

1 MORNINGSIDE PARTNERS, LLC

2 BUSINESS MEETING TO CONSIDER A
3 RESOLUTION AUTHORIZING THE CHAIRMAN
4 TO SUBPOENA MONICA GOODLING; AND
5 MARKUP OF H.R. 1592, THE "LOCAL LAW
6 ENFORCEMENT HATE CRIMES PREVENTION
7 ACT OF 2007"; H.R. 692, THE "ARMY
8 SPECIALIST JOSEPH P. MICKS FEDERAL
9 FLAG CODE AMENDMENT ACT OF 2007";
10 AND H.RES. 314, SUPPORTING THE GOALS
11 OF WORLD INTELLECTUAL PROPERTY DAY,
12 AND FOR OTHER PURPOSES
13 Wednesday, April 25, 2007
14 House of Representatives,
15 Committee on the Judiciary,
16 Washington, D.C.

17 The committee met, pursuant to call, at 10:24 a.m., in Room
18 2141, Rayburn House Office Building, Hon. John Conyers
19 [chairman of the committee] presiding.

20 Present: Representatives Conyers, Berman, Nadler,
21 Scott, Watt, Lofgren, Jackson Lee, Waters, Meehan, Delahunt,
22 Wexler, Sanchez, Cohen, Johnson, Gutierrez, Sherman, Baldwin,
23 Weiner, Schiff, Davis, Wasserman Schultz, Ellison, Smith,
24 Sensenbrenner, Coble, Gallegly, Goodlatte, Chabot, Lungren,
25 Cannon, Keller, Issa, Pence, Forbes, King, Feeney, Franks,
26 Gohmert, and Jordan.

27 Staff present: Perry Apelbaum, Chief Counsel and Staff
28 Director; Joseph Gibson, Minority Chief Counsel; and Anita
29 Johnson, Chief Administrative Officer/Clerk.

30 Chairman Conyers. [Presiding.] Will the committee come
31 to order? Good morning. I ask that our seats be taken, the
32 doors closed.

33 We first turn to the two items remaining on our agenda
34 from last week, involving Monica Goodling and our continuing
35 investigation into the circumstances surrounding the
36 terminations of U.S. attorneys. The representations have
37 been made to Congress regarding those circumstances and
38 related matters.

39 We have before us two resolutions, one to direct the
40 House general counsel to apply for a court order that would
41 permit the committee to give Ms. Goodling use immunity for
42 testimony and related information she provides under
43 compulsion to us and the other to authorize the issuance of a
44 subpoena for Ms. Goodling.

45 And so pursuant to notice, I call up the first
46 resolution regarding use of immunity.

47 [The resolution follows:]

48 ***** INSERT *****

49 Chairman Conyers. We had a good discussion of this
50 matter last week and decided, at the request of our ranking
51 minority member, Mr. Smith, to postpone the voting on the
52 resolutions to permit us all to gain a little more
53 familiarity and comfort with the immunity procedure and to
54 speak informally with the Department of Justice.

55 We have done that this week, and based on that meeting,
56 I believe it is appropriate and prudent that we proceed with
57 the process of considering immunity for Ms. Goodling.

58 Allow me to briefly recount how we came to this point.
59 The matters we have been examining go to the very heart of
60 the public's ability to rely on the integrity of our legal
61 system, and we have been working diligently to get to the
62 truth. We have encountered some obstacles and we are working
63 to overcome them.

64 We have been working closely with our minority members
65 in all of these efforts, and we deeply appreciate their
66 support in that regard.

67 We have a subpoena pending with the Justice Department
68 for e-mails and related information, which the department has
69 thus far only partially complied with. But we continue to be
70 in discussions with the department regarding their
71 compliance.

72 We have requested interviews with a number of current
73 and former high-level department officials, and those

74 interviews are being scheduled and conducted.

75 We have asked the White House for information and for
76 interviews with selected current and former White House
77 officials who appear, based on information we have obtained
78 thus far, to be significantly involved in the decision-
79 making. As of yet, the White House has not been forthcoming,
80 but we continue to hope and expect that we will reach an
81 accommodation with them.

82 It is against this backdrop that we consider Monica
83 Goodling recently resigned from her position as senior
84 counsel to the attorney general. Among her duties in that
85 position was serving as the Justice Department's principal
86 liaison with the White House.

87 She was apparently involved in crucial discussions over
88 a 2-year period with senior White House aides and with other
89 senior Justice officials in which the termination list was
90 developed, refined and finalized. She was also apparently in
91 the small group of senior Justice lawyers who prepared Deputy
92 Attorney General Paul McNulty and his principal associate,
93 William Moschella, for congressional testimony that we
94 believe inaccurately portrayed the surrounding circumstances.

95 And so Ms. Goodling appears to be a key witness for us
96 as to any possible undue or improper interference and as to
97 any internal discussions as to how forthcoming to be in
98 Congress. But she has notified the committee, of course,

99 that she would invoke her Fifth Amendment privilege against
100 self-incrimination were she called to testify. And I don't
101 think at this point that all of her potential grounds for
102 invoking the privilege can be dismissed out of hand.

103 So under these circumstances, it would appear that the
104 committee has used up, exhausted all reasonable efforts to
105 obtain Ms. Goodling's critical information short of providing
106 her with limited-use immunity under the applicable statute,
107 18 USC 6005.

108 Taking this step will compel her to testify under
109 penalty of contempt but under the protection that information
110 she provides to us under compulsion could not be used against
111 her for any prosecution, provided as long as the information
112 is truthful.

113 Under this statute, we direct the House general counsel
114 to apply to the court for an order conferring use immunity.
115 The statute provides for notice to the Department of Justice
116 and a waiting period so that the department can advise the
117 committee as to whether conferring immunity on Ms. Goodling
118 would interfere with any ongoing or expected criminal
119 investigation involving her. We will certainly take any
120 concerns the department may choose to provide us into
121 account.

122 As committee chairman, may I again assure all the
123 members that I do not propose this step lightly or one to be

124 regularly employed. I believe we have been proceeding with
125 appropriate care at each step of the way so as to carefully
126 consider the implications of all interests at stake—the
127 constitutional interests of the legislative and executive
128 branches and the interests of the American people in having a
129 government in whose integrity they can confidently place
130 their trust.

131 Considering all of those interests, I believe it
132 appropriate for us now to begin the legal process for
133 enabling us to secure Ms. Goodling's testimony over her
134 expected Fifth Amendment assertion. We will promptly notify
135 the Justice Department of our application, which under the
136 statute gives the department a period of time, from 10 to 30
137 days, at their discretion, to advise us to any possible
138 implications that may be connected with any investigations
139 that they may have ongoing.

140 I emphasize that the step we are taking fully preserves
141 all the committee's prerogatives to proceed or not as further
142 developments warrant. If we learn something new in the
143 courts of our investigation that gives us pause, we can
144 always stop the process before the court issues an order, and
145 I have been working closely with, and appreciate the
146 cooperation from, the ranking member, Mr. Smith.

147 Even after this ordered is issued, it does not take
148 effect unless we use it to compel testimony from Ms. Goodling

149 over her Fifth Amendment assertions. And I once again assure
150 everyone on this committee that we will not take that step
151 until and unless it appears, considering all factors, the
152 appropriate step to take in the exercise of our oversight
153 responsibility.

154 I am now pleased to recognize our ranking minority
155 member, Lamar Smith, the gentleman from Texas.

156 Mr. Smith. Thank you, Mr. Chairman.

157 Mr. Chairman, granting immunity is a big step, sometimes
158 a leap too far. For several reasons, we need to exercise
159 caution as we move forward. We all want to know the truth
160 about this situation, including Ms. Goodling's role. The
161 best way to get those facts is to ask her under oath. And if
162 she did something wrong, we don't want to cut off the
163 possibility that her actions will have consequences.

164 The Department of Justice's inspector general and its
165 Office of Professional Responsibility are in the early stages
166 of investigating this matter. Granting immunity to Ms.
167 Goodling could compromise DOJ's ability to do their job.
168 Once immunity is granted, no evidence, directly or
169 indirectly, derived from her congressional testimony could be
170 used against her. The burden a prosecutor would face in
171 proving that evidence used in a potential prosecution was not
172 derived directly or indirectly from Ms. Goodling's testimony
173 would be very high.

174 I am also concerned at the circumstances that have led
175 us here. Before we had a chance to arrange an interview with
176 Ms. Goodling, members of Congress publicly concluded that
177 wrongdoing had in fact occurred without having received any
178 evidence to support such a conclusion. These inflammatory
179 and premature statements by members of Congress caused Ms.
180 Goodling to invoke her Fifth Amendment rights.

181 And I also remain concerned about this committee's
182 investigation. Selective leaks of information from
183 interviews have skewed the public's perception of whether any
184 wrongdoing actually occurred.

185 Most troubling, the majority has generally denied the
186 minority of this committee an equal opportunity to ask
187 questions in the witness interviews. If we are to continue
188 this investigation, it must be conducted in a manner that is
189 both fair to the majority and the minority. It cannot be an
190 endless, piscatorial expedition. We must bring it to a close
191 promptly and prudently.

192 It is time for us to ask ourselves some questions. How
193 long will this investigation go on? When does this committee
194 owe it to the taxpayers to ask whether this remains an
195 efficient use of taxpayer dollars? At what point do we have
196 a responsibility to turn the focus of this committee's work
197 to those subjects most important to the public?

198 This country faces significant issues. Just a few weeks

199 ago, we held a field hearing in New Orleans. That hearing
200 revealed that 90 people in every 100,000 are murdered each
201 year in New Orleans. In less than one in 10 instances is
202 someone actually charged with murder, and less than one in 12
203 of those charged goes to jail.

204 We have focused more committee resources on this
205 investigation than on the problems of crime facing New
206 Orleans and other cities.

207 I find today's vote to be a difficult decision. One
208 could reasonably feel compelled to vote against granting Ms.
209 Goodling immunity for many reasons, some of which my
210 colleagues will mention shortly. However the public has a
211 strong interest in knowing the truth in this situation and
212 knowing it now. So I am willing to vote for immunity for Ms.
213 Goodling.

214 My vote today should not be considered a precedent for
215 supporting immunity or subpoenas in future cases. Every case
216 must be considered separately. A grant of immunity should
217 not be a committee's automatic next step when an
218 investigation does not progress the way we would like.

219 Thank you, Mr. Chairman. I will yield back.

220 Chairman Conyers. I thank the gentleman.

221 Before I recognize if there are any other members that
222 would like to be heard on this matter, I respect the
223 questions that he has raised in his statement, and I would

224 like to let him know that I am willing to work on them with
225 him, discuss them with him.

226 Our offices are working closely together. I am as
227 concerned as you are about any leaks that may be occurring,
228 and I will do everything in my power to make sure that they
229 don't happen or that they are discontinued.

230 We have had, as some of you have researched, the know
231 that since the immunity statute was enacted there have been
232 345 immunity orders issued in the Congress, and the cases are
233 all on record.

234 And so I assure that we are moving to conclude this
235 investigation as expeditiously as possible. We do have a
236 large agenda that should be addressed. We have been hindered
237 by some resistance from the Department of Justice, the White
238 House, the Republican National Committee, though some of it
239 is to be expected in this kind of situation. I don't know if
240 we would be done by now if we had received better
241 cooperation, but we would certainly be much closer to winding
242 this up.

243 Securing Ms. Goodling's testimony is a pivotal step and
244 an important one in moving us toward the conclusion of this
245 matter that you seek, and I expect the information that she
246 provides will help us narrow our focus on who else we need to
247 talk with and what we need to ask them and perhaps get a
248 better handle on how soon we may conclude.

249 So each step along the way we continue to keep each
250 other informed of our activities and plans. We have given
251 you prompt notice of all interviews, and we have your
252 representatives, the Department of Justice involved in every
253 interview that takes place, of course, and they, so far, are
254 working very well. And I think this bipartisan approach
255 serves us well, and we intend to continue it.

256 And so I will have the majority investigative staff meet
257 today with your investigative staff to make certain we are
258 completely up to date on any witnesses that we are
259 considering for interviewing or calling to testify and to
260 make sure we get your reaction and support in this matter.

261 Now, as you are already aware, over the next few weeks,
262 we are looking at possible testimony from Mr. Comey, Mr.
263 McNulty and Mr. Moschella, and of course Attorney General
264 Gonzalez is already scheduled for coming before the full
265 committee already. And others whom we have interviewed
266 privately may be called to testify publicly and probably some
267 won't.

268 And so we are concerned with getting to a definitive end
269 point in this investigation. We have got plenty to do and
270 not enough time to do it, but it is in the nature of
271 investigation that you don't always know where they are going
272 to lead and what is going to happen.

273 So it is in that spirit that I accept your statement and

274 appreciate it very much.

275 Mr. Smith. Mr. Chairman, thank you for those
276 reassurances. You did touch upon a number of concerns that I
277 have, and I appreciate your comments.

278 In regard to the ability of our staff to ask questions
279 of the various individuals who are being interviewed, what
280 oftentimes happen, and I am sure you are aware of it, is that
281 we run out of time and sometimes we don't ever get to the
282 point where we are able to ask questions. So the fact that
283 you are saying that the investigative staffs will be able to
284 talk and try to resolve that is also encouraging.

285 So thank you for your comments.

286 Chairman Conyers. Absolutely. You are welcome.

287 Mr. Sensenbrenner. Mr. Chairman?

288 Chairman Conyers. I think I will yield to the former
289 chairman of this committee, Mr. Sensenbrenner.

290 Mr. Sensenbrenner. Mr. Chairman, I rise in opposition
291 to the resolution granting immunity.

292 Mr. Chairman, the only time use immunity is necessary in
293 a congressional investigation is when a witness pleads the
294 Fifth Amendment, and the pleading of the Fifth Amendment
295 means that the witness is concerned about potential
296 criminality, not as a result of testimony that might be
297 perjurious but because of actions or statements that the
298 witness may have made before they are subpoenaed to appear

299 before this committee or any other committee.

300 And if that is the case, immunity can very easily be the
301 get out of jail card for someone who has committed a crime,
302 and that is what happened 20 years ago during the Iran-Contra
303 investigation. That was a media event. The public was
304 watching. That was even before cable TV was in the fold, and
305 many of the over-the-air networks broadcast either the
306 hearings in their entirety or significant parts of the
307 hearing.

308 Both John Poindexter and Oliver North, who worked in the
309 White House for the National Security Council, were given
310 immunity for their testimony, and subsequently they were
311 convicted of making false statements prior to the time they
312 were brought before the joint congressional committee. They
313 appealed their convictions and the D.C. circuit reversed
314 those convictions based upon the fact that the prosecutor
315 used immunized testimony.

316 On remand, the prosecutor elected not to retry Mr.
317 Poindexter and Colonel North because there was not enough
318 unimmunized testimony left to support a conviction of the
319 crimes for which they were indicted.

320 So as a result of the immunity in the Iran-Contra
321 affair, there were two people that the jury found guilty
322 beyond a reasonable doubt, unanimously, that got off the hook
323 simply because immunized testimony was used.

324 Now, I guess the question that we have to ask ourselves
325 in determining whether or not to pass this resolution to have
326 the Justice Department apply for the immunity that is called
327 for is whether or not we think that the criminal process of
328 determining whether someone has committed a crime should be
329 obstructed by Congress conducting an investigation. I think
330 that if you look at the history of what Congress did 20 years
331 ago in Iran-Contra affair, the answer to that question should
332 be, no.

333 And for that reason, I oppose this resolution. I would
334 ask my colleagues on both sides of the aisle to think of the
335 consequences to the integrity and reputation of this
336 committee and this institution should we grant immunity and
337 it is possible to prosecute someone that a grand jury might
338 think has committed a crime and to let a jury of Ms.
339 Goodling's peers in this instance make a determination of
340 whether she committed a crime or not.

341 So I am going to vote no. I would ask my colleagues on
342 both sides of the aisle to look at this in the long run
343 rather than in the short run and join me.

344 I yield back the balance of my time.

345 Mr. Cannon. Mr. Chairman?

346 Chairman Conyers. Yes.

347 Mr. Cannon. Point of parliamentary inquiry here. Are
348 we in debate or are we still in opening statements on this?

349 Chairman Conyers. There are no opening statements. Do
350 you want to be recognized?

351 Mr. Cannon. I seek recognition at the appropriate time,
352 yes.

353 Chairman Conyers. All right. I don't want to keep this
354 a secret from any of the members. I am anxious to move this
355 forward as quickly as we can and hope that the statements
356 don't have to consume all 5 minutes if you are recognized,
357 because we have a very full schedule, and it would be nice to
358 have dinner tonight somewhere around the dinnertime hour.

359 Ms. Jackson Lee. Mr. Chairman?

360 Chairman Conyers. I understand that there are several
361 members on this side that still seek recognition, and I hear
362 the gentlelady from Texas calling the chair.

363 For what purpose does the gentlelady—

364 Ms. Jackson Lee. Strike the last word.

365 Chairman Conyers. All right. She is recognized.

366 Ms. Jackson Lee. Mr. Chairman, I am reflective of the
367 comments made both by the ranking member and the former
368 chairman.

369 I think we have learned our lesson, and I think it has
370 been a constructive lesson regarding the contra issues.
371 Because once we vote today, we will have the opportunity to
372 give the Department of Justice a response time. Frankly,
373 they will be able to address this body as to whether or not

374 there is a pending prosecution or an obstruction that might
375 occur because of this subpoena. And we will have an
376 opportunity to reconsider.

377 I think it is important to note that if we fail to issue
378 a subpoena today, we really have been derelict in our duty.
379 There is no question that repeatedly the Department of
380 Justice has not responded, not only to this committee but to
381 individual members. One of the general concerns that I have
382 is whether or not the people's business is being accomplished
383 because the Justice Department is bogged down with these
384 inquiries and concerns that have not been explored and not
385 been answered about the fired U.S. attorneys.

386 It has recently come to our attention that a U.S.
387 attorney that had been investigating a person of interest has
388 taken a lucrative law firm position at the law firm that is
389 defending the person they were previously considering
390 investigating.

391 All of these issues may be edified by the subpoena and
392 testimony of Ms. Goodling, and I think it is imperative, one,
393 to get the Justice Department back on doing its job. That
394 means investigating civil rights abuses, which it has not
395 been doing, carrying on the responsibilities in its criminal
396 division, which I imagine it can't do, and getting a
397 management system in place that is, if you will, not tainted
398 by all of these questions.

399 So I, frankly, think we have answered the concern of the
400 gentleman from Wisconsin by allowing the department to advise
401 us as to whether immunity would interfere with an existing or
402 contemplated prosecution. The committee then will make a
403 follow-up judgment whether to proceed, defer or delay taking
404 the immunized testimony. What more can we do?

405 And we certainly cannot allow the confusion, the lack of
406 responsiveness and certainly the response that the attorney
407 general gave just last week as to be the lasting response on
408 these glaring charges of improprieties and maybe even illegal
409 actions.

410 And so I would rise to support the subpoena and thank
411 the ranking member for his support and the full committee
412 chair for the leadership on this issue, and I yield back.

413 Chairman Conyers. I thank the gentlelady for her
414 brevity.

415 Mr. Gohmert. Mr. Chairman, parliamentary inquiry.

416 Chairman Conyers. Mr. Cannon?

417 Mr. Cannon. Thank you. I don't have a parliamentary
418 inquiry; somebody else had that. I seek recognition for 5
419 minutes.

420 Chairman Conyers. Oh. Well, let me yield to the
421 gentleman from Texas. Do you have a parliamentary inquiry?

422 Mr. Gohmert. Yes, sir.

423 Chairman Conyers. Yes, Mr. Gohmert?

424 Mr. Gohmert. Mr. Chairman, I know from apparently a lot
425 of the press and the radio and the television a lot of people
426 are speculating on whether or not the attorney general is
427 going to resign or hang in there, and I am curious—

428 Chairman Conyers. Can you hold that? I don't think
429 that is much of a parliamentary inquiry?

430 Mr. Gohmert. But my inquiry is if he were to resign, is
431 this committee intent on going forward with the subpoena?

432 Chairman Conyers. How do I know, sir? Let's not go
433 that way today at this early point in time. I have no idea,
434 and since you mentioned it, I have not called for his
435 resignation.

436 Mr. Gohmert. I know the chairman hasn't, but that is
437 what I was wondering as an inquiry.

438 Chairman Conyers. Yes. Okay. Unanswerable.

439 Mr. Cannon?

440 Mr. Cannon. Thank you, Mr. Chairman. I want to assure
441 the gentleman that I don't think that this resolution is
442 going to endanger his dinner tonight. With that said, I will
443 try to keep my comments brief. I do have a couple of
444 questions for you.

445 But, first of all, I would never arrogate to myself the
446 role of explaining the ranking member and his meaning, but as
447 to a single word, I was interested in "piscatorial," which
448 means fishing, and I thought that that deserved at least some

449 notice. Great word.

450 I want to associate myself with the comments of Mr.
451 Smith. I appreciate the approach and the caution that he
452 talks about in going forward with these sorts of things. I
453 also have been, as the ranking member, irritated to a great
454 degree by the leaks that we have had in the matter, and I
455 appreciate the chairman's assurances that we will seek to
456 change that.

457 I would like to point out that this investigation taxes
458 the resources of this committee but also the resources of the
459 Justice Department. We had Mr. Moschella in here yesterday
460 for 11 hours answering questions in his interview, and he is
461 the point person for the Department of Justice now on the
462 Virginia Tech incident.

463 And having him and other members of the administration,
464 as well as the resources of this committee tied up, as I
465 mentioned to you in the hallway the other day, Mr. Chairman,
466 this is a difficult matter, and, therefore, this is the
467 choice of the majority, and I am supportive to the degree
468 that I can be.

469 But last week when we had our meeting as Republicans, we
470 talked about how we should proceed, and I suggested to the
471 minority that we have these interviews that are ongoing and
472 that that should inform the decision about granting immunity
473 to Ms. Goodling.

474 Since last week, we have had a couple of interviews, and
475 it just seems to me, at least I don't see—and, granted, these
476 are not points that we can talk about publicly, we may want
477 to go into private session—but it seems to me that we haven't
478 actually come up with anything that indicates that we
479 actually need to proceed with Ms. Goodling's testimony.

480 And if I am wrong, I would actually really like to know
481 from you, Mr. Chairman, or others who are involved, what is
482 it that we have learned that actually makes it more important
483 today than last week that we proceed with an immunity grant
484 for Ms. Goodling?

485 Chairman Conyers. Well, I don't want to take you back
486 through all of the activity that has led us to this morning,
487 Chris, but let me assure you the reason the interview went so
488 long yesterday, if this will make you feel better, is that it
489 was Senate and House testimony combined, and at the request
490 of the person being interviewed, he wanted to combine both
491 sessions. There were going to be two separate sessions. He
492 wanted to do them all in one day and be done with it. And
493 that is what—

494 Mr. Cannon. I thank the chairman.

495 Reclaiming my time, all these interviews are joint
496 interviews, and they are all taking a very, very long time,
497 which means, by the way, that we are being very thorough.

498 And while in the early interviews it was very difficult

499 to get minority time, I think that has been solved, and I
500 want to thank the chairman for his involvement in that and
501 the gracious way this has proceeded. There is nothing in
502 anything I want to say here that is critical. I think we
503 have had some leaks that have been a problem. The chairman
504 has been very helpful on that.

505 But what have we seen that indicates that there is
506 something that Ms. Goodling can tell us that is new?

507 Chairman Conyers. Chris, she was the liaison to the
508 White House from the Department of Justice. Doesn't that
509 ring a bell that there may be some connection here?

510 Mr. Cannon. Well, I actually made the Daily Kos—

511 Chairman Conyers. And if she refuses to testify under
512 oath—

513 Mr. Cannon. I actually made the Daily Kos for the
514 dumbest statement of the week, which was that the firings—
515 actually, when they read the quote to me, I thought it was
516 pretty cool, and then to realize it was actually in the Daily
517 Kos, I mean, I think I have arrived.

518 The point was that these firings are justifiably
519 political. Politics is not the issue here; it is wrongdoing
520 and corruption. And what we haven't seen yet in anything
521 that we have done so far, so far as I can tell, is
522 indications that there is something corrupt about the
523 process.

524 Chairman Conyers. Well, that is what we are here for,
525 Chris. I mean, I wish I could be more definitive, but this
526 is a reasonable process. We have got a person that is
527 connected very closely with the questions involving the
528 discharge of the U.S. attorneys. She won't testify without
529 immunity, and we just propose to give it to her.

530 Now, where it goes from there, I am totally unprepared
531 to say. We may come back and say, "You were right," but we
532 also may not.

533 Mr. Cannon. I notice that my time has expired, Mr.
534 Chairman. I appreciate your graciousness in the whole
535 matter, and if I am right, I hope that you will tell the
536 Daily Kos that, and I yield back.

537 Chairman Conyers. Randy Forbes of Virginia?

538 Mr. Forbes. Thank you, Mr. Chairman. I move to strike
539 the last word.

540 Chairman Conyers. Absolutely.

541 Mr. Forbes. Mr. Chairman, first of all, I acknowledge
542 that we have a very full schedule but an important schedule,
543 and I also point out that we don't get to set that schedule,
544 so we have to go with what is put before us.

545 Mr. Chairman, as I have stated many times, and I repeat
546 again today, my respect for you and my respect for the
547 ranking member, and I hope my remarks will be taken in that
548 context, but last year, many of us were enormously

549 embarrassed and we felt it was inappropriate as we found out
550 about the famous bridge to nowhere.

551 But, Mr. Chairman, I would submit that we are rapidly
552 exchanging the bridge to nowhere to hearings to nowhere. And
553 everyone understands why we have become so quickly an
554 investigative body rather than a legislative body. It is all
555 about wearing down and destroying as many people in the
556 administration as possible.

557 We get one and just like in the barber shop we say,
558 "Next," and put someone else in the chair, and it is working.
559 It is happening nonstop throughout this Congress. We are
560 wearing down our Justice Department, our FBI, our agency
561 employees. We keep their attention on us instead of on doing
562 their jobs. And the partisans love this kind of thing, but
563 most citizens are sick of it.

564 And while we are running the government by hearing, we
565 are not reaching for the solutions that impact them most. As
566 the ranking member pointed out, in the hearing we had in New
567 Orleans, only 7 percent of the individuals arrested for
568 crimes, including the most violent crimes that were there,
569 ever went to jail. Only 12 percent of those arrested for
570 murders ever went to jail. And are we doing anything about
571 that? No. Our answer will be, just send them a check and
572 hope it gets better.

573 While we are sitting here doing all this investigation,

574 wearing other people down, we have got growing gang networks
575 around the country. Their networks are growing. Are we
576 going to do anything to stop them? No. Our answer will be,
577 let's send them a check and hope it stops.

578 On illegal immigration, we will have 10 hearings, but
579 are we going to stop temporary protected status, which allows
580 the most violent gang members to stand out on the street with
581 a placard that says, "I am here illegally, I am a member of
582 the most violent criminal gang in America, and you can't do
583 anything about it," when we could stop that? When we have
584 gang members that are here illegally? When we have illegal
585 drunk drivers that are doing things that we could stop?

586 We don't need more hearings to fix these problems. We
587 could reach out and fix them and impact our neighborhood.
588 But what is our answer de jour? It is just, write more
589 checks, send more money, whether it works or not.

590 And why give immunity to Mrs. Goodling? If she is
591 guilty, then prosecute her, but let professional prosecutors
592 handle this matter, who have the full picture, and don't turn
593 it into a political football that could botch this
594 prosecution like this body has done in the past.

595 Last week, in this very committee, it was stated that
596 there was no evidence, no evidence, of any wrongdoing.
597 Somewhere, sometime, we have to stop this process and put our
598 energy on the criminals that are impacting our neighborhoods.

599 For me, today is that day. This resolution is that
600 resolution, and I can't support it.

601 Mr. Chairman, I yield back the balance of my time.

602 Chairman Conyers. I thank you, Mr. Forbes.

603 Before I call for a vote, does Mr. Gohmert seek
604 recognition at all?

605 Mr. Gohmert. Yes, Mr. Chairman.

606 Chairman Conyers. Well, I recognize you now.

607 Mr. Gohmert. Thank you. And I always am pleased to
608 recognize you every time I see you in the hall, and I
609 appreciate being recognized here.

610 But with regard to the subpoena, as my friend, Mr.
611 Forbes, had indicated, we heard last week there is no
612 indication of wrongdoing, but I believe it was criminal
613 wrongdoing or in that context. I think all of us agree there
614 was wrongdoing by this attorney general or Department of
615 Justice office in the way that it went about letting these
616 U.S. attorneys go.

617 There has been a lot of talk about, "Gee, there were
618 cases that were affected." Well, I recall back in 1993, I
619 was a judge at the time in Texas, how it adversely affected
620 our U.S. attorneys. Some of the 93 that were let go by the
621 Clinton administration say cases were adversely affected by
622 that.

623 The thing the Clinton administration did well that this

624 Department of Justice or Attorney General's Office did poorly
625 in its wrongdoing of good judgment was the Clinton
626 administration had the good sense to say, "You know what, we
627 just want somebody else. The law allows us to have our own
628 people that we want in there, so we want you out; we want
629 somebody else in," and in record-breaking status dropped 93
630 U.S. attorneys.

