemental appropriations conference report deleted that provision, allowing detainees to be transferred to the United States for trial.

If we put them into our Federal system—I can speak this way because I am not an attorney, so I can stand back and cite the obvious. If we do that, then the rules of evidence are different.

There are a lot of these guys who are picked up, and even now they talk about Miranda rights. That blows my mind when I think about it—when this goes on now and we have the opportunity to get these people and extract information from them. Thinking about the idea of trying them in the Federal court system where, if they cannot get a conviction—and many times they could not for one reason, which is that the rules of evidence are different.

When they were captured, they went by the rules of evidence for military tribunals. So we could have some who would be turned free, and many of them in the United States.

Recent polls show that a majority of Americans oppose closing Gitmo and moving detainees to the United States. By a margin of 2 to 1—which is huge in polls—those surveyed said Guantanamo should not be closed, and by more than 3 to 1 they oppose moving some of the accused terrorists housed there to prisons in the United States.

Again, one of the prisons the Obama administration talked about of the 17 prisons happened to be in Oklahoma. It should be obvious to everybody if we have 17 locations where we are housing terrorists, that becomes a magnet for terrorism—17 magnets in the United States.

A recent Fox News poll said President Obama made a mistake when he signed the order to close Gitmo. Seventy-seven percent of all Americans say that was a mistake, that Gitmo should not be closed, 60 percent of all Americans, up from 53 percent in April and 45 percent in January. You can see the trendlines. The vast majority—nearly two-thirds—is saying he should not close Gitmo and Gitmo prisoners should not be transferred into prisons in the United States. Sixty percent of all Americans say that is true. Sixty percent in polling is a huge number, a vast majority.

I encourage Senators who will be voting on this significant amendment to keep that in mind. Since President Obama announced he intended to close

Gitmo, it has become widely circulated that these detainees could be transferred to American prisons for prosecution in U.S. criminal courts and potentially released in the United States. Moving detainees to prisons here would require significant investment in restructuring existing facilities and would cost taxpayers millions of dollars.

Currently, the United States only has one Supermax facility located in Florence, CO. According to the Bureau of Prisons, as of May 21, "only 1 bed was not filled at Supermax." So if we want to give maximum security to these people, such as Khalid Sheikh Mohammed, we better decide who is going to be in that one bed because we don't have the capacity. The capacity of all the high security Bureau of Prison facilities at the beginning of this month was 13,448 inmates, while the total prison population was approximately 20,000.

So what we are talking about is they are overcrowded, and that is flat not going to happen. Despite claims by Senator DURBIN that the Supermax prisons in the United States are ready to receive Gitmo detainees, the Supermax prisons in the United States are at or above their maximum capacity.

FBI Director Robert Mueller said there is the very real possibility that the Gitmo detainees will recruit more terrorists from among the Federal inmate population and continue al-Qaida operations inside the walls of prison. That cannot happen in Gitmo because they are all terrorists there. That is how the New York synagogue bombers were recruited, in our own prison system.

In 2002, an entire wing of a jail in Alexandria, VA, was cleared out for the 9/11 "20th hijacker," Zacarias Moussaoui, to be housed for his trial—just for one detainee. Bringing Gitmo detainees to the United States could also place America and its citizens at risk by inevitably creating a new set of targets for the jihadist terrorists. Gitmo, on the other hand, is a state-of-the-art prison. I cannot find anyone who has gone over there, including unfriendly media, media that was bent on closing Gitmo—once they go over there and see it, almost all of them change their mind. It is a state-of-the-art facility that provides humane treatment for all detainees. It is fully compliant with the Geneva Conventions and provides treatment and oversight that exceed any maximum security prison in the world, as attested to by human rights organizations, the Red Cross, Attorney General Holder, and an independent commission led by Admiral Walsh. This is state of the art, and this is not a place where torture takes place. It is the only facility of its kind in the world that was specifically designed to house and try these types of dangerous detainees.

If President Obama ever decides to visit Gitmo, I am sure he would equally

be impressed as everyone else, including, I might say, Attorney General Holder. He came back and gave a glowing report and said how great this was and, at the same time, said the President still wants to close it.

When you look at the Gitmo situation, there are, on average, two lawyers for every detainee. There are 127 doctors and nurses. The ratio is 1 to 2 in terms of health care specialists to take care of these prisoners. Here we are talking about health care in this country. Maybe they want to go to Gitmo. They would be a lot better off. Current treatment and oversight exceeds that of any maximum security prison in the world.

There is also a \$12 million expeditionary legal complex. This is very significant because if we are going to do tribunals, we cannot do tribunals in our court system in the United States because it is not set up for that. Obviously, there are some things in testimony that takes place that have to be private. You cannot have these things go out because that would endanger American lives. We spent \$12 million on this complex. It is a courtroom at Gitmo to try detainees, and specifically that is what it is there for. It is the only one of its kind in the world, and it provides a secure location to try detainees charged by the Federal Government. They have full access to sensitive and classified information, full access to defense lawyers, and protection by the full media, access by the press. But it is set up to take care of that specific type of an incarcerated individual.

Senator HARRY REID declared, in a press conference after my bipartisan amendment was adopted, that "We will never allow terrorists to be released into the United States." I applaud Senator REID for that statement and hope he will stay with that because that is something the American people are not willing to tolerate.

He went on to say he opposes imprisoning detainees on U.S. soil, saying:

We don't want them around the United States . . . I can't make it any more clear than the statement I have given to you. We will never allow terrorists to be released in the United States.

Senator DURBIN said:

The feeling was at this point we were defending the unknown. We were being asked to defend a plan that hasn't been announced.

I think Senator DURBIN was correct then and is correct now.

There are lots of questions, very few answers. What is the impact? Let's say we close Gitmo. What is the impact of placing detainees in the U.S. prison system—pretrial and posttrial? Has an assessment been done to determine the risk of escape, as well as potentially creating targets in the United States for terrorist attacks? Will Gitmo detainees be segregated from the regular prison population? Keep in mind, these guys are trained to recruit. That would be a garden spot for them to get into the American prison system to recruit

people to become terrorists. What facilities exist in the United States today that can hold these detainees? We talked about that. They tried to locate 17 facilities, and it will not work.

By the way, the State legislatures in each one of those States that have one of these facilities have passed resolutions or some type of a document saying: We don't want them in our States. That is what they are saying from the States, and we need to listen to them. One might ask, where will the military commissions be held—at Guantanamo or the United States? Obviously, if you close Guantanamo, you lose that facility. Assuming military commissions are held in Guantanamo, where will detainees who are convicted serve out their sentence, if not there, because there is no other place that has the capability of doing that. There are all these questions.

What additional constitutional rights will a detainee gain if they are tried in the United State versus Guantanamo?

Are there differences in the rights awarded to detainees tried in a Military Commission versus civilian court? Could location or geography affect the right afforded to detainees—somewhere in the U.S. versus Gitmo?

How do we handle protection of classified information during trials?

What are the long-term implications on future conflicts of trying these detainees in a civil court versus military commissions?

Why is the administration reading Miranda rights to some detainees captured or held in Iraq and Afghanistan? How many are being read Miranda rights? How many have invoked their rights?

What is the impact of requiring the reading of Miranda rights to terrorists captured on the battlefield and advising them they have the "right to remain silent"?

What if a detainee is found not guilty—where will he be released?

What does the administration plan to do when a Federal judge orders the release of a detainee but the administration knows is too dangerous to release of transfer?

What do you do with a detainee you cannot try or release due to national security concerns?

Despite not having a plan, the administration continues in its quest to empty Gitmo regardless of the cost or the risk.

The Obama administration initially talked with the small South Pacific island of Palau, population 20,000, to accept transfer of a group of 17 Chinese Muslims currently at Gitmo, called Uighurs, at the cost of some \$200 million. That is \$11.7 million per individual. This is not a cheap thing he is talking about doing. The total cost to build Gitmo was only \$275 million. As I said, it has been on lease since 1903 for \$4,000 a year. The Wall Street Journal just yesterday had a government official who said that well over 50 detainees have been approved for transfer to

other countries and that negotiations are continuing with Saudi Arabia to take a large group of Yemeni detainees. Attorney General Eric Holder has estimated that more than 50 detainees may end up on trial by U.S. authorities. This news comes as more and more Americans are growing opposed to the closure of Gitmo, placing them unnecessarily at risk in order to satisfy political goals.

I think we need to stop, sit back, take a deep breath, and look at some of the things that are going on today. The idea that we would have Miranda rights for terrorists, people who have killed Americans, is pretty outrageous.

Finally, on June 9, the Obama administration again went against the will of the Congress and the American people by transferring the first Gitmo detainee to the United States for his trial in New York City.

Ahmed Khalfan Ghailani has been indicted for the 1998 al-Qaida U.S. Embassy bombings in Kenya and Tanzania that killed more than 224 people, including 12 Americans. Ghailani was later captured in Pakistan in 2004 while working for al-Qaida, preparing false documents. Intelligence shows he met both bin Laden and Khalid Shaikh Mohammed in Afghanistan and remained a close associate with al-Qaida until his capture in 2004.

This bonafide terrorist will have the privilege of a U.S. civilian court trial in the United States—I think it is New York. To me, it is inconceivable that could happen. The press reported that Ghailani was smiling when the charges were read to him in New York.

Despite the Obama administration's intentions, they will find themselves in a position where they cannot even try or safely transfer or release Gitmo detainees. As of May 2009, 74 transferred/released detainees have returned to the fight—74. These are the ones we captured again. We know they returned to the fight. How many more are there out there? If you release these people, they go right back to their practice of killing Americans. Former Guantanamo Bay inmate Mullah Zakir, also known as Abdullah Ghulam Rasoul, is leading the fight against the U.S. Marines in the Helmand Province in Afghanistan. He surrendered in north Afghanistan in 2001, was transferred to Gitmo in 2006, and then released. He is out there killing marines today. That is what is happening currently. There is no alternative to Gitmo.

I go through all this not to be disagreeable with anyone except to say there is an answer, and there is only one answer.

Today, we are considering the Defense authorization bill. I have an amendment to that bill. I now have, in a matter of 3 hours, 22 cosponsors. This is amendment No. 1559 to the Defense authorization bill, S. 1390. This does something very simple. I like simple bills because they cannot be misunderstood. They are not like the health insurance bill with over 1,000 pages no

one has read. They are not like the cap-and-trade bill that passed the House with no one reading it, over 1,000 pages. This is just two pages. That is all. It is easy to read. Let me tell you what it says. I am wrong, it is one page. It says an amendment offered by Senator INHOFE:

Sec. 1059. Prohibition on transfer of Guantanamo Detainees.

No department or agency of the United States may

(1) transfer any detainee of the United States housed at Naval Station, Guantanamo Bay, Cuba, to any facility in the United States or its territories.