631 This Attorney General's Office, on the other hand, said,
632 "There are people we want besides you eight, but we are also
633 going to put you in defensive mode." And unlike the Clinton
634 administration that said, "Good job, thank you, bye-bye,"
635 this Attorney General's Office—

636 Mr. Delahunt. Would the gentleman yield for a moment?

637 Mr. Gohmert. Let me finish. This Attorney General's
638 Office said, "Bye-bye, and, by the way, you did a bad job,"
639 which necessarily put them in defensive mode to lash back at
640 the Attorney General's Office in order to protect their good
641 names. And so I think that is what led to a lot of it.

642 So it was probably not well-handled, and, yes, I would
643 yield to my friend from Massachusetts.

644 Mr. Delahunt. I thank the gentleman for yielding.

645 And you make reference to the dismissal or the failure
646 to reappoint 93 U.S. attorneys, and I keep hearing that
647 repeated, and it is accurate, but I think we have to put it
648 in a context. That occurs every time there is a change in

649 administration. One only has to go back and when there is a
650 change of administration from Republican to Democrat,
651 clearly, those holdovers are expected to be replaced in the
652 course of a relatively short period of time—

653 Mr. Gohmert. And I understand that, and my time is
654 growing short. I need to reclaim. But you are right, they
655 are replaced in a relatively short period of time, but never
656 had it been so abruptly like that. The difference was they
657 handled it well, they didn't insult the U.S. attorneys
658 outgoing. This one did.

659 And I appreciate the chairman's answer that we don't
660 know how to answer what will happen if the attorney general
661 were to resign, because as a commander in the Army used to
662 tell me, sometimes a no answer is an answer.

663 And in this case, if friends are trying to advise the
664 attorney general, do you hang in there and fight or do you
665 just resign so we can move on to the next issue, apparently
666 the answer is, hang in there until we see what happens,
667 because it is not going to go away if you resign. We are
668 still going to be focused on you for some time to come.

669 With that, I yield back.

670 Chairman Conyers. Thank you. We are going to try to
671 vote as soon as I recognize Mike Pence of Indiana.

672 Mr. Pence. Thank you, Mr. Chairman. Thank you for the
673 courtesy.

674 I associate myself with the long-standing statement by
675 President Abraham Lincoln who said, "Give the people the
676 facts and the Republic will be saved." And so I find myself
677 willing to give the benefit of the doubt in this case to the
678 majority of the committee and move forward and find the
679 facts.

680 But a few cautionary statements. I do share the former
681 chairman of this committee's concern about use immunity in a
682 case like this, and I will ponder that deeply in the years
683 ahead.

684 But I thought it would be important before we go to a
685 vote to restate the facts of this case. The basic facts are
686 straightforward and remain unchanged.

687 The Department of Justice sought the resignations of
688 eight of 93 U.S. attorneys for valid reasons. DOJ has been
689 forthcoming in providing the Congress with more than 3,000
690 pages of e-mails and documents so that Congress and the
691 American people understand the process behind this decision
692 to replace eight of the 93 U.S. attorneys.

693 And I would say, for the record, Mr. Chairman, nothing
694 in those documents contradicts the department's assertion
695 that not one of these U.S. attorneys were dismissed for
696 improper reasons. DOJ has also agreed to make relevant
697 officials voluntarily available, and we have heard statements
698 today about some 11 hours of testimony yesterday.

699 It does seem to me that it is important to remind the
700 American people that it would be improper to remove a U.S.
701 attorney in retaliation for bringing or failing to bring a
702 particular prosecution. That would be offensive to any
703 notion of justice among any American.

704 But as has been testified and as reams of documents
705 support, that, according to the facts as we know them now,
706 did not happen in this case. And U.S. attorneys, we should
707 be reminded, serve at the pleasure of the president of the
708 United States of America, and it is appropriate and routine
709 for the White House to be consulted with respect to replacing
710 any presidential appointee, as happened in this case.

711 The attorney general, I am pleased to know, will testify
712 before this committee. That is all together appropriate, but
713 he has already testified under oath before the Senate
714 Judiciary Committee. He has taken responsibility for
715 administrative errors, he has made recommendations for
716 changes in management to prevent that in the future. I
717 acknowledge the administrative errors, but I fail to see in a
718 fair reading of the facts, as we know them now, evidence of
719 wrongdoing.

720 And, therefore, I find myself hesitant and struggling
721 with the urgency and the application of use immunity in this
722 case. But, again, in the interest of the facts, I am
723 prepared to support it.

724 My last point is simply that I hope we can do this, Mr.
725 Chairman, as you do so many things in your career, and that
726 is with dignity and beyond politics. But that became, of
727 course, more difficult when the former chairman of the
728 Democratic Congressional Campaign Committee chose this week
729 at the Brookings Institute to give a speech in which he cited
730 specifically what have become the efforts of this committee
731 as a part of an overall political agenda to taint this
732 administration.

733 My distinguished colleague, Rahm Emanuel, now the caucus
734 chairman for your party, said, "Americans have learned just
735 how the Bush administration works and are discovering that
736 under President Bush no function of the federal government is
737 free from the influence of politics. And this is no accident
738 and by design." And he says, "Absolutely nothing is out of
739 bounds, from our national security to our justice system and
740 everything in between," and I close quote, respectfully.

741 I would say, Mr. Chairman, it is precisely this kind of
742 rhetoric to suggest in the absence of facts that the justice
743 system in America is being subject to the influence of raw
744 politics. That has no place in this debate and in this
745 consideration. I know that your dignity and your career
746 reflect the capacity to consider matters of justice beyond
747 politics, and I hope as we move forward we will avoid this
748 kind of rhetoric which will not serve the interests of the

749 American people or the interests of justice in this case.

750 Chairman Conyers. Thank you, Mr. Pence.

751 We are going to have a record vote because two-thirds of
752 the committee in support of this is required, and the
753 question occurs on the resolution directing the House general
754 counsel to apply to the district court for an order
755 conferring use immunity to Monica Goodling for testimony and
756 information provided to the committee under compulsion.

757 As your name is called, those in favor will signify by
758 saying, "Aye," and all opposed, "No."

759 The clerk will call the roll.

760 The Clerk. Mr. Conyers?

761 Chairman Conyers. Aye.

762 The Clerk. Mr. Conyers votes aye.

763 Mr. Berman?

764 Mr. Berman. Aye.

765 The Clerk. Mr. Berman votes aye.

766 Mr. Boucher?

767 [No response.]

768 Mr. Nadler?

769 Mr. Nadler. Aye.

770 The Clerk. Mr. Nadler votes aye.

771 Mr. Scott?

772 Mr. Scott. Aye.

773 The Clerk. Mr. Scott votes aye.

774 Mr. Watt?

775 Mr. Watt. Aye.

776 The Clerk. Mr. Watt votes aye.

777 Ms. Lofgren?

778 Ms. Lofgren. Aye.

779 The Clerk. Ms. Lofgren votes aye.

780 Ms. Jackson Lee?

781 Ms. Jackson Lee. Aye.

782 The Clerk. Ms. Jackson Lee votes aye.

783 Ms. Waters?

784 [No response.]

785 Mr. Meehan?

786 [No response.]

787 Mr. Delahunt?

788 Mr. Delahunt. Aye.

789 The Clerk. Mr. Delahunt votes aye.

790 Mr. Wexler?

791 Mr. Wexler. Aye.

792 The Clerk. Mr. Wexler votes aye.

793 Ms. Sanchez?

794 Ms. Sanchez. Aye.

795 The Clerk. Ms. Sanchez votes aye.

796 Mr. Cohen?

797 Mr. Cohen. Aye.

798 The Clerk. Mr. Cohen votes aye.

799 Mr. Johnson?
800 Mr. Johnson. Aye.
801 The Clerk. Mr. Johnson votes aye.
802 Mr. Gutierrez?
803 Mr. Gutierrez. Aye.
804 The Clerk. Mr. Gutierrez votes aye.
805 Mr. Sherman?
806 Mr. Sherman. Aye.
807 The Clerk. Mr. Sherman votes aye.
808 Ms. Baldwin?
809 Ms. Baldwin. Aye.
810 The Clerk. Ms. Baldwin votes aye.
811 Mr. Weiner?
812 Mr. Weiner. Aye.
813 The Clerk. Mr. Weiner votes aye.
814 Mr. Schiff?
815 Mr. Schiff. Aye.
816 The Clerk. Mr. Schiff votes aye.
817 Mr. Davis?
818 Mr. Davis. Aye.
819 The Clerk. Mr. Davis votes aye.
820 Ms. Wasserman Schultz?
821 Ms. Wasserman Schultz. Aye.
822 The Clerk. Ms. Wasserman Schultz votes aye.
823 Mr. Ellison?

824 Mr. Ellison. Aye.

825 The Clerk. Mr. Ellison votes aye.

826 Mr. Smith?

827 Mr. Smith. Aye.

828 The Clerk. Mr. Smith votes aye.

829 Mr. Sensenbrenner?

830 Mr. Sensenbrenner. No.

831 The Clerk. Mr. Sensenbrenner votes no.

832 Mr. Coble?

833 Mr. Coble. Aye.

834 The Clerk. Mr. Coble votes aye.

835 Mr. Gallegly?

836 Mr. Gallegly. Aye.

837 The Clerk. Mr. Gallegly votes aye.

838 Mr. Goodlatte?

839 Mr. Goodlatte. Aye.

840 The Clerk. Mr. Goodlatte votes aye.

841 Mr. Chabot?

842 Mr. Chabot. Aye.

843 The Clerk. Mr. Chabot votes aye.

844 Mr. Lungren?

845 Mr. Lungren. Aye.

846 The Clerk. Mr. Lungren votes aye.

847 Mr. Cannon?

848 Mr. Cannon. No.

849 The Clerk. Mr. Cannon votes no.
850 Mr. Keller?
851 [No response.]
852 Mr. Issa?
853 [No response.]
854 Mr. Pence?
855 Mr. Pence. Aye.
856 The Clerk. Mr. Pence votes aye.
857 Mr. Forbes?
858 Mr. Forbes. No.
859 The Clerk. Mr. Forbes votes no.
860 Mr. King?
861 Mr. King. No.
862 The Clerk. Mr. King votes no.
863 Mr. Feeney?
864 Mr. Feeney. Aye.
865 The Clerk. Mr. Feeney votes aye.
866 Mr. Franks?
867 Mr. Franks. No.
868 The Clerk. Mr. Franks votes no.
869 Mr. Gohmert?
870 Mr. Gohmert. Aye.
871 The Clerk. Mr. Gohmert votes aye.
872 Mr. Jordan?
873 Mr. Jordan. Aye.

874 The Clerk. Mr. Jordan votes aye.

875 Chairman Conyers. Any other members who have not voted?

876 Ms. Waters?

877 Ms. Waters. Aye.

878 The Clerk. Ms. Waters votes aye.

879 Chairman Conyers. Mr. Issa?

880 Mr. Issa. Aye.

881 The Clerk. Mr. Issa votes aye.

882 Chairman Conyers. Any others?

883 The clerk will report.

884 Yes, Mr. Gohmert?

885 Mr. Gohmert. No.

886 The Clerk. Mr. Gohmert votes no.

887 Chairman Conyers. Mr. Meehan?

888 Mr. Meehan. Aye.

889 The Clerk. Mr. Meehan votes aye.

890 Chairman Conyers. The clerk will report, please.

891 The Clerk. Mr. Chairman, 32 members voted aye, six

892 members voted no.

893 Chairman Conyers. Two-thirds of the committee members

894 having voted in the affirmative, the resolution is adopted.

895 Pursuant to notice, I call up the resolution authorizing

896 that a subpoena be issued to Ms. Goodling for testimony and

897 related documents.

898 [The resolution follows:]

899 ***** INSERT *****

900 Chairman Conyers. This will add Ms. Goodling to the
901 list of current and former Justice Department and White House
902 officials who the chairman may subpoena to come before the
903 committee.

904 The question occurs on the resolution authorizing the
905 issuance of a subpoena to Monica Goodling.

906 All those in favor, signify by saying, "Aye."

907 All opposed, "No."

908 In the opinion of the chair, the ayes have it, and the
909 resolution is adopted.

910 The next matter pending is H.R. 692, the "Army
911 Specialist Joseph Micks Federal Flag Code Amendment Act of
912 2007."

913 The clerk will report the bill, please.

914 The Clerk. "H.R. 692, a bill to amend title 4, United
915 States Code—"

916 [The bill follows:]

917 ***** INSERT *****

918 Mr. Nadler. Mr. Chairman?

919 Chairman Conyers. I ask unanimous consent that the bill
920 be considered as read and recognize the gentleman from New
921 York, Jerry Nadler.

922 Mr. Nadler. Thank you, Mr. Chairman. I have an
923 amendment in the nature of a substitute at the desk.

924 Chairman Conyers. All right.

925 The clerk will report the substitute.

926 The Clerk. "Amendment in the nature of a substitute to
927 H.R. 692, offered by Mr. Nadler—"

928 [The amendment by Mr. Nadler follows:]

929 ***** INSERT *****

930 Mr. Nadler. Mr. Chairman, I ask unanimous consent that
931 the amendment be considered as read.

932 Chairman Conyers. Without objection, so ordered. The
933 gentleman is recognized.

934 Mr. Nadler. Thank you, Mr. Chairman.

935 Mr. Chairman, H.R. 692 was introduced by our colleague
936 from Michigan, Representative Bart Stupak, to honor our
937 fallen men and women who gave their lives to this nation
938 while on active duty in the armed forces.

939 The bill is named for Specialist Joseph P. Micks of
940 Rapid River, Michigan, who was killed by a roadside bomb on
941 July 8, 2006, at the age of 22 while serving in Ramadi, Iraq.

942 H.R. 692 simply amends current law to add heroes like
943 Specialist Micks to the list of persons in whose honor the
944 flag should be flown at half-staff for 10 days. The bill
945 would also specify that a governor's proclamation ordering
946 the flag to be flown at half-staff, consistent with this
947 measure, would apply to federal facilities in that state.

948 In response to the frustration expressed by many
949 families, my colleague introduced this legislation because
950 the flags on federal buildings have not been lowered in honor
951 of our fallen members of the armed services, while the flags
952 on state and local buildings were flown at half-staff.

953 As a spokeswoman for the Society of Military Widows
954 observed, "We strongly feel that federal agencies within the

955 states should comply with this in order to honor fallen
956 native sons and daughters. As military widows, we can
957 especially appreciate this visible show of respect."

958 In agreement with the distinguished ranking member, we
959 have also added a congressional finding that, "Members of the
960 armed forces of the United States defend the freedom and
961 security of the United States." While that goes without
962 saying, it is appropriate to emphasize that in this
963 legislation.

964 We have also clarified that the new authority provided
965 in this legislation applies to the mayor of the District of
966 Columbia in addition to the governors of the states, the
967 territories and Puerto Rico.

968 I urge adoption of this bipartisan measure to honor our
969 troops, and I yield back the balance of my time.

970 Chairman Conyers. I recognize now Lamar Smith.

971 Mr. Smith. Thank you, Mr. Chairman.

972 Mr. Chairman, this bill, H.R. 692, authorizes state
973 governors to fly the American flag at half-staff upon the
974 death of a member of the armed forces who dies while serving
975 on active duty. I support this legislation that honors all
976 those who defend the freedom and security of the United
977 States.

978 The life of each member of our armed forces is a
979 precious gift to all Americans who love liberty, and it is

980 altogether fitting that the governors of the states and the
981 mayor of D.C. be allowed to recognize those lives by
982 bestowing the honor of flying the flag at half-mast.

983 I am also pleased the majority has accepted my proposal
984 to add a simple congressional finding to this legislation
985 that states the following: "Congress finds that members of
986 the armed forces of the United States defend the freedom and
987 security of our nation."

988 This is exactly the same finding that Congress included
989 in the Homeland Security Act of 2002. That finding was true
990 then and it is true today, and it is fitting that it
991 accompanied this legislation that recognizes not just the
992 loss of a member of our armed forces but also honors the
993 reasons they serve.

994 Members of our armed forces put their lives between us
995 and hostile enemies around the world. They sacrifice
996 stability with their own families so ours may sleep easier.
997 They persevere in the most extreme conditions so we can lead
998 ordinary lives. It is the least we can do to lower the flag
999 on their behalf.

1000 When we lower the flag to half-staff, we remind
1001 ourselves that in the end the American spirit is not
1002 preserved by lofty ideals. It is preserved by the courageous
1003 and selfless actions taken by our own brothers and sisters,
1004 mothers and fathers, neighbors and friends who come from our

1005 own hometown.

1006 When we lower the flag, the country lowers its head, and
1007 we are reminded that someone fell so that our ideals could
1008 rise.

1009 The flag code is designed to honor public service, and
1010 it is entirely fitting that this bill be amended to codify
1011 what all members of the armed forces are honored for; namely,
1012 their service in helping to preserve the safety and liberty
1013 of all Americans.

1014 Mr. Chairman, I am pleased to support this legislation
1015 and encourage all of my colleagues to do so as well, and I
1016 will yield back the balance of my time.

1017 Chairman Conyers. Thank you, Mr. Smith.

1018 Mr. Nadler?

1019 Mr. Nadler. Mr. Chairman, I am told I didn't do what I
1020 remember doing, but I will do it again. I pointed out that I
1021 had an amendment in the nature of a substitute at the desk.
1022 She started reading it, and you, Mr. Chairman, then asked
1023 that it be considered as read, but I will do all that again,
1024 and I so do.

1025 Chairman Conyers. We will now vote on the amendment in
1026 the nature of a substitute, offered by Mr. Nadler.

1027 All in favor, say, "Aye."

1028 All opposed, say, "No."

1029 The ayes have it.

1030 If there are no further amendments, we have a reporting
1031 quorum present. The question is on reporting the bill
1032 favorably to the House, as amended.

1033 All in favor will signify by saying, "Aye."

1034 All opposed, by saying, "No."

1035 The ayes have it, and the bill, H.R. 692, is ordered
1036 reported favorably to the House. Without objection, the bill
1037 will be reported favorably to the House in the form of a
1038 single amendment in the nature of a substitute, incorporating
1039 any amendments adopted here today.

1040 Without objection, the staff is directed to make any
1041 technical and conforming changes. All members will be given
1042 2 days, as provided by House rules, to submit additional
1043 views.

1044 Pursuant to Committee Rule 2(j), the chair is authorized
1045 to offer such motions as may be necessary in the House to go
1046 to conference with the Senate on the bill, if necessary.

1047 Pursuant to notice, I now call up H.R. 314, Supporting
1048 the Goals of World Intellectual Property Day, for purposes of
1049 a markup.

1050 The clerk will report the resolution.

1051 The Clerk. "H.R. 314, Supporting the Goals of World
1052 Intellectual Property Day, and for other purposes."

1053 [The resolution follows:]

1054 ***** INSERT *****

1055 Chairman Conyers. I ask unanimous consent that the
1056 resolution be agreed to, as read.

1057 And I recognize the gentleman from Florida, Mr. Wexler.

1058 Mr. Wexler. Thank you very much, Mr. Chairman.

1059 I want to thank the chairman for permitting the bill to
1060 be on the calendar today. This is a truly bipartisan
1061 resolution which celebrates the importance of intellectual
1062 property in America's economy. In the previous Congress, we
1063 passed a similar resolution by a vote of 315 to zero.

1064 I want to also thank Mr. Berman, Mr. Coble, Mr. Lamar
1065 Smith, Mr. Feeney, Mr. Adam Smith, Ms. Bono, Mr. Schiff, Ms.
1066 Watson, Mr. Issa and Mr. Goodlatte, who joined me in
1067 introducing the resolution.

1068 In summation, World Intellectual Property Day is April
1069 26 of this year. It was created by the World Intellectual
1070 Property Organization to bring attention to the importance of
1071 intellectual property in the world economy, and its essential
1072 goal is to celebrate the link between intellectual property
1073 and creativity and economic growth and prosperity.

1074 And, again, I thank the chairman and ask the committee
1075 for unanimous support.

1076 Chairman Conyers. Absolutely.

1077 Lamar Smith?

1078 Mr. Smith. Thank you, Mr. Chairman.

1079 Mr. Chairman, I support H.R. 314 and commend the

1080 gentleman from Florida, Mr. Wexler, for introducing it.

1081 The purpose of this resolution is to congratulate the
1082 World Intellectual Property Organization, known as WIPO, for
1083 its work and to support the goals of World Intellectual
1084 Property Day.

1085 WIPO is considered the most important international
1086 organization for the promotion of intellectual property.
1087 Among other responsibilities, it administers treaties, such
1088 as the Berne and Paris conventions, which protect
1089 intellectual property globally.

1090 The convention that created WIPO took effect on April
1091 26, 1970. The United States joined WIPO that same year and
1092 has remained a member since that time. Currently, 184
1093 countries are parties to the WIPO convention.

1094 Seven years ago, WIPO member states commemorated the
1095 founding of the organization by establishing World
1096 Intellectual Property Day. The goals of this IP day include
1097 teaching the importance of intellectual property as a tool
1098 for economic, social and cultural development.

1099 H.R. 314 commemorates the achievements of WIPO and the
1100 designation of April 26, 2007, as World Intellectual Property
1101 Day for the current year.

1102 The resolution also contains detailed data on the extent
1103 to which intellectual property generates jobs, sales and
1104 exports for the United States and contrasts these benefits

1105 with the problems related to piracy and anti-counterfeiting.

1106 As a former chairman of the Intellectual Property
1107 Subcommittee, I support strong global protections for
1108 intellectual property and recognize the important role that
1109 WIPO plays.

1110 I urge my colleagues to support this resolution.

1111 Mr. Chairman, I will yield the balance of my time to the
1112 ranking member of the Intellectual Property Committee, Mr.
1113 Coble.

1114 Mr. Coble. I thank the gentleman.

1115 I will be very brief, Mr. Chairman.

1116 The distinguished gentleman from Florida and the
1117 distinguished gentleman from Texas have pretty thoroughly
1118 promoted the Intellectual Property Day bill that is before
1119 us.

1120 I know of no commercial entity, colleagues, that
1121 contributes more favorably to economic well-being in this
1122 country than does the intellectual property community. I
1123 think the bill is dedicated to promoting the use and
1124 protection of patents, trademarks and copyrights
1125 internationally, and I urge its passage and yield back to the
1126 ranking member.

1127 Mr. Smith. Mr. Chairman, I yield back as well.

1128 Chairman Conyers. Thank you.

1129 A reporting quorum being present, the question is on

1130 reporting this bill favorably to the House.

1131 All in favor will signify by saying, "Aye."

1132 Opposed, "No."

1133 The ayes have it, and H.R. 314 is ordered reported
1134 favorably to the House. Without objection, the resolution
1135 will be reported favorably to the House in the form of a
1136 single amendment in the nature of a substitute, incorporating
1137 any amendments adopted here today.

1138 Without objection, the staff is directed to make any
1139 technical and conforming changes. All members will be given
1140 2 days, as provided by House rules, to submit additional
1141 views.

1142 Pursuant to Committee Rule 2(j), the chair is authorized
1143 to offer such motions as may be necessary in the House to go
1144 to conference with the Senate on the resolution.

1145 Pursuant to notice, I now call up bill, H.R. 1592, the
1146 "Local Law Enforcement Hate Crimes Prevention Act of 2007,"
1147 for purposes of a markup and ask the clerk to report the
1148 bill.

1149 The Clerk. "H.R. 1592, a bill to provide federal
1150 assistance to states, local jurisdictions and Indian tribes
1151 to prosecute hate crimes and for other purposes."

1152 [The bill follows:]

1153 ***** INSERT *****

1154 Chairman Conyers. Without objection, the bill will be
1155 considered read.

1156 And if I may begin the discussion on this, I would like
1157 to point out that 1592 offers federal protection in
1158 conjunction with states and local officials for victims of
1159 hate crimes targeted because of their race, religion, sexual
1160 orientation, gender, gender identity or disability.

1161 These crimes constitute an assault not only against the
1162 victim but against our communities and against the very
1163 foundation of our democracy. It is an issue I have worked on
1164 for at least two or three Congresses and it has passed both
1165 the House and the Senate on several previous occasions, only
1166 to go to a fate unknown in the Conference Committee.

1167 This year, I believe we have reached the point in time
1168 to pass a strong federal hate crimes law, and I say this for
1169 several reasons.

1170 First, hate crimes have been, and continue to be, a very
1171 serious problem in our society. The incidence of hate
1172 violence in the United States has a long and shameful
1173 history. For example, nearly 4,000 African-Americans were
1174 tortured, killed and lynched from 1880 to 1930.

1175 Equally disturbing is the fact that modern-day hate
1176 crimes continue to be prevalent in our nation. Since 1991,
1177 more than 113,000 hate crimes have been documented by the
1178 Federal Bureau of Investigations. In 2005 alone, there were

1179 7,163 reported hate crimes.

1180 While these statistics are staggering, we must keep in
1181 mind that they may significantly understate the extent of
1182 hate violence in our country. For a variety of reasons,
1183 these types of crimes tend to be seriously underreported.

1184 Despite the widespread and devastating impact of hate
1185 violence, current law fails to adequately address these
1186 crimes. Currently, law severely limits federal jurisdiction
1187 over hate crimes to incidents directed against individuals on
1188 the basis of religion, race, color or national origin.
1189 Federal jurisdiction pertains only if the victim is targeted
1190 because he or she is engaged in a specified federally
1191 protected activity, such as voting.

1192 Moreover, current law does not provide for any federal
1193 involvement in a range of cases; namely, where crimes are
1194 motivated by bias against the victim's perceived sexual
1195 orientation, gender, gender identity or disability. As a
1196 result, if a state or local law enforcement agency refuses to
1197 prosecute these types of hate crimes, the victim is helpless.

1198 H.R. 1592 has widespread support, very widespread
1199 support. The legislation has 137 cosponsors, is supported by
1200 over 230 civil rights, education, religious and civic
1201 organizations, including the NAACP, the Leadership Conference
1202 of Civil Rights and the American Civil Liberties Union.

1203 Virtually every major law enforcement organization in

1204 the country has endorsed this legislation, including the
1205 International Association of Chiefs of Police, the National
1206 District Attorneys Association, the National Sheriffs
1207 Association and the Police Executive Research Forum, as well
1208 as nearly 30 states attorneys general.

1209 H.R. 1592 provides critical assistance to state and
1210 local enforcement agencies. It amends current law to
1211 facilitate the investigation and prosecution of violent,
1212 biased-motivated crimes. The bill, however, only applies to
1213 bias-motivated violent crimes and does not impinge public
1214 speech, religious expression or writing in any way. The bill
1215 applies only to bias-motivated violent crimes and does not
1216 impinge public speech, religious expression or writing in any
1217 way.

1218 This legislation ensures that state and local
1219 authorities will continue to prosecute the overwhelming
1220 majority of hate crimes and that the federal government will
1221 continue to defer to these law enforcement agencies in the
1222 vast majority of cases. In other words, the state will still
1223 maintain primary jurisdiction. To ensure federal restraint,
1224 the bill further requires the attorney general to approve any
1225 prosecution's undertaking pursuant to this measure.

1226 H.R. 1592 also creates an intergovernmental grant
1227 program to make the Justice Department technical, forensic
1228 and prosecutorial assistance available in appropriate

1229 circumstances.

1230 It also authorizes the attorney general to make grants
1231 to state and local enforcement agencies that have incurred
1232 extraordinary expenses in connection with the investigation
1233 and prosecution of hate crimes.

1234 Hate crimes are a stain on our national heritage. We
1235 should accordingly do what we can to better equip our
1236 federal, state and local law enforcement agencies with the
1237 tools to prosecute these crimes. I believe that this measure
1238 before us provides those critical tools.

1239 And I now recognize the distinguished minority member,
1240 Ranking Member Lamar Smith of Texas.

1241 Mr. Smith. Thank you, Mr. Chairman.

1242 We all agree that every violent crime is deplorable
1243 regardless of its motivation. Every violent crime can be
1244 devastating, not only to the victim, but also to the larger
1245 community whose public safety has been violated. That is why
1246 all violent crimes must be vigorously prosecuted.

1247 However, this bill, no matter how well-intended,
1248 undermines basic principles of our criminal justice system
1249 and raises significant constitutional and federalism issues.

1250 Our criminal justice system has been built on the ideal
1251 of equal justice for all. This bill undermines that
1252 principle. Justice will no longer be equal but will depend
1253 on the race, sex, sexual orientation, disability or other

1254 protected status of the victim. In my view, all victims
1255 should have equal worth in the eyes of the law.

1256 Ordinarily, criminal law does not concern itself with
1257 motive but rather with intent. If someone intended to harm a
1258 person, no motive makes them more or less culpable for that
1259 conduct. Under this legislation, law enforcement will have
1260 to comb the offender's past to determine whether the offender
1261 ever expressed antipathy for a protected group. Criminal
1262 investigations will focus on a suspect's thoughts and beliefs
1263 about the victim. This is a distraction from the primary
1264 goal of ensuring that justice is served.

1265 Even more dangerous, ad perhaps unintended, the bill
1266 raises the real possibility that religious leaders or members
1267 of religious groups could be prosecuted based on their speech
1268 or activity. Those who express deeply held religious beliefs
1269 about certain lifestyles might risk criminal prosecution
1270 under conspiracy law, which makes liable any person who aids,
1271 abets, counsels, commands, induces or procures the commission
1272 of a crime or one who "willfully causes an act to be done" by
1273 another.

1274 It is not difficult to imagine a situation in which a
1275 prosecutor might seek to link what they deem to be hateful
1276 speech to causing violent acts. A chilling effect on
1277 religious leaders and others who express their
1278 constitutionally protected beliefs unfortunately could

1279 result.

1280 I also believe that the bill itself is unconstitutional
1281 and will likely be struck down by the courts. There is
1282 little evidence to support the claim that hate crimes impact
1283 interstate or foreign commerce, an important consideration
1284 for any federal court reviewing the constitutionality of this
1285 legislation.

1286 In 2000, the Supreme Court, in *United States v.*
1287 *Morrison*, struck down a prohibition on gender-motivated
1288 violence. In that case, the court specifically warned
1289 Congress that the Commerce Clause does not extend to "non-
1290 economic, violent criminal conduct" that does not cross state
1291 lines.

1292 Nor is the proposed legislation authorized under the
1293 14th and 15th Amendments. Those amendments extend only to
1294 state actions and do not cover the actions of private persons
1295 who commit violent crimes. While the 13th Amendment reaches
1296 private conduct, such as individual criminal conduct, it is
1297 difficult to argue that one's "sexual orientation, disability
1298 or gender identity" constitutes a "badge and incidence of
1299 slavery."

1300 Aside from the constitutional defects of this bill, it
1301 purports to federalize crimes that are being effectively
1302 prosecuted by our states and local governments. FBI
1303 statistics show that the incidence of so-called hate crimes

1304 has actually declined over the last 10 years. Only six, only
1305 six of approximately 15,000 homicides in the nation involved
1306 hate crimes. There is no evidence that states are not fully
1307 prosecuting violent crimes involving hate. In fact, 45
1308 states and the District of Columbia already have specific
1309 laws punishing hate crimes, and federal law already punishes
1310 violence motivated by race or religion in many contexts.

1311 As The Washington Post stated in an editorial, "Rape,
1312 murder and assault, no matter what prejudice motivates the
1313 perpetrator, are presumptively local matters in which the
1314 federal government should intervene only when it has a
1315 pressing interest. The fact that hatred lurks behind a
1316 violent incident is not, in our view, an adequate federal
1317 interest."

1318 Mr. Chairman, for these reasons, I oppose the bill, and
1319 I urge my colleagues to oppose the bill as well.

1320 And I will yield back the balance of my time.

1321 Chairman Conyers. I thank Mr. Smith.

1322 All other opening statements will be included in the
1323 record.

1324 And the chair recognizes Artur Davis for an amendment.

1325 Mr. Davis. Mr. Chairman, I have an amendment that is
1326 being put at the desk.

1327 Chairman Conyers. The clerk will report the amendment.

1328 The Clerk. "Amendment to H.R. 1592, offered by Mr.

1329 Davis of Alabama. At the end of the bill, insert the
1330 following new section—"

1331 [The amendment by Mr. Davis follows:]

1332 ***** INSERT *****

1333 Mr. Davis. I ask that it be considered read, Mr.

1334 Chairman.

1335 Chairman Conyers. Without objection. The gentleman is

1336 recognized—

1337 Mr. Sensenbrenner. Mr. Chairman, reserve a point of

1338 order.

1339 Chairman Conyers. All right. A point of order is

1340 reserved by Mr. Sensenbrenner.

1341 Mr. Davis. Thank you, Mr. Chairman. I ask permission

1342 to speak on behalf of the amendment.

1343 Chairman Conyers. Without objection.

1344 Mr. Davis. Mr. Chairman, let me say at the outset that

1345 I am a supporter of this bill.

1346 I am reminded for its need based on an incident 24 hours

1347 ago in my state of Alabama. Three individuals attacked a

1348 young Korean man in a misguided retaliation for what happened

1349 at Virginia Tech a week ago. It was a flagrant an obvious

1350 hate-based crime and it was wrong, and it is the kind of

1351 thing that this statute seeks to cover.

1352 I do want to offer one amendment to address something

1353 that has been floating around regarding this bill. As I see

1354 this bill, it is limited. It doesn't create a new class of

1355 crimes. It simply says, if a crime that is already existing

1356 is based on hate, if it is based on the motivation of hatred,

1357 then we will punish that crime more than we punish some other

1358 crimes in our society. That is a legitimate choice for this
1359 society to make, and I support it.

1360 I did hear the ranking member of this committee, and I
1361 heard some others during the hearing last week make the
1362 argument that somehow this bill will criminalize legitimate
1363 acts of constitutional expression. I think that is a
1364 misguided argument, I think it is wrong.

1365 There is nothing about this bill that changes
1366 *Brandenburg v. Ohio*, which said in 1969, the U.S. Supreme
1367 Court said that if you incite to imminent lawless action,
1368 then your words can be a basis of criminality. This bill
1369 doesn't change the scope of *Brandenburg*, it doesn't change
1370 long-standing Supreme Court doctrine, which makes it very
1371 clear that you can't be prosecuted just based on speech.

1372 But because the argument has been raised over and over
1373 again by some of our colleagues and by some people not in
1374 this room, I do think it is helpful to add one amendment.
1375 The amendment that I offer is a brief one that says, nothing
1376 in this act or the amendments made by this act shall be
1377 construed as modifying, diminishing or limiting the rights or
1378 protections of any individual under the First Amendment of
1379 the Constitution.

1380 For those on the other side of the dais who believe that
1381 this bill will somehow limit legitimate constitutional
1382 expression, that it will somehow criminalize the expression

1383 of particular viewpoints, again, I think those are not
1384 meritorious concerns, but this amendment, I think, once and
1385 for all, creates a rule of construction that says very
1386 clearly to courts and the futures Congresses that we don't
1387 seek to change the scope of constitutional interpretation of
1388 the First Amendment.

1389 I will end, Mr. Chairman, by saying this: I regret that
1390 there are some people who think that this is a bill about
1391 creating political protections for some classes of people.
1392 This is not a bill about political protection for anyone.
1393 The only way you are covered by this bill as a victim is if
1394 you have been attacked or if your property has been
1395 vandalized. If your property has been vandalized or you have
1396 been subject to a physical attack, I don't think you feel you
1397 are getting any special treatment at that moment. That is
1398 another misguided argument.

1399 So I endorse this bill and simply offer this amendment
1400 to meet the concerns of those on the other side of the dais
1401 and those outside this room who want to make sure that
1402 nothing in the bill limits the scope of what the Supreme
1403 Court has said in Brandenburg and in other cases.

1404 And I will yield back the balance of my time.

1405 Mr. Sensenbrenner. Mr. Chairman?

1406 Chairman Conyers. I thank the gentleman for his
1407 amendment, and I recognize—

1408 Mr. Sensenbrenner. Mr. Chairman?

1409 Chairman Conyers. —Mr. Sensenbrenner.

1410 Mr. Sensenbrenner. Mr. Chairman, I withdraw my
1411 reservation.

1412 Chairman Conyers. I thank you, sir, and recognize Lamar
1413 Smith.

1414 Mr. Smith. Mr. Chairman, I think this is a helpful
1415 amendment, and I support it.

1416 Chairman Conyers. Is there any further debate—

1417 Mr. Watt. Mr. Chairman?

1418 Chairman Conyers. Mr. Watt?

1419 Mr. Watt. Thank you, Mr. Chairman. I move to strike
1420 the last word.

1421 Chairman Conyers. Without objection, the gentleman is
1422 recognized.

1423 Mr. Watt. And I am going to express myself in the
1424 context of this amendment, because I think it really helps to
1425 improve substantially this bill. I still have serious
1426 reservations about whether I can support the bill or not.

1427 Some members of the committee may find it surprising
1428 that I have had a long running debate and discussion with
1429 folks in the civil rights community about hate crimes
1430 legislation, going back to the point when I was in the state
1431 legislature and expressed concerns about creating a separate
1432 crime for hate.

1433 I have never had any reservations about enhancement of
1434 penalties for people who are committing a crime based on
1435 hate, but it seems to me that the consequences of a crime, if
1436 somebody is shot and killed, the penalty should be the same
1437 whether they were shot and killed because—it is the shooting
1438 and the killing that should be the essence of the crime, not
1439 the motivation that we should be punishing separately.

1440 This amendment helps to address that, because one of the
1441 theories I have always had is that the well-intended hate
1442 crime statutes would ultimately be used more against the
1443 people for whom they were intended to protect than for the
1444 purpose for which they were put on the books.

1445 Somebody walks into a convenience store and robs or
1446 shoots the clerk, the crime is robbery or the shooting. The
1447 fact that the person is a black robber who in the course of
1448 the act calls the clerk a white SOB or the fact that the
1449 perpetrator of the crime is a white robber and calls the
1450 clerk a black SOB shouldn't be a determining factor of what
1451 the penalty should be.

1452 And Mr. Davis's amendment gets directly at that issue
1453 and makes it less likely that this statute will be abused in
1454 ways that I think hate crimes legislation can be abused, just
1455 as historically we thought that making penalties uniform by
1456 supporting mandatory minimum sentencing might be a positive
1457 step at one point. We have found that these things can be

1458 used by the criminal justice system in ways that were never
1459 intended, and the consequences of what we do can be extremely
1460 negative.

1461 So having said that, I am rising in very, very strong
1462 support of Mr. Davis's amendment. It helps to address some
1463 of the concerns I have about the underlying legislation. My
1464 jury is still out about whether it addresses all of the
1465 concerns I have about the underlying legislation, but I
1466 thought it important to at least let the public and all of
1467 our colleagues know that this is not solely a partisan issue,
1468 it is not solely a race issue or a religion issue. This is a
1469 criminal justice issue, and we should treat it as that, and
1470 in that respect, I find myself, in many ways, echoing some of
1471 the sentiments that were raised by my colleague, Mr. Smith,
1472 on the opposite side of the aisle.

1473 With that, Mr. Chairman, I appreciate the chairman's
1474 indulgence, and I will yield back the balance of my time.

1475 Chairman Conyers. Well, I appreciate the gentleman's
1476 enlightenment of his position.

1477 The chair recognizes Mr. Cohen.

1478 Mr. Cohen. Thank you, Mr. Chairman.

1479 I, likewise, support the amendment, and while I have a
1480 great respect and listened closely to the discussion from the
1481 gentleman who I respect highly from North Carolina, I would
1482 like to point out that this law does not affect robberies, it

1483 only affects crimes that cause death or bodily injury. And,
1484 indeed, when you have death, normally you have a death
1485 penalty or life imprisonment, and whether it is a hate crime
1486 or not, the penalty would be the same.

1487 But if it is bodily injury, you have got an assault, but
1488 if it is a hate crime where it is bodily injury, you have
1489 something greater than that in a hate crime, because that
1490 assault is not just against that individual and against
1491 society, it is against every person who is a member of that
1492 group. And if it is an assault, it is already based on race.
1493 If it is an assault against black people and the person does
1494 it because the person is black, it is saying to all black
1495 people, "You are not welcome in this area, you are not
1496 welcome among society, and we want to teach you a lesson."
1497 This is what the Klan did; that was hate crimes.

1498 It is the same thing if people are gay. It is saying,
1499 "We don't want you in our community; you are not acceptable.
1500 And anybody who is gay is subject to the same type of
1501 offensive physical conduct." And it is not a simple assault,
1502 it is an assault against all gay people or all people with a
1503 different sexual orientation or all people with disabilities.

1504 And that is not what America is about. America says to
1505 those type of bullies that want to say, "This is my turf and
1506 you stay out of it," that that is not America, and you
1507 shouldn't be assaulting, physically or any other way, people.

1508 And this is a group action against all types of people, and
1509 that is why I support the bill.

1510 Mr. Watt. Will the gentleman yield? Will the gentleman
1511 yield?

1512 Mr. Cohen. Yes, sir.

1513 Mr. Watt. I appreciate the gentleman for yielding.

1514 And I think the two statements here have reflected the
1515 very, very tough and serious difficulty of this, and while I
1516 have wrestled with it over the years, this is a very, very
1517 tough issue, and there is historical element here, but I know
1518 also, based on my own experience, that there is a future
1519 here.

1520 And what I fear, and I don't see anything in the statute
1521 that limits the application of this solely to black people or
1522 gay people, and what I fear is going to happen is you are
1523 going to have this statute used a lot more against black
1524 people who in the course of some action will be prosecuted
1525 because they will be perceived to have committed a hate crime
1526 against white people than the reverse.

1527 And unless you are prepared to accept that eventuality,
1528 which I have serious reservations about because of the
1529 history of why we are doing this, I think we need to proceed
1530 with a high degree of caution.

1531 And I have seen our criminal justice system, which is
1532 dominated by the majority in our society, use statute after

1533 statute after statute for a purpose that was never intended
1534 for that statute to be used. And I don't have the same level
1535 of confidence in our justice system and its ability to apply
1536 these things in the way that we talk about them in this
1537 committee as some of my colleagues do, because I have seen
1538 the system work so adversely that I have kind of a built-in
1539 distrust of it.

1540 I appreciate the gentleman. I understand exactly what
1541 he is saying, but I hope he understands what I am saying too
1542 on this issue.

1543 And I yield back to the gentleman.

1544 Mr. Cohen. Thank you, Mr. Chairman and the gentleman
1545 from North Carolina. I will be very brief in my response.

1546 I understand where you are coming from. I think you are
1547 overly concerned. I believe that what we are talking about
1548 is situations like in Texas where the black man—and I forget
1549 the gentleman's name but he was killed and dragged behind—
1550 Byrd, and then there was Shepard up in the Northwest. They
1551 were just heinous crimes.

1552 I don't think you will find any crime that you can show
1553 me, and there are hate crimes on the books where a white
1554 person—a black person was charged because of a hate crime
1555 against a black person. But if that happened and if it was
1556 that a white person was in Harlem and somebody came up to him
1557 and said a bunch of—attacked him because he was white, that

1558 would be wrong too. I don't think there is a precedent for
1559 that, but if it happened, that would be justice. But justice
1560 has always been on the other side, and I think it will be on
1561 the other side, and that is where most of the hate crimes
1562 occur.

1563 Thank you, Mr. Chairman.

1564 Chairman Conyers. Members of the committee, I propose
1565 that we take a short recess for lunch at 12 o'clock and come
1566 back at 1 o'clock, but I want to now recognize the gentleman
1567 from Virginia, Robert Goodlatte.

1568 Mr. Goodlatte. Mr. Chairman, thank you very much.

1569 I am very interested in this discussion between the
1570 gentleman from North Carolina and the gentleman from
1571 Tennessee, and I would like to actually inject the gentleman
1572 from Alabama into it. Because it seems to me that the
1573 concerns addressed by the gentleman from Tennessee would
1574 suggest that if you make it clear that there is nothing in
1575 this law that prohibits free speech or free exercise of
1576 activities protected by the First Amendment, that there is no
1577 longer any indicia of what might be the basis for
1578 establishing that a particular crime is a hate crime.

1579 So I would like the gentleman from Alabama to explain
1580 that. If the activities are protected that would be normally
1581 looked at to determine whether or not somebody's intention
1582 was hate and yet we clarify in this law that indeed it is

1583 that intention, how do you then establish a hate crime.

1584 Mr. Davis. Will the gentleman yield?

1585 Mr. Goodlatte. I would, yes.

1586 Mr. Davis. I thank the gentleman from Virginia for
1587 raising this question, and let me take this as a chance to
1588 clarify.

1589 Again, two basic points about this proposed statute. It
1590 doesn't create any new crimes. It simply says that there is
1591 a class of crimes that we will punish more based on our
1592 instinct as a society that hate is a particularly obnoxious
1593 motive. That is the first point.

1594 The second point, I think the U.S. Supreme Court has
1595 been very clear about this. The only time that a speech act
1596 will get you in criminal court is if you are inciting to
1597 imminent lawless action. *Brandenburg v. Ohio* is nearly 40
1598 years old. It is still good law. Now, if you are inciting
1599 to imminent lawless action, you are already subject to be
1600 criminally prosecuted. Again, that is not a change in the
1601 state of play.

1602 All that this amendment seeks to do out of an abundance
1603 of caution is, number one, to reflect the very legitimate and
1604 very thoughtful concerns of the people like my friend from
1605 North Carolina, but, number two, to make a point that we are
1606 not expanding liability. That is a very important point in
1607 this debate, and I can't emphasize that enough. We are not

1608 expanding liability in the core sense of what constitutes a
1609 crime. All this bill does is to add an extra penalty.

1610 So any expressive conduct, Mr. Goodlatte, any expressive
1611 speech, any right of association, what somebody says in the
1612 way of a political opinion, all of that is as permissible
1613 after this statute as it was before. All this statute says
1614 is that if hatred is the motivation for what is already a
1615 criminal action, we are going to punish you more. That is
1616 what Mr. Cohen spoke to.

1617 Does that answer the gentleman's question?

1618 Mr. Goodlatte. No. Let me expand upon that. Is the
1619 gentleman saying that notwithstanding the inclusion of this
1620 language in the legislation that the example cited by the
1621 gentleman from North Carolina would still be admissible as-

1622 Mr. Davis. Will the gentleman yield?

1623 Mr. Goodlatte. -evidence of a hate crime if in shooting
1624 a maiming a convenience store operator one made an expression
1625 that characterized the other person's race-

1626 Mr. Davis. Will the gentleman yield?

1627 Mr. Goodlatte. -religion or other entity.

1628 Yes, I would yield.

1629 Mr. Davis. Well, if the gentleman would yield, the
1630 rules of evidence speak to this issue in this context and any
1631 other. Any statement that an individual makes during a crime
1632 is admissible as proof of that person's state of mind. In

1633 fact, that is one of the most famous exceptions to heresy.

1634 There is nothing about this statute that alters that.

1635 So to use Mr. Watt's example—

1636 Mr. Goodlatte. But for the purpose of proving that it
1637 is hate—

1638 Mr. Davis. Well, if the gentleman would yield back, if
1639 I can answer his question, again, this doesn't change the
1640 rule from what rule 403 and rule 404 create now. If someone
1641 makes a statement during a crime that goes to his state of
1642 mind, certainly the judge could give a limiting instruction.
1643 The judge—

1644 Mr. Goodlatte. Reclaiming my time, let me ask the
1645 gentleman what about a prior statement that was not inciting
1646 to action but clearly indicated that person has—

1647 Mr. Davis. Well, if the gentleman would yield—

1648 Mr. Goodlatte. —a racial bias or some other bias that—

1649 Mr. Davis. If the gentleman would yield—

1650 Mr. Goodlatte. —would later be imputed to the
1651 gentleman's subsequent action that was characterized as a
1652 hate crime.

1653 Mr. Davis. Mr. Goodlatte, if you would yield, if
1654 someone makes a statement at any point in time, it will be
1655 subject to the rules of heresy. That statement would be
1656 admissible for one purpose, to prove state of mind.

1657 Mr. Goodlatte. Sure.

1658 Mr. Davis. That is the rule now, it is the rule after
1659 this.

1660 Mr. Goodlatte. My question was, is it admissible for
1661 the purpose of establishing that the crime was a hate crime?

1662 Mr. Davis. Oh, absolutely. Because what this amendment
1663 does is says that legitimate protected speech is not
1664 constrained by this amendment.

1665 Now, if someone engages in a legitimate protected speech
1666 act—

1667 Mr. Goodlatte. Is the gentleman then saying that you
1668 can say what you want to say because that is protected by the
1669 First Amendment, but that can still be used to establish your
1670 intent that the crime you are committing is indeed a hate
1671 crime.

1672 Mr. Davis. Well, since you asked me a question—

1673 Mr. Goodlatte. If that is the case, then that would
1674 seem to undercut the reason why the gentleman from North
1675 Carolina wants to support your amendment.

1676 Mr. Davis. Well, if the gentleman would yield, if I can
1677 answer your question, Mr. Goodlatte, the rules of evidence
1678 right now permit all kinds of protected activity and
1679 protected speech to be admitted if there is a relevant reason
1680 for it.

1681 Mr. Goodlatte. Well, I understand that. There is no
1682 question about that. The question is, what does this do to

1683 change—

1684 Mr. Scott. Would the gentleman yield? Would the
1685 gentleman yield?

1686 Chairman Conyers. Time has expired.

1687 Mr. Goodlatte. I would ask unanimous consent that I be
1688 given an additional minute so that the gentleman from
1689 Virginia—

1690 Mr. Scott. I move to strike the last word.

1691 Chairman Conyers. Well, just a moment. Mr. Goodlatte
1692 wants an additional minute, and it is granted.

1693 Mr. Goodlatte. I would yield to the gentleman from
1694 Virginia.

1695 Mr. Scott. Well, you have to look at the language on
1696 page 15, line nine, and use that in conjunction with this
1697 amendment. Because that language—and I have the same
1698 concerns that the gentleman from North Carolina has—that
1699 language says that in prosecuting a case evidence of
1700 expression or associations of the defendant may not be
1701 introduced as substantive evidence in trials—the fact that
1702 you belong to an organization, the fact that you may have
1703 said something in the past—unless it is specifically related
1704 to the specific offense.

1705 Now, as my colleague from Virginia said, you have
1706 problems proving your case anyway—the burden is on the
1707 prosecution to prove the case—if they can't come up with

1708 evidence that you belong to a particular organization and
1709 that therefore proves that it must have been a hate crime.
1710 As a matter of fact, without this, I could not support the
1711 bill, because it would seem to me that without this
1712 amendment—

1713 Mr. Goodlatte. Reclaiming my time, without the
1714 gentleman's amendment is what you—

1715 Mr. Scott. No, without the language on page 15.

1716 Mr. Goodlatte. Does the gentleman support the
1717 gentleman's amendment?

1718 Mr. Scott. I support the amendment, using them both
1719 together.

1720 Chairman Conyers. The gentleman's time has again
1721 expired.

1722 Mr. Goodlatte. All right. Thanks, Mr. Chairman.

1723 Mr. Scott. Move to strike the last word, Mr. Chairman.

1724 Chairman Conyers. All right. We are cutting into our
1725 lunchtime, but this is an important discussion.

1726 I recognize Bobby Scott from Virginia.

1727 Mr. Scott. Let me just continue. Without this language
1728 on page 15, mischief could occur, because if you have got a
1729 weak case on identification, you just lob in a hate crime,
1730 which without this amendment would allow you to introduce
1731 into evidence, "Well, he belongs to this unpopular group."

1732 Well, that kind of cures all the problems on

1733 identification and the weaknesses aside, he is going to be
1734 guilty anyway. He may not be guilty on the hate crime, but
1735 without this amendment, it would allow you to lob in a lot of
1736 extraneous what he said in the past, who he hates, what
1737 organization he belongs to. Now, unless all of that relates
1738 to the specific case, you can't use it.

1739 Everybody wants to cover the Byrd case and the Shepard
1740 case, but the problem you have got is you don't want to cover
1741 a lot of other things that you don't want covered. And with
1742 the gentleman from Alabama's amendment in conjunction with
1743 what is already in the bill, I think we can keep a lot of the
1744 extraneous, unnecessary things out and limit it to the tough
1745 case to prove to the prosecution, the burden he has, to limit
1746 it only to the kinds of cases that we are looking for.

1747 Mr. Davis. Could the gentleman yield, briefly?

1748 Mr. Scott. I yield to the gentleman from Alabama.

1749 Mr. Davis. I thank the gentleman for his comments in
1750 support of the amendment.

1751 And, again, he makes an important point, Mr. Goodlatte,
1752 but I want to underscore, the rules of evidence today in
1753 criminal cases clearly permit all kinds of valid
1754 constitutional activity to be put into evidence for one
1755 purpose—if it is relevant to the offense at hand.

1756 And Mr. Scott's points underscore this. If someone
1757 makes in some other context an act of speech that is relevant

1758 to his or her state of mind, yes, it is admissible, but let
1759 me give you a classic hypothetical. If someone makes a
1760 statement that is incendiary about a group, that person
1761 should not be prosecuted. Making incendiary statements by
1762 itself does not create a basis for prosecution. Making
1763 incendiary statements that are coupled with violent conduct,
1764 that does create a basis for criminal prosecution.

1765 So, again—

1766 Mr. Scott. Reclaiming my time—

1767 Mr. Davis. I am on the gentleman's time.

1768 Mr. Scott. —but the fact that you have made incendiary
1769 statements in the past does not make you guilty—

1770 Mr. Davis. Yes.

1771 Mr. Scott. —for a later offense.

1772 Mr. Davis. And a judge could instruct to that effect.

1773 If the gentleman would—

1774 Mr. Scott. It is not only instruct, it is prohibited
1775 from introduction—

1776 Mr. Davis. Yes. Absolutely.

1777 Mr. Scott. —unless you can show it physically. And
1778 that is why the language on page 15 is so important.

1779 Mr. Davis. And I thank the gentleman for that point.

1780 Mr. Goodlatte. Would the gentleman yield?

1781 Mr. Scott. I thank the gentleman for yielding.

1782 I just want to say to the gentleman from Alabama that I

1783 am very concerned about the same issue that the gentleman
1784 from North Carolina raised. I am not at all happy about the
1785 underlying bill, but I will support the gentleman's
1786 amendment, because I think it narrows the scope of the
1787 legislation and certainly protects free speech.

1788 Getting beyond that into what is in the mind of somebody
1789 that causes them to commit a crime and whether their
1790 particular actions constitutes an action taken because of
1791 hate or not is an area that I am quite concerned about.

1792 So we will, I am sure, get into that as the debate moves
1793 forward, but I support the gentleman's amendment.

1794 Mr. Scott. Reclaiming my time, and I would remind the
1795 gentleman to also look at the language on page 15. I think
1796 it is extremely important to the bill.

1797 And with that, Mr. Chairman, I yield back.

1798 Mr. Lungren. Mr. Chairman?

1799 Chairman Conyers. I recognize Dan Lungren.

1800 Mr. Lungren. Mr. Chairman, thank you very much.

1801 I know the chairman wants us to break for lunch and has
1802 talked about us coming back at one o'clock. I understand we
1803 probably will expect votes at 1:45, but beyond that there is
1804 scheduled a bipartisan briefing on the war in Iraq with
1805 General Petraeus, who has come back from the war zone. That
1806 is scheduled from 2 to 3:30.

1807 There are many members of this committee, I believe, who

1808 wish to participate in the debate on this bill and any
1809 amendments that will be offered to it.

1810 So my inquiry of the chair is, will arrangements be made
1811 that we will be able to break for the briefing by General
1812 Petraeus and other leaders with respect to the prosecution of
1813 the war in Iraq?

1814 Chairman Conyers. Thank you, Dan. I will discuss this
1815 with the ranking minority member. My inclination is to do it
1816 as long as everybody realizes that our goal is to finish this
1817 evening.

1818 Mr. Gohmert. Mr. Chairman?

1819 Chairman Conyers. Yes, Mr. Gohmert?

1820 Mr. Gohmert. I rise in opposition, actually, to this
1821 amendment and ask 5 minutes to address this.

1822 Chairman Conyers. Yes. Please proceed.

1823 Mr. Gohmert. All right. Thank you, Mr. Chairman.

1824 I appreciate the efforts in this amendment, but it seems
1825 entirely inadequate to me because of the provisions in the
1826 bill itself. Because the bill itself says nothing prohibits
1827 utilizing protected speech if it pertains to the offense.

1828 Well, what is easy to see, if you take this in
1829 conjunction with 18 USC 2(a), which is the law on principles
1830 that we don't have accomplices that have a lesser sentence or
1831 a lesser range of punishment than the actual perpetrators.
1832 Anyone who counsels or is said to induce could be sentenced

1833 Just as the actual perpetrator.

1834 Therefore, this is all smoke and mirrors, it appears to
1835 me, because of the language that remains in the bill that is
1836 not changed by the gentleman's good efforts in this
1837 amendment.

1838 Therefore, it is easily conceived that a shooter goes
1839 out, some nut, and shoots somebody but he is not insane, he
1840 is just what we would consider a nut, but he doesn't rise to
1841 the level of an insanity defense. And when questioned he
1842 says, "My preacher said that any sexual activity outside the
1843 marriage of a man or a woman is wrong and God doesn't like
1844 it, so I am out here to end this."

1845 Well, that could be said by many people. It could be
1846 counsel, certainly, according to the shooter, induced him to
1847 go out and shoot. So the preacher could then be charged,
1848 even with this amendment, every sermon the preacher ever
1849 preached regarding sexual activity and marriage and who it is
1850 between, all of those things then become relevant, under the
1851 bill, as it stands, even if this amendment is part of it, it
1852 changes the entire dynamic of what has always been protected
1853 as religious speech when it comes to these areas.

1854 So I really appreciate the gentleman's efforts, but it
1855 doesn't seem to protect the religious speech that up to the
1856 time that this committee started trying to weigh in and say
1857 that transvestites with gender issues deserve heightened

1858 protection, whereas students so situated as random attacks or
1859 because they were rich, as were those victims at Virginia
1860 Tech, they are not as protected.