That is No. 1.

No. 2 is, we cannot “construct, improve, modify, or otherwise enhance any facility in the United States or its territories for the purpose of housing any detainee described in paragraph (1) . . .”

No. 3: We cannot “permanently or temporarily house or otherwise incarcerate any detainee described in paragraph (1) in the United States or its territories.”

That is a very simple solution. It is all in three sentences on one page.

I have a feeling there are going to be many people who know that we are on the right side of this issue, know that the American people are overwhelmingly, by more than two to one, in support of an amendment such as this, and are going to offer some amendment full of loopholes that will still allow them to close it. It will sound good. But this is the only one out there.

Mr. President, I say to my colleagues, if their interest is to really do something about keeping Gitmo open, there is only one vehicle out there. We are on it right now—the Defense authorization bill. That is amendment No. 1559. All it does is prohibit us from transferring any detainee from Gitmo to any facility in the United States of America or its territories; it prohibits us from constructing, improving, modifying, or otherwise enhancing any facility in the United States or its territories for the purpose of housing any detainee described in paragraph 1 above—that is the terrorist; and No. 3, it prohibits us from temporarily or otherwise incarcerating any detainee described in paragraph 1 in the United States or its territories. Period. That is all it does.

I say to those two-thirds people of America, there is a vehicle now we can use to make sure that facility, one of the really true state-of-the-art resources we have in this country, stays open and keeping those detainees, those terrorists out of America. If you want to keep them out of America, this is the way to do it.

Mr. President, I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### GLOBAL WARMING

Mr. INHOFE. Mr. President, I notice no one else is on the floor right now. I was only going to address those three subjects, but I do want to make a couple of additional comments. If anyone comes in and seeks the floor, I will come to a close.

There is one other major issue that we are dealing with right now—we have had a number of hearings—and I would like to kind of put it in perspective so people will understand.

There are a lot of complaints around the country about the cap and trade bill that was passed by the House of Representatives—interestingly by one vote over the majority—which is 219. Most of the bill actually was written at about 3 o'clock in the morning and passed the same day—a thousand pages. I applaud JOHN BOEHNER over there for saying that we want to establish some kind of a program whereby anything we are going to consider on the floor should be on a Web site so all of America can read it at least 72 hours before it is voted on. I applaud that, and I hope we will be able to do that.

I certainly hope we will be able to do that with a bill that I am sure will be passed from the Environment and Public Works Committee of the Senate—the cap and trade bill that has yet to be drafted. The chairman of that committee, Senator BOXER, has stated it is going to basically be the framework of the Waxman bill from the House that was passed by a margin of 219 votes to 212, I think it was.

Anyway, that at least gives us something to talk about. I would like to go back historically to my first exposure to this whole issue. Back about 10 years ago, when we had the Kyoto Treaty, the Kyoto Treaty was a treaty the Clinton-Gore administration was trying to get us to ratify in the Senate. It was a treaty that would establish a cap-and-trade type of arrangement to limit the number of CO<sub>2</sub>—and the proper term is anthropogenic gases—anthropogenic, man-made gases, methane, CO<sub>2</sub>.

The theory behind that, and I believed it at that time because everyone said it was true, was that these man-made gases were causing global warming. I assumed the science was there and was settled. As I say, everybody thought it was. It was at that time that the Wharton School of Economics came out with the Wharton econometrics survey. That survey quantified how much it would cost America in taxes if we in the United States ratified the treaty and lived by its requirements. The result was in the range between \$300 billion and \$330 billion a year.

Now, I have often said one of the most egregious votes ever taken in the Senate was the vote that took place in October of 2008 when we gave an unelected bureaucrat the \$700 billion to

do with as he wished. It was just unconscionable. I voted against it. I was opposed to it, but we lost. We did it, and now, most of the people who voted for it, are sorry. I tried to equate at that time what \$700 billion was, and I said if you take all of the families who file tax returns and pay taxes and do your math, it is \$5,000 a family—\$5,000 for every American family, not just the ones in Oklahoma but everywhere. So I thought, as bad as that was, that was a one-shot deal. If we pass cap and trade, we are talking about a \$300-plus billion tax increase every year, not just once.

So at the time we looked at this, and the Wharton School came out with these figures, I thought, let me be sure in my own mind, as a member of the Environment and Public Works Committee, that the science is there. So I looked into it, only to find out this whole thing came from the United Nations' IPCC—the Intergovernmental Panel on Climate Change. All we have seen are just the reports not from scientists but from politicians on the summaries they give policy donors. So we started talking to real scientists only to find out that really well-established scientists—and this is 10 years ago—who looked at this said: Well, yes, there could be a connection between man-made gases, CO<sub>2</sub>, and global warming. However, it is not a major significant contribution.

Now, to fortify this, then-Vice President Gore was trying to build his case on why we should ratify this convention and he did his own study. He hired a guy—one of the top scientists in America—named Tom Wigley to do an analysis. Now, here was his challenge. If all of the developed nations in the world—America, France, Western Europe and the rest of the developed nations—would ratify this treaty and would live by its emission requirements, how much would that lower the temperature in 50 years? So if all the countries in the developed nations did this, how much would it lower it in 50 years? The result of the study was seven one-hundredths of a degree Celsius. Well, I said that is not even measurable. And I said, if his own scientist says that, we have to have a wake-up call here in America. And that is when I made this statement that people have been throwing at me for 10 years—the idea of the notion that man-made gases significantly contribute to global warming is probably the greatest hoax ever perpetrated on the American people.

Well, when we stop and look back now at what has happened in the scientific community, many members of the community were the recipients of grants and had those grants held up unless they would come in and say, yes, we are going to have to do something about CO<sub>2</sub> in order to stop global warming.

By the way, I have to just say that at this time we are in our ninth year of a global cooling. People seem to forget we have been going through these ups

and downs all throughout recorded history. God is still up there, and we are going to have warming and cooling periods.

The same individuals who are so hysterically behind this idea of passing a cap and trade—putting a huge tax on America at this time—are the same ones in 1975 that were saying we are going to have to do something because another ice age is coming. Well, anyway, this has been going on for a long period of time.

So as we have progressed through the years, more and more scientists have come over who were on the other side. And I call to mind now, just from memory, Claude Allegra, from France. Claude Allegra is a socialist over there—very prominent scientist. He was marching through the aisles with Al Gore 15 years ago, and he has now reversed his position and said, wait a minute, everything we thought from the modeling didn't happen. This thing is not real. He is solidly on the skeptic side now, saying I was wrong back then. This Claude Allegra is the guy Sarkozy now is talking about putting in as the environmental minister of the country of France. Now that is the caliber of people we are talking about.

David Bellamy was the top scientist in the U.K. and David Bellamy was solidly on the other side 10, 12 years ago. He is now saying, we have looked at the modeling and we have changed and this is just flat not true.

A guy named Nir Shaviv from Israel, another top scientist, he was on the other side of this issue and he has now come over.

And for my colleagues who want to really see the fortification, see the numbers we are talking about in terms of scientists who have reversed their position, go to my Web site, Inhofe.Senate.Gov, and look it up. There are a lot of speeches I have made from the floor of the Senate, but one was about the 700 scientists, most of whom were on the other side of the issue and are now saying the same thing as Claude Allegra, David Bellamy, Nir Shaviv, and others have said because they have changed their minds on this thing.

So clearly the science has turned around, and that gives a sense of urgency for some people who want to respond to some of the extremists—mostly in California, and mostly in Hollywood—to go ahead and pass something. Get something passed and get it passed quickly. It is kind of like health care. They want to get it passed before people have a chance to read it.

So now we have a bill that is going to be put together and drafted in the Environment and Public Works Committee, which was going to be coming to the floor of the Senate prior to the August recess—just a few weeks from now—but Chairman BOXER has now decided to put it off until after the recess. I applaud her for that, because time is not the friend of the people who are trying to make believe we are

going to have to pass an expensive tax to address what they consider to be a more serious problem than I consider it to be. And during the August recess, during those 30 days, you are going to have a lot of Members of this Senate be approached by people—such as people in the agricultural community.

I had the opportunity of going and talking to the National Farm Coop the other day and discussing with them what would happen if we were to pass a cap-and-trade system and what that would do to the farmers of my State of Oklahoma and all throughout America. Stop and think about it. Seventy-one percent of the cost of a bushel of wheat is in fertilizer and in energy costs. That is what would go up. So you would be talking about doubling the price of wheat, or I could use soybeans or any other commodity. It would be disastrous for our farmers in America.

So the years have gone by, and slowly people have caught onto this thing, and that is why there is such a sense of urgency by people who want to pass this before the public realizes what it is. Fortunately, the public already understands, and the vast amount of recent polling shows that, just like the issue of closing Gitmo, which I talked about a few minutes ago, they are solidly on the side of not passing a cap-and-trade tax which would constitute the largest tax increase in the history of America to address a problem that people aren't really sure exists to start with.

So I think we will defeat that in the Senate. It will, of course, pass out of the committee. It is a very liberal committee. I love everyone on that committee, but they will pass anything that has to do with a cap-and-trade package, so it will be on the floor of the Senate. But it will not pass the Senate. And the reason I say that is we have had several votes in the Senate—the House had never had any votes. We have considered this five times, and actually voted three times—2003, 2005, and 2008.

In 2003, it was called the McCain-Lieberman bill. At that time, I was the only one on the floor. For 5 days, 10 hours a day, I talked about this and was trying to defeat that thing. For 50 hours, only two or three Senators came down for a short period of time to help me. Now, fast forward from 2003 to 2005 to 2008. The bill was called the Warner-Lieberman bill. We had 23 Senators who came down, and it didn't take 5 days to defeat it; it was just 2 days.

So I think in terms of passing the tax increase called cap and trade, they have about maybe 34, 35 of votes, and it takes 60 votes in the Senate to pass it. Really, I am happy our forefathers were divined and inspired when they thought of the two Houses so we could have checks and balances.

So I think that is what will happen. I know there are other names I could mention but cannot because some of the things I know are at a level of confidence. But some of the new Senators

who have been elected, they don't really want to go back and say—whether Democrats or Republicans, but, in fact, it is the Democrats I have in mind—saying to the people who have just elected them: Aren't I doing a good job for you, coming back from my first session and passing the largest annual tax increase in the history of America? That isn't going to happen, Mr. President. People are so sensitive right now with the level of spending that is going on in this country.

I can remember in 1993, it was the first year of the Clinton administration, and I was complaining at that time on the floor—I was serving in the House of Representatives—of the huge tax increase he was pushing, and all of the things that were going on—with gun control, the Hillary health care, which we all remember. At that time, I remember complaining on the floor: He even has a budget of \$1.5 trillion. Well, guess what. This one is \$3.5 trillion. We can't sustain that. We can't do that in America.