1861 Mr. Davis. Will the gentleman yield?

1862 Mr. Gohmert. Yes, I will yield.

1863 Mr. Davis. Thank you, Mr. Gohmert. I will be brief,
1864 because I know the chair wants to move us through this.

1865 But, Mr. Gohmert, it is not as if a judge is missing
1866 from the proceedings. It is not as if the rules of evidence
1867 or rule 403 are missing from the proceedings. A judge would
1868 always be entitled to instruct a jury, "You can consider this
1869 statement for one limited purpose, state of mind. You cant
1870 consider it for any other purpose, and maybe eliminating as
1871 much—

1872 Mr. Gohmert. Reclaiming my limited time, I appreciate
1873 that, and I am quite familiar with 403, 404, ruled many times
1874 based on it, but the fact is those things come in. Those
1875 sermons come in. Everything the preacher has ever said that
1876 perhaps affected this person come in. And preachers will be
1877 muzzled all over the—

1878 And not only preachers. It is not just Christian
1879 preachers. This is part of the Judeo law, it is part of
1880 Islam, it is part of the Koran. And so religion is going to
1881 materially be affected, as will the marriage issue.

1882 Mr. Davis. So as these things come in, the amendment

1883 won't affect it.

1884 Mr. Gohmert. By the actions of this committee, it is
1885 very profound and very far-reaching, and I yield back.

1886 Mr. Davis. Would the gentleman yield?

1887 Chairman Conyers. Are we ready to proceed to a vote,
1888 because I think we have an announcement to make after the
1889 vote about how we will conduct ourselves for the rest of the
1890 day.

1891 All those in favor of the Artur Davis amendment, please
1892 indicate by saying, "Aye."

1893 All those opposed, by saying, "No."

1894 The ayes have it, and the amendment is agreed to.

1895 Now, with regard to the committee recess, we will come
1896 back at 1:15. We will proceed with the bill until there are
1897 votes on the floor, and then, Dan Lungren, it is our proposal
1898 that we come back and continue debate but roll all votes.
1899 There will be no voting until—oh, a half-hour for the
1900 Petraeus. Okay.

1901 Mr. Smith. Mr. Chairman—

1902 Chairman Conyers. What is your proposal?

1903 Mr. Smith. —may I be recognized? I don't like the idea
1904 of rolling votes. I am hoping that we can take those one at
1905 a time and get a good start on doing that between 1:14 and
1906 1:45 before we break.

1907 Chairman Conyers. All right. Very good. We will

1908 recess now. Come back at 1:15, please.

1909 The committee stands in recess.

1910 [Recess.]

1911 Chairman Conyers. Good afternoon. The committee will
1912 come to order, please.

1913 Before we recognize Jim Jordan of Ohio, let's work until
1914 the next vote, and then in accordance with the Smith
1915 recommendation, we will recess for the Iraq briefing from 2
1916 to 3:30. Please come back immediately thereafter, and we
1917 still will work toward the goal of resolving all the
1918 amendments on this bill by tonight, if we can.

1919 The chair recognizes Jim Jordan of Ohio.

1920 Mr. Jordan. Thank you, Mr. Chairman. I have an
1921 amendment at the desk.

1922 Mr. Nadler. Mr. Chairman? Mr. Chairman, reserving the
1923 right to object—reserving a point of order, rather.

1924 Chairman Conyers. All right. A point of order is
1925 reserved.

1926 Clerk will report.

1927 The Clerk. I have two amendments for Mr. Jordan.

1928 Mr. Jordan. I think it is number 61; is that correct?
1929 Number 61?

1930 The Clerk. "Amendment to H.R. 1592, offered by Mr.
1931 Jordan. Page 12, line 1, after 'identity' insert 'status as
1932 an unborn child under circumstances where the crime under

1933 this section is also a crime under section 1531.'" "

1934 [The amendment by Mr. Jordan follows:]

1935 ***** INSERT *****

1936 Chairman Conyers. The gentleman is recognized for 5
1937 minutes in support of his amendment.

1938 Mr. Jordan. Mr. Chairman, members of the committee, I
1939 thank you.

1940 This amendment adds unborn children to the list of
1941 protected groups of people identified in the bill.
1942 Specifically, the amendment addresses situations in which
1943 section 1531 of the criminal code, the section pertaining to
1944 the ban on partial birth abortions is violated.

1945 As you know, partial birth abortion ban, passed by
1946 Congress, was upheld last week by the United States Supreme
1947 Court in a victory for all defenders of innocent human lives.
1948 In fact, I think this committee was first made aware of that
1949 decision by our Supreme Court when our colleague, Congressman
1950 Chabot, announced it at our meeting last week here in this
1951 room.

1952 Our amendment would codify this committee's intent to
1953 treat unborn children with the dignity and the respect they
1954 deserve as innocent human beings. If there was ever a group
1955 of individuals that needed protection of this Congress, it is
1956 unborn children who are completely defenseless against the
1957 world.

1958 Since its legalization in 1973, more than 45 million
1959 children have lost their lives to this procedure—45 million,
1960 approximately one-sixth of our population. Further, this

1961 partial birth abortion procedure, banned by section 1531, is
1962 particularly gruesome and violent by nature. If these
1963 innocent victims could speak, they would echo many of the
1964 same horrors that have led to the introduction of this bill.

1965 In poll after poll, the American people have clearly
1966 stated their abhorrence to this now illegal procedure. The
1967 intent of our amendment is to help protect any further
1968 victims from such acts of violence.

1969 I would urge my colleagues and the committee to support
1970 this amendment.

1971 Thank you, Mr. Chairman. I yield back the balance of my
1972 time.

1973 Chairman Conyers. I thank the gentleman.

1974 Just for our information, this has never been considered
1975 a hate crime, abortion itself, and this is an amendment of
1976 first instance, which the chair is in some puzzlement about,
1977 because I am not quite sure that people who engage in
1978 abortion are doing it out of a motivation of hate. And I
1979 assume that the gentleman is implying that.

1980 Mr. Jordan. Mr. Chairman?

1981 Mr. Nadler. Mr. Chairman? Mr. Chairman?

1982 Chairman Conyers. Yes.

1983 Mr. Nadler. I would like to insist on my point of order
1984 at this point.

1985 Chairman Conyers. Okay. Would the gentleman state the

1986 point of order?

1987 Mr. Nadler. I will, Mr. Chairman.

1988 Mr. Chairman, the amendment would include among the
1989 class of persons covered by this legislation "status as an
1990 unborn child under circumstances where the crime under this
1991 section is also a crime under section 1531."

1992 House Rule 16, clause seven, states that, "No motion of
1993 proposition on a subject different from that under
1994 consideration shall be admitted under color of amendment."
1995 The House manual, section 932, states that, "An amendment
1996 must relate to the subject matter under consideration."

1997 In this case, the section of the underlying bill the
1998 gentleman seeks to amend specifically applies to "any
1999 person." In fact, the sentence he seeks to amend is very
2000 specific on this point. Under federal law, a fetus has not
2001 been determined to be a person, making this amendment non-
2002 germane. United States Code 1 defines person to include
2003 "corporations, companies, associations, firms, partnerships,
2004 societies and joint stock companies as well as individuals."

2005 This language does not include a fetus or, in the
2006 language of the gentleman's amendment, "the unborn." The
2007 unborn are not recognized in law as a person. The amendment
2008 seeks to amend a sentence dealing with persons. Because this
2009 legislation applies only to legal persons and not to fetuses,
2010 the amendment is not germane and is therefore out of order,

2011 Mr. Chairman.

2012 Mr. Jordan. Mr. Chairman?

2013 Chairman Conyers. The gentleman from Ohio?

2014 Mr. Jordan. I thank the chairman.

2015 I was going to cite the same section of the United
2016 States code where a person is defined and we do talk about
2017 individuals. And let's be clear, we are not talking about
2018 abortion, in general, we are talking about a specific type
2019 where we have partially born individuals. I mean, if they
2020 are not individuals, what are they? I was going to cite the
2021 exact same thing to argue that this is germane.

2022 And let's be clear, these are children. And if you
2023 think about hatred, this is one group of people that I think,
2024 by definition, fall into the category that should be
2025 protected. Defenseless, partially born individuals, as
2026 section one of the United States code says.

2027 I think I would challenge the—

2028 Mr. Nadler. Mr. Chairman, I never yielded back my time,
2029 and I reclaim it at this point.

2030 Chairman Conyers. Well, I will recognize the gentleman
2031 for further discussion.

2032 Mr. Nadler. Thank you.

2033 Mr. Chairman, without getting into a debate on the
2034 merits on the partial birth abortion, the fact is, even the
2035 Supreme Court decision recognizes what everyone may think

2036 about the merits of the bill, that is the partial birth
2037 abortion bill, if the abortion at that point would pose a
2038 threat to the life of the mother, even the partial birth
2039 abortion bill, so-called, recognizes the right to abortion at
2040 that point, which means that even that bill, not to mention
2041 the Supreme Court decision, does not recognize the fetus at
2042 that point as a born person, because if it did, then the life
2043 of the mother would have no precedence over the life of the
2044 baby. That is number one.

2045 And 1 USC 8(a) says, "In determining the meaning of any
2046 act of Congress or of any ruling, regulation or
2047 interpretation of the various administrative bureaus and
2048 agencies of the United States, the words, 'person,' 'human
2049 being,' 'child' and 'individual' shall include every infant
2050 member of the species homo sapiens who was born alive at any
2051 stage of development."

2052 Clearly, what we are talking about, this fetus, was not
2053 born alive, and in fact I remember agreeing to pass this
2054 section of the bill into law a few years ago, because it
2055 changed nothing. And, clearly, under that definition, a
2056 fetus in so-called partial birth abortion is not an
2057 individual or is not a person within the meaning of the law.

2058 And, therefore, this amendment, again, is not germane.

2059 Chairman Conyers. Does anyone else want to be heard on
2060 the point of order?

2061 Mr. Chabot. Mr. Chairman?

2062 Chairman Conyers. Yes?

2063 Mr. Chabot. Move to strike the last word.

2064 Chairman Conyers. Mr. Chabot?

2065 Mr. Chabot. Thank you, Mr. Chairman. I will be brief.

2066 I, first of all, want to commend the gentleman from

2067 Ohio, Mr. Jordan, for his thoughtful amendment, and obviously

2068 it put some members in somewhat of a moral dilemma here. And

2069 I think that the point is if the unborn child that the

2070 gentleman from Ohio is trying to protect, that child is no

2071 less dead if the child's life is terminated.

2072 And I think it is also interesting when one talks about

2073 the—I mean, the gentleman from New York said, I think you

2074 could look at the case of even self-defense. If a person is

2075 attacked by another person and their life is threatened, if

2076 they take the other person's life, they are in fact, at that

2077 point, that can be a defense to a charge of homicide, and so

2078 there are some justifications for taking the life.

2079 So I think my point is, is that when the gentleman said,

2080 "Even in the Partial Born Abortion Ban Act, there is an

2081 exception, not for the health of the mother." And the reason

2082 there wasn't an exception for the health of the mother is

2083 because many abortionists said that any pregnancy is a threat

2084 to a woman's health and therefore, if you had a health

2085 exception, that would be an exception big enough to drive a

2086 Mack truck through, as has been said in the past.

2087 So, again, my point being that there was an exception,
2088 the life of the mother, because at that point, you are
2089 comparing the life of a child and the life of a mother, and I
2090 think there is, at that point—

2091 Mr. Nadler. Would the gentleman yield?

2092 Mr. Chabot. I will in just a second.

2093 At least at that point, there is arguably a choice to be
2094 made. There is the life of the woman, and there is the life
2095 of the child, and that choice is a choice that, I guess,
2096 reasonable people could come to different conclusions about
2097 at that point.

2098 But I think the gentleman from Ohio is making a very
2099 good distinction. I don't think that it matters whether that
2100 child's life was terminated as a result of hate or not. The
2101 child's life is terminated just as much, whatever the
2102 motivation was.

2103 And that is one reason that I think this overall bill is
2104 so flawed. Because in the final analysis, what difference
2105 does it make to the person who is a victim of a crime,
2106 whether it be homicide or an assault of some sort, whether
2107 the person was heterosexual or homosexual? It shouldn't
2108 matter. The crime ought to be fully prosecuted, whatever the
2109 nature—

2110 Mr. Nadler. Would the gentleman yield?

2111 Mr. Chabot. -of their sexual disposition is.

2112 And I will be happy to yield to the gentleman.

2113 Mr. Nadler. I would point out two things.

2114 One, if in fact the law considered the fetus at that
2115 point, born, that is to say a person, if the law considered
2116 that, then it is not a question of which you prefer. You
2117 cannot take an affirmative action, you cannot shoot somebody
2118 to save the life of somebody else, period. So that is number
2119 one.

2120 But number two, there is really no point redebating. We
2121 will have ample opportunities in this Congress to debate the
2122 whole question of abortion and all of the other questions,
2123 which we have debated for a long time and will continue.
2124 There is no point redebating that issue on this bill, which
2125 really has nothing to do with it, and the amendment is indeed
2126 not germane.

2127 Mr. Chabot. Well, just reclaiming my time, just making
2128 a final point, one of the gentleman's colleagues from New
2129 York, Senator Moynihan, sometime earlier described a partial
2130 birth abortion as infanticide, which is the death or homicide
2131 of an infant.

2132 Mr. Jordan. Would the gentleman yield?

2133 Mr. Chabot. I will yield to the gentleman from Ohio.

2134 Chairman Conyers. The chair is about ready to rule, and
2135 I would like to ask Steve King to withhold here, so that we

2136 can move forward on this. I have heard a lot about this.
2137 There wasn't any consideration of this issue in the
2138 subcommittee.

2139 What we are dealing with here is hate crimes against
2140 persons, which as defined in the code, does not include the
2141 unborn. And so in opinion of the chair, this amendment is
2142 not germane to the bill, because it would expand the scope of
2143 the bill to deal with a different category of victim not
2144 included in the bill.

2145 And so the germaneness point of the gentleman from New
2146 York is recognized.

2147 Mr. Chabot. Mr. Chairman? Mr. Chairman?

2148 Chairman Conyers. Yes. Who asked? Mr. Chabot?

2149 Mr. Chabot. I appeal the ruling of the chair.

2150 Mr. Nadler. I move to table the motion. Mr. Chairman,
2151 I move to table the motion.

2152 Chairman Conyers. You made an appeal; Mr. Nadler made a
2153 motion to table. And so we table—okay. A recorded vote is
2154 requested.

2155 All those in favor of tabling the motion, when your name
2156 is called, say, "Aye." Those opposed, say, "Nay."

2157 And the clerk will call the roll.

2158 The Clerk. Mr. Conyers?

2159 Chairman Conyers. No—aye, excuse me. If you don't
2160 mind, I would like to change my vote before there is any

2161 serious misunderstanding.

2162 The Clerk. Mr. Conyers votes aye.

2163 Mr. Berman?

2164 [No response.]

2165 Mr. Boucher?

2166 [No response.]

2167 Mr. Nadler?

2168 Mr. Nadler. Aye.

2169 The Clerk. Mr. Nadler votes aye.

2170 Mr. Scott?

2171 Mr. Scott. Aye.

2172 The Clerk. Mr. Scott votes aye.

2173 Mr. Watt?

2174 Mr. Watt. Aye.

2175 The Clerk. Mr. Watt votes aye.

2176 Ms. Lofgren?

2177 Ms. Lofgren. Aye.

2178 The Clerk. Ms. Lofgren votes aye.

2179 Ms. Jackson Lee?

2180 Ms. Jackson Lee. Aye.

2181 The Clerk. Ms. Jackson Lee votes aye.

2182 Ms. Waters?

2183 [No response.]

2184 Mr. Meehan?

2185 [No response.]

2186 Mr. Delahunt?

2187 [No response.]

2188 Mr. Wexler?

2189 Mr. Wexler. Aye.

2190 The Clerk. Mr. Wexler votes aye.

2191 Ms. Sanchez?

2192 Ms. Sanchez. Aye.

2193 The Clerk. Ms. Sanchez votes aye.

2194 Mr. Cohen?

2195 Mr. Cohen. Aye.

2196 The Clerk. Mr. Cohen votes aye.

2197 Mr. Johnson?

2198 [No response.]

2199 Mr. Gutierrez?

2200 [No response.]

2201 Mr. Sherman?

2202 [No response.]

2203 Ms. Baldwin?

2204 Ms. Baldwin. Aye.

2205 The Clerk. Ms. Baldwin votes aye.

2206 Mr. Weiner?

2207 Mr. Weiner. Pass.

2208 The Clerk. Mr. Weiner passes.

2209 Mr. Schiff?

2210 Mr. Schiff. Aye.

2211 The Clerk. Mr. Schiff votes aye.
2212 Mr. Davis?
2213 [No response.]
2214 Ms. Wasserman Schultz?
2215 [No response.]
2216 Mr. Ellison?
2217 Mr. Ellison. Aye.
2218 The Clerk. Mr. Ellison votes aye.
2219 Mr. Smith?
2220 Mr. Smith. No.
2221 The Clerk. Mr. Smith votes no.
2222 Mr. Sensenbrenner?
2223 Mr. Sensenbrenner. No.
2224 The Clerk. Mr. Sensenbrenner votes no.
2225 Mr. Coble?
2226 Mr. Coble. No.
2227 The Clerk. Mr. Coble votes no.
2228 Mr. Gallegly?
2229 Mr. Gallegly. No.
2230 The Clerk. Mr. Gallegly votes no.
2231 Mr. Goodlatte?
2232 Mr. Goodlatte. No.
2233 The Clerk. Mr. Goodlatte votes no.
2234 Mr. Chabot?
2235 Mr. Chabot. No.

2236 The Clerk. Mr. Chabot votes no.
2237 Mr. Lungren?
2238 Mr. Lungren. No.
2239 The Clerk. Mr. Lungren votes no.
2240 Mr. Cannon?
2241 Mr. Cannon. No.
2242 The Clerk. Mr. Cannon votes no.
2243 Mr. Keller?
2244 Mr. Keller. No.
2245 The Clerk. Mr. Keller votes no.
2246 Mr. Issa?
2247 Mr. Issa. No.
2248 The Clerk. Ms. Issa votes no.
2249 Mr. Pence?
2250 Mr. Pence. No.
2251 The Clerk. Mr. Pence votes no.
2252 Mr. Forbes?
2253 Mr. Forbes. No.
2254 The Clerk. Mr. Forbes votes no.
2255 Mr. King?
2256 Mr. King. No.
2257 The Clerk. Mr. King votes no.
2258 Mr. Feeney?
2259 Mr. Feeney. No.
2260 The Clerk. Mr. Feeney votes No.

2261 Mr. Franks?

2262 Mr. Franks. No.

2263 The Clerk. Mr. Franks votes no.

2264 Mr. Gohmert?

2265 Mr. Gohmert. No.

2266 The Clerk. Mr. Gohmert votes no.

2267 Mr. Jordan?

2268 Mr. Jordan. No.

2269 The Clerk. Mr. Jordan votes no.

2270 Chairman Conyers. Those who have not voted, Ms.

2271 Wasserman Schultz?

2272 Ms. Wasserman Schultz. Aye.

2273 The Clerk. Ms. Wasserman Schultz votes aye.

2274 Chairman Conyers. Mr. Meehan?

2275 Mr. Meehan. Aye.

2276 The Clerk. Mr. Meehan votes aye.

2277 Chairman Conyers. Mr. Johnson?

2278 Mr. Johnson. Aye.

2279 The Clerk. Mr. Johnson votes aye.

2280 Chairman Conyers. Mr. Wiener?

2281 Mr. Weiner. Aye.

2282 The Clerk. Mr. Weiner votes aye.

2283 Chairman Conyers. Mr. Brad Sherman?

2284 Mr. Sherman. Aye.

2285 The Clerk. Mr. Sherman votes aye.

2286 Chairman Conyers. Are there any others who choose to
2287 vote?

2288 The clerk will report.

2289 The Clerk. Mr. Chairman, 17 members voted aye, 17
2290 members voted nay.

2291 Chairman Conyers. So the motion is not agreed to.

2292 Mr. Sensenbrenner. Mr. Chairman, I move the committee
2293 to now adjourn.

2294 Mr. Jordan. Mr. Chairman?

2295 Chairman Conyers. Who seeks—

2296 Mr. Jordan. Call the question on the amendment.

2297 Chairman Conyers. Yes, that is what I intended to do.

2298 Mr. Weiner. Mr. Chairman, point of order. Mr.
2299 Chairman, point of order.

2300 Chairman Conyers. Who raises a point of order?

2301 Mr. Weiner. I do, Mr. Chairman. Mr. Chairman, over
2302 here, lower, to your right, sir.

2303 Chairman Conyers. Oh, okay. All right. Mr. Weiner?

2304 Mr. Weiner. Mr. Chairman, would you have the clerk
2305 restate the tally? Because we have a different number over
2306 here.

2307 Chairman Conyers. So we will now vote on Mr.
2308 Sensenbrenner's motion to adjourn—

2309 Mr. Weiner. What?

2310 Chairman Conyers. —which he has made.

2311 All in favor of a motion to adjourn from Mr.
2312 Sensenbrenner, indicate by saying, "Aye."
2313 All opposed, say, "No."
2314 The noes clearly have it.
2315 Roll-call vote is requested. The clerk will call the
2316 roll.
2317 The Clerk. Mr. Conyers?
2318 Chairman Conyers. No.
2319 The Clerk. Mr. Conyers votes no.
2320 Mr. Berman?
2321 [No response.]
2322 Mr. Boucher?
2323 [No response.]
2324 Mr. Nadler?
2325 Mr. Nadler. No.
2326 The Clerk. Mr. Nadler votes no.
2327 Mr. Scott?
2328 Mr. Scott. No.
2329 The Clerk. Mr. Scott votes no.
2330 Mr. Watt?
2331 Mr. Watt. No.
2332 The Clerk. Mr. Watt votes no.
2333 Ms. Lofgren?
2334 Ms. Lofgren. No.
2335 The Clerk. Ms. Lofgren votes no.

2336 Ms. Jackson Lee?

2337 Ms. Jackson Lee. No.

2338 The Clerk. Ms. Jackson Lee votes no.

2339 Ms. Waters?

2340 Ms. Waters. No.

2341 The Clerk. Ms. Waters votes no.

2342 Mr. Meehan?

2343 Mr. Meehan. No.

2344 The Clerk. Mr. Meehan votes no.

2345 Mr. Delahunt?

2346 [No response.]

2347 Mr. Wexler?

2348 Mr. Wexler. No.

2349 The Clerk. Mr. Wexler votes No.

2350 Ms. Sanchez?

2351 Ms. Sanchez. No.

2352 The Clerk. Ms. Sanchez votes no.

2353 Mr. Cohen?

2354 Mr. Cohen. No.

2355 The Clerk. Mr. Cohen votes no.

2356 Mr. Johnson?

2357 Mr. Johnson. No.

2358 The Clerk. Mr. Johnson votes no.

2359 Mr. Gutierrez?

2360 [No response.]

2361 Mr. Sherman?

2362 Mr. Sherman. No.

2363 The Clerk. Mr. Sherman votes no.

2364 Ms. Baldwin?

2365 Ms. Baldwin. No.

2366 The Clerk. Ms. Baldwin votes no.

2367 Mr. Weiner?

2368 Mr. Weiner. Pass.

2369 The Clerk. Mr. Weiner passes.

2370 Mr. Schiff?

2371 Mr. Schiff. No.

2372 The Clerk. Mr. Schiff votes no.

2373 Mr. Davis?

2374 [No response.]

2375 Ms. Wasserman Schultz?

2376 Ms. Wasserman Schultz. No.

2377 The Clerk. Ms. Wasserman Schultz votes no.

2378 Mr. Ellison?

2379 Mr. Ellison. No.

2380 The Clerk. Mr. Ellison votes no.

2381 Mr. Smith?

2382 Mr. Smith. Aye.

2383 The Clerk. Mr. Smith votes aye.

2384 Mr. Sensenbrenner?

2385 Mr. Sensenbrenner. Aye.

2386 The Clerk. Mr. Sensenbrenner votes aye.
2387 Mr. Coble?
2388 Mr. Coble. Aye.
2389 The Clerk. Mr. Coble votes aye.
2390 Mr. Gallegly?
2391 Mr. Gallegly. Aye.
2392 The Clerk. Mr. Gallegly votes aye.
2393 Mr. Goodlatte?
2394 Mr. Goodlatte. Aye.
2395 The Clerk. Mr. Goodlatte votes aye.
2396 Mr. Chabot?
2397 Mr. Chabot. Aye.
2398 The Clerk. Mr. Chabot votes aye.
2399 Mr. Lungren?
2400 Mr. Lungren. Aye.
2401 The Clerk. Mr. Lungren votes aye.
2402 Mr. Cannon?
2403 Mr. Cannon. Aye.
2404 The Clerk. Mr. Cannon votes aye.
2405 Mr. Keller?
2406 Mr. Keller. Aye.
2407 The Clerk. Mr. Keller votes aye.
2408 Mr. Issa?
2409 ISSA; Aye.
2410 The Clerk. Mr. Issa votes aye.

2411 Mr. Pence?

2412 Mr. Pence. Aye.

2413 The Clerk. Mr. Pence votes aye.

2414 Mr. Forbes?

2415 Mr. Forbes. Aye.

2416 The Clerk. Mr. Forbes votes aye.

2417 Mr. King?

2418 Mr. King. Aye.

2419 The Clerk. Mr. King votes aye.

2420 Mr. Feeney?

2421 Mr. Feeney. Aye.

2422 The Clerk. Mr. Feeney votes aye.

2423 Mr. Franks?

2424 Mr. Franks. Aye.

2425 The Clerk. Mr. Franks votes aye.

2426 Mr. Gohmert?

2427 Mr. Gohmert. Aye.

2428 The Clerk. Mr. Gohmert votes aye.

2429 Mr. Jordan?

2430 Mr. Jordan. Aye.

2431 The Clerk. Mr. Jordan votes aye.

2432 Chairman Conyers. Are there any other members that—Mr.

2433 Delahunt?

2434 Mr. Delahunt. How am I recorded?

2435 The Clerk. Mr. Delahunt is not recorded.

2436 Mr. Delahunt. No.

2437 The Clerk. Mr. Delahunt votes no.

2438 Chairman Conyers. Mr. Berman?

2439 Mr. Berman. No.

2440 The Clerk. Mr. Berman votes no.

2441 Chairman Conyers. If there are no other members that

2442 choose to vote, the clerk will—oh, Mr. Weiner?

2443 Mr. Weiner. No.

2444 The Clerk. Mr. Weiner votes no.

2445 Chairman Conyers. The clerk will report.

2446 The Clerk. Mr. Chairman, 17 members voted aye; 20

2447 members voted nay.

2448 Chairman Conyers. Ladies and gentlemen, the question is

2449 now on, shall the ruling of the chair stand?

2450 All those in favor, say, "Aye."

2451 All those opposed, say, "No."

2452 The chair is not certain, but he believes that the ayes

2453 prevail.

2454 Mr. Smith asks for a recorded vote. The clerk will call

2455 the roll.

2456 The Clerk. Mr. Conyers?

2457 Chairman Conyers. Aye.

2458 The Clerk. Mr. Conyers votes aye.

2459 Mr. Berman?

2460 Mr. Berman. Aye.

2461 The Clerk. Mr. Berman votes aye.
2462 Mr. Boucher?
2463 [No response.]
2464 Mr. Nadler?
2465 Mr. Nadler. Aye.
2466 The Clerk. Mr. Nadler votes aye.
2467 Mr. Scott?
2468 Mr. Scott. Aye.
2469 The Clerk. Mr. Scott votes aye.
2470 Mr. Watt?
2471 Mr. Watt. Aye.
2472 The Clerk. Mr. Watt votes aye.
2473 Ms. Lofgren?
2474 Ms. Lofgren. Aye.
2475 The Clerk. Ms. Lofgren votes aye.
2476 Ms. Jackson Lee?
2477 Ms. Jackson Lee. Aye.
2478 The Clerk. Ms. Jackson Lee votes aye.
2479 Ms. Waters?
2480 Ms. Waters. Aye.
2481 The Clerk. Ms. Waters votes aye.
2482 Mr. Meehan?
2483 [No response.]
2484 Mr. Delahunt?
2485 Mr. Delahunt. Aye.

2486 The Clerk. Mr. Delahunt votes aye.
2487 Mr. Wexler?
2488 Mr. Wexler. Aye.
2489 The Clerk. Mr. Wexler votes aye.
2490 Ms. Sanchez?
2491 Ms. Sanchez. Aye.
2492 The Clerk. Ms. Sanchez votes aye.
2493 Mr. Cohen?
2494 Mr. Cohen. Aye.
2495 The Clerk. Mr. Cohen votes aye.
2496 Mr. Johnson?
2497 Mr. Johnson. Aye.
2498 The Clerk. Mr. Johnson votes aye.
2499 Mr. Gutierrez?
2500 [No response.]
2501 Mr. Sherman?
2502 Mr. Sherman. Aye.
2503 The Clerk. Mr. Sherman votes aye.
2504 Ms. Baldwin?
2505 Ms. Baldwin. Aye.
2506 The Clerk. Ms. Baldwin votes aye.
2507 Mr. Weiner?
2508 Mr. Weiner. Aye.
2509 The Clerk. Mr. Weiner votes aye.
2510 Mr. Schiff?