So I think one at a time we are going to have to stop these expensive programs, one being the health care program—I know we can't afford that—another being cap and trade. I think we will defeat that, and I believe America is now going to look a lot more carefully, and they are going to applaud the efforts being made to make sure any bill that comes up for consideration of this magnitude should be on a Web site, as Mr. BOEHNER suggested, and several other Senators have suggested, including myself, for at least 72 hours so we and the American people can read and see what it is going to be. I can assure you, if that had happened when the cap-and-trade bill passed the House, it would not have passed the House.

With that, I see there is someone else on the floor wanting to have the floor, so I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey is recognized.

Mr. MENENDEZ. Mr. President, what is the status of the Senate right now?

The ACTING PRESIDENT pro tempore. The Senate is in consideration of S. 1390.

Mr. MENENDEZ. Mr. President, I rise to talk about the pending amendment. Let's all imagine a situation. You are a 25-year-old, a father of two, it is night and you are walking home across a park. A group of teenagers come near and they throw a slur at you. When you respond and their verbal attacks escalate, they are nasty. They seek to dehumanize you because of where you were born, how you look or how you speak. There is a fight, four on one, in which you are pummeled to the ground and kicked in the skull repeatedly.

As you lie on the pavement in convulsions, foam oozing from your mouth, life slipping away, there is one more insult. They yell a warning to anyone who looks like you or talks



like you that they will do the same thing.

Imagine you are this man's two little children. Your father spends 2 days in intensive care, his face bruised and swollen, his head bandaged, tubes everywhere, and then he passes on from this world. You will never remember your father holding you or feeding you or kissing you; you are too young. What you will remember is growing up without a father. He was the victim of a needless death from a senseless beating, a beating fueled by red-hot hatred for the type of person he was.

The one hope for some small measure of fairness so that these two young children will one day know that justice was served after their daddy was killed would be an appropriate conviction for this unthinkable crime. But in the courthouse the verdict is read. The most serious charges, the most appropriate charges, are discarded. At most, two of the four young men who committed this murder in a bigoted rage will spend less than 2 years—less than 2 years—behind bars. But they could be there for as little as 6 months—6 months in jail. But this man, this father, he is gone forever.

It is as sad and heart wrenching a situation as you can imagine. How we wish it was only that, a horror story we simply imagined. But it is not a figment of our imagination, it is a dose of reality. This nightmare scene actually happened, and it did not happen in a society less open than ours, nor did it happen 100 or 200 years ago. It happened exactly 1 year ago in Shenandoah, PA, less than 150 miles from where this Chamber is; less than 50 miles from my home State of New Jersey.

Luis Ramirez was the target of the vitriol and the beating; struck in the chest so hard he bore a bruise in the shape of Jesus Christ from the medalion he wore on a chain around his neck. As he lay, seizing from the deadly blows, if he had still been conscious what he would have heard were words that, uncensored, do not befit the Senate.

Tell your [expletive] friends to get the [expletive] out of Shenandoah or you will be [expletive] laying next to him.

Tell your [expletive] friends to get the [expletive] out of Shenandoah or you will be [expletive] laying next to him.

This in the 21st century, in the United States of America, the land of the free—all men created equal—life, liberty, and the pursuit of happiness. Not for Luis Ramirez. He may have been born originally in a different country, but he was just as human as you or I. It did not matter. He was cursed and battered and put down like an abused animal would be, in the United States of America.

The people who did this, the people who beat their fellow man to death, treating him as subhuman—this gang gets a veritable slap on the wrist.

We can change that—no more circumstances such as that, not with this

legislation. There is no better prosecutor of hate crimes in our country than Federal law enforcement. They are tough on these hate criminals and they are determined to serve justice in each and every one of these cases. If we are to make sure hate crimes are treated with the seriousness they deserve, if we are to make sure would-be perpetrators think twice, Federal law enforcement must have a greater involvement.

I can hear opponents of this legislation, this particular amendment: This is 2009. The President is African American. It is a reaction to an insignificant problem.

Ask Luis Ramirez, if you could. I would ask them to consider this, from the Leadership Conference on Civil Rights: Between 2003 and 2007, hate crimes reported against Hispanics increased not just a little bit but by 40 percent. In 2007, Hispanics were the target of 60 percent of hate crimes committed based on ethnicity, signifying an increasingly sharp rise.

But this is not just a problem confined to the Hispanic community. The man who packed up his rifle, got in his car, drove to Washington, entered a building, opened fire, and claimed the life of a noble security guard—he didn't just do that at any building. He did it at the Holocaust Museum, because this murderer hates Jewish people, hates them enough to kill.

Let's never forget the namesake of this legislation, Matthew Shepard, a University of Wyoming student who had his whole life ahead of him before it was snatched away on an October night in the countryside near Laramie. Two men, uneasy with Matthew's sexual orientation, drove off from a bar with him, only to beat him mercilessly with a pistol and rope him to a fence, as if a warning to the gay community. They hated Matthew because he was gay. He lost his life because he was gay.

I ask those who would argue against this legislation, how many more tragic stories do we have to hear before we make our laws tougher? How many more? Do we have to hear another story, such as the one of Jose Osvaldo Sucuzhanay, a father of two and native of Ecuador who ran a real estate agency, who was headed home with his brother from a bar after a church party. These brothers walked around the Brooklyn street with arms around each other, like men in Latino cultures often do.

Up drove three men, yelling slurs that were both homophobic and racist, they belted Jose on the head with a glass bottle. They smashed his head in with a metal bat. They continued to beat him and kick him and beat him and kick him. He clung to life for 2 days in a hospital and then he died.

How many more stories? Do we have to hear another story such as that of Marcelo Lucero? He, too, was born in Ecuador and he, too, was a real estate professional and he, too, was killed simply for the way he looked and the

way he spoke, the innocent victim of a senseless gang of teenagers on Long Island, driving around in search of "some Mexicans to [expletive] up."

Here is how the prosecutor described this assault:

Like a lynch mob, the defendant and his friends got out of a car and surrounded Mr. Lucero.

Like a lynch mob—in the 21st century in the United States—they beat Marcelo and stabbed him to death.

How many more of these stories? How many more? Do we have to hear another story such as that of Walter Sanchez? His horrific story happened earlier this year and it happened in my home State of New Jersey.

Walking to a restaurant with his cousin, a car with five men pulled up. Calling Walter a Hispanic son of a [expletive], they beat him senseless. He was one of the lucky ones, escaping with his life, but he still underwent hours of reconstructive surgery to put many of the bones in his face back together.

Again, how many stories do we have to tell? It is time to stop asking and it is time to start acting. We can pass this legislation and know, while there is still a ways to go until we have wiped our society clean of bigotry and hatred, we will have made it harder for the perpetrators of these evil acts to escape justice. As the law is written now, there are too many ways in which those who commit hate crimes can escape the kind of justice Federal law enforcement is prepared to bring.

Sometimes these loopholes are bewildering, even perverse. Remember the story of Luis Ramirez, whose murderers will serve as little as 6 months in jail? The cruel irony is that the deadly beating he suffered occurred in the street, not in the park 100 feet away, the park where Luis had walked minutes, if not seconds, before he was battered. If this murder of a hate crime had taken place in that park, it would have been Federal law enforcement's business. The delivery of justice may have been different. As it turned out, local law enforcement, some of whom were related to the assailants, took 2 weeks to arrest the four men, and we know how the rest of the process turned out.

We can all agree, a hate crime is a hate crime—whether it is in the park or in the street, on the grass or on the pavement, 100 feet this way or 100 feet that way. A hate crime is a hate crime.

I sponsored, when I was back in the New Jersey legislature, the law that became one of the first landmark pieces of legislation on hate crimes in our country. I said then that we cannot eliminate hate with the passage of a law, but we can send a clear societal message that we do not tolerate such crimes against individuals because of their race, because of their religion, because of their ethnicity or, for that matter, their sexual orientation.

Hate crimes are hate crimes. They are all an affront to the set of values

upon which this great Nation stands, and they all deserve the full scrutiny of our Federal law enforcement.

It is time to pass this legislation. I urge my colleagues to vote in favor of the amendment and make sure each hate crime is met appropriately with justice.

I ask you to remember, as I started this speech, that father kicked to death, with the two children who will never ever know their father as so many of us are fortunate to know ours. Remember when you cast your vote. Think that, but for the grace of God, it could be you. That is how momentous this decision is. That is how important this legislation is. That is why justice is served with the passage of this amendment.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. INOUE. Mr. President, the facilities and services located at Ohana Nui and Camp Catlin, and designated as excess, were established at the behest of the U.S. Navy in the 1950s for the benefit of our military and their families. Not-for-profit organizations responded to the needs identified by the Navy to assist our military. The relationships formed between the military and surrounding community have grown over the past 50 years at Ohana Nui and Camp Catlin including schools for children in prekindergarten through high school. It is my hope the Department of the Navy will consider the Federal Real Property Management Regulations regarding adjusted fair market value when making their determination for the Ohana Nui and Camp Catlin property.

Mr. BEGICH. Mr. president, today I submitted amendment No. 1572 to S. 1390 that would provide for earned retirement payments to be restored to a group of selfless heroes in Alaska.

In 1942, after the Alaska National Guard was called overseas, a group of brave Alaska Native men formed a group called the Alaska Territorial Guard, ATG. These men helped protect the territory of Alaska during and after World War II by conducting scouting patrols and constructing military airstrips. The brave men received no pay or benefits for their sacrifices during their time of service in the ATG. After disbanding in 1947, many of these former ATG members continued their service in the army and Alaska National Guard and other services.

Recognizing the heroic and patriotic actions of the ATG members, in 2000 Congress passed a law that made former members of the ATG eligible for veterans' benefits. In 2008, approxi-

mately 25 of these guardsmen, mostly Native Alaskans in their mid-to-late eighties, were issued military retirement credit for their period of service in the ATG and began receiving a modest \$500 a month in retirement pay.

However, in January of this year, the Defense Finance and Accounting Service abruptly ended these payments based on a finding that a misinterpretation of the law had resulted in erroneously awarding these payments. These men, who live in remote areas and rely on this payment for day-to-day needs, were devastated by the unexpected decrease in their monthly income.

Understanding the significant financial impact experienced by these heroes and their contributions during World War II, the Secretary of the Army provided them 2 months of pay from the emergency and extraordinary expense fund. The Alaska Legislature, further cushioning the economic loss experienced by this courageous group, enacted a bill that temporarily restores the entitlement to the ATG members until the earlier of the date that the Federal Government restores the entitlement or February 1, 2010.

My amendment permanently restores the earned Federal entitlement benefit to members of the ATG for their service. As Members of the Senate, it is our responsibility to take care of those who have served and sacrificed. Earlier this year, this body supported restoring this entitlement to the ATG in the Senate-passed budget resolution, S. Con. Res. 13. I ask my colleagues to support this amendment to honor those who have served.

Mr. President, amendment No. 1573 to S. 1390 would authorize the Department of Defense to reimburse military families for costs incurred for transport of a second personally owned vehicle on a change of permanent duty station to or from Alaska, Hawaii, or Guam.

Current law only authorizes servicemembers to be reimbursed for the cost to transport one personally owned vehicle. As with their counterparts in civilian life, many military families today own and rely on a second vehicle. For example, a significant number of military members live off base and commute to work, while their spouses work as well, making ownership of just a single vehicle impractical for most families.

Some military families ship their second vehicle back to the lower 48 States or Alaska, Hawaii, or Guam at their personal expense. Shipment of a second personally owned vehicle to Alaska, Hawaii, or Guam, or to the lower 48 States from these locations can cost our servicemembers as much as \$2,000 out of pocket.

Other times, they opt to sell their second vehicle prior to the move and repurchase a second personally owned vehicle upon arrival of duty station. This is a costly option resulting in severe financial loss.

The current policy of reimbursing military families for only transport of one personally owned vehicle is an outdated policy that unfairly impacts the finances of these families who rely on a second vehicle to sustain their needs.

Authorizing reimbursement for a second privately owned vehicle will greatly enhance the quality of life for our servicemembers and their families stationed in Alaska, Hawaii, and Guam, and those returning to the lower 48 States and the District of Columbia from those locations, and will alleviate the unnecessary financial burdens on these families. I ask my colleagues to support this amendment.

Mr. CHAMBLISS. Mr. President, I have listened to the debate all day with regard to the national defense authorization bill, and, frankly, it is one of the frustrating aspects of serving in this great body, to sit here and debate an issue like we have debated over the last couple of days and to think that you are going to come to the floor of the Senate and to cast a vote on a very important measure that has been characterized by Senator MCCAIN earlier as one of the most important pieces of legislation or amendments that we will have—and I agree with him that is the case—and all of a sudden we are thrown into an entirely different atmosphere with regard to what has taken place on the floor.

All of a sudden we are not talking about defense, we are not talking about our troops, we are not talking about the national security of the United States, we are talking about hate crimes.

We are in some very difficult times with respect to the national security of our country. While Senator MCCAIN and I disagree on the issue of the F-22 and this amendment, he and I agree strongly—and it is why he is my dear friend and why we agree on most things—about the fact that we ought to be here debating defense issues and voting on defense issues.

It truly is frustrating. I know our soldiers in the field can't understand what in the world is going on in the Senate now, when they thought we were going to be debating and voting on amendments that pertained to them—issues such as their pay raise, their quality of life, weapon systems—and all of a sudden we are thrown into doing something else. So I just want to associate myself with the remarks of my friend, Senator MCCAIN, with respect to why we are here.

With regard to what Senator LEVIN said, frankly, Senator DODD, on the other side of the aisle, who has been working very closely with me on the F-22 amendment, he and I had a meeting with Senator LEVIN and Senator MCCAIN on Monday, and informally—or actually formally agreed between the four of us—which is an informal agreement—that we would have a vote on the Levin-McCain amendment on Wednesday morning. We thought that was kind of a done deal.

Now, all of a sudden we have debated and we have talked about this, we have debated it again, we have talked about the amendment, and now we are thrown into an entirely different scenario on the Senate floor when we have been prepared to vote. I would hope we still have the opportunity to vote in the short term on the issue of the F-22.

On that point, just very briefly, Mr. President, I want to state a couple of things with regard to that issue. I made a very long statement yesterday, and I am not going to go back into all the detail with the reference to the why-fors of the F-22 and its value to the national security of the United States, but there have been some comments made on the Senate floor that I think are important to address.

One of those comments made by Senator LEVIN was that I had made a statement that there had never been a study by the Air Force which validated the requirement that 187 aircraft be the top line number for the F-22.

What I said was there have been dozens of studies out there over the years on the F-22, and there has only been one study—and it was an internal study at the Department of Defense, without the input of the Air Force—that said 187 is the number. I want to make sure everybody in this body understands every single other study done internally, as well as outside the Pentagon, outside the Air Force, outside the Office of the Secretary of Defense, or inside, has concluded that the requirement for the number of F-22s we need far exceeds the number of 187. The minimum number that has ever been referred to is 243, which is some 56 airplanes more than the 187 we are talking about now.

Last week, in a hearing before the Senate Armed Services Committee, we had GEN James Cartwright, who is a Joint Chiefs of Staff Vice Chairman, and I asked General Cartwright if there was any study or any analysis done at the Pentagon that validated the number 187. General Cartwright told me:

There is a study in the Joint Staff that we just completed and partnered with the Air Force which validates the number of 187.

Well, on Monday afternoon, a reporter asked a Pentagon official, and the top spokesman from the Pentagon, Geoff Morrell, made the statement in response to that reporter's inquiry about that study as follows:

Well, it is not so much a study as work products. What I think General Cartwright was referring to is two different work products, one by the Program Analysis and Evaluation shop and one by the Air Force. Not so much a study.

So what has happened is there have been discussions within the Pentagon to attempt to validate the number of 187. It is pretty obvious what I said on the floor of the Senate remains true, and that is that of all the dozens of studies that have been done on the F-22 requirement, the minimum number that has ever been validated is 243. The number goes up from there all the way

to 781, which I think was our original number. The number of 381 is the number that has been used in most of the recent studies as the number we need.

Also, with respect to other statements regarding the Secretary of Defense, the Chairman of the Joint Chiefs, and others who are saying that 187 is the number, that is leadership at the Pentagon. The leadership at the Pentagon has the responsibility for sending a budget to the Senate and to the House, but it is our obligation as Members of the Senate and the House to review that budget—sometimes to agree with it; sometimes to disagree with it. We often disagree with it.

In this case, a number of us disagree with the number of 187 as being the top line for the F-22. That is not unusual. But with respect to what the leadership at the Pentagon has said, let me go back to a letter I talked about yesterday, and it is a letter that has been received from Rebecca Grant, the Director of the Mitchell Institute for Airpower Studies. What she says in her letter to me is: In the letter of July 13 from Admiral Mullen and Secretary Gates, the characterization of F-35 as a “half-generation newer aircraft than the F-22 and more capable in a number of areas such as electronic warfare and combating enemy air defenses” is incorrect and misleading.

Air Force Secretary Donley and General Schwartz have repeatedly stated: “The F-22 is, unquestionably, the most capable fighter in our military inventory.”

The F-22 was designed with twice the fighting speed and altitude of the F-35 to preserve U.S. advantages in the air even if adversaries contest our electronic countermeasures or reach parity with us.

She also States in that letter:

If electronic jamming fails, the speed, altitude and maneuverability advantages of F-22 remain. The F-35 was designed to operate after F-22s secure the airspace and does not have the inherent altitude and speed advantages to survive every time against peers with counter electronic measures. Only five F-35s are flying today. The F-35 has completed less than half its testing. Developmental tests will not be completed until 2013. It is impossible to assess the full capabilities of the F-35 until operational test is complete in 2014.

The Secretary of Defense and others in the administration are putting all of their tactical air eggs in one basket, Mr. President. That is a very dangerous road down which we should not travel with respect to the national security of the United States and the safety and security of our men and women.

#### APPOINTMENT TO THE HELP COMMITTEE

Mr. REID. Mr. President, under an order of May 5 and under the auspices of S. Res. 18, I made a temporary appointment of SHELDON WHITEHOUSE to serve on the HELP Committee, while retaining my authority to make a permanent appointment to the HELP Committee. I now announce that as of today, Senator AL FRANKEN is ap-

pointed to serve on a permanent basis to the slot that was occupied by Senator SHELDON WHITEHOUSE.

#### SENATOR WHITEHOUSE

Mr. President, Sheldon Whitehouse, since coming to the Senate, has truly been a workhorse. There isn't anything I have asked this fine man to do that he has not come forward with enthusiasm to do it. We have seen the brilliant work he has done on so many different occasions as a member of the Judiciary Committee.

His other assignments in the Senate have been just as auspicious as his work on the Judiciary Committee. His background is significant. He has a real interest in health care. His work on the bill that was reported out of the HELP Committee today was essential. All members of the committee, Democrats and Republicans, are astounded at how good he was.

I repeat, he enthusiastically accepted this temporary assignment while we waited for the long, never-ending situation in Minnesota to come to a close. Senator WHITEHOUSE was far from just a seat-warmer. He dove into the issues and, to no one's surprise, was a substantive contributor to one of the most important bills the committee has ever marked up in the history of this country.

Without belaboring the point, on behalf of the entire Senate, I greatly appreciate his service on the committee, and I personally thank him, as does the entire Democratic caucus. I bet if a poll were taken of those who serve as Republicans on the HELP Committee, they would acknowledge his brilliance and hard work. I know Senator KENNEDY, whom we have missed on that committee and the vital work he has done for decades in the Senate, is someone who has watched from afar and applauded Senator WHITEHOUSE.

Mr. President, I came to the House of Representatives in 1982. In that class of 1982 was a young man from Arizona, someone who came with a certain degree of fame. His name is JOHN MCCAIN. He had served our country valiantly during the Vietnam conflict and spent 5 years in a prisoner-of-war camp in Vietnam. I have great admiration and respect for him. I want the record to reflect that my respect for JOHN MCCAIN is very deep. Not only did we come to the House together, but we also came to the Senate together. We were elected together in 1986. Our seniority is as close as it can get. We both have the same amount of service in the House of Representatives, so seniority is determined by how many people are in the State of Nevada and the State of Arizona. There are more people in the State of Arizona than in the State of Nevada, so he is one up on me in overall seniority in the Senate.

Having said that, recognizing who this man is, he was proudly the nominee for Republicans in the last election. I watched his campaign and admired his courage, the stands he took. While I may not have agreed with him,

I recognize he has strong feelings. But so do I.

The senior Senator from Arizona today said he was “deeply, deeply disappointed” that what he considers an unrelated amendment; that is, the Matthew Shepard Hate Crimes bill, has been added to this bill, the Defense authorization bill. I wonder on which recent morning did the Senator from Arizona wake up and suddenly feel so strongly. Where has he been in the past? Let me make a couple of comments about the remarks of my friend from Arizona.

First, his is a new outrage over a very old issue. The hate crimes bill was first added to the Defense authorization bill in a previous Congress. I didn’t do it. The amendment today was an amendment I offered on behalf of the chairman of the Judiciary Committee and other sponsors of this legislation. Senator LEAHY would have been here, but he is a little busy with the Supreme Court nomination. The hate crimes bill was first added to the Defense authorization bill when George Bush was President, a Republican. Where was the Senator’s disappointment then? I heard no big statements at that time, and no one else did.