2511 Mr. Schiff. Aye.

2512 The Clerk. Mr. Schiff votes aye.

2513 Mr. Davis?

2514 [No response.]

2515 Ms. Wasserman Schultz?

2516 Ms. Wasserman Schultz. Aye.

2517 The Clerk. Ms. Wasserman Schultz votes aye.

2518 Mr. Ellison?

2519 Mr. Ellison. Aye.

2520 The Clerk. Mr. Ellison votes aye.

2521 Mr. Smith?

2522 Mr. Smith. No.

2523 The Clerk. Mr. Smith votes no.

2524 Mr. Sensenbrenner?

2525 Mr. Sensenbrenner. No.

2526 The Clerk. Mr. Sensenbrenner votes no.

2527 Mr. Coble?

2528 Mr. Coble. No.

2529 The Clerk. Mr. Coble votes no.

2530 Mr. Gallegly?

2531 Mr. Gallegly. No.

2532 The Clerk. Mr. Gallegly votes no.

2533 Mr. Goodlatte?

2534 Mr. Goodlatte. No.

2535 The Clerk. Mr. Goodlatte votes no.

2536 Mr. Chabot?
2537 Mr. Chabot. No.
2538 The Clerk. Mr. Chabot votes no.
2539 Mr. Lungren?
2540 Mr. Lungren. No.
2541 The Clerk. Mr. Lungren votes no.
2542 Mr. Cannon?
2543 Mr. Cannon. No.
2544 The Clerk. Mr. Cannon votes no.
2545 Mr. Keller?
2546 Mr. Keller. No.
2547 The Clerk. Ms. Keller votes no.
2548 Mr. Issa? Mr. Issa is not recorded.
2549 Mr. Issa. No.
2550 The Clerk. Mr. Issa votes no.
2551 Mr. Pence?
2552 Mr. Pence. No.
2553 The Clerk. Mr. Pence votes no.
2554 Mr. Forbes?
2555 Mr. Forbes. No.
2556 The Clerk. Mr. Forbes votes no.
2557 Mr. King?
2558 Mr. King. No.
2559 The Clerk. Mr. King votes no.
2560 Mr. Feeney?

2561 Mr. Feeney. No.

2562 The Clerk. Mr. Feeney votes no.

2563 Mr. Franks?

2564 Mr. Franks. No.

2565 The Clerk. Mr. Franks votes no.

2566 Mr. Gohmert?

2567 Mr. Gohmert. I have a parliamentary inquiry as to

2568 whether—

2569 Chairman Conyers. No parliamentary inquiries during the

2570 vote, sir.

2571 Mr. Gohmert. All right. I was under the impression we

2572 were voting for Mr. Chabot's motion, but I guess my vote is

2573 no. I am not really clear.

2574 Chairman Conyers. It is all right.

2575 The Clerk. Mr. Gohmert votes no.

2576 Mr. Jordan?

2577 Mr. Jordan. No.

2578 The Clerk. Mr. Jordan votes no.

2579 Chairman Conyers. The clerk—

2580 Mr. Davis. Mr. Chairman, how am I recorded?

2581 Chairman Conyers. Mr. Davis is not recorded.

2582 Mr. Davis. Aye.

2583 The Clerk. Mr. Davis votes aye.

2584 Chairman Conyers. Mr. Meehan?

2585 Mr. Meehan. Aye.

2586 The Clerk. Mr. Meehan votes aye.

2587 Chairman Conyers. Any other members?

2588 Ms. Jackson Lee. Mr. Chairman?

2589 Chairman Conyers. Any other members that have not voted
2590 that wish to be recorded?

2591 Ms. Jackson Lee. Mr. Chairman, how am I recorded?

2592 The Clerk. Ms. Jackson Lee voted aye.

2593 Ms. Jackson Lee. Thank you.

2594 Chairman Conyers. The clerk will report.

2595 The Clerk. Mr. Chairman, I have 21 members voting aye
2596 and 17 members voting no.

2597 Chairman Conyers. The ruling of the chair stands.

2598 Mr. Franks. Mr. Chairman?

2599 Chairman Conyers. We will come back at 3:30 because of
2600 the briefing, and I will recognize Mr. Gohmert first.

2601 Mr. Franks. Mr. Chairman, just briefly, I think there

2602 may be a parliamentary issue here. Didn't we come back to

2603 Mr. Chabot's amendment rather than what you said? Mr.

2604 Chabot's amendment was to appeal the ruling of the chair, and

2605 we switched the vote around. Just for your consideration,

2606 Mr. Chairman.

2607 Chairman Conyers. Yes. We considered it, and I

2608 appreciate it very much.

2609 The fact of the matter is that we will recognize Mr.

2610 Gohmert when we come back at 3:30. It is now 2 o'clock

2611 precisely. If the briefing ends before 3:30, we urge that
2612 you join us.

2613 The committee stands in recess, and I thank you all very
2614 much.

2615 [Recess.]

2616 Chairman Conyers. Good afternoon. The committee will
2617 come to order.

2618 The chair recognizes the gentleman from Texas.

2619 Mr. Gohmert. Thank you, Mr. Chairman. I have an
2620 amendment at the desk. This is amendment, I think, 29
2621 offered by Gohmert of Texas.

2622 Mr. Scott. Mr. Chairman? I reserve a point of order.

2623 Chairman Conyers. Point of order is reserved by the
2624 gentleman from Virginia.

2625 The clerk will report.

2626 The Clerk. "Amendment to H.R. 1592 offered by Mr.
2627 Gohmert of Texas. Page 12, line 2, after 'person' insert ',
2628 or if the victim was randomly selected or was a victim by
2629 chance.' "

2630 [The amendment by Mr. Gohmert follows:]

2631 ***** INSERT *****

2632 Chairman Conyers. The gentleman is recognized in
2633 support of his amendment.

2634 Mr. Gohmert. Thank you, Mr. Chairman.

2635 This amendment deals with a rather egregious fault of
2636 the bill itself.

2637 We have gone through a great deal of legislative
2638 hearings and markup on the Second Chance Act, and the
2639 majority made very clear that they believed that we needed to
2640 do a better job of rehabilitating, and I think that is
2641 something that we all agreed on, although there was some
2642 disagreement on the means.

2643 The problem with this—one of the problems with this bill
2644 is that from what I can find, those who commit crimes with
2645 ill will in their heart seem to have a far greater chance of
2646 being rehabilitated—there is a good deal of studies being
2647 done, situations where—mediated conferences between the
2648 offender and the victim have ended up resulting in the
2649 offender breaking down, indicating he couldn't believe the
2650 hatred that he used to have.

2651 Those folks, most of them, can be rehabilitated. The
2652 greatest threat seems to be for those who can't be
2653 rehabilitated, or the antisocial personalities, those who
2654 used to be called sociopaths, antisocial personalities, or
2655 even psychopaths.

2656 These are people whose situation does not rise to the

2657 level of an insanity defense. Nonetheless, they know right
2658 from wrong. They can make their conduct conform to the
2659 requirements of the law.

2660 They just choose not to conform to the requirements of
2661 the law. They enjoy doing wrong.

2662 And there is a great deal of literature out there year
2663 after year. One indicates, in talking about the comparison
2664 of those who are psychopaths, antisocial personalities, who
2665 go through treatment to try to help them reform—this article
2666 from the American Psychologist, April of 1997, says the
2667 treated psychopaths had significantly worse outcomes than
2668 their untreated counterparts, whereas the reverse was true
2669 for non-psychopaths.

2670 These findings, along with others showing that
2671 psychopaths do poorly compared with other participants in
2672 therapeutic community programs, led us to believe that they
2673 differed fundamentally.

2674 But it goes on to say that whereas psychopaths in the
2675 program learned how to be more empathetic and concerned about
2676 others—that is non-psychopaths—the psychopaths simply learned
2677 how to appear more empathetic and then used this information
2678 so as to better manipulate and deceive others.

2679 In the absence of any true empathy, the better
2680 manipulation skills of the treated psychopaths allowed them
2681 to use and abuse others in both violent and non-violent ways.

2682 So what my amendment tries to do is say if somebody is
2683 situated, as was—and I know this was recent, and it is a very
2684 tender issue because it was so egregious, but if Virginia
2685 Tech, when that ruthless murderer came through and randomly
2686 killed student after student—if you don't accept my
2687 amendment, if it is not approved, then these people are not—
2688 someone situated as was that murderer will not be treated as
2689 harshly as somebody who harbors ill will.

2690 I keep hearing the Byrd case from East Texas brought up.
2691 That was such a horrible case, where an African-American man
2692 was dragged to death tied to a truck.

2693 And I will tell you, I would be open to amendment, and I
2694 have got one, to insert the death penalty. But the two most
2695 responsible individuals got the death penalty in Mr. Byrd's
2696 case.

2697 Now, I wouldn't have a problem amending the law to allow
2698 that aggrieved family to get to choose the rope or the chain,
2699 the terrain to drag the defendant over. I wouldn't have a
2700 problem with that.

2701 But this bill doesn't do that. There is nothing in this
2702 bill that would change the outcome of the Byrd case and the
2703 justice that was occasioned to the defendants that got what
2704 they deserved.

2705 So we keep citing cases like that. This doesn't have
2706 any effect on that. But we cannot overlook the most scary,

2707 the most egregious, most ruthless killers.

2708 And the people that are capable of such brutality in
2709 this country are the psychopaths, the sociopaths, and I tried
2710 to include that in.

2711 If you do not include this in, the message is clear from
2712 this bill. The message says to potential beasts out there,
2713 "If you are going to brutalize me, please, for goodness sake,
2714 don't hate me while you are brutalizing me, please, make it a
2715 random, senseless act of violence." If you don't include my
2716 amendment, that is what this bill says to criminals.

2717 I yield back the balance of my time.

2718 Mr. Scott. Mr. Chairman?

2719 Chairman Conyers. Mr. Scott?

2720 Mr. Scott. I insist on my point of order and would like
2721 to speak to the point of order.

2722 Chairman Conyers. The gentleman insists on his point of
2723 order, and he is recognized to make his point of order.

2724 Mr. Scott. Thank you.

2725 Mr. Chairman, I would agree with the gentleman from
2726 Texas that his amendment describes heinous crimes, but
2727 unfortunately those crimes are not germane to the bill.

2728 Mr. Chairman, this amendment violates House Rule 16,
2729 Clause 7, which states that no motion or proposition on a
2730 subject different from that under consideration shall be
2731 admitted under color of amendment.

2732 In this case, the hate crimes bill is what we are
2733 considering, and the hate crime definition is a crime in
2734 which the defendant intentionally selects. Obviously, if it
2735 is random, he was not intentionally selecting him, so it is
2736 irrelevant to the underlying bill.

2737 Therefore, it violates the rules of germaneness, and I
2738 would insist on my point of order.

2739 Chairman Conyers. Would you like to be heard, Mr.
2740 Gohmert, on this point of order?

2741 Mr. Gohmert. Yes, Mr. Chairman, I would.

2742 My good friend from Virginia said that this was a
2743 different offense. Actually, it is the very same offenses.
2744 The only difference would be the mens rea.

2745 Instead of allowing people to come in at sentencing and
2746 say, "Look, I didn't hate these people, I just made a random
2747 selection, so you can't punish me as badly," this takes that
2748 defense away at sentencing and will not allow them to escape
2749 for the same crime, same-

2750 Mr. Scott. Would the gentleman yield?

2751 Mr. Gohmert. Certainly. Yes, sir.

2752 Mr. Scott. The hate crimes is a case that has to be
2753 made in the case itself. This is not a sentencing
2754 enhancement. This is a new crime. So you have to prove all
2755 of the elements of the crime in the case in chief.

2756 You don't get to wait till the end to try to make your

2757 case on sentencing. You have to prove—and the burden of
2758 proof on the prosecution is fairly stiff, because they have
2759 to show under the bill that the defendant intentionally
2760 selected, and the—

2761 Mr. Gohmert. If I could reclaim, the gentleman is
2762 right. You are right. In this bill, it is on the guilt-
2763 innocence phase. You are right. But the outcome is the
2764 same, same offense, same harm, same devastated victim's
2765 family.

2766 The only difference is the mens rea. One says, "I
2767 harbored ill will in my heart toward the group that this
2768 person was part of," and the other says, "Hey, I didn't care,
2769 I just meant to shoot or kill or hurt somebody that day."

2770 I yield back.

2771 Chairman Conyers. The chair is prepared to rule on the
2772 point of order. The bill deals with crimes of violence based
2773 upon a bias. The amendment before us deals with crimes based
2774 on no bias whatsoever.

2775 And therefore in the opinion of the chair, the amendment
2776 is therefore not germane and sustains the point of order
2777 raised by the gentleman from Virginia.

2778 Are there other amendments?

2779 Mr. Gohmert. Mr. Chairman?

2780 Chairman Conyers. Yes.

2781 Mr. Gohmert. I have an amendment at the desk. This

2782 would be Gohmert 2, amendment to H.R. 1592.

2783 Chairman Conyers. The clerk will report.

2784 A point of order is reserved by the gentleman from
2785 Virginia, Mr. Scott.

2786 The Clerk. "Amendment to H.R. 1592, offered by Mr.
2787 Gohmert of Texas. Page 2, line 10, after 'gender,' strike
2788 'sexual orientation, gender identity.' Page 6, line 16,
2789 after 'gender' strike 'sexual orientation, gender identity.'
2790 Page 11, line 15, after 'gender' strike 'sexual orientation,
2791 gender identity.' Page 12, line 1, after 'der' strike
2792 'sexual orientation, gender identity.' Page 14, line 6,
2793 after 'gender' strike 'sexual orientation, gender identity.'
2794 Page 15, strike lines 6, 7 and 8. Page 15, line 12—"

2795 [The amendment by Mr. Gohmert follows:]

2796 ***** INSERT *****

2797 Chairman Conyers. I ask unanimous consent the amendment
2798 be considered as read.

2799 I recognize the gentleman from Texas for 5 minutes.

2800 Mr. Gohmert. Thank you, Mr. Chairman.

2801 As the clerk was reading, this simply goes through the
2802 bill and preserves the hate crime bill except that it strikes
2803 out sexual orientation and gender identity as issues that are
2804 protected.

2805 It does cause me concern, especially at this time, just
2806 so shortly after what happened, the tragedy at Virginia Tech,
2807 that we are saying through this bill that a transvestite with
2808 gender issues deserves more protection than some heterosexual
2809 student that was randomly selected in a classroom. That is
2810 tragic.

2811 We know that the cornerstone of our Constitution are
2812 protections for race, creed, color, religion, national
2813 origin, and so it is only in our recent history that we have
2814 added the sexual orientation. And this is the first bill
2815 that I have seen that adds gender identity.

2816 I am quite concerned that those have such broad meaning,
2817 especially "sexual orientation." At some point, a court is
2818 going to define those terms to mean exactly what the terms
2819 say. Sexual orientation means whatever this person is
2820 oriented toward. And it may be children. It may be corpses.
2821 It may be animals. But nonetheless, that is such a broad

2822 term. This amendment seeks to strike that and leave the
2823 other parts intact.

2824 I also, Mr. Chairman, would like to offer—I received
2825 this morning a letter signed, that includes names and
2826 addresses of 176 leaders around the country who have grave
2827 concerns about this bill and are asking that we not pass it
2828 in its present form because of that concern.

2829 And in part, their concern says, "The passage of 1592
2830 will be a serious threat to freedom of religion and speech.
2831 It begins to lay the legal foundation and framework to
2832 investigate, prosecute and persecute pastors, business owners
2833 and anyone else whose actions are based upon and reflect the
2834 truths found in the Bible which have previously been
2835 protected by the First Amendment resulting in a chilling
2836 effect on religious liberties."

2837 And I would submit also that it is not just the Bible,
2838 it is the Torah, the Koran. They all have similar
2839 indications in those books. And this would have a profound
2840 effect beginning to limit that.

2841 And I would ask unanimous consent to submit this letter,
2842 as well as one from Frank Wright from National Religious
2843 Broadcasters, who asked us to oppose the Hate Crimes
2844 Prevention Act of 2007. I would ask unanimous consent—

2845 Chairman Conyers. Without objection, both letters will
2846 be included.

2847 [The letters follow:]

2848 ***** COMMITTEE INSERT *****

2849 Mr. Gohmert. Thank you, Mr. Chairman.

2850 And with that, I would yield back.

2851 Chairman Conyers. Thank you.

2852 The chair recognizes the gentlelady from Wisconsin,
2853 Tammy Baldwin.

2854 Ms. Baldwin. Thank you, Mr. Chairman.

2855 First of all, I, too, would like to submit for the
2856 record letters of support and endorsing organizations for the
2857 hate crimes legislation. I think this is important for a
2858 complete record.

2859 And then I would like—

2860 Chairman Conyers. How many letters?

2861 Ms. Baldwin. How many?

2862 Chairman Conyers. Yes. A lot?

2863 Ms. Baldwin. A lot.

2864 Chairman Conyers. Okay.

2865 Ms. Baldwin. I would say it is about—

2866 Chairman Conyers. Without number.

2867 Ms. Baldwin. —almost a half-inch thick—

2868 Chairman Conyers. Okay.

2869 [The letters follow:]

2870 ***** INSERT *****

2871 Ms. Baldwin. -testimony in support.

2872 Then I want to, first of all, respond to some of the
2873 specific arguments made in support of Mr. Gohmert's
2874 amendment.

2875 His discussion of questions related to the definition of
2876 the terms "sexual orientation" and "gender identity"—he
2877 actually raised these concerns at the subcommittee hearing
2878 that we had quite recently.

2879 And I will assure members that as we talked to our
2880 expert witnesses, they shared no such slippery-slope concerns
2881 as were just raised in his defense of his amendment.

2882 But I would also point to members in the underlying bill
2883 that the term "sexual orientation" is already defined in
2884 federal statute. It is in the Hate Crimes Statistic Act, and
2885 that definition is adopted in this bill.

2886 And it is defined—as used in this section, the term
2887 "sexual orientation" means consensual homosexuality or
2888 heterosexuality. End of sentence. "Gender identity" is
2889 actually defined in the text of the base bill before us.

2890 And so these arguments of some sort of slippery slope
2891 with regard to later interpretation of the terms "sexual
2892 orientation" or "gender identity" I think ought not to
2893 concern us.

2894 But let me get to the meat of the amendment before us,
2895 because obviously it is a gutting amendment that strips away

2896 some of the key provisions that are contained in the hate
2897 crimes bill before us.

2898 Congress made a judgment many years ago to enact the
2899 initial hate crimes statute and to protect the groups that
2900 were protected originally because of a long record of
2901 evidence of crimes where individuals were targeted for
2902 violence against their persons or their property based on a
2903 characteristic—race, religion, national origin.

2904 We have a hate crimes statistic law that collects data
2905 on the prevalence of crimes of this nature. And included in
2906 the Hate Crimes Statistics Act are the requirement to collect
2907 data on and statistics on incidents of sexual orientation
2908 hate crimes.

2909 And I think since the enactment of that Hate Crimes
2910 Statistics Act that we can all come away with a firm
2911 understanding that lesbian, gay, bisexual and transgender
2912 Americans are the targets of hate crimes.

2913 And it is a very disturbing trend. One in six hate
2914 crimes is motivated by the victim's sexual orientation, yet
2915 today's federal hate crimes laws do not include any
2916 protections for these Americans.

2917 The FBI collects statistics, as I just mentioned, on
2918 sexual orientation hate crimes, and they are in the thousands
2919 each year.

2920 Unfortunately, the Hate Crimes Statistics Act does not

2921 require that the FBI collect data on hate crimes as the
2922 result of where the targeted victim was targeted based on
2923 their gender identity, and so we have to rely on other data.

2924 But it is very clear to me, in the research that I have
2925 done, and the testimony we heard from our experts at our
2926 hearing last week, that it is very prevalent and of great
2927 concern.

2928 Mr. Gohmert. Will the gentlewoman yield for a question?

2929 Ms. Baldwin. Briefly.

2930 Mr. Gohmert. Yes. You mentioned the Hate Crimes
2931 Statistics Act. I don't find it referenced in this bill.
2932 Could you direct me in the bill to where that definition is
2933 referenced? That was one of my problems. Thank you.

2934 Ms. Baldwin. If you will hold on one moment while I
2935 grab the bill, I can do that. The eighth section, by the
2936 way, of the bill does refer to expansion of the Hate Crimes
2937 Statistics Act, section 8 on Page 15.

2938 Chairman Conyers. The gentlelady is given an additional
2939 minute.

2940 Ms. Baldwin. Oh, thank you. Actually, I am just going
2941 to continue debate and I will—as soon as somebody else is
2942 recognized to speak, I will get you the specific cite. It is
2943 in the bill.

2944 But clearly, the amendment that is posed before us right
2945 now is a gutting amendment. I think it is high time that we

2946 as a nation make a statement both because of its substantive
2947 value and its symbolic value that this type of hate crime
2948 ought to be protected under our federal hate crimes statute
2949 and it ought to be subject to the additional penalties.

2950 Chairman Conyers. The gentlelady's time has expired
2951 again.

2952 The chair recognizes briefly Steve King of Iowa before
2953 we go to a vote on the amendment.

2954 Mr. King. Thank you, Mr. Chairman. I move to strike
2955 the last word.

2956 Chairman Conyers. Without objection, so ordered. The
2957 gentleman is recognized.

2958 Mr. King. Thank you, Mr. Chairman.

2959 I rise in support of the Gohmert amendment, and I am
2960 compelled to speak to this issue because I think that we need
2961 to recognize the slippery slope that we are sliding down here
2962 with this legislation.

2963 And I want to—as I paid particular attention to the
2964 Civil Rights Act, particularly Title 7, and the definitions
2965 of protected classes of people within Title 7 of the Civil
2966 Rights Act, and I believe that is the foundation for this
2967 legislation.

2968 In fact, it is fairly easy to identify it when one goes
2969 back and reads the definitions of protected classes within
2970 Title 7 of the Civil Rights Act. It says prohibits

2971 discrimination based upon race, color, religion, sex and
2972 national origin.

2973 And when I look at the comparison of that language to
2974 the language in this bill, I see the additions. I see a
2975 change on the one word, from "sex" to "gender," and I see the
2976 additions of "sexual orientation" and "gender identity."

2977 Now, I pass along this. I think it is a foundational
2978 issue. And that is that all of these characteristics that
2979 are protected in the Civil Rights Act, save religion, are
2980 immutable characteristics.

2981 Religion is protected by the Constitution specifically.
2982 Immutable characteristics are characteristics that can be
2983 independently verified. They can't be successfully self-
2984 alleged. And they can't be changed.

2985 And so for those reasons, we ought to be protecting
2986 immutable characteristics, because those are the
2987 characteristics that God assigns to us. And those are the
2988 ones we can independently verify. They can be verified by a
2989 physician, for example.

2990 And when you go down the path of sexual orientation and
2991 gender identity, these are self-assigned characteristics.
2992 And I would point out that when I was in the state senate, we
2993 were lobbied each year by advocates of these kind of
2994 policies.

2995 And I remember an unnamed state senator who asked these

2996 college students who were surrounding him, making their
2997 lobbying case that they needed special protection, and he
2998 said, "Well, tell me, am I a heterosexual or am I a
2999 homosexual?"

3000 And they looked at him at some length, and they said,
3001 "Well, we don't know." He said, "Exactly my point. If you
3002 don't know, how do you discriminate against someone unless
3003 they self-allege and wear it on their sleeve?"

3004 And once you go down the path of self-alleged special
3005 protected status, that grants everyone that opportunity to
3006 make an allegation that they want that protection and they
3007 can assign themselves whatever mutable characteristic they
3008 choose to assign themselves, whether it is homosexuality,
3009 heterosexuality, bisexuality or a list of proclivities that I
3010 have seen as well.

3011 So what it comes down to in the end is if you can get
3012 the political support to give you special protected status,
3013 then it will be bestowed upon you by Congress if we go down
3014 this path.

3015 And I will draw the line brightly and sharp and
3016 illuminate it fluorescently between—the difference between
3017 immutable characteristics and self-alleged mutable
3018 characteristics. And I would support the Gohmert amendment.

3019 And I thank you, Mr. Chairman. I yield back the balance
3020 of my time.

3021 Chairman Conyers. Mr. Scott?

3022 Mr. Scott. Move to strike the last word.

3023 Chairman Conyers. Do you withdraw your—

3024 Mr. Scott. Mr. Chairman, I would withdraw my point of
3025 order.

3026 Chairman Conyers. All right. The gentleman is
3027 recognized.

3028 Mr. Scott. Thank you.

3029 Mr. Chairman, this is a major part of the bill. It is
3030 hard to imagine any list of high-profile hate crimes that
3031 doesn't mention the name of Matthew Shepard.

3032 The list of people who are concerned about what might
3033 happen to them if we pass this bill would only have to
3034 refrain from committing crimes to avoid prosecution under
3035 this bill. So I am not sure exactly what they are afraid of.

3036 And in reference to the last comment, it is not that a
3037 person thinks of themselves. What we are concerned about is
3038 a person that goes out and selects a person because of their
3039 perceived situation.

3040 I think the amendment undermines the legislation and I
3041 hope that the amendment would be defeated.

3042 I yield to the gentlelady from—

3043 Ms. Baldwin. We probably will not settle at this
3044 particular committee meeting whether sexual orientation or
3045 gender identity is an immutable characteristic. It is

3046 something that has been debated long.

3047 But I would also ask the members to think about the
3048 protected classes in the underlying bill, because we already
3049 have a list that contains both immutable characteristics but
3050 also with the addition of protections for people on the basis
3051 of religion, something that clearly is not an immutable
3052 characteristic.

3053 But yet this Congress in both the cases of immutable
3054 characteristics and in the case of a choice, a selection,
3055 such as the choice of religion, how to worship, we have
3056 chosen to grant protection against hate crimes to those
3057 categories of persons because of the very well documented
3058 record of a history of violence targeted toward those groups
3059 of people, a history unfortunately in our nation of animus
3060 and bigotry and violence directed to those groups of people.

3061 And therefore, I think it is very important that we take
3062 the step now to add these two or keep these two in the bill.
3063 I would urge rejection of the Gohmert amendment.

3064 Mr. Forbes. Mr. Chairman?

3065 Chairman Conyers. Mr. Forbes?

3066 Mr. Forbes. Thank you, Mr. Chairman. Mr. Chairman,
3067 move to strike the last word.

3068 Chairman Conyers. The gentleman is recognized for 5
3069 minutes.

3070 Mr. Forbes. Would the gentlelady from Wisconsin yield

3071 for a question, please?

3072 I would ask her if she has—forgetting whether we are
3073 going to debate immutable characteristics or not, I would
3074 like to come back to the definitions that are in the bill.

3075 And have you had an opportunity to review the bill to
3076 tell us how it references the other bill, the hate crimes
3077 statistics law that you referenced earlier?

3078 Mr. Watt. If the gentleman would yield, I—

3079 Mr. Forbes. I will be happy to yield to the gentleman
3080 from North Carolina.

3081 Mr. Watt. —I pledged to her that I would do that,
3082 because I had traced back through because of concerns I had
3083 about getting back to a concrete definition.

3084 If you look on page 5 of the bill, starting at line 17,
3085 it says the term "hate crime" has the meaning given such term
3086 in section 2803, and then of the Violent Crime Control and
3087 Law Enforcement Act of 1994.

3088 So then we went and pulled that statute, 28 USC 994, and
3089 it refers you back, then, to the Hate Crimes Statistics Act,
3090 which is Public Law 103-322.

3091 And there you will find this definition, "In this
3092 section, hate crime means a crime in which the defendant
3093 intentionally selects a victim or, in the case of a property
3094 crime, the property that is the object of the crime, because
3095 of the actual or perceived race, color, religion, national

3096 origin, ethnicity, gender, disability or sexual orientation
3097 of that person."

3098 Ms. Baldwin. Will the gentleman yield?

3099 Mr. Forbes. Well, it is my time, but I will yield to
3100 you if you have a question.

3101 Ms. Baldwin. Not a question, but further, the same hate
3102 crimes act in Section 535 then specifically defines the term
3103 "sexual orientation" and it says, "As used in this section,
3104 the term sexual orientation means consensual homosexuality or
3105 heterosexuality."

3106 Mr. Forbes. Well, I would like to just take a few
3107 moments, and we will be looking and trying to trace with the
3108 gentleman from North Carolina the language.

3109 But let me ask this question, if I could, from the
3110 gentlelady from Wisconsin. In the hearings that you talked
3111 about—and first of all, you know, the hearings are always a
3112 little difficult.

3113 We have six people that normally come to testify. We
3114 have 5 minutes to ask them questions. But do you have
3115 examples where you have these hate crimes against
3116 heterosexuals?

3117 Ms. Baldwin. In terms of the hearing itself, I do not
3118 believe I heard any case in which a victim was targeted
3119 because of their heterosexuality.

3120 We certainly have heard cases in the public eye that

3121 people were targeted because of their status as a gay man or
3122 lesbian. But I did not hear any testimony on that.