Second, the Senator from Arizona has evidently not always held the belief he discussed today. This is a new conversion. He has evidently not always believed that bills must only contain amendments that relate directly to the underlying legislation.

It was just a while ago a bill came before the Senate known as the motor-voter bill, a bill to make it easier for people to register to vote. When they got their registration changed on their car, they would at the same time have the opportunity to register to vote. It was a unique and good idea, and it has allowed millions of people to register to vote who ordinarily would not register.

On that legislation, motor-voter, Senator McCAIN offered a line-item veto amendment. It had nothing to do with registration to vote. So it is hard to understand how his was the kind of related amendment he demands today. In fact, that issue went to the Supreme Court, where the Supreme Court declared it illegal, unconstitutional.

It was a year before that that Senator McCAIN offered the same amendment to a research bill. Again, it is hard to understand how his was the kind of related amendment he demands today.

Additionally, Senator McCAIN offered an amendment that would change Senate rules about tax increases to a bill about unemployment compensation. It is hard to understand how his was the kind of related amendment that he suddenly today demands.

He also offered his line-item veto amendment to a bill that would give more rights to blind Americans. It is hard to understand how the line-item veto had anything to do with the visually impaired. But it appears this was

the kind of amendment he demands today.

Again, Senator McCAIN offered an amendment about Medicare to a bill funding energy and water development, having no relation, obviously. It is hard to understand how his was a kind of related amendment that he demands today.

The third point I want to make is that the Senator from Arizona is not alone in offering such unrelated amendments. His Republican colleagues do it all the time. In fact, they are quite fond of doing it.

Where has his outrage been when that has happened, Mr. President? Where has the outrage been from the Senator from Arizona when, for example, one of his Republican Senator friends twice offered an amendment about the ACORN group? This is an organization around the country that is involved in a lot of different things. But he wanted to do an amendment on the economic recovery package related to the ACORN organization. That was a bill, of course, that had nothing to do with voting registration.

Another Republican Senator offered an amendment about prescription drugs to a bill that funds homeland security—no relation whatsoever. Where was the outrage of my friend from Arizona about that?

Another Republican Senator offered an amendment about the fairness doctrine—a fake issue meant exclusively to excite a very small segment of our population—to a bill that would give DC residents, finally, the right to vote. Where was the outrage of my friend from Arizona about that?

Another Republican Senator offered the same amendment; that is, the fairness doctrine; another Senator, same amendment, on the same conjured issue to the Omnibus appropriations bill. That is the bill we passed to keep our government running and complete unfinished business from the Bush administration. Where was my friend’s outrage about that?

Another Republican Senator offered an amendment about union dues to that same Omnibus appropriations bill, having nothing to do with what we were trying to accomplish here.

Another Republican Senator offered an amendment about congressional pay to another appropriations bill, having no relationship whatsoever.

Another Republican Senator offered an amendment about rules surrounding charitable donations to the national service bill—no relationship whatsoever. I did not hear my friend say one word about that. The Senator from Arizona did not complain 1 minute about that.

Another Republican Senator offered an amendment about national language to a bill that helps us crack down on mortgage fraud. Now try that one. That is something that might stir up a little outrage but not from my friend from Arizona.

Another Republican Senator offered an amendment on auto dealers to a bill

that funds our troops in Iraq and Afghanistan. Where was the outrage on that—an amendment on auto dealers on a bill that funds our troops in Iraq and Afghanistan, the supplemental appropriations bill?

Mr. President, there are lots of other examples. Those are just a few. It is hard to understand how any of these amendments were the kind of related amendment Senator McCAIN demands today. But it is even harder to understand why the Senator from Arizona did not feel the need to express, as I have said, the outrage he did this morning.

Finally, I want to say that I would gladly, as a matter of principle, keep each of these bills separate; that is, hate crimes, Defense authorization. But the reality is, the Republicans’ relentless and reckless strategy of slowing, stopping, and stalling has made it impossible for us to do so. My friend, the senior Senator from Arizona, knows the most recent example of this all too well. His Republican colleagues refuse to let us vote on his amendment, which I support. I support the F-22 amendment. I support that. Why can’t we vote on that? This could have been done yesterday, the day before, today, but for the stubbornness of the Senate Republicans.

We have lots of work to do, a lot of priorities to fulfill, and a lot of mistakes in the last 8 years to correct. And we are trying to do that. The bottom line is, we would not have to take the time for such steps if the Republican minority would not waste the American people’s time and money by making us jump through procedural hoop after procedural hoop just to do our jobs. Last Congress, 100 filibusters; this Congress, I think we are at 21 already this year—21.

To my knowledge, Senator McCAIN has never supported hate crimes legislation. If I am mistaken, it certainly would not be the first time, but that is the information I have. It is my understanding he does not think there probably is ever a good time to pass this important and overdue bill.

This is an issue here, a very important issue. And that is the real reason the Republicans, I assume, do not like to talk about the Matthew Shepard hate crimes bill. But I am not afraid to talk about the issue.

A man by the name of Luis Ramirez was picking strawberries and cherries to support his three children and a woman he wanted to marry. When he was not working the fields, he worked a second job in a local factory in Shendoah, PA. It is a coal town of only 5,000 people.

As he was walking home one Saturday night, six high schoolers jumped him in a park. They taunted and screamed racial slurs at Luis, who came to this small town in the middle of Pennsylvania from a small town in the middle of Mexico. But the boys did not stop with the taunting and screaming racial slurs. That was not enough.

They punched, beat, and kicked him. When Luis's friend pleaded with the teenagers to stop, one yelled back: Tell your Mexican friends to get out of town, or you'll be lying next to him.

These boys stomped on Luis so hard that an imprint of the necklace he was wearing was embedded into his chest. They beat him so badly and so brutally that Luis never regained consciousness. He is dead. On July 14, 2008—2 days after the beating and exactly 1 year ago yesterday—Luis Ramirez died. He was 25 years old.

Hate crimes embody a unique brand of evil, and that is why the legislation is so important. It is terrorism; it is just a different kind than we normally see or think of. A violent act may physically hurt just a single victim and cause grief for loved ones. But hate crimes do more. They distress entire communities, entire groups of people, and our country.

Our friend, Senator TED KENNEDY, has for many years courageously fought for the legislation Senator LEAHY and I offered as an amendment today to the Defense authorization bill. Senator KENNEDY has correctly called hate crimes a form, I repeat, of domestic terrorism. It is our obligation to protect Americans from this domestic terror.

The hate crimes bill will help bring justice to those who intentionally choose their victims based on race, color, religion, nationality, ethnicity, gender, sexual orientation, sexual identity, or disability. Disability—there are examples all the time of someone who may not be what "normal" may be; maybe they are mentally challenged. There are all kinds of examples of people for that reason taking advantage and hurting them. That is a hate crime.

Hate crimes are rampant and the numbers are rising. The Department of Justice estimates that hundreds happen every day. Now State and local governments are on their own when it comes to prosecuting even the most violent crimes and conducting the most extensive and expensive investigations. State and local governments will always come first, as they should, but if those governments are unwilling or unable to prosecute hate crimes—and if the Justice Department believes that may mean justice will not be served—this law will let the Federal authorities lend a hand to State and local authorities.

I spent some time yesterday with Judy Shepard. I have five children. I have four boys. I had never met Judy Shepard until yesterday. My wife, within the past few months, had lunch with her and a number of other people and sat next to her. She told me what a wonderful person she is. When I met with her yesterday, the thing she said that was so traumatic to me was: I only have one boy left. Two children; Matthew is dead.

The bill we have is named after Matthew Shepard, Judy's son. He was a 21-

year-old college student when he was tortured and killed for being gay—and did they torture, did they torture. And that was not good enough for them. In the cold Wyoming night, they took him, before he was dead, and hung him on a barbed-wire fence.

When Wyoming police pursued justice in Matthew's murder, they needed resources they did not have. Laramie, WY, is where it is. Police could not call in Federal law enforcement for help—the law would not allow it—and their expensive investigation devastated that small police department. It was a police department of 40 people—not all police officers. As all police officers, some of them took care of the little jail, did jail duty, and they were responding to phone calls. Out of this 40-person police department, they had to lay off 5 people so they could prosecute this crime, this vicious crime, this hate crime. But it cost that little town a lot. When this bill becomes law, that will never happen again in Laramie, WY, or anyplace else in the country.

We must not be afraid to call these crimes what they are. The American people know this is the right thing to do. Hundreds of legal, law enforcement, civil rights, and human rights groups know this is the right thing to do. The U.S. Senate knows this is the right thing to do.

This bill simply recognizes that there is a difference between assaulting someone to steal his money or doing so because he is gay or disabled or Latino or Jewish; that there is a difference between setting fire to an office building and setting fire to a church, a synagogue, or a mosque; that there is a difference, as we learned so tragically last month, between shooting a security guard and shooting him because he works at the Holocaust Museum.

It is a shame that we often do not discuss our responsibility to do something about horrific hate crimes until after another one has been committed. It means we always tend to act too late. But does this mean we should not act now? Of course not. It means, in fact, the opposite: it means we must act before another one of our sons or daughters or friends or partners is attacked or killed merely because of who they are.

We must act in the name of people such as Thomas Lahey, who, in 2007, was beaten unconscious in Las Vegas. Why? Because he was gay.

Not far from my hometown of Searchlight, NV, is a place called Laughlin, NV—25 miles away. It is on the river, a little resort community. We must act in the name of Jammie Ingle, who, in 2002, was beaten and bludgeoned to death in Laughlin, NV. Why? They thought he was gay.

We must act in the name of Tony Montgomery, who was shot and killed in Reno. Why? Because he was an African American.

We must act in the name of those who worship at Temple Emanu-El in Reno, a synagogue that has been

firebombed time and time again by skinheads. We must act in the name of Luis Ramirez, whom I already talked about who died 1 year ago this week. We must act in the name of Judy Shepard, of her son, Matthew Shepard, whose family has fought tirelessly since his brutal death, his brutal murder, so others may know justice. If their country doesn't stand for them, if we don't stand for them, who will?

The F-22 is an airplane I have seen. A number of them are stationed at Nellis Air Force Base. Nellis Air Force Base has almost 15,000 people who are involved in that air base, civilian and military personnel. We are so proud of that. Nellis Air Force Base is named after Bill Nellis from Searchlight, NV. Bill Nellis was a war hero in World War II. He joined then the Army Air Corps, already having two children, was way beyond the age when he would be drafted, but he volunteered. He served 69 missions before a dive bomber went down in Belgium where he is now buried. We are proud of Nellis. We are proud the F-22s are there. But we have had enough F-22s at Nellis Air Force Base. We have enough F-22s anyplace else.

The F-22 is a Cold War weapon that has not flown a single mission over Iraq or Afghanistan—not one; not a training mission, not any kind of a mission. It is a powerful plane built to fight superpowers. But as we all know, the wars we fight today are not against superpowers. This generation of our military bravely fights a new generation of warfare against terrorists and insurgents. For today's national security needs, the F-22 is an overpriced and underperforming tool. And the nearly 200 we already have in our fleet is sufficient. It is a sufficient deterrent to the potential of conventional war. But some want us to spend at least \$2 billion to keep making more of them. That is only the first step. Actually, it is \$1.75 billion. I rounded it off to \$2 billion. It is a very expensive plane to build and a very expensive plane to fly. It costs taxpayers \$42,000 an hour to operate.

This technology is not suited for today's warfare. The radar in the F-22 means that when it flies over heavily populated cities such as the ones in Iraq and Afghanistan, its position is easily given away. We have at Nellis Air Force Base in the ranges there what we call red flag activities.

A couple times a year, we bring our fighting forces there, our air fighting forces, and they do mock exercises. It is a wonderful place, one of the few places in the world this can take place. They do all kinds of good things. Aircraft from all over the world come there to participate in these war games. If the F-22's radar is turned off to avoid being so easily detected, its agility is significantly compromised. We know that. This was proven recently in a recent exercise at Nellis Air Force Base, when an F-16 brought down in a war game an F-22 that simply had turned its radar off in a test fight.

There is broad bipartisan consensus that ending the F-22's production is in our national security interests. Here is a list of some who agree: Chairman LEVIN; Ranking Member MCCAIN; Commander in Chief Barack Obama; the previous Commander in Chief, President Bush; the Secretary of Defense; the previous Secretary of Defense; the chairman of the Senate Armed Services Committee. I repeat; the ranking member, I repeat, of the Senate Armed Services Committee; the Chairman of the Joint Chiefs of Staff; the Vice Chairman of the Joint Chiefs of Staff; the Secretary of the Air Force; the Chief of Staff of the Air Force. Can you believe that? And we are going to try to move forward in doing this, and no one wants it in the military. All of those have prudently pointed out that buying more F-22s that we don't need means doing less of something we do need.

Some have encouraged us to continue making this Cold War-era plane because it creates jobs for those who build them. Being a little bit personal here, the stealth airplane was developed in the deserts of Tonopah, NV. It was a wonderful thing our country did. Each of these airplanes had its own hangar up in the desert because the Soviet satellites came over, and they couldn't come out in the daytime. These pilots were trained so efficiently; everything they did was in pitch darkness, but that is where these airplanes were developed and flown.

There came a time after it became public that we had these stealth aircraft that they had to put them somewhere. They put most of them at Nellis Air Force Base. The Pentagon, after they had been stationed there for a matter of months, made a decision: That is not good. We need to move them to New Mexico to an airbase. Pete Domenici, my friend, was concerned about whether they should go to New Mexico or Nevada. I said: Pete, I got a deal for you. I, personally, don't believe that what we do for the military is a jobs program. I think it is to make our Nation more secure. Let's have the General Accounting Office do a study, and if they come back and say it will save the country money and it will make our country more secure if they move them to New Mexico, I am not going to say a word about it. It took the General Accounting Office a matter of a few months to do this. They came back and said these stealth aircraft would be better off in New Mexico, and it will make our country more secure; they can train better there because of how much activity there is at Nellis, and it will save the country money.

That is how I feel about the military. I think we have to have the most sophisticated, secure weapons systems that exist, but it has to be something that is good for our country. It is obvious—with all these people from President Obama to President Bush to the Secretaries of Defense in the past to

now—these airplanes are not necessary. They prudently point out that buying more F-22s that we don't need means doing less of something else that we do need.

I repeat: Some have encouraged us to continue making this airplane because it creates jobs for those who build it. I don't believe that is the purpose of why we are here. I understand the importance of jobs, but a more advanced jet, the F-35, which can be used by all branches of the military service, would create similar jobs—jobs that actually will enhance our national security. That is what this is all about. That is what this bill is about, the Defense authorization bill.

Finally, President Obama has pledged to veto this Defense authorization bill if it includes continuing to build this obsolete airplane. And he will veto it. That is a risk, and why would anyone want to take it? I spoke to the President's Chief of Staff yesterday. The President is going to veto this bill. This is kind of an: Oh, he will never do that. He will.

Cutting funding for wasteful programs is good for our economy, good for our workers, and good for the continued military dominance of our country. I oppose continuing to build a weapon that will compromise our national security. I oppose continuing to fund a program that will jeopardize our economy. I oppose wasting billions of dollars of taxpayer money on a plane that doesn't defend us in our wars that we fight today and will not defend us in tomorrow's wars. I support moving our military into today's century the 21st century, not go back to the last century.

Now, finally, let me say this: I have called my friend, the Republican leader, and he will call in just a minute when he has some time because I didn't call him while he was in a meeting. I wanted to speak to him before I came to the floor, but I have something else I have to do tonight. We are going to vote on invoking cloture. We will see if we can get 60 votes on this hate crimes amendment that is on this bill. I would like to work it out so we can do it conveniently for everyone, sometime tomorrow. What I would like to do is set aside some more time if we want to debate more the hate crimes, set aside more time to do that, and if people want to do the F-22, let's do that. Let's get these two out of the way. I can't force an amendment vote on the F-22, but I can force a vote on cloture, and we are going to do that. We will do that tomorrow. Tomorrow may spill over until a little after midnight Friday morning, but we are going to do this. So everyone should understand the hate crimes bill is going to be voted on either tomorrow or very early Friday morning. I have said Friday there will be no votes, and that is by day. This will be in the middle of the night. I hope we don't have to do that, but that is when time runs out on this.

I think these two amendments are important. I understand the anxiety of

those who would rather not have hate crimes legislation on this bill. I accept that. But I spent a lot of my time here on the floor, as I have outlined, wondering why in the world other people don't complain when they offer these ridiculous amendments on legislation that is so important. I have indicated that we are going to go back to the way we used to do business in the Senate. I have done that during the time I have had this job. We have this—this year we have had an open amendment process except on rare occasions. I have stood here when we have done abortion amendments, gun amendments, you name it. I have told Senator McCONNELL I wish this were not the case, but that is why we are here, to make tough votes and easy votes both.

So I hope we can work something out, where we can resolve this matter tomorrow during the daylight hours; otherwise, we will do it tomorrow night.

The PRESIDING OFFICER (Mr. BENNET). The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I thank the majority leader for his words concerning the parliamentary situation we are in. Of course, I am very appreciative of his words about the long service we have shared together, both in the other body and in the Senate. Since I have returned from the campaign trail, I have appreciated his kind words about my service to the country. I must say, while the majority leader is still on the floor, I might point out that they are dramatically different from the comments he made about me during the campaign—not just our political differences but my qualifications to serve and other statements about my character. All those things are said in political campaigns, but I am certainly glad to see sort of a significant change in his comments concerning me, and I am always very grateful.

Can I also say that the distinguished leader said he couldn't understand that I couldn't understand. Well, the thing I can't understand is the fact that the majority leader can, by virtue of being majority leader, put legislation at any time before this body. I have never been majority leader, and in all candor I never want to be majority leader. I think the majority leader in the Senate has a very tough job. I appreciate the hard work he does in trying to move legislation through the Senate. My former colleague and one-time majority leader, Senator Lott, once said that being majority leader of the Senate was like herding cats, and I certainly agree with that assessment.

So let me say I appreciate the work the majority leader does, but if I had been majority leader, I would never have had to do any of those amendments. The majority leader sets the agenda for the Senate. All he has to do if he wants the hate crimes bill up is to schedule it to be taken up and debated and discussed and amended—but in the



regular order of the Senate. Instead, he chooses to put it on the Defense authorization bill, a bill that is vital to the future of the security of this Nation.

I understand his passion concerning hate crimes. I have heard speakers come to the Senate floor all day, and they, in very graphic and moving terms, described events, as I am sure the next speaker will—about the terrible crimes committed in this country by some of the worst of the worst people who have ever inhabited this country.

But the question remains: Why should a bill of this importance—the hate crimes legislation—not have been, at the majority leader's direction, moved through the Judiciary Committee, reported out, and reported to the floor of the Senate? We have been in session since January. I am sure the Judiciary Committee has a lot to do. This has been described by proponents, as they come to the floor, as one of the most important issues of our time. If it is, why not move it through the Judiciary Committee, move it to the floor, and allow us to amend, debate, and discuss the issue? Instead, it is put, as an amendment, on the Defense authorization bill.

That is not right, Mr. President. The fact is, the amendment the majority leader just, very rightfully, extolled, the Levin-McCain amendment—and I appreciate his strong remarks about the importance of it—is the one he wanted withdrawn. The reason we are not debating it now is because the majority leader told the chairman of the committee to withdraw the amendment.

I appreciate his passionate advocacy of this issue. I also want to reemphasize this isn't just about \$1.75 billion. This amendment is about whether we are going to change, fundamentally, the way we do business.

If the opponents of the amendment succeed, and we fund additional F-22 aircraft, which as the majority leader pointed out has never flown in Iraq or Afghanistan, that signal to the military industrial complex, which President Eisenhower warned us about is business as usual in our Nation's Capitol.

So this is an amendment that has transcendent importance. The President has guaranteed a veto. The Secretary of Defense came out and staked his reputation on succeeding here and eliminating, bringing to an end the F-22 production line and moving forward with the F-35 production line.

A lot of my friends ought to understand this is not just about cutting or eliminating or ending production of the F-22. It is also about the F-35 aircraft. If I had been majority leader, I would have—when he described those amendments I put on bills that were before the Senate, it was because I could not get them up in any other way.

Let me say this: Hate crimes legislation deserves the attention of the Sen-

ate in the normal legislative process with amendments, debate, and discussion. If it is so important, and speaker after speaker, including the majority leader, came to the Senate floor talking about how important and vital it is and all of the terrible things that have happened as a result of, in their view, not having this bill—although that is not in agreement with the U.S. Commission on Civil Rights. But the fact is, then you would think we would want to take it up in the regular fashion and debate it, and that we would want to improve it and make it more effective through the amending process. But, no, we are not going to do that. We are going to take down the pending amendment that is probably one of the most significant amendments we have had in recent history of the Senate—at least as far as defense is concerned—and replace it with a piece of legislation that is complex, certainly controversial, and certainly deserves the full attention of the Senate.

I proposed earlier a unanimous-consent request, which was rejected by the majority, that we move back to the F-22 amendment, that we dispose of this legislation, and then that we move to the hate crimes bill, the Matthew Shepard Hate Crimes Prevention Act, even bypassing the Judiciary Committee, which is not a normal thing to do given the complexity of the issue.

I am deeply moved by the stories the majority leader told, and both Senators from California came to the floor, and many others have given very graphic and dramatic and compelling stories recounting terrible things that have happened to our citizens—horrible, awful, horrifying things. I understand that and my sympathies and thoughts and prayers go out to their families. We must do everything in our power to make sure these kinds of horrendous acts are never repeated.