3123 I would, though, add that, you know, the statistics are
3124 taken and the question is asked is the victim targeted
3125 because of their sexual orientation. Among many other
3126 questions, we look at statistics and a number of bases.

3127 Mr. Forbes. If I could just reclaim my time—and I want
3128 you to be able to answer on somebody else's time more, but
3129 based on—a while ago when you were talking about this bill,
3130 you said there was no evidence that was presented at the
3131 hearing referencing to Mr. Gohmert's amendment.

3132 But I have not seen any evidence that has been presented
3133 to us or any from the hate crimes statistics law regarding
3134 hate crimes against people with heterosexuality.

3135 And can the gentlelady present to me any cases where
3136 that has been the case, where someone was targeted because
3137 they were heterosexual?

3138 Ms. Baldwin. The way the Hate Crimes Statistics Act
3139 worked—I gave you the definition of "sexual orientation," so
3140 the FBI counts hate crimes in which the victim was targeted
3141 by virtue of their sexual orientation, so we get perhaps the
3142 aggregate data that you are talking about.

3143 And in 2005, there were well over 1,000 such cases. In
3144 2004, 1,197. And in—

3145 Mr. Forbes. And if I could get my time back—

3146 Mr. Watt. Would the gentleman yield?

3147 Mr. Forbes. Well, if I can ask her one more question.

3148 The question I would like to get at is, do you have any
3149 evidence of a hate crime that has been committed against
3150 anyone in the United States for being a heterosexual?

3151 Ms. Baldwin. I have nothing with me. I don't know if
3152 anyone else does. It certainly could have happened.

3153 Mr. Forbes. I would be glad to yield to the gentleman
3154 from North Carolina.

3155 Mr. Watt. I thank the gentleman for yielding.

3156 I think the answer to the question is no. But you
3157 should be comforted to know that the bill would cover a hate
3158 crime based on heterosexuality.

3159 Mr. Forbes. But if I could—

3160 Mr. Watt. So, I mean, I am not sure what your—

3161 Chairman Conyers. The gentleman is given 1 additional
3162 minute.

3163 Mr. Forbes. Thank you, Mr. Chairman.

3164 And I don't want to cut you off. You go ahead and
3165 finish.

3166 Mr. Watt. I don't know what you are arguing, unless you
3167 are arguing that we should redefine the definition of "sexual
3168 orientation" to exclude heterosexuals.

3169 Mr. Forbes. That is exactly what I am arguing.

3170 Mr. Watt. I think that would make this a very offensive

3171 act, and I would think it would make it offensive from your
3172 own perspective more than it would make it offensive from our
3173 perspective.

3174 Mr. Forbes. And the reason I would say—

3175 Ms. Baldwin. Would the gentleman yield?

3176 Mr. Forbes. —that it was not—I will in just a second,
3177 if I can get more time.

3178 The reason that I would say it would not be offensive to
3179 me is because we have been arguing on each one of these
3180 amendments that we are basing these on particular categories
3181 where we have evidence that there has been hate crime against
3182 people in those categories.

3183 And we are going to have a number of different
3184 categories that we are going to bring forward today that we
3185 would feel comfortable if we—

3186 Chairman Conyers. The gentleman's time has expired
3187 again.

3188 Let's see. I have requests from the gentlelady from
3189 Texas, gentlelady from Florida, Dan Lungren and Lamar Smith.
3190 Let's end the debate on those four, please.

3191 The gentlelady from Texas?

3192 Ms. Jackson Lee. Mr. Chairman, I would like to refer my
3193 colleagues again back to the bill. As I look at the
3194 underlying bill, in addition to grant programs, of course, we
3195 have a section on statistics.

3196 And I think that to presuppose ahead of time questions
3197 about who we can document that have been targeted because of
3198 their gender or gender identity—I can witness to constituents
3199 who have come to me and have indicated that they have been
3200 fired.

3201 Now, that may not be in the statistical analysis at this
3202 point, but I could witness to the fact that individuals that
3203 have a gender identity question and/or question that deals
3204 with gender have approached me as a member of Congress or an
3205 elected official.

3206 I would like to refer my colleagues again to Section 3
3207 that defines a hate crime. And I think that is the focus
3208 that we should have.

3209 And I query my colleagues who are raising these
3210 amendments as to how we can pull back on the initial language
3211 that says, "Hate crime is a violent act causing death or
3212 bodily injury."

3213 It then goes on to list race, color, religion, national
3214 origin, sexual orientation, gender and gender identity or
3215 disability.

3216 My query to my friends is are the listing of those
3217 protected superior to the violent act of killing or
3218 brutalizing somebody because of their difference.

3219 The debate frustrates me because I think what we are
3220 trying to prevent is for anyone—and someone raised the

3221 question of heterosexuality, and I assume that if someone was
3222 to make the case, we would all rise up and say, "They have
3223 been hatefully attacked."

3224 They could be hatefully attacked by one of these
3225 protected classes. That might raise a question about their
3226 coverage.

3227 But what we are arguing or making the point now is that
3228 we are trying to prevent a hateful act.

3229 Who of us can concede that we want to yield to the
3230 brutality and hatefulness that Matthew Shepard succumbed to,
3231 or David Richardson succumbed to, or the gentleman from
3232 Texas—that James Byrd succumbed to, a heinous crime?

3233 So if we focus on the prevention of a hate crime to the
3234 listed class, why would we want to eliminate someone from the
3235 speculation that they might be brutalized?

3236 I yield to the gentleman.

3237 Mr. Watt. I think she is making the point—the exact
3238 point I was trying to make to you, Mr. Forbes, was that we
3239 would view it as equally reprehensible if a group of gay
3240 people got together and violently attacked a heterosexual.

3241 That would be a hate crime just as much as a group of
3242 non-gay people getting together attacking gay people. And if
3243 you believe—I mean, you couldn't possibly be arguing that we
3244 should strike attacks against heterosexuals from the law.
3245 Surely that is not what you are saying.

3246 Mr. Forbes. And if the gentlelady would—

3247 Ms. Jackson Lee. And reclaiming my time, I will yield
3248 to the gentleman for a moment.

3249 Mr. Forbes. I thank the gentlelady.

3250 And what I would tell you is exactly what you just said.

3251 I would be just as outraged if it was against a group of
3252 students because they were students, if it was against
3253 military people because they were in the military, if it was
3254 against police officers because they were in the police.

3255 And we are going to give all of you an opportunity to
3256 vote on those issues later on, and I would suggest to you
3257 that we have situations that we can show where they were
3258 targeted, whereas we have not one single case that anybody
3259 can present before this committee—

3260 Ms. Jackson Lee. Reclaiming my time—

3261 Mr. Forbes. —where a heterosexual was targeted.

3262 Ms. Jackson Lee. Reclaiming my time, I think to the
3263 distinguished gentleman that you raise a straw man of an
3264 argument, frankly.

3265 And I do join with my colleague from North Carolina and
3266 say that we would raise an outcry—I would raise an outcry if
3267 we had a defined understanding that police persons were
3268 brutalized not because of the law that they represent or how
3269 they have had—perception in a community, which is what you
3270 might argue, but simply because they exist, and they walk

3271 down the street, and they had a uniform on.

3272 We can make the argument, if you have statistical basis.

3273 As I said, I have had people come to me on the gender

3274 question, on the sexual orientation question. And we should

3275 be talking about hate. We should be talking about the basis

3276 of this underlying bill to stop brutality.

3277 And I would raise the question as to whether or not the

3278 distinguished chairman would say to us, "We will have

3279 hearings on these other proposed affected groups." I have

3280 never heard Mr. Conyers deny that.

3281 We now have an underlying bill that has a premise of

3282 documented groups that have been proven to have been

3283 brutalized—

3284 Chairman Conyers. The gentlelady's time has expired.

3285 Ms. Jackson Lee. —on the basis of their status. And I

3286 ask that we oppose the amendment.

3287 I yield back.

3288 Chairman Conyers. I thank you.

3289 The time is 10 minutes before a vote, and I am going to

3290 recognize Mr. Smith, Mr. Lungren, and hopefully we can go to

3291 disposition of this matter.

3292 Mr. Smith. Thank you, Mr. Chairman. I move to strike

3293 the last word.

3294 Chairman Conyers. Without objection, the gentleman is

3295 recognized.

3296 Mr. Smith. Thank you, Mr. Chairman. I will yield to
3297 the ranking member of the Crime Subcommittee, Mr. Forbes.

3298 Mr. Forbes. Thank you to the ranking member.

3299 And I would just respond to the suggestions that have
3300 been talked about that if we have statistics that these
3301 people have been targeted just because they were police
3302 officers.

3303 I can say that when we had hearings on the gang
3304 legislation, we had people that would actually state that
3305 some of the gang members, especially MS-13 and some of the
3306 other ones, actually targeted individuals just because they
3307 were police officers. And the instruction that went out was,
3308 "Just kill a police officer as part of your initiation to get
3309 into this organization."

3310 We have heard other testimony around the country of
3311 people who have targeted people just because they were
3312 military and men and women in uniform. We have statistics on
3313 that that is far greater than any statistics we have on
3314 heterosexuality.

3315 And while I would certainly hope we would protect people
3316 who would be targeted because they were heterosexual, I would
3317 hope that we would apply that same protection across the
3318 board to individuals who might be police officers, students
3319 or in the military and be equally targeted with the same kind
3320 of hatred.

3321 Thank you, Mr. Chairman. I yield back.

3322 Mr. Smith. Okay.

3323 Mr. Chairman, I will yield back the balance of my time.

3324 Chairman Conyers. I recognize Debbie Wasserman Schultz
3325 for a few minutes.

3326 Ms. Wasserman Schultz. Thank you, Mr. Chairman.

3327 The gentleman from Texas's comments attempting to link
3328 the tragedy of Virginia Tech last week to adding sexual
3329 orientation to the Hate Crimes Act is exploitation of that
3330 tragedy at best and cheapens it at worst.

3331 Our Constitution demands equal justice under the law,
3332 Mr. Chairman. We all know that lesbian, gay, bisexual and
3333 transgendered Americans are awash in a sea of inequality.

3334 And I want to thank you, Mr. Chairman, and my colleague,
3335 Ms. Baldwin, for your leadership on this legislation.

3336 This bill stems from the very basic assumption that all
3337 Americans should be able to be open, honest and safe in their
3338 homes and their communities. This is also a principle that
3339 the American people embrace.

3340 Hate crimes do more than threaten our safety and well-
3341 being. They do more than inflict incalculable physical and
3342 emotional pain on their victims. They also terrorize
3343 communities. Left unpunished, crimes motivated by hatred
3344 toward particular groups send powerful messages of
3345 intolerance.

3346 As a member who represents one of the country's largest
3347 gay, lesbian, bisexual and transgender populations, I am a
3348 proud co-sponsor of this bill. I stand in staunch opposition
3349 to this amendment because it will give—this bill will give
3350 law enforcement the tools it needs to investigate and
3351 prosecute violent hate crimes perpetrated against GLBT
3352 citizens all across this country.

3353 Let us learn from the living nightmares that were
3354 endured by Matthew Shepard and Brandon Teena. Let us all
3355 agree here and now that we will not turn a blind eye to hate
3356 in our neighborhoods and that our police and prosecutors will
3357 have every resource they need to stamp out the scourge of
3358 intolerance.

3359 Just because you don't approve of someone doesn't mean
3360 that it is acceptable or appropriate to commit violence
3361 against them. It certainly doesn't mean that we shouldn't
3362 enhance the penalties to ensure that there is a deterrent
3363 against doing just that.

3364 Remember, years ago, when I was a young child, when you
3365 were even younger, even more years ago, Mr. Gohmert, for you,
3366 it was okay—no disrespect, men, just a fact of life—it was
3367 okay—

3368 Mr. Gohmert. I appreciate your bowing to my—

3369 Ms. Wasserman Schultz. No problem. It was okay, just
3370 because of a person's skin color or their ethnicity or their

3371 religion—it was okay to commit crimes against Jews. It was
3372 okay to commit crimes against blacks. It was okay to commit
3373 crimes against Asians. That was more acceptable in society.
3374 Cross burning, violence—that is why we have the Hate Crimes
3375 Act.

3376 It is not okay with you for someone to choose a
3377 different sexual orientation than you do, but, Mr. Chairman,
3378 it is essential that we make sure that we do not hurt people
3379 based on what is not a choice but what—

3380 Mr. Gohmert. Would the gentlewoman yield? You asked a
3381 question, if it is all right with me—

3382 Ms. Wasserman Schultz. I would be happy to.

3383 Mr. Gohmert. And it is certainly not all right, and
3384 that is my point. Anybody that commits this kind of act of
3385 violence on anybody, heterosexual, homosexual—anybody—they
3386 deserve protection.

3387 But what we are doing with this legislation is saying a
3388 transvestite with gender issues bears protecting more so—

3389 Ms. Wasserman Schultz. Reclaiming my time—

3390 Mr. Gohmert. —than some heterosexual—

3391 Ms. Wasserman Schultz. No, we are not saying that.

3392 What we are doing is we are—in addition to saying that it is
3393 not okay to commit crimes against them, it is an enhanced
3394 penalty.

3395 It is heinous to commit crimes against them based on the

3396 way they are living a lifestyle that is not a lifestyle
3397 choice, but it is just the way they were born, just as you
3398 and I were born white, just as I was born Jewish.

3399 We have to make sure that we protect people, and that is
3400 what the law is for. That what this institution was created
3401 for.

3402 And I yield back the balance of my time.

3403 Chairman Conyers. Only because Dan Lungren has been
3404 waiting so long—

3405 Mr. Lungren. Thank you very much, Mr. Chairman.

3406 Chairman Conyers. —we are going to try to vote right
3407 after your—

3408 Mr. Lungren. Right.

3409 Mr. Chairman, about 20 years ago, serving on this panel
3410 with you, we had the question of consideration of hate crimes
3411 statistics. And while I did not support that bill at that
3412 time because of my concern about the unevenness of reporting
3413 from different jurisdictions, I did oppose at that time an
3414 effort to knock out coverage of hate crimes dealing with gay
3415 individuals, because I think the record has shown that that
3416 does occur in this country.

3417 However, Mr. Gohmert makes a very good point that,
3418 unfortunately, we seem to want to just pass over. The fact
3419 of the matter is if you look at this statute, it does not
3420 define sexual orientation except for the keeping of

3421 statistics.

3422 In that section of the bill, it not only enhances
3423 penalties but creates a new federal statute against hate
3424 crimes. This is a new federal statute against all hate
3425 crimes irrespective of any federal connection.

3426 That is the difference in this bill from current law.
3427 In that area, there is no definition of sexual orientation.
3428 It makes reference to the Crime Control and Law Enforcement
3429 Act of 1994, 28 USC 994 note. That refers to the sentencing
3430 commission. That is not a statutory definition of sexual
3431 orientation.

3432 And if, in fact, what those on the other side are saying
3433 is that you want to limit it to sexual orientation properly
3434 understood in the statistics act, then we ought to put that
3435 in here. It is not in here. You follow the paper trail. It
3436 is not in here.

3437 When Mr. Gohmert first presented to me his amendment,
3438 frankly, I thought his was an extreme concern.

3439 However, if you do not have a definition of sexual
3440 orientation, the arguments he makes with respect to sexual
3441 activity of the kind that he mentioned, which is a definition
3442 of certain types of orientation, go far beyond what anybody
3443 here is arguing, go far beyond whatever proof there is of the
3444 existence of hate crimes in this country.

3445 And so as one who dealt with this issue 20 years ago, in

3446 an effort to try and at least get proper definitions, if we
3447 are not going to support the Gohmert amendment, then someone
3448 had better present an amendment that does that definition of
3449 sexual orientation that the majority side has said is what
3450 they believe it to be.

3451 It is not in the statute, this proposed statute. You
3452 can examine it from one end to the other, and we have looked
3453 at what the counsel for the majority has presented to us. It
3454 does not define it as you suggest.

3455 And therefore, Mr. Gohmert's argument about the
3456 expansiveness of this definition is, in fact, valid.

3457 Chairman Conyers. May I invite my colleague to look at
3458 an amendment I might propose along the lines you have
3459 recommended?

3460 Mr. Lungren. I will be happy to look at any amendment,
3461 but I am just saying we need to do something on this bill—

3462 Chairman Conyers. Okay.

3463 Mr. Lungren. —if that is what you are talking—

3464 Chairman Conyers. We now close this down with a record
3465 vote on the Gohmert amendment, and the clerk will call the
3466 roll.

3467 The Clerk. Mr. Conyers?

3468 Chairman Conyers. No.

3469 The Clerk. Mr. Conyers votes no.

3470 Mr. Berman?

3471 [No response.]

3472 Mr. Boucher?

3473 [No response.]

3474 Mr. Nadler?

3475 [No response.]

3476 Mr. Scott?

3477 Mr. Scott. No.

3478 The Clerk. Mr. Scott votes no.

3479 Mr. Watt?

3480 Mr. Watt. No.

3481 The Clerk. Mr. Watt votes no.

3482 Ms. Lofgren?

3483 [No response.]

3484 Ms. Jackson Lee?

3485 Ms. Jackson Lee. No.

3486 The Clerk. Ms. Jackson Lee votes no.

3487 Ms. Waters?

3488 [No response.]

3489 Mr. Meehan?

3490 [No response.]

3491 Mr. Delahunt?

3492 [No response.]

3493 Mr. Wexler?

3494 [No response.]

3495 Ms. Sanchez?

3496 Ms. Sanchez. No.

3497 The Clerk. Ms. Sanchez votes no.

3498 Mr. Cohen?

3499 Mr. Cohen. No.

3500 The Clerk. Mr. Cohen votes no.

3501 Mr. Johnson?

3502 Mr. Johnson. No.

3503 The Clerk. Mr. Johnson votes no.

3504 Mr. Gutierrez?

3505 [No response.]

3506 Mr. Sherman?

3507 Mr. Sherman. No.

3508 The Clerk. Mr. Sherman votes no.

3509 Ms. Baldwin?

3510 Ms. Baldwin. No.

3511 The Clerk. Ms. Baldwin votes no.

3512 Mr. Weiner?

3513 Mr. Weiner. Pass.

3514 The Clerk. Mr. Weiner passes.

3515 Mr. Schiff?

3516 Mr. Schiff. No.

3517 The Clerk. Mr. Schiff votes no.

3518 Mr. Davis?

3519 [No response.]

3520 Ms. Wasserman Schultz?

3521 Ms. Wasserman Schultz. No.

3522 The Clerk. Ms. Wasserman Schultz votes no.

3523 Mr. Ellison?

3524 [No response.]

3525 Mr. Smith?

3526 Mr. Smith. Aye.

3527 The Clerk. Mr. Smith votes aye.

3528 Mr. Sensenbrenner?

3529 Mr. Sensenbrenner. Aye.

3530 The Clerk. Mr. Sensenbrenner votes aye.

3531 Mr. Coble?

3532 Mr. Coble. Aye.

3533 The Clerk. Mr. Coble votes aye.

3534 Mr. Gallegly?

3535 [No response.]

3536 Mr. Goodlatte?

3537 Mr. Goodlatte. Aye.

3538 The Clerk. Mr. Goodlatte votes aye.

3539 Mr. Chabot?

3540 [No response.]

3541 Mr. Lungren?

3542 Mr. Lungren. Aye.

3543 The Clerk. Mr. Lungren votes aye.

3544 Mr. Cannon?

3545 Mr. Cannon. Aye.

3546 The Clerk. Mr. Cannon votes aye.
3547 Mr. Keller?
3548 Mr. Keller. Aye.
3549 The Clerk. Mr. Keller votes aye.
3550 Mr. Issa?
3551 [No response.]
3552 Mr. Pence?
3553 Mr. Pence. Aye.
3554 The Clerk. Mr. Pence votes aye.
3555 Mr. Forbes?
3556 Mr. Forbes. Aye.
3557 The Clerk. Mr. Forbes votes aye.
3558 Mr. King?
3559 Mr. King. Aye.
3560 The Clerk. Mr. King votes aye.
3561 Mr. Feeney?
3562 Mr. Feeney. Aye.
3563 The Clerk. Mr. Feeney votes aye.
3564 Mr. Franks?
3565 [No response.]
3566 Mr. Gohmert?
3567 Mr. Gohmert. Aye.
3568 The Clerk. Mr. Gohmert votes aye.
3569 Mr. Jordan?
3570 Mr. Jordan. Aye.

3571 The Clerk. Mr. Jordan votes aye.

3572 Chairman Conyers. Are any other members choosing to
3573 vote?

3574 Ms. Lofgren?

3575 Ms. Lofgren. No.

3576 Chairman Conyers. Mr. Delahunt?

3577 Mr. Delahunt. No.

3578 The Clerk. Ms. Lofgren votes no. Mr. Delahunt votes
3579 no.

3580 Chairman Conyers. Mr. Nadler?

3581 Mr. Nadler. No.

3582 The Clerk. Mr. Nadler votes no.

3583 Chairman Conyers. Mr. Wexler?

3584 Mr. Wexler. No.

3585 The Clerk. Mr. Wexler votes no.

3586 Chairman Conyers. Mr. Berman?

3587 Mr. Berman. No.

3588 The Clerk. Mr. Berman votes no.

3589 Chairman Conyers. Ms. Waters?

3590 Ms. Waters. No.

3591 The Clerk. Ms. Waters votes no.

3592 Chairman Conyers. Mr. Weiner?

3593 Mr. Weiner. No.

3594 The Clerk. Mr. Weiner passed. Mr. Weiner votes no.

3595 Chairman Conyers. Any other members desiring to vote?

3596 The clerk will report, please.

3597 The Clerk. Mr. Chairman, 13 members voted aye, 18
3598 members voted nay.

3599 Chairman Conyers. Just a moment.

3600 Mr. Meehan?

3601 Mr. Meehan. No.

3602 The Clerk. Mr. Meehan votes no.

3603 Chairman Conyers. Okay, can't add that one. Sorry,
3604 Meehan. She reported it already. We can put it in the
3605 record.

3606 The amendment fails.

3607 We have two votes on the floor. We will resume the
3608 discussion and debate and the amendment process as soon as
3609 the votes have been completed. We will stand in recess.

3610 [Recess.]

3626 Mr. Franks. Mr. Chairman, I move to order the amendment
3627 as read.

3628 Ms. Baldwin. Mr. Chairman, I reserve a point of order.

3629 Chairman Conyers. Without objection.

3630 And the gentlelady from Wisconsin reserves a point of
3631 order.

3632 The gentleman is recognized.

3633 Mr. Franks. Thank you, Mr. Chairman.

3634 Mr. Chairman, a long time ago Martin Luther King said,
3635 "The law cannot give a man a heart, but it can restrain the
3636 heartless. It cannot make a man love me, but it can keep him
3637 from lynching me."

3638 And I think there is very cogent meaning in those words,
3639 in that we have had a lot of discussion today about
3640 protecting people and giving special emphasis on protecting
3641 people whose antagonists that might attack them based on some
3642 particular attribute of their life.

3643 And, Mr. Chairman, the bottom line here is the purpose
3644 that we are here in this body is to protect our citizens from
3645 being harmed by others regardless of who they are.

3646 When someone is attacked, whether they are in a
3647 different class that some of us might recognize or not more
3648 fully, the bottom line is the reason that it is wrong to hurt
3649 them is because they are a child of God no matter who they
3650 are.

3651 And I am a little concerned that we are going to affect
3652 people's free speech with this particular bill.

3653 And this amendment that we have bars prosecution under
3654 the hate crimes statute based on speech or free exercise of
3655 religion and the exercise of other freedoms that are
3656 protected by the First Amendment.

3657 The First Amendment is very simple. It reads as
3658 follows, "Congress shall make no laws respecting the
3659 establishment of religion or prohibiting the free exercise
3660 thereof, or abridging the freedom of speech or the press or
3661 the right of the people to peaceably assemble and to petition
3662 the government for redress of grievances."

3663 Mr. Chairman, as we probably all know, the Supreme Court
3664 has struck down hate crimes that selectively criminalize
3665 bias-motivated speech or symbolic speech under the First
3666 Amendment, while they have upheld statutes that criminalize
3667 bias-motivated violence.

3668 The line between bias-motivated speech and bias-
3669 motivated violence is not an easy one to draw, but under the
3670 existing criminal law principles, the bill raises the
3671 possibility that religious leaders or members of religious
3672 groups could be prosecuted criminally based on their speech
3673 or protected activities.

3674 For instance, using the conspiracy law or Section 2 of
3675 Title 18, which includes anyone who aids, abets, counsels,

3676 commands, induces or procures the commission of a crime, or
3677 anyone who willfully causes an act to be done by another—it
3678 is easy to imagine a situation in which a prosecutor may seek
3679 to link protected speech to actions categorized as hate
3680 crimes under the bill.

3681 For example, what constitutes under this bill the
3682 inducing or the counseling of the commission of a crime?
3683 What activity constitutes willfully causing an act to be done
3684 by another?

3685 I don't think we know, and this uncertainty, I believe,
3686 could have a chilling effect on speech.

3687 This bill is broad and overly vague in that regard, and
3688 the restriction of these First Amendment freedoms must serve
3689 as a compelling state interest and must be narrowly drawn to
3690 achieve that specific goal.

3691 And I don't think the hate crimes bill as it is written
3692 out can withstand that scrutiny.

3693 Now, it appears from this bill that the prosecution of
3694 an individual for a hate crime may require seeking testimony
3695 relating to the offender's thought process, leading to his
3696 motivation to attack a person out of hatred of a particular
3697 group.

3698 So for example, members of an organization or religious
3699 group may be called as witnesses to provide testimony as to
3700 ideas that may have influenced the defendant's thoughts or

3701 motivation for his crimes, therefore expanding the focus of
3702 an investigation to include areas that may have influenced a
3703 person to commit an act of violence.

3704 Such groups or religious organizations may be chilled
3705 from expressing their ideas out of fear from involvement in
3706 the criminal process.

3707 And I don't know where we find the constitutional
3708 authority to regulate the inner workings of the human mind.
3709 The concept of the First Amendment's protection of freedom of
3710 conscience and deterrence against official attempts to engage
3711 in thought reform of its citizens is very well established in
3712 U.S. law.

3713 The Supreme Court sees the strength of America in
3714 "individual freedom of mind," rather than "officially
3715 disciplined uniformity," for which history indicates a
3716 disappointing and disastrous end.

3717 Mr. Chairman, I would just quote the Supreme Court
3718 Justice Benjamin Cardozo when he opined in the case of Palko
3719 v. Connecticut that, "Freedom of thought is the matrix, the
3720 indispensable condition of nearly every other form of
3721 freedom. A pervasive recognition of this truth can be traced
3722 in our history, and political and legal and otherwise."

3723 In other words, all freedoms must rest upon the freedom
3724 of thought.

3725 Chairman Conyers. The gentleman's time has expired.

3726 Mr. Franks. All right. Well, I urge my colleagues to
3727 support this amendment. Thank you.

3728 Chairman Conyers. The chair recognizes Bobby Scott and
3729 asks him to yield momentarily.

3730 Mr. Scott. I yield.

3731 Chairman Conyers. Let me tell Trent Franks that I
3732 appreciate his effort here, that it is well-intentioned. I
3733 am in agreement with it.

3734 I would like to just point out that this is written so
3735 over broadly that we could end up barring the prosecution of
3736 violent acts while engaged in First Amendment protected
3737 conduct.

3738 Nevertheless, in addition, because Section 7 very
3739 specifically protects the rights that you are concerned with,
3740 and the Davis amendment introduced earlier goes even further—
3741 but since this is an issue, and the gentleman is so
3742 dedicated, could I suggest that if you withdraw this and our
3743 staffs work together that we could come up with something
3744 that might fit the bill here?

3745 Mr. Franks. Mr. Chairman, we have spent an awful lot of
3746 time on this amendment, and I appreciate the attitude that
3747 the chairman is taking here.

3748 I am sure this bill will find its way through different
3749 processes, but that there will be time to correct it if this
3750 amendment proves to be real hurtful. But I would like to go

3751 ahead and proceed with the amendment.

3752 Chairman Conyers. I thank the gentleman and thank Mr.
3753 Scott for his time.

3754 Mr. Scott. Thank you.

3755 Reclaiming my time, Mr. Chairman, I tend to agree with
3756 the articulated intent of this amendment, but we dealt with
3757 that with the Davis amendment, which protects you against
3758 prosecution for things that would otherwise be free speech or
3759 free exercise of religion.

3760 And if you look at page 15, line 9, you can't go back
3761 and use evidence that a person belonged to a certain
3762 organization or had certain beliefs. The beliefs have to be
3763 specific to this case.

3764 But as the chairman has indicated, this thing is so over
3765 broad that it is a bar to prosecution for an offense under
3766 Subsection A that the offender was at the time of the offense
3767 engaged in context protected by the First Amendment of the
3768 Constitution.

3769 Well, that means if you are praying while you are
3770 shooting somebody, the fact that you are praying would be a
3771 bar to prosecution. This thing is way overly broad. I think
3772 it goes much further than the articulated intent.

3773 I think the articulated intent of this amendment has
3774 already been covered with the Davis amendment and the
3775 language on page 15, line 9. I think it is at least

3776 unnecessary and way overly broad to cover things that could
3777 not possibly have been intended.