Let me point out another thing, if I could. There are also men and women in the military who are in harm's way now and who have been gravely wounded. The sooner we enact this legislation, we will make preparation and be able to better care for them.

Mr. President, I don't usually tell these anecdotes. I heard a lot today, and I sympathize with them. Before the majority leader took the floor, I was outside the Senate Chamber. There was a young man there who said he wanted to meet me—a young marine in a wheelchair, badly wounded. He was there with his family. He was escorted by Congressman KENNEDY. I was gratified and moved that he wanted to meet me.

Do you know what. That made me want to come back here and pass this legislation as quickly as possible because this legislation, No. 1, provides fair compensation and first-rate health care and addresses the needs of the injured and improves the quality of life of the men and women of the All-Volunteer Force—Active Duty, National Guard, Reserve, and their families.

That is the No. 1 priority of this legislation.

Instead of moving this legislation as quickly as possible through the Senate, we have now withdrawn the amendment and moved on to a piece of legislation that has nothing to do with the purpose and our obligation to the men and women serving this country.

I understand what numbers are, and I understand what the outcome of elections is. I understand there is a majority on the other side of the aisle. But what is being done by withdrawing an amendment that has transcendent importance and putting another totally unrelated piece of legislation in—it may set a dangerous precedent for this body.

This is not a one-shot deal; this the hate crimes bill. This is not an amendment to say you can carry a gun in a national park. This is not a single specific issue bill—hate crimes. We are talking about a very large, encompassing piece of legislation that, by any rational observation, demands to be considered through the proper committee and on the floor through the proper process.

We are now holding up the progress of legislation that is important to the future security of this country and the men and women who serve it, to give them the resources, training, technology, equipment, force protections, and authorities they need to succeed in combat and stability operations.

I understand and appreciate the passion of the advocates of hate crime legislation. They have made it very clear and told compelling stories on the Senate floor. I believe we must take it up and enact it as immediately as possible. What we should be doing is taking up the hate crimes bill in the Senate for full debate and discussion as soon as we finish the Defense authorization bill. There is no connection between the Defense authorization bill and hate crimes. It is a complex and detailed—26 pages, as I recall—piece of legislation.

Again, I appreciate the kind comments of the majority leader, who came to the floor and said he couldn't understand certain things I have done. I hope the majority leader understands better now. If he doesn't, I will be glad to come to the floor again and point out that what we are doing is wrong. It is wrong for us to get off the legislation that provides for the defense and security of this Nation. It is wrong to take up a piece of legislation that should go through the appropriate committee.

This is what we teach kids in school in Civics 101—that a bill is proposed and goes through the proper committee, is reported out, and then it comes to the floor of the Senate for debate and amendment. Instead, we are violating the fundamental rules of procedure of the Senate.

As we continue and vote at 2 a.m.—or whatever it is that we are going to do—

all we will have done is delay the responsibility we have, which is to provide for the security of this Nation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I ask unanimous consent that after my remarks, which will be no more than 5 minutes, Senator BROWN be recognized for up to 10 minutes, and then Senator CHAMBLISS be recognized for 15 minutes.

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

Mr. LEVIN. Mr. President, first, my dear friend from Arizona has spoken very eloquently about the transcendent importance of the Levin-McCain amendment. I could not agree with him more. We tried for 2 days to get an agreement to vote on that amendment. It is a critically important amendment for the reasons he has given and for the reasons I hopefully have given persuasively around here, and others have as well.

We have this President, the previous President, this Secretary of Defense, the previous Secretary of Defense, this Chairman of the Joint Chiefs, the previous Chairman of the Joint Chiefs, the Vice Chairman of the Joint Chiefs, the Chief of Staff of the Air Force, and the Secretary of the Air Force saying we have enough F-22s. We have to move on to the F-35, which is under production, by the way. We have 30 F-35s funded in this bill.

We have tried to get the Levin-McCain amendment to a vote. We tried to reach an agreement and a time. We could not get an agreement on the time. That is what has then precipitated the decision of the majority leader to move on to the hate crimes amendment. We have simply tried, day after day, to get a vote, without success.

I could not agree more that this is a critically important amendment, and we have to end production of a weapon system that we no longer need, according to top civilian and military experts, and focus more on the F-35, which is going to be used by all three of the services, not just one. It will have greater capabilities in very critical areas than the F-22, and it will cost significantly less than the F-22. But we could not achieve that.

I don't understand the logic or the strategies involved that say we cannot have a vote on the amendment that is pending—Levin-McCain amendment—and then when faced with the majority leader's amendment on hate crimes, forces that to a cloture vote, which is going to be held—in other words, everybody understands both of these amendments are going to be addressed on this bill one way or the other. Nobody can guarantee the outcome on these amendments. But what can be guaranteed is that these amendments are going to be debated on this bill because the majority leader has made that clear for a long time. The procedures of this body allow for it.

The precedents of this body are full of amendments such as this. As a matter of fact, the hate crimes amendment was adopted on the Senate Defense authorization bill 2 years ago, after the same kind of debate. Debate is fair. Debate is important. Every one of us should protect the right of everyone else to debate. Whether it should go on this bill or another, we can debate that. But it is offered on this bill, as was noticed by the majority leader days ago. It is what we have done years ago. It is totally consistent with the rules of the Senate. As a matter of fact, it has been done repeatedly in the Senate.

Maybe we should adopt a new rule that says you have to be relevant or germane to offer an amendment to a pending bill. We don't have that rule, never had that rule, and probably never will have that rule.

But that is the way the Senate operates. These are important amendments. Again—and I am going to close with this—I don't get the logic of not allowing us to proceed to the Levin-McCain amendment because another amendment that some people don't like and don't think should be offered is going to be offered on this bill, when what is certain is that both amendments are going to be offered on this bill. Nothing is accomplished by refusing that vote on the Levin-McCain amendment except delay. That is the only thing accomplished by the refusal of whoever it was who refused to agree to a time to vote on Levin-McCain, nothing was accomplished except delay. And that, I don't think, is in anybody's interest, for the reasons Senator MCCAIN gave.

We want to get this bill passed. We want to get it conferenced. We want to get it to the President, hopefully, by the time this fiscal year is over because the troops deserve us to act.

I am going to vote for the hate crimes amendment. I believe it is very appropriate that it be on this bill. I spoke 2 years ago to this effect, and I will speak again at the right time, perhaps tomorrow if there is time, as to why the hate crimes amendment belongs on this bill. It is an important amendment. It involves acts, as the leader and others have said, of domestic terrorism. The values reflected in the hate crimes legislation are values which our men and women who put on the uniform of this country fight for and put their lives on the line for, a country which believes in diversity, a country that believes you ought to be able to have whatever religion you want, be whatever ethnic group, whatever religious group, whatever racial group you are part of, whatever your sexual orientation, whether you are disabled, regardless of your gender, that you should be free from terror and physical abuse.

That is what the hate crimes law does now, except it does not include some groups who should be included, including the disabled and including

people who are gay. That is what is involved here.

It is not a new debate. We debated it 2 years ago. It is not new on this bill. It was added in the Senate 2 years ago.

I hope we can reach an agreement to get to a vote on both these amendments. They are both going to be resolved on this bill. That is a certainty. Again, how they are going to be resolved no one knows. We can guess as to what the outcome will be. They will both be close votes, I believe. Let's get on it and get through those votes.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN. Mr. President, I ask unanimous consent to speak as in morning business.

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

#### AFFORDABLE HEALTH CHOICES ACT

Mr. BROWN. Mr. President, I grew up in Mansfield, OH, a middle-class town of about 50,000 people, halfway between Cleveland and Columbus, in north central Ohio. It is a town similar to thousands of other cities in Ohio such as Marion, Zanesville, Xenia, Springfield, Portsmouth, Chilcote, and Ravenna. It is a town not much different from dozens of cities around our Nation.

My dad was a family doctor. He practiced into his late seventies. He lived to be 89 and died about 9 years ago. My dad for years made house calls, caring for his friends and neighbors, regardless of their ability to pay. One patient, I remember, gave my dad a little arrowhead collection after my dad had done very important work for his health.

Today the Health, Education, Labor, and Pensions Committee passed historic health reform legislation that restores my dad's sense of quality and compassion in our health care system.

This legislation was not written for the insurance industry. It was not drafted by the drug industry or any other segment of the health care industry. We remember not that long ago in this Chamber—I remember it more intensely at the other end of the Hall in the House of Representatives where I sat on the Health Committee—we remember in those days the drug companies wrote the Medicare laws, and the health insurance industry wrote health care legislation. Those days are gone. This bill is not for them; it is for the American people.

The health care industry does not like this bill that much. That is because they did not get their way on issue after issue. They did sometimes. They did dramatically on occasion in our committee. But, by and large, this bill is not for them. This bill is for the American people. It is for American families who are afraid that unaffordable health care costs will deny their children a chance for a healthy life.

Everybody in this Chamber has met dozens of children such as that who

needed the Children's Health Insurance Program to keep their families from going bankrupt and to keep their health care going. Children who need this health care legislation, families who need this bill too often choose between medicine and food, between heating their homes in the winter and cooling their homes in the summer on the one hand and going to the doctor on the other.

This bill is for American families that do not have health insurance at all. Maybe they work for an employer who cannot afford to provide health insurance. Maybe they lost their job. Maybe they cannot afford their share of the premium for employer-sponsored coverage. Maybe they have a pre-existing condition that makes them undesirable to the insurance industry. Maybe they cannot pay their mortgage, feed their children, and pay for nongroup health coverage. Unfortunately, for many Americans, something had to give. But not anymore. This bill is for them.

Two weeks ago in Columbus, I was having breakfast with my daughter and a friend—a young woman who teaches voice lessons. She just graduated from college. She is working at this restaurant part time while she finds more and more students to teach voice lessons as she begins her business. She does not have health insurance. She came up and said: Are you going to give me health insurance this year?

I said: Yes. It is a commitment of the President of the United States. We are going to finish this bill this year.

I am going to send her a note tonight telling her what we did today.

Not too long ago, I was at a grocery store in Avon, OH, near my home. My wife asked me to find water crackers. I didn't know what water crackers were. I was standing in the aisle, and I asked a guy: Do you know what water crackers are?

He said: They are right there. This is a gentleman who is self-employed and sells food products, mostly crackers and cookies, for a national company. He sells them to local grocery stores in Lorain County. He said to me: I am self-employed. Are you going to pass the public option I need to make sure you can keep the health insurance industry honest and I can get decent health coverage?

I said: Yes, we are—because we are.

This bill is for them. It is for the young woman in Columbus, it is for the younger man in Avon, the man approaching middle age, it is for him.