3778 The bar to prosecution would bar prosecution if somebody
3779 is praying while they are shooting somebody. That is clearly
3780 not what is intended to be a bar for prosecution.

3781 I can't believe that is what is intended, but that is
3782 exactly what this amendment, as it is written, means.

3783 I yield back, Mr. Chairman.

3784 Chairman Conyers. All right. The question occurs on
3785 the Franks—oh, the point of order of the gentlelady—

3786 Ms. Baldwin. I would withdraw my point of order.

3787 Chairman Conyers. —from Wisconsin is withdrawn.

3788 The vote occurs on the Trent Franks amendment.

3789 All those in favor, say, "Aye."

3790 All those opposed, say, "No."

3791 The noes have it, and the amendment is not agreed to.

3792 Are there further amendments?

3793 Yes, Mr. Forbes of Virginia?

3794 Mr. Forbes. Mr. Chairman, I have an amendment at the
3795 desk. It is Amendment number 50.

3796 Chairman Conyers. The clerk will report the amendment.

3797 The Clerk. "Amendment to H.R. 1592 offered by Mr.

3798 Forbes—"

3799 Mr. Scott. Mr. Chairman, I reserve a point of order.

3800 Chairman Conyers. Mr. Scott reserves a point of order.

3801 The Clerk. "Page 12, line 1, after 'identity' insert ',
3802 status as a member of the armed forces.'"

3803 [The amendment by Mr. Forbes follows:]

3804 ***** INSERT *****

3805 Chairman Conyers. The gentleman is recognized for 5
3806 minutes in support of his amendment.

3807 Mr. Forbes. Thank you, Mr. Chairman.

3808 Mr. Chairman, this amendment adds the category of
3809 members of the armed forces to those whom this legislation
3810 seeks to protect. Hate crimes against the military are a
3811 definite threat, one that should be deterred by including
3812 them in the list of protected groups.

3813 We honor our men and women of the military because of
3814 their patriotism, their commitment to protecting our freedom
3815 and to serving our country.

3816 In times of controversy surrounding the use of our
3817 military, we have seen unfortunate acts by those who use
3818 their hostility toward the military to further their
3819 political agenda.

3820 For example, last year we were faced with the practice
3821 of groups protesting at military funerals of soldiers killed
3822 in Iraq. This sick and despicable behavior intruded on the
3823 family of the lost soldier and the need for privacy and
3824 grief.

3825 Congress acted last year in passing legislation to
3826 restrict the right of protesters to interfere with military
3827 funerals.

3828 With the rising debate of the Iraqi war, we are seeing
3829 increasing threats to Iraqi war veterans. In 2005 during a

3830 peace rally, a war veteran was spit on by a protester at the
3831 rally.

3832 Such events were all too commonplace during the upheaval
3833 surrounding the Vietnam War when hundreds of threats and
3834 spitting incidents occurred against Vietnam War veterans.

3835 Congress needs to make it clear to everyone that we
3836 honor members of our armed forces. Any act of violence
3837 against the member of the armed forces must be met with swift
3838 and sure punishment.

3839 Congress can make the message clear that hate of our
3840 armed forces will be punished at a heightened level just like
3841 the other groups that are given under this act.

3842 I urge my colleagues to approve this amendment.

3843 Mr. Chairman, this is exactly what we were talking about
3844 early when we are talking about outrage. I can't imagine us
3845 not being outraged when we see our men and women in uniform
3846 targeted just because they happen to be members of the armed
3847 forces. And I hope we will pass this amendment.

3848 Chairman Conyers. Who seeks recognition?

3849 Tammy Baldwin?

3850 Ms. Baldwin. Thank you, Mr. Chairman.

3851 I want to first recognize that there is likely to be, I
3852 think, a number of amendments that are anticipated that are
3853 going to seek to add certain groups on page 12, line 1, of
3854 this bill as additional categories for protection under the

3855 hate crimes bill.

3856 And I think that we are going to see number of arguments
3857 made for groups that don't share certain fundamental
3858 commonalities with the groups that we have already chosen to
3859 protect and the groups that we seek to protect through this
3860 amendment to the federal hate crimes bill.

3861 The covered groups currently and the ones we seek to add
3862 through today's measure we can demonstrate a pattern, a
3863 historical pattern, of animus and bigotry and discrimination,
3864 and we can count and point to—

3865 Mr. Forbes. Would the gentlelady yield?

3866 Ms. Baldwin. Not yet. I have a couple of points that I
3867 want to press before I yield for questions or further debate.

3868 And the incidents of violence we have seen throughout
3869 history, and it is striking and expansive.

3870 The groups that we are going to see put forward for
3871 inclusion—members of the armed forces, I think police
3872 officers, maybe some witnesses in judicial proceedings,
3873 veterans of our military service and others that we may see
3874 in amendments this evening do not share those same
3875 characteristics as we have observed in terms of the classes
3876 that are now protected—race, religion, and sexual
3877 orientation, gender identity and disability status.

3878 And in fact, I would argue even further in the terms of
3879 a number of groups that we are seeing proposed for coverage

3880 under this that, in fact, we honor them and elevate them as a
3881 society. That has been our practice.

3882 With veterans, we have Veterans Day. With our armed
3883 service members, we prefer and protect them in employment
3884 laws, in higher education access, et cetera, because of the
3885 tribute we pay to those men and women in our armed services.

3886 And so I think they lack a commonality, a shared thread,
3887 if you will, with the other groups that are currently
3888 protected and that we seek to add to the hate crimes bill
3889 tonight.

3890 So I think it would be really a departure to the core
3891 purpose. The core purpose of hate crimes bills and
3892 protections are to address longstanding animus, bigotry and
3893 violence toward groups of people.

3894 America stands for a country where people should be free
3895 to be who they are, to practice their faith. And so this
3896 would really be a departure, and I urge strongly the
3897 rejection of this amendment this evening.

3898 Chairman Conyers. Mr. Smith?

3899 Mr. Smith. Thank you, Mr. Chairman. I move to strike
3900 the last word.

3901 Chairman Conyers. The gentleman is recognized.

3902 Mr. Smith. Mr. Chairman, I have a brief statement in
3903 support of this amendment, but when I finish my statement I
3904 am happy to yield to anyone who might want additional time.

3905 Mr. Chairman, I support this amendment, which adds
3906 members of the armed forces to the categories this
3907 legislation seeks to protect.

3908 We should protect the men and women who honorably serve
3909 our country from acts of violence committed against them
3910 simply because they wear the uniform of our nation.

3911 We should make clear that violence motivated by hatred
3912 of our armed forces is as serious as violence directed at
3913 other groups protected under this legislation.

3914 I urge my colleagues to approve this amendment.

3915 And I will yield the balance of my time to the gentleman
3916 from Virginia, Mr. Forbes.

3917 Mr. Forbes. Thank you, Congressman Smith.

3918 We have heard earlier today that there was not a shred
3919 of evidence about any kind of attacks or any kind of hate
3920 crimes against heterosexuals today, and yet the argument we
3921 got from the proponents of this bill was the fact that they
3922 would be outraged if they didn't include them in, in case
3923 there was an attack down the road that they wanted to protect
3924 them against.

3925 The gentlelady from Wisconsin says that we elevate these
3926 other groups, and we are not talking about the other groups.
3927 We are talking about this amendment and men and women in
3928 uniform.

3929 And I would suggest that there are places around the

3930 country where individuals who are homosexual are elevated.

3931 There are gay pride days. There are other kinds of

3932 activities all around the country.

3933 Certainly, there are a small segment of individuals that
3934 have hatred that they express against different groups, but
3935 there is a group of individuals who hate men and women in the
3936 uniforms.

3937 They have shown up at their funerals. They gather
3938 against them. They spit on them. Whatever that case is, we
3939 ought to be just as outraged and try to protect them as we
3940 were on individuals who are heterosexual who have no evidence
3941 that there has been any hate crimes against them.

3942 So once again, Mr. Chairman, I think it is just a matter
3943 of priorities of who we want to protect. I believe in this
3944 particular case we can find no group more important in our
3945 country that we want to defend and protect than members of
3946 armed services.

3947 Mr. Gohmert. Will the gentleman yield?

3948 Mr. Forbes. I am sorry, I yield to the gentleman from
3949 Texas.

3950 Mr. Smith. Actually, I think I am the one yielding to
3951 the gentleman from Texas.

3952 Mr. Forbes. Oh, I am sorry. I yield back. I yield
3953 back.

3954 Mr. Gohmert. Would the gentleman yield?

3955 Mr. Smith. Yes. I thought I had yielded.

3956 Mr. Gohmert. Oh, okay. I am sorry.

3957 With regard to that very thing, we have seen recently in
3958 the home town of the speaker of the House now, Speaker
3959 Pelosi's home town of San Francisco—last year, I had read an
3960 article that they had moved to ban military recruiters from
3961 recruiting in the schools in San Francisco.

3962 We read an article that they voted to prevent war ships
3963 because they were war ships from docking there. And in fact,
3964 one wanted to make a permanent home there, as I recall, and
3965 it was banned.

3966 But I go back to 1974 when I went to Army basic up in
3967 Fort Riley, Kansas. We were ordered, and that we were told
3968 it was a court-martial-able offense, if we wore our uniform
3969 off Fort Riley post because of violence being done to
3970 military members.

3971 And in fact, we came to see that if we didn't travel in
3972 groups of three or more that we were in trouble, and some of
3973 our group did get beat up if they weren't.

3974 When I was at Fort Benning, when I went from 1978 to
3975 1982, we were routinely ordered not to wear uniforms off
3976 post, depending on the feeling in town, different things that
3977 might have arisen, because of animosity toward people in
3978 uniform.

3979 So it occurred back in the 1970s, I know, when I was in

3980 the military, and there is nothing like being spit at to get
3981 your attention. But then apparently that feeling is growing
3982 back again, even after 9/11 brought this country together in
3983 miraculous form and made us no hyphenated Americans, just all
3984 Americans.

3985 And now we are falling back into apathy and even disgust
3986 for the military, and so I think the gentleman's amendment is
3987 a good one.

3988 Mr. Scott. Mr. Chairman?

3989 Chairman Conyers. Mr. Scott?

3990 Mr. Scott. Mr. Chairman, we have heard kind of
3991 anecdotes. We didn't have any testimony in terms of this
3992 particular situation. The funeral situation has already been
3993 covered by different legislation.

3994 This bill requires bodily injury, and we haven't heard
3995 any stories where bodily injury has occurred. We have had
3996 insults hurled at people, maybe spitting, but no bodily
3997 injury.

3998 This is designed to aim at hate crimes that we know are
3999 committed against certain classes of people. And there is no
4000 evidence that bodily injury has been inflicted upon service
4001 members.

4002 Mr. Forbes. Would the gentleman yield?

4003 Mr. Scott. I will yield.

4004 Mr. Forbes. Well, first of all, I would ask the

4005 gentleman, in the one hearing that we had on this in the
4006 subcommittee, if the gentleman and I were not even present at
4007 that hearing because we were attending the convocation
4008 ceremony for the students who had been killed at Virginia
4009 Tech.

4010 Secondly, I would suggest that as far as gathering all
4011 the information that we have at hearings here, it is almost
4012 impossible to do that because, as the gentleman knows, we
4013 have been having a series of hearings where we will have six,
4014 seven and eight individuals coming in and testifying, and we
4015 have 5 minutes to question them.

4016 But the third thing I would ask the gentleman is we have
4017 under here—and everyone has indicated how they want to
4018 protect heterosexuals. There is not a scintilla of evidence
4019 that has been at any of those hearings that there have been
4020 any hate crimes against heterosexuals, yet we want to include
4021 them, but we don't want to include men and women in the
4022 military who we know have had hatred acts posed against them
4023 for some period of time.

4024 And it is just a matter of whether or not we want to
4025 protect that particular group or exclude them.

4026 Mr. Scott. Reclaiming my time, I would point out to the
4027 gentleman that evidence can be submitted for the record.

4028 And in terms of the 5 minutes, when we were in the
4029 minority, you would give us one witness to cover all parts of

4030 a bill. Obviously, it is difficult to get everything into
4031 the record, but you can submit documents.

4032 In terms of class, there is evidence that sexual
4033 orientation is a class that needs protection. You don't have
4034 to—within the class, within the category, you don't have to
4035 have problems with each part of the class.

4036 Hate crimes against people of certain religions is
4037 obviously a target, and we don't have to list each and every
4038 religion to show that each and every religion has been a
4039 target.

4040 If persons are targeted because of their religion, you
4041 cover that class. Maybe Baptists have not had problems and
4042 Lutherans have. But are you going to leave the Baptists out?

4043 Mr. Forbes. If the gentleman—

4044 Mr. Scott. I will yield.

4045 Mr. Forbes. If the gentleman would yield, then based on
4046 that, are you suggesting that we should include everyone in
4047 this definition who has a particular sexual orientation?

4048 Mr. Scott. If you are selected because of your sexual
4049 orientation, then you are covered by this law.

4050 Mr. Forbes. So the gentleman is going to—

4051 Mr. Scott. I yield.

4052 Mr. Forbes. If the gentleman would yield, the gentleman
4053 is suggesting to us that any sexual orientation is covered
4054 under this piece of legislation.

4055 Mr. Scott. Sexual orientation is defined in another
4056 part of the statute as homosexuality or heterosexuality.

4057 Mr. Forbes. And I would just suggest to the gentleman,
4058 if he would yield one more time—

4059 Mr. Scott. I yield.

4060 Mr. Forbes. —that if he looks at the definitions of
4061 sexual orientation, they were two sexual orientations that
4062 were selected out of the entire broad definition of what
4063 sexual orientation is, so the gentleman did make an exclusion
4064 of several other sexual orientation behaviors that were not
4065 included in the original hate crimes statistics law.

4066 Mr. Scott. Well, you know, I don't know—what I just
4067 read to you was out of the hate crimes statistics law, the
4068 definition that they had in there. And when they talked
4069 about hate crimes against religion, they certainly didn't
4070 list each and every religion.

4071 But as I said, for the funerals that have been
4072 indicated, there is public evidence on that. That has
4073 already been covered by a separate law. And there is just no
4074 evidence that your status as a member of the armed forces has
4075 not resulted in people targeting you for bodily injury.

4076 I yield back.

4077 Chairman Conyers. The gentleman yields back his time.

4078 Does the gentlelady insist on her reservation?

4079 Ms. Baldwin. I don't believe I made a reservation on

4080 this one.

4081 Chairman Conyers. Did anyone?

4082 Mr. Scott. I do not insist on my point of order.

4083 Chairman Conyers. All right.

4084 The chair will call for a vote on the Forbes amendment.

4085 All those in favor, say, "Aye."

4086 All those opposed, say, "No."

4087 Mr. Forbes. Mr. Chairman, I request a recorded vote,
4088 please.

4089 Chairman Conyers. A recorded vote is requested by the
4090 gentleman from Virginia.

4091 The Clerk. Mr. Conyers?

4092 Chairman Conyers. No.

4093 The Clerk. Mr. Conyers votes no.

4094 Mr. Berman?

4095 [No response.]

4096 Mr. Boucher?

4097 [No response.]

4098 Mr. Nadler?

4099 [No response.]

4100 Mr. Scott?

4101 Mr. Scott. No.

4102 The Clerk. Mr. Scott votes no.

4103 Mr. Watt?

4104 Mr. Watt. No.

4105 The Clerk. Mr. Watt votes no.
4106 Ms. Lofgren?
4107 Ms. Lofgren. Pass.
4108 The Clerk. Ms. Lofgren passes.
4109 Ms. Jackson Lee?
4110 [No response.]
4111 Ms. Waters?
4112 [No response.]
4113 Mr. Meehan?
4114 [No response.]
4115 Mr. Delahunt?
4116 [No response.]
4117 Mr. Wexler?
4118 [No response.]
4119 Ms. Sanchez?
4120 Ms. Sanchez. No.
4121 The Clerk. Ms. Sanchez votes no.
4122 Mr. Cohen?
4123 Mr. Cohen. No.
4124 The Clerk. Mr. Cohen votes no.
4125 Mr. Johnson?
4126 Mr. Johnson. No.
4127 The Clerk. Mr. Johnson votes no.
4128 Mr. Gutierrez?
4129 [No response.]

4130 Mr. Sherman?

4131 [No response.]

4132 Ms. Baldwin?

4133 Ms. Baldwin. No.

4134 The Clerk. Ms. Baldwin votes no.

4135 Mr. Weiner?

4136 [No response.]

4137 Mr. Schiff?

4138 [No response.]

4139 Mr. Davis?

4140 Mr. Davis. Pass.

4141 The Clerk. Mr. Davis passes.

4142 Ms. Wasserman Schultz?

4143 Ms. Wasserman Schultz. No.

4144 The Clerk. Ms. Wasserman Schultz votes no.

4145 Mr. Ellison?

4146 Mr. Ellison. No.

4147 The Clerk. Mr. Ellison votes no.

4148 Mr. Smith?

4149 Mr. Smith. Aye.

4150 The Clerk. Mr. Smith votes aye.

4151 Mr. Sensenbrenner?

4152 Mr. Sensenbrenner. Aye.

4153 The Clerk. Mr. Sensenbrenner votes aye.

4154 Mr. Coble?

4155 Mr. Coble. Aye.

4156 The Clerk. Mr. Coble votes aye.

4157 Mr. Gallegly?

4158 [No response.]

4159 Mr. Goodlatte?

4160 [No response.]

4161 Mr. Chabot?

4162 [No response.]

4163 Mr. Lungren?

4164 Mr. Lungren. Aye.

4165 The Clerk. Mr. Lungren votes aye.

4166 Mr. Cannon?

4167 Mr. Cannon. Aye.

4168 The Clerk. Mr. Cannon votes aye.

4169 Mr. Keller?

4170 [No response.]

4171 Mr. Issa?

4172 [No response.]

4173 Mr. Pence?

4174 Mr. Pence. Aye.

4175 The Clerk. Mr. Pence votes aye.

4176 Mr. Forbes?

4177 Mr. Forbes. Aye.

4178 The Clerk. Mr. Forbes votes aye.

4179 Mr. King?

4180 [No response.]

4181 Mr. Feeney?

4182 Mr. Feeney. Aye.

4183 The Clerk. Mr. Feeney votes aye.

4184 Mr. Franks?

4185 Mr. Franks. Aye.

4186 The Clerk. Mr. Franks votes aye.

4187 Mr. Gohmert?

4188 Mr. Gohmert. Aye.

4189 The Clerk. Mr. Gohmert votes aye.

4190 Mr. Jordan?

4191 Mr. Jordan. Aye.

4192 The Clerk. Mr. Jordan votes aye.

4193 Chairman Conyers. Are there members—Mr. Nadler?

4194 Mr. Nadler. No.

4195 The Clerk. Mr. Nadler votes no.

4196 Chairman Conyers. Ms. Lofgren?

4197 Ms. Lofgren. No.

4198 The Clerk. Ms. Lofgren votes no.

4199 Chairman Conyers. Mr. Sherman?

4200 Mr. Sherman. No.

4201 The Clerk. Mr. Sherman votes no.

4202 Chairman Conyers. Mr. Berman?

4203 Mr. Berman. No.

4204 The Clerk. Mr. Berman votes no.

4205 The Clerk. Mr. Schiff?

4206 Mr. Schiff. No.

4207 The Clerk. Mr. Schiff votes no.

4208 Chairman Conyers. Any other members?

4209 Mr. Davis. Am I recorded, Mr. Chairman?

4210 Chairman Conyers. Mr. Davis?

4211 Mr. Davis. Aye.

4212 The Clerk. Mr. Davis votes aye.

4213 Chairman Conyers. Are there other members?

4214 Mr. Weiner. Mr. Chairman, am I recorded?

4215 Chairman Conyers. Mr. Weiner?

4216 Mr. Weiner. No.

4217 The Clerk. Mr. Weiner votes no.

4218 Chairman Conyers. The clerk will report.

4219 The Clerk. Mr. Chairman, 12—

4220 Chairman Conyers. Wait a minute.

4221 Mr. Wexler?

4222 Mr. Wexler. No.

4223 The Clerk. Mr. Wexler votes no.

4224 Chairman Conyers. The clerk will report.

4225 The Clerk. Mr. Chairman, 12 members voted aye, 16

4226 members voted nay.

4227 Chairman Conyers. The amendment fails.

4228 The chair recognizes the gentleman from Florida, Tom

4229 Feeney, for an amendment.

4230 Mr. Feeney. Thank you, Mr. Chairman.

4231 Chairman Conyers. The clerk will report.

4232 Mr. Feeney. Amendment number 77.

4233 The Clerk. "Amendment to H.R. 1592 offered by Mr.

4234 Feeney. Page 3, strike line 11 and all that follows—"

4235 [The amendment by Mr. Feeney follows:]

4236 ***** INSERT *****

4237 Mr. Feeney. Mr. Chairman, I move the amendment be
4238 considered as read.

4239 Chairman Conyers. Without objection, the amendment will
4240 be considered as read.

4241 Ms. Baldwin. Mr. Chairman, reserving a right to object.

4242 Chairman Conyers. Yes.

4243 Ms. Baldwin. Or, sorry, reserving a point of order.

4244 Chairman Conyers. All right. The gentlelady reserves a
4245 point of order.

4246 The gentleman is recognized.

4247 Mr. Feeney. Thank you, Mr. Chairman.

4248 Mr. Chairman, I have a number of problems with this
4249 bill, including the policy.

4250 In my view, we ought to rename this bill as the Unequal
4251 Protection Proposal, because this bill basically treats the
4252 dignity and protection of property and person and life of
4253 some Americans better and gives more afforded protection than
4254 other Americans, which in my view flies in the face of the
4255 intent and the letter of the 14th Amendment.

4256 I believe deeply, however, that in addition to the
4257 public policy flaws in the proposal to give people special
4258 classes of protection from crimes, that the amendment also
4259 has a serious constitutional problem.

4260 This amendment addresses that constitutional issue. The
4261 hate crimes law is an unconstitutional assertion of power

4262 under the commerce clause of our Constitution.

4263 The Supreme Court in its famous Lopez decision has
4264 stated, "When Congress criminalizes conduct already denounced
4265 as criminal by the states, it effects a change in the
4266 sensitive relation between the federal and state criminal
4267 jurisdiction."

4268 The Supreme Court, in *United States v. Morrison*, struck
4269 down a prohibition on gender-motivated violence and
4270 specifically ruled that Congress has no power under the
4271 commerce clause or the 14th Amendment over "non-economic
4272 violent criminal conduct" that does not cross state lines.

4273 This court concluded that upholding the Violence Against
4274 Women Act provision would open the door to federalization of
4275 virtually all serious crimes as well as family law and other
4276 areas of traditional state regulation.

4277 The Supreme Court's *Morrison* decision followed several
4278 other decisions in which the court clarified the
4279 Constitution's restriction on Congress' exercise of its
4280 powers under both the interstate commerce clause and Section
4281 5 of the 14th Amendment.

4282 Federal efforts to criminalize hate crimes cannot
4283 survive the federalism standards articulated by the Supreme
4284 Court.

4285 Not only does much of the hate crime problem go beyond
4286 what Congress may regulate under the interstate commerce

4287 clause, but there is no factual evidence in the record that
4288 hate crimes are a national problem.

4289 In fact, the number of incidents, offenses and victims
4290 is less in the year 2005 than it was in 1995 of hate crimes
4291 activity.

4292 And I would say that the findings set forth in Section 2
4293 of our bill are not supported by factual evidence. And even
4294 if true, they do not constitute a sufficient basis on which
4295 Congress can act under the commerce clause.

4296 Simply including in a statute a statement that hate
4297 crimes substantially affect interstate commerce, without any
4298 significant efforts of the fact-finder to back it up, will
4299 not satisfy the Supreme Court's federalism jurisprudence.

4300 Until Congress engages in this sort of legislative
4301 spadework, it will not be able to justify an amendment to 18
4302 USC Section 245 that expands federal jurisdiction to all hate
4303 crimes under the commerce clause.

4304 My amendment corrects these infirmities in the bill by
4305 eliminating the factual findings and simply requiring a
4306 showing by the government that a hate crime has, in fact, had
4307 a substantial impact on interstate or foreign commerce.

4308 This will allow hate crime prosecutions that are
4309 constitutional and ensure that only those hate crimes that
4310 clearly fall within Congress' powers are criminalized under
4311 this bill.

4312 For these reasons, I urge my colleagues to support the
4313 amendment which makes the bill constitutional, in my view.

4314 With that, I yield back the balance of my time.

4315 Chairman Conyers. I thank the gentleman, and I will
4316 attempt to respond to him, because this is a very important
4317 consideration, because he is replacing a specific definition
4318 of interstate commerce for a more general one.

4319 And what the amendment would unintentionally do is upset
4320 the carefully crafted interstate commerce clause upon which
4321 this legislation is founded and therefore should be rejected.

4322 Pursuant to the proposed 18 USC 249(a)(2), the
4323 government must prove in hate crime prosecutions involving
4324 conduct motivated by animus based on actual or perceived
4325 sexual orientation, gender identity or disability that in
4326 connection with the offense that the defendant traveled in
4327 interstate or foreign commerce, used a facility or
4328 instrumentality of interstate or foreign commerce, or engaged
4329 in activities that affect interstate or foreign commerce, or
4330 that the offense was in or affected interstate or foreign
4331 commerce.

4332 To avoid constitutional concerns arising from the
4333 decision in United States v. Lopez, the bill requires that
4334 the government prove beyond a reasonable doubt as an element
4335 of the offense a nexus to interstate commerce in every
4336 prosecution brought under one of the newly created categories

4337 in 18 249(a)(2).

4338 The Supreme Court in *Lopez*, and later in *U.S. v.*
4339 *Morrison*, emphasized that the importance of the inclusion of
4340 an express jurisdictional element in addressing
4341 constitutional concerns about a state's explicit connection
4342 with or effect on interstate commerce—the court held in these
4343 cases that such a jurisdictional element, as presented here,
4344 will establish that the enactment is in pursuant of
4345 Congress's regulation of interstate commerce.

4346 In other words, this was a more narrow, specific
4347 description of what constitutes interstate commerce.

4348 The interstate commerce nexus required by the bill
4349 before us is also analogous to that required in other federal
4350 criminal statutes, including the Church Arson Prevention Act,
4351 which was a form of a hate crime act, the Hobbes Act, the
4352 Racketeer Influenced and Corrupt Organizations Act, RICO.

4353 Prosecutions brought under these statutes have not
4354 raised problematic constitutional litigation over the
4355 interpretation of their respective commerce clause elements.

4356 So with this amendment, we would, I think, inadvertently
4357 be injecting uncertainty into the important issue of
4358 investigating and prosecuting hate crimes.

4359 The proposed interstate commerce element will ensure
4360 that hate crimes prosecutions will not be mired in
4361 constitutional litigation concerning the scope of Congress's

4362 power under the enforcement provisions of the 13th and 14th
4363 Amendments.

4364 And for those reasons, I would urge that we not accept
4365 this well-intentioned amendment.

4366 The chair would now ask if the gentlelady insists on her
4367 point of order.

4368 Ms. Baldwin. No, Mr. Chairman. I would withdraw my
4369 point of order.

4370 Chairman Conyers. All right. Thank you.

4371 All those in favor of the gentleman from Florida, Mr.
4372 Feeney's amendment, indicate by saying, "Aye."

4373 All those opposed to Mr. Feeney's amendment, indicate by
4374 saying, "No."

4375 Did someone ask for—Mr. Feeney asks for a recorded vote.
4376 The clerk will call the roll.

4377 The Clerk. Mr. Conyers?

4378 Chairman Conyers. No.

4379 The Clerk. Mr. Conyers votes nay.

4380 Mr. Berman?

4381 [No response.]

4382 Mr. Boucher?

4383 [No response.]

4384 Mr. Nadler?

4385 Mr. Nadler. No.

4386 The Clerk. Mr. Nadler votes no.

4387 Mr. Scott?

4388 Mr. Scott. No.

4389 The Clerk. Mr. Scott votes no.

4390 Mr. Watt?

4391 Mr. Watt. No.

4392 The Clerk. Mr. Watt votes no.

4393 Ms. Lofgren?

4394 Ms. Lofgren. No.

4395 The Clerk. Ms. Lofgren votes no.

4396 Ms. Jackson Lee?

4397 [No response.]

4398 Ms. Waters?

4399 [No response.]

4400 Mr. Meehan?

4401 [No response.]

4402 Mr. Delahunt?

4403 Mr. Delahunt. No.

4404 The Clerk. Mr. Delahunt votes no.

4405 Mr. Wexler?

4406 [No response.]