This bill was developed with a few core principles in mind. First, Americans who like their current health coverage should be able to keep it. If you have good insurance, if you like your employer-based insurance, by all means keep that insurance. Keep what you have. This bill is designed to protect existing coverage while putting downward pressure on health insurance premiums. What is going to happen to those people who now have insurance?

Right now if you have decent insurance, you are also paying the cost; when you go to the emergency room with your insurance, you are also paying the cost of somebody who goes to the emergency room without insurance. You are paying the cost that doctors and hospitals and, frankly, taxpayers provide for those people without insurance. You are absorbing those costs.

So when this bill passes, when the President signs this bill in October or November, there is a reasonably good chance that the cost of your insurance, whether you are the employer, whether you are the employee, will stabilize. The costs will stabilize and maybe go down.

I mentioned this bill was developed with a few core principles in mind. No. 1, people who like their current insurance can keep it. No. 2, people underinsured or uninsured should be able to find good coverage and pay a reasonable premium for it. They will have full choice of private insurance or, the third point is, Americans should have choices they want. This bill includes a strong public health insurance option designed to increase price competition in the health insurance industry and to help keep private insurers honest.

And speaking of honest, another principle behind this bill is that health insurers should do what they are paid to do. This bill includes new rules to prevent insurers from denying you coverage for preexisting conditions, terminating your coverage just to save money or excluding you from coverage because of your age or health history.

There are two things going on here: One, we are putting rules on the insurance industry so they cannot keep gaming the community rating system, can't keep imposing preexisting conditions on potential people they insure, can't lock people out who are too sick and they don't want to cover.

First is the rules. Second is creation of a public option, which will mean competition. We make sure insurance companies are doing the right thing by the rules, but we also inject competition, so public option will compete with private insurance companies.

This bill was written for American families, for American patients, for American businesses, and for American taxpayers. This bill is a victory for the thousands of Ohioans who shared with me their struggle for our health care system. It is about retiree Christopher from Cincinnati. He is worried his shattered retirement savings and small pension won't keep up with rising insurance premiums.

This bill is about breast cancer survivor Michelle from Willoughby, OH, Lake County, east of Cleveland, who should no longer live, in her words, "for the sum of my work is to pay for insurance."

It is about the children that Darlene, a school nurse from Cleveland, treats each day who struggle in school because they are worried about a sick

parent or grandparent who cannot get the health care they need.

It is about small business owner Kathleen from Rocky River, who is trying to do right for her employees but whose small business is being crushed by exorbitant health insurance costs.

It is about Karen from Toledo, whose adult son has advanced MS, and for 5 years she has seen her savings drained, forcing her to drop out of college.

It is about these Ohioans. It is about Ohioans in Lima, Springfield, Volare, St. Clairsville, Pickaway, and Troy. It is about people around this country, the millions who work hard, play by the rules, who still struggle each day with disease and despair. It is about their stories, those who have inspired us to stand with them and not be intimidated by the special interests that are spending \$1 million every single day lobbying to try to write this bill—the insurance companies, the drug companies that have had such a huge influence in the Halls of Congress over the last several years but this time did not have the kind of influence they wanted.

Because of this bill, more Americans will be able to afford health care. Crucial national priorities will not be crowded out by health care spending. No longer will exploding health care costs cut into family budgets, wear down businesses, drain tax dollars from local governments, from State governments or from Federal budgets.

This bill uses market competition and common sense to squeeze out an efficiency, to maximize quality to ensure every American has access to quality, affordable coverage.

More work is yet to be done. We have taken a long step toward the day that generations before us have prepared us for, that pushed this government to do more and do better.

This started in the 1930s when Harry Truman wanted to include Medicare or some version of national health care with Social Security but thought he could not get it passed and settled for Social Security. Harry Truman tried in the late 1940s. Lyndon Johnson successfully pushed through Congress, with strong Democratic majorities in each House, to create Medicare. We have tried ever since. This is the time.

I thank Senator DODD for his leadership of the HELP Committee over the last few weeks. It was an impressive and productive process from beginning to end. We worked in a deliberate, bipartisan manner.

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

Mr. BROWN. I ask unanimous consent for 2 additional minutes.

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

Mr. BROWN. We worked in a deliberate, bipartisan manner, spanning 13 days, 287 amendments were debated, and 161 Republican amendments were included in this bill. We worked hard to make sure this bill reflects broad

ranges of views and best serves the American people.

A special thank you to my friend and colleague, Chairman KENNEDY, whose Senate career has been dedicated to providing health care to those in need. Senator KENNEDY's activism and determination made this day possible. My Senate colleagues and I and millions of Americans who may finally see the day when there is quality affordable health care owe him our gratitude and thanks.

In closing, of all injustices, Martin Luther King once observed: "Injustice in health care is the most shocking and inhumane."

This day is a victory for Ohio families, it is a victory for seniors and middle-class families around the Nation who deserve the humane justice of an affordable health care system that works for all of them.

We have a historic opportunity to make fundamental improvements to our Nation's health care system. We must not squander it—not in this Nation, not at this time.

#### MORNING BUSINESS

Mr. BROWN. Mr. President, I ask unanimous consent that the Senate proceed to a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

#### HONOR FLIGHT VETERANS TRIBUTE

Mr. MCCONNELL. Mr. President, I would like to take a moment to recognize an inspiring group of World War II veterans from the Commonwealth who visited our Nation's Capitol on the 65th anniversary of the D-day invasion. The noble work of the Honor Flight Program and the leaders at its Bluegrass Chapter made it possible for these World War II veterans to visit their memorial on the National Mall free of charge. I have been privileged to participate in previous Honor Flights from Kentucky, and I very much regret that my schedule prevented me from attending the one that took place on June 6, 2009. I hope to have the opportunity to join participants from my home State on Honor Flight trips in the near future.

I wish to express my tremendous gratitude to the 66 Kentucky veterans who were here that day for having served to protect our great Nation's principles from the enemies of freedom. As Americans, we are forever indebted to the heroic men and women of the U.S. military who defend this great Nation and all it represents. In fighting for prosperity and freedom around the world, the veterans of World War II risked everything, earning the title of the "greatest generation."

As General Eisenhower said in his message to the troops just before the invasion at Normandy: "The eyes of

the world are upon you. The hopes and prayers of liberty loving people everywhere march with you." These words ring true, even after 65 years, as our military continues to challenge threats to freedom, democracy and the American way of life.

Our country continues to do its best to honor the incredible bravery and sacrifice of our men and women in uniform. The Honor Flight Program is a reflection of the admiration and appreciation that all Americans have for the military. I take great pride in representing many brave veterans from Kentucky and in doing what I can to show our Nation's reverence for them.

The names of the 66 World War II veterans from the Commonwealth are as follows:

Richard Straub; George Hoffman; Robert Willman; Charles Junkins; Norman Reiss; William Taylor; Mary Phillips; Walter Brumfield, Sr.; Raymond Bumann; Lawrence Mayfield; Thomas Crump; Albert Tomassetti; Eugene Heimerdinger; Fletcher Williams; Paul Lawson; Millard Allen; Paul Jordan; Joseph McConnell; Harry Greaves; Robert Bohan.

John McCord, Jr.; Louis Stafford; Walter Martin; Stanley Adkins; James Thomas; William Wilson; Harold Hoover; Kenneth Elliott; Johnie Hayes; Peter Johnson, Sr.; Robert O'Bryan; Frank Rose; Norbert Gnadinger; Martin Lambright; Robert Zangmeister, Sr.; Walter Jewell, Jr.; James Keene; George Pope; Richard Thompson; Orland Warth.

Raymond Ludwick; Arthur Lowe; Ralph Hammerle; Roy Six; Arthur Wissing; Louis Guettzow; Howard Mather; Allen Kessler; Harold Finnell; William Boyd; Wilbert Block; Claude Decker; George Garth; Joseph Wilson; Lloyd Hoagland; William Zeitz; Vincent Heuser; Oscar Disney, Jr.; Nat Bailen; George Keltner; Richard Zogg; Taylor Davidson; Pauline Thompson; Henry Hardy, Jr.; Abner McMaster; Stanley Fischer.

#### HIV TRAVEL AND IMMIGRATION BAN

Mr. DURBIN. Mr. President, the Department of Health and Human Services has taken an important and overdue step toward ending our Nation's discriminatory ban on HIV-positive visitors and immigrants.

On July 2, 2009, the Department of Health and Human Services published proposed regulations that would lift the HIV travel and immigration ban. This policy change would remove HIV from the list of "communicable diseases of public health significance."

While we all know that HIV infection is a serious health condition, it does not represent a communicable disease that is a significant threat for transmission and spread to the U.S. population through casual contact. Officially ending this long-standing ban will help remove the stigma and discrimination often associated with HIV.

The United States is one of 12 countries in the world that ban HIV-positive visitors, nonimmigrants and immigrants. It seems illogical that the United States, a country that is a leader in the fight against the global HIV/AIDS epidemic, should legally ban all non-Americans who are HIV-positive.

The current travel and immigration ban prohibits HIV-positive foreign nationals from entering the United States unless they obtain a special waiver. This waiver is difficult to obtain and only allows for short-term travel. Immigrants who want to become legal permanent residents by applying for a green card are subject to a medical exam. Many individuals who have been denied a green card because of their HIV status confront a dilemma—either they go home where they might not have access to effective treatment or violate American law by remaining in the United States.

The ban undermines public health efforts by keeping researchers, advocates and experts from even entering the country. The current regulation stigmatizes and discriminates against people living with HIV and AIDS without justification and has serious consequences on individuals, families and our Nation. It separates loved ones, denies American businesses access to talented workers, and bars students and tourists from accessing opportunities and supporting our economy. Due to the ban, there have not been any international conferences on HIV/AIDS in the United States since 1990.

The ban originated in 1987, and was explicitly codified by Congress in 1993, despite efforts in the public health community to remove the ban when Congress reformed U.S. immigration law in the early 1990s. While immigration law excludes foreigners with any "communicable disease of public health significance" from entering the U.S., only HIV was ever explicitly singled out in the Immigration and Nationality Act. For all other communicable diseases, the Secretary of Health and Human Services determines whether a particular disease is of public health significance and should therefore constitute a ground for excluding noncitizens from entering or immigrating to the United States.

Last year, I strongly supported the Tom Lantos and Henry Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008, which Congress passed and the President signed into law. Included was a provision that removed the language from the Immigration and Nationality Act mandating that HIV be on the list of diseases that bar entry to the United States. This provision returned regulatory authority to the Secretary of Health and Human Services to determine whether HIV should remain on a list of communicable diseases that bar foreign nationals from entering the United States.

By proposing this regulation the administration is making a clear statement that the United States does not discriminate against people with HIV and does not endorse misconceptions of the past. I look forward to seeing the proposed regulation finalized in the coming months.