4407 Ms. Sanchez?

4408 Ms. Sanchez. No.

4409 The Clerk. Ms. Sanchez votes no.

4410 Mr. Cohen?

4411 Mr. Cohen. No.

4412 The Clerk. Mr. Cohen votes no.
4413 Mr. Johnson?
4414 Mr. Johnson. No.
4415 The Clerk. Mr. Johnson votes no.
4416 Mr. Gutierrez?
4417 [No response.]
4418 Mr. Sherman?
4419 [No response.]
4420 Ms. Baldwin?
4421 Ms. Baldwin. No.
4422 The Clerk. Ms. Baldwin votes no.
4423 Mr. Weiner?
4424 [No response.]
4425 Mr. Schiff?
4426 [No response.]
4427 Mr. Davis?
4428 Mr. Davis. No.
4429 The Clerk. Mr. Davis votes no.
4430 Ms. Wasserman Schultz?
4431 Ms. Wasserman Schultz. No.
4432 The Clerk. Ms. Wasserman Schultz votes no.
4433 Mr. Ellison?
4434 Mr. Ellison. No.
4435 The Clerk. Mr. Ellison votes no.
4436 Mr. Smith?

4437 Mr. Smith. Aye.

4438 The Clerk. Mr. Smith votes aye.

4439 Mr. Sensenbrenner?

4440 Mr. Sensenbrenner. Aye.

4441 The Clerk. Mr. Sensenbrenner votes aye.

4442 Mr. Coble?

4443 Mr. Coble. Aye.

4444 The Clerk. Mr. Coble votes aye.

4445 Mr. Gallegly?

4446 Mr. Gallegly. Aye.

4447 The Clerk. Mr. Gallegly votes aye.

4448 Mr. Goodlatte?

4449 [No response.]

4450 Mr. Chabot?

4451 [No response.]

4452 Mr. Lungren?

4453 Mr. Lungren. Aye.

4454 The Clerk. Mr. Lungren votes aye.

4455 Mr. Cannon?

4456 Mr. Cannon. Aye.

4457 The Clerk. Mr. Cannon votes aye.

4458 Mr. Keller?

4459 Mr. Keller. Aye.

4460 The Clerk. Mr. Keller votes aye.

4461 Mr. Issa?

4462 [No response.]

4463 Mr. Pence?

4464 Mr. Pence. Aye.

4465 The Clerk. Mr. Pence votes aye.

4466 Mr. Forbes?

4467 Mr. Forbes. Aye.

4468 The Clerk. Mr. Forbes votes aye.

4469 Mr. King?

4470 [No response.]

4471 Mr. Feeney?

4472 Mr. Feeney. Aye.

4473 The Clerk. Mr. Feeney votes aye.

4474 Mr. Franks?

4475 [No response.]

4476 Mr. Gohmert?

4477 Mr. Gohmert. Aye.

4478 The Clerk. Mr. Gohmert votes aye.

4479 Mr. Jordan?

4480 Mr. Jordan. Aye.

4481 The Clerk. Mr. Jordan votes aye.

4482 Chairman Conyers. Are there other members who wish to

4483 cast a vote?

4484 Ms. Waters?

4485 Ms. Waters. No.

4486 The Clerk. Ms. Waters votes no.

4487 Chairman Conyers. Mr. Sherman?
4488 Mr. Sherman. No.
4489 The Clerk. Mr. Sherman votes no.
4490 Chairman Conyers. Mr. Berman?
4491 Mr. Berman. No.
4492 The Clerk. Mr. Berman votes no.
4493 Chairman Conyers. Mr. Wexler?
4494 Mr. Wexler. No.
4495 The Clerk. Mr. Wexler votes no.
4496 Mr. Weiner. Mr. Chairman, how am I recorded?
4497 Chairman Conyers. Mr. Weiner?
4498 Mr. Weiner. No.
4499 The Clerk. Mr. Weiner votes no.
4500 Chairman Conyers. Mr. Schiff?
4501 Mr. Schiff. No.
4502 The Clerk. Mr. Schiff votes no.
4503 Chairman Conyers. The clerk will report, please.
4504 The Clerk. Mr. Chairman, 12 members voted aye, 19
4505 members voted nay.
4506 Chairman Conyers. The amendment fails.
4507 The members should be advised that, because we are
4508 working late on the floor, we are hoping that we can
4509 coordinate our activities in the committee so that when the
4510 time comes for us to vote, we will have concluded our
4511 deliberations, if that is at all possible.

4512 Who has an amendment?

4513 Mr. Pence. Mr. Chairman, I have an amendment.

4514 Chairman Conyers. Mr. Pence?

4515 Mr. Pence. Thank you, Mr. Chairman. I have an
4516 amendment at the desk numbered MV-072.

4517 Ms. Waters. Mr. Chairman?

4518 Chairman Conyers. The clerk will report the amendment.

4519 The Clerk. "Amendment to H.R. 1592 offered by Mr.

4520 Pence. Page 15, line 15--"

4521 [The amendment by Mr. Pence follows:]

4522 ***** INSERT *****

4523 Mr. Pence. I would ask unanimous consent it be
4524 considered as read.

4525 Chairman Conyers. The gentlelady from California?

4526 Ms. Waters. I was asking to be recognized to reserve a
4527 point of order.

4528 Chairman Conyers. Absolutely. The gentlelady is
4529 recognized for that purpose.

4530 The gentleman is recognized in support of his amendment.

4531 Mr. Pence. Thank you, Mr. Chairman.

4532 As you know, this debate and this legislation has caused
4533 great concern among a very broad and diverse group of
4534 religious leaders across the country.

4535 However intended, there is a profound concern expressed
4536 already in correspondence from the leader of the National
4537 Religious Broadcasters and in correspondence signed by over
4538 50 religious leaders in the country, just to name a few
4539 examples, that make it clear that there is concern that this
4540 hate crimes bill not affect the constitutional right to
4541 religious freedom in this country.

4542 And the Pence amendment speaks specifically to that. My
4543 amendment essentially would state emphatically at the close
4544 of this legislation that nothing in this section limits the
4545 religious freedom of any person or group under the
4546 Constitution.

4547 I will leave for another time, or perhaps a floor

4548 debate, my general view of hate crimes legislation and focus,
4549 rather, on the fact the First Amendment of the Constitution
4550 provides that Congress shall make no law respecting an
4551 establishment of religion or prohibiting the free exercise
4552 thereof.

4553 Of great concern to me and of many religious leaders
4554 across the United States is that the hate crime laws in this
4555 legislation could be used to target religious groups.

4556 Of the 9,430 hate crimes recorded by the FBI in 1999, by
4557 far the largest group was labeled under the category of
4558 intimidation. The intimidation category does not even exist
4559 for ordinary crimes.

4560 This vague concept is already being abused by some local
4561 governments which target speech in favor of traditional
4562 morality as hate speech.

4563 And the road we could be led down is one on which
4564 religious broadcasters, evangelical leaders and pastors who
4565 are speaking their own personal convictions could be
4566 prosecuted under a hate crimes statute.

4567 A couple of examples. In New York, a pastor who rented
4568 a billboard and posted biblical quotations about sexual
4569 morality had them taken down by city officials, who cited
4570 hate crimes principles as the justification.

4571 In San Francisco, city council enacted a resolution
4572 urging the local broadcast media not to run advertisements by

4573 a pro-family group.

4574 And finally, pro-homosexual activists like the Human
4575 Rights Campaign have stated publicly their belief that an ad
4576 campaign by pro-family groups showing that many former
4577 homosexuals found happiness in the heterosexual lifestyle—
4578 leadership in the Human Rights Campaign expressed publicly on
4579 network television that that ad campaign contributed to the
4580 tragic 1998 murder of a homosexual college student named
4581 Matthew Shepard, even though subsequent investigation found
4582 there was no nexus whatsoever and no evidence that the
4583 killers even knew about the ad campaign.

4584 The danger here, clearly, is that people will use hate
4585 crimes bills like that which we are considering to silence
4586 the freedom of religious leaders to speak out on key moral
4587 views.

4588 There is a real possibility that leaders or members of
4589 religious groups could be ultimately prosecuted criminally
4590 based on their speech and protected activities under
4591 conspiracy laws or under Section 2 of Title 18 which holds
4592 criminally liable anyone who aids, abets, counsels, commands,
4593 induces or procures the commission or one who willfully
4594 causes an act to be done by another.

4595 It is easy to imagine a situation in which a prosecutor
4596 may seek to link what would be determined hateful speech to
4597 the cause of hateful violent acts.

4598 And so I bring this, really, in a spirit of hopefully
4599 clarifying what I believe would be the broad intentions of
4600 the members of this committee and members of Congress, that
4601 we would make a declarative statement in this legislation
4602 that nothing in this section would limit the religious
4603 freedom of any person or group under the Constitution, to
4604 guard against the potential for abuse of hate crime laws this
4605 amendment seeks to clarify and reemphasize the importance of
4606 religious freedom in our country and the respect for that
4607 tradition.

4608 And I offer it for the committee's consideration.

4609 Ms. Waters. Mr. Chairman?

4610 Mr. Nadler. [Presiding.] The chair recognizes himself
4611 for 5 minutes to respond.

4612 Ms. Waters. Mr. Chairman, I would like to withdraw my
4613 point of order.

4614 Mr. Nadler. The point of order is withdrawn.

4615 The gentleman's amendment seeks to provide that nothing
4616 in this section limits the religious freedom of any person or
4617 group under the Constitution. I think that is a principle on
4618 which we all agree.

4619 However, this bill does not limit religious freedom or
4620 freedom of speech. It deals with acts of violence, which I
4621 also think we should all be able to agree are outside the
4622 scope of anything protected by the Constitution.

4623 For those members and for those clergymen who wrote
4624 those letters earlier, who nonetheless have strong concerns
4625 about the impact of this bill on religious liberty, earlier
4626 today this committee adopted an amendment offered by the
4627 gentleman from Alabama, Mr. Davis.

4628 That amendment said, "Nothing in this act or the
4629 amendments made by this act shall be construed to prohibit
4630 any expressive conduct protected from legal prohibition by or
4631 any activities protected by the free speech or free exercise
4632 clauses of the First Amendment to the Constitution."

4633 That amendment was supported by members on both sides of
4634 the aisle, including the gentleman from Indiana. The
4635 committee addressed the issue that the gentleman from Indiana
4636 raises in this amendment earlier with the Davis amendment and
4637 more completely.

4638 The Davis amendment completely makes sure that no one
4639 can construe this bill to inhibit in any way freedom of
4640 speech or freedom of religion.

4641 This amendment is not necessary. It would actually
4642 narrow the protections in Mr. Davis's amendment and would
4643 cause confusion.

4644 So I would first urge that this amendment be withdrawn
4645 as unnecessary. And I would urge that number 71, which is
4646 going to be offered, not be offered because it is also
4647 totally enveloped by the Davis amendment.

4648 And I hope we don't have to waste time with a number of
4649 these amendments which are totally unnecessary at this point.
4650 And if we do have to waste time, I urge their rejection.

4651 I yield back.

4652 The gentleman from Texas is recognized.

4653 Mr. Smith. Thank you, Mr. Chairman. I move to strike
4654 the last word.

4655 Mr. Nadler. The gentleman is recognized for 5 minutes.

4656 Mr. Smith. Okay. Mr. Chairman, I intend to speak in
4657 favor of this amendment, but I also will have some remaining
4658 time I would be happy to yield to the proponent of this
4659 amendment if he needs it.

4660 Mr. Chairman, I support this amendment to ensure that
4661 this legislation shall not have any adverse effect on the
4662 constitutional right to religious freedom.

4663 Based on how some existing hate crime statutes have
4664 already been utilized, many fear that this bill could be used
4665 to target religious groups that speak in favor of their views
4666 of morality.

4667 No viewpoint should be suppressed by the threat of
4668 criminal penalties simply because some disagree with it. We
4669 should adopt this amendment to guard against the possibility
4670 that this legislation could be abused to stifle religious
4671 freedom.

4672 I urge my colleagues to support this amendment.

4673 And I would be happy to yield to the gentleman from
4674 Indiana if he wishes additional time.

4675 Mr. Pence. I am grateful.

4676 Mr. Smith. Okay.

4677 Mr. Chairman, I yield to the gentleman from Indiana.

4678 Mr. Nadler. The gentleman from Indiana is recognized.

4679 Mr. Pence. I thank the gentleman for yielding.

4680 And it is certainly not my intention to waste this
4681 committee's time on any occasion, and it is easy to imagine a
4682 situation in which a prosecutor would seek to link hateful
4683 speech to causing hateful violent acts.

4684 Another example is in 2004, a case that occurred in
4685 Philadelphia. Eleven individuals were arrested at what was
4686 described as OutFest, a gay pride festival in the community.

4687 The individuals held signs and were reading segments of
4688 the holy Bible. They were arrested after protesting
4689 peacefully. They were charged with three felonies and five
4690 misdemeanors.

4691 Their felony charges included possession of instruments
4692 of crime. That would be a bullhorn. They were charged with
4693 ethnic intimidation, apparently for saying that homosexuality
4694 is a sin, and for inciting a riot which apparently was
4695 derived from evidence that showed that they read passages
4696 from the Bible related to homosexuality.

4697 Whether or not a riot occurred involving Christians was

4698 debatable. And even so, they faced \$90,000 in fines and
4699 possibly 47-year prison sentences.

4700 All this amendment really seeks to do, Mr. Chairman, as
4701 the ranking member said, is to guard against the potential
4702 for abuse of hate crime laws by drawing a clear line in the
4703 sand.

4704 I have great respect for Congressman Davis and respect
4705 greatly the intentions of his amendment and would not see my
4706 amendment as redundant but as another way of affirming what I
4707 truly believe is the intention of the members of this
4708 committee to reassure religious leaders across this country
4709 that whether we agree or disagree on the broad objectives of
4710 hate crime laws generally, that there is no effort and no
4711 intention on this committee to infringe on that sacred
4712 constitutional right of freedom of religion.

4713 And I yield back.

4714 Mr. Nadler. I thank the gentleman.

4715 The gentleman from Alabama?

4716 Mr. Smith. Mr. Chairman, it is my time, and I will
4717 yield to the gentleman from Virginia, Mr. Goodlatte.

4718 Mr. Goodlatte. I thank the gentleman for yielding.

4719 I want to join in the expression of support for this
4720 amendment as well. I think this is an important amendment.

4721 If one looks at the provision regarding rule of evidence
4722 on page 15, subparagraph D, there is a very vague description

4723 of what constitutes evidence specifically related to that
4724 offense.

4725 Therefore, all manner of constructions could take place
4726 regarding religious teachings, preaching from pulpits and so
4727 on that someone might later attempt to link because of the
4728 lack of specificity in the legislation right now regarding
4729 protections against religious statements and beliefs.

4730 And therefore, this rule of construction, I think, is a
4731 good addition to that section of the bill, and I strongly
4732 support it and yield back.

4733 Mr. Smith. And, Mr. Chairman, I will yield back as
4734 well.

4735 Mr. Nadler. I thank the gentleman.

4736 The gentleman from Alabama?

4737 Mr. Davis. Thank you, Mr. Chairman.

4738 Let me make two points, because I know the chair wants
4739 to move this debate along, the first one to my good friend
4740 from Indiana.

4741 You make the observation, and the ranking member of the
4742 committee made the observation several times, about the
4743 possibility of this statute somehow broadening criminal
4744 liability to include things such as intimidation.

4745 And I take the gentleman's point, but if I can refer to
4746 the statute, if I can refer to page 10 of the statute, page
4747 11 of the statute and page 6 of the statute, all the relevant

4748 provisions that define the meaning of hate crimes, defines
4749 the scope of crimes covered by this statute, it could not be
4750 more clear that we are talking about crimes of violence as
4751 described on page 6, that we are talking on page 10 and 11
4752 about crimes that result in serious bodily injury or involve
4753 the use of an incendiary device.

4754 It is impossible, looking at page 6, 10 and 11, to
4755 believe that any statutes based on mere intimidation or the
4756 mere assertion of verbiage would qualify as hate crimes.

4757 And I would reference the Brandenburg v. Ohio case that
4758 my friend from Indiana is well aware of. The Supreme Court
4759 has said that the only speech that is criminally actionable
4760 is that which incites imminent lawless action. Nothing in
4761 this statute alters Brandenburg in any way.

4762 So for that first reason, I think the gentleman's
4763 concerns are not met by his amendment.

4764 I would make another point. I agree with the chair's
4765 observations. The amendment that was adopted by, I think, a
4766 near unanimous vote earlier that I proposed, is, frankly,
4767 broader than this amendment.

4768 And I would yield to my friend from Indiana to ask him
4769 can you tell me or tell the committee, more to the point, how
4770 your amendment is not covered by the amendment that we
4771 adopted earlier that I introduced.

4772 And I will yield to him to answer that.

4773 Mr. Pence. Well, I appreciate the gentleman for
4774 yielding, and I would simply say that my burden in this case
4775 is really to focus on the issue of the freedom of religion,
4776 the freedom of religious expression.

4777 Mr. Davis. But, reclaiming my time, my amendment deals
4778 with the whole range of rights protected under the
4779 Constitution and the First Amendment.

4780 And certainly, religious freedom, freedom of expression
4781 or freedom of exercise, would be contained within that
4782 category, wouldn't the gentleman agree?

4783 Mr. Pence. I would on broad principle, but if the
4784 gentleman would yield—

4785 Mr. Davis. I will yield.

4786 Mr. Pence. —I truly believe—and now I am holding a
4787 letter directed to Congressman Gohmert that was signed by 176
4788 religious groups.

4789 The reality is that there is great and growing concern
4790 from a broad and diverse group of religious leaders in this
4791 country—

4792 Mr. Davis. Well, reclaiming my time—

4793 Mr. Pence. —over the issue of freedom of religion.

4794 Mr. Davis. Reclaiming my time—it is still my time—I am
4795 asking the gentleman a very pointed question. Can you tell
4796 me why my amendment would not include religious freedom?

4797 Mr. Goodlatte. Would the gentleman yield?

4798 Mr. Davis. I will.

4799 Mr. Goodlatte. Your language says nothing in this act
4800 would prohibit. The gentleman from Indiana's language says
4801 nothing in this section limits. Limit is a much less
4802 restrictive term than prohibit.

4803 And therefore, I think because your section refers to a
4804 portion of the First Amendment dealing with speech, it does
4805 not specifically deal with religious freedom, which in the
4806 First Amendment is given its own separate protection.

4807 Mr. Davis. Well, reclaiming my time, reclaiming my time
4808 from the gentleman, we can argue about the difference in
4809 limit and prohibit, but the last time I checked, prohibit is
4810 a stronger, more persuasive term than limit and covers a
4811 broader ambit.

4812 Without getting into that kind of a pedantic
4813 conversation—

4814 Mr. Goodlatte. Would the gentleman yield?

4815 Mr. Davis. —I would—well, no, not yet. If I could
4816 finish my point, I would hope that we would agree in the
4817 interest of moving this markup along that if we all voted on
4818 a near unanimous basis for the first amendment, which was
4819 meant to capture this very principle, I suppose we could do
4820 an amendment on association.

4821 I suppose we could do an amendment on free exercise. I
4822 suppose we could do an amendment on every other

4823 constitutional right that we could contemplate under the
4824 First Amendment—

4825 Mr. Nadler. Would the gentleman yield?

4826 Mr. Davis. —but it would be enormously redundant if we
4827 did that.

4828 If I have any time left, I will yield.

4829 Mr. Nadler. I just want to point out, the gentleman
4830 from Virginia asked that religion is not encompassed under
4831 free speech. Mr. Davis' amendment talked about free speech
4832 and free exercise clauses.

4833 The free exercise clause is the freedom of religion
4834 clause that Mr. Pence's amendment would deal with.

4835 Mr. Davis. And reclaiming my time—

4836 Mr. Nadler. So Mr. Pence's amendment is totally covered
4837 by—

4838 Mr. Pence. Would the gentleman yield?

4839 Mr. Davis. Well, reclaiming my time to follow up on
4840 that point, and I will yield to Mr. Pence or any other
4841 member—

4842 Chairman Conyers. [Presiding.] The gentleman is out of
4843 time. I will grant him 1 additional minute.

4844 Mr. Davis. Yes. Just to ask one question, Mr.

4845 Chairman.

4846 Following up on Mr. Nadler's excellent point, is there
4847 some provision of the Constitution that deals with religious

4848 freedom other than the exercise clause and the establishment
4849 clause, that would clearly be referenced by my amendment?

4850 And I would yield to any member who identifies—

4851 Mr. Gohmert. Well, if the gentleman would yield, even
4852 with—I am sorry.

4853 Mr. Davis. I will yield.

4854 Mr. Gohmert. Even with your amendment, you still have
4855 to go back to the "rule of evidence" at page 15 of the
4856 underlying bill. And it says that these things may not be
4857 introduced as substantive evidence at trial unless the
4858 evidence specifically relates to the offense.

4859 And if I understood the gentleman's amendment—and I will
4860 put the question back to you—if a minister preaches that
4861 sexual relations outside of marriage of a man and woman is
4862 wrong, and somebody within that congregation goes out and
4863 does an act of violence, and that person says that that
4864 minister counseled or induced him through the sermon to
4865 commit that act, are you saying under your amendment that in
4866 no way could that ever be introduced against the minister?

4867 Mr. Davis. No.

4868 Chairman Conyers. The gentleman's time has again
4869 expired.

4870 Mr. Gohmert. And he answered no before the time ran
4871 out.

4872 Chairman Conyers. Let's see. We have been on this

4873 amendment a considerable time, and three people now seek
4874 recognition.

4875 Mr. Lungren. Just for a short time, Mr. Chairman.

4876 Mr. Issa. Mr. Chairman, I only moved the previous
4877 question. I will yield all other time.

4878 Chairman Conyers. Well, I will recognize the senior
4879 member on this side, Dan Lungren.

4880 Mr. Lungren. Mr. Chairman, I just wanted to point out
4881 one thing. On page 6, there has been reference to the fact
4882 that hate crime is limited to—

4883 Chairman Conyers. The previous question has been moved?

4884 Mr. Issa. I was only hoping to bring a finality to
4885 these last two speakers, nothing more.

4886 Chairman Conyers. Well, if it meets with your approval,
4887 could we just vote on this particular amendment before we go
4888 to the floor for this next series of votes?

4889 Mr. Lungren. Mr. Chairman, if I could be recognized, I
4890 was just going to make—

4891 Chairman Conyers. All right. I will recognize Dan
4892 Lungren.

4893 Mr. Lungren. Mr. Chairman, strike the requisite number
4894 of words.

4895 There has been reference to the definitions being very
4896 tight in this particular bill, and reference was to page 6.

4897 I would just ask my colleagues to look at subsection 7

4898 of (a)(1), and in this we are talking about crimes motivated
4899 by prejudice based on actual or perceived race, color,
4900 religion, et cetera, et cetera, or is a violation of the
4901 state, local or tribal hate crime laws.

4902 That means a state hate crime law now or some time in
4903 the future, a local hate crime law now or some time in the
4904 future, or a tribal hate crime law—

4905 Mr. Davis. Will the gentleman yield?

4906 Mr. Lungren. I will be happy to yield.

4907 Mr. Davis. I would only make one point, Mr. Chairman,
4908 that you have to read the provisions conjunctively. It says
4909 subsection A constitutes a crime of violence, subsection B
4910 constitutes a felony, and then subsection C picks up the
4911 language—

4912 Mr. Lungren. Well, reclaiming my time, I understand
4913 that, but the point that some people have made is that with
4914 reference to what does incite mean, what does counsel mean,
4915 what does speech mean in a sermon, and if a particular state
4916 or particular location decides to somehow incorporate that—

4917 Mr. Davis. It must be—

4918 Mr. Lungren. —which I don't believe—

4919 Mr. Davis. —with a crime of violence.

4920 Chairman Conyers. Order.

4921 Mr. Lungren. The crime of violence is not the question.
4922 It is the question of whether someone incited to a crime of

4923 violence as suggested by the gentleman from Texas.

4924 Ms. Jackson Lee. Would the gentleman yield?

4925 Mr. Lungren. I am not sitting here trying to defend
4926 crimes of violence. I am talking about the extension of that
4927 act to someone else who has expressed a point of view with
4928 respect to a religious teaching that may then be
4929 misinterpreted as an incitement to violence.

4930 That is the point I am trying to make.

4931 Chairman Conyers. Ladies and gentlemen, we have not
4932 concluded with finality this discussion, but we do require
4933 that a vote on the amendment be taken before we go to vote.

4934 All in favor of the Pence amendment, indicate by saying,
4935 "Aye."

4936 Thank you.

4937 All opposed to the Pence amendment, indicate by saying,
4938 "No."

4939 The noes have it.

4940 Mr. Pence. Mr. Chairman, on that I request a recorded
4941 vote.

4942 Chairman Conyers. And a recorded vote is requested.

4943 The Clerk. Mr. Conyers?

4944 Chairman Conyers. No.

4945 The Clerk. Mr. Conyers votes no.

4946 Mr. Berman?

4947 [No response.]

4948 Mr. Boucher?
4949 [No response.]
4950 Mr. Nadler?
4951 Mr. Nadler. No.
4952 The Clerk. Mr. Nadler votes no.
4953 Mr. Scott?
4954 Mr. Scott. No.
4955 The Clerk. Mr. Scott votes no.
4956 Mr. Watt?
4957 Mr. Watt. No.
4958 The Clerk. Mr. Watt votes no.
4959 Ms. Lofgren?
4960 Ms. Lofgren. No.
4961 The Clerk. Ms. Lofgren votes no.
4962 Ms. Jackson Lee?
4963 Ms. Jackson Lee. No.
4964 The Clerk. Ms. Jackson Lee votes no.
4965 Ms. Waters?
4966 [No response.]
4967 Mr. Meehan?
4968 [No response.]
4969 Mr. Delahunt?
4970 Mr. Delahunt. No.
4971 The Clerk. Mr. Delahunt votes no.
4972 Mr. Wexler?

4973 [No response.]

4974 Ms. Sanchez?

4975 Ms. Sanchez. No.

4976 The Clerk. Ms. Sanchez votes no.

4977 Mr. Cohen?

4978 Mr. Cohen. No.

4979 The Clerk. Mr. Cohen votes no.

4980 Mr. Johnson?

4981 Mr. Johnson. No.

4982 The Clerk. Mr. Johnson votes no.

4983 Mr. Gutierrez?

4984 Mr. Gutierrez. No.

4985 The Clerk. Mr. Gutierrez votes no.

4986 Mr. Sherman?

4987 [No response.]

4988 Ms. Baldwin?

4989 Ms. Baldwin. No.

4990 The Clerk. Ms. Baldwin votes no.

4991 Mr. Weiner?

4992 Mr. Weiner. No.

4993 The Clerk. Mr. Weiner votes no.

4994 Mr. Schiff?

4995 [No response.]

4996 Mr. Davis?

4997 Mr. Davis. No.

4998 The Clerk. Mr. Davis votes no.
4999 Ms. Wasserman Schultz?
5000 Ms. Wasserman Schultz. No.
5001 The Clerk. Ms. Wasserman Schultz votes no.
5002 Mr. Ellison?
5003 Mr. Ellison. No.
5004 The Clerk. Mr. Ellison votes no.
5005 Mr. Smith?
5006 Mr. Smith. Aye.
5007 The Clerk. Mr. Smith votes aye.
5008 Mr. Sensenbrenner?
5009 Mr. Sensenbrenner. Aye.
5010 The Clerk. Mr. Sensenbrenner votes aye.
5011 Mr. Coble?
5012 Mr. Coble. Aye.
5013 The Clerk. Mr. Coble votes aye.
5014 Mr. Gallegly?
5015 Mr. Gallegly. Aye.
5016 The Clerk. Mr. Gallegly votes aye.
5017 Mr. Goodlatte?
5018 Mr. Goodlatte. Aye.
5019 The Clerk. Mr. Goodlatte votes aye.
5020 Mr. Chabot?
5021 [No response.]
5022 Mr. Lungren?

5023 Mr. Lungren. Aye.

5024 The Clerk. Mr. Lungren votes aye.

5025 Mr. Cannon?

5026 Mr. Cannon. Aye.

5027 The Clerk. Mr. Cannon votes aye.

5028 Mr. Keller?

5029 Mr. Keller. Aye.

5030 The Clerk. Mr. Keller votes aye.

5031 Mr. Issa?

5032 Mr. Issa. Aye.

5033 The Clerk. Mr. Issa votes aye.

5034 Mr. Pence?

5035 Mr. Pence. Aye.

5036 The Clerk. Mr. Pence votes aye.

5037 Mr. Forbes?

5038 Mr. Forbes. Aye.

5039 The Clerk. Mr. Forbes votes aye.

5040 Mr. King?

5041 [No response.]

5042 Mr. Feeney?

5043 Mr. Feeney. Aye.

5044 The Clerk. Mr. Feeney votes aye.

5045 Mr. Franks?

5046 Mr. Franks. Aye.

5047 The Clerk. Mr. Franks votes aye.

5048 Mr. Gohmert?

5049 Mr. Gohmert. Aye.

5050 The Clerk. Mr. Gohmert votes aye.

5051 Mr. Jordan?

5052 Mr. Jordan. Yes.

5053 The Clerk. Mr. Jordan votes yes.

5054 Chairman Conyers. Are there other members who wish to
5055 cast a vote?

5056 Mr. Wexler?

5057 Mr. Wexler. No.

5058 The Clerk. Mr. Wexler votes no.

5059 Chairman Conyers. Mr. Sherman?

5060 Mr. Sherman. No.

5061 The Clerk. Mr. Sherman votes no.

5062 Chairman Conyers. Mr. Berman?

5063 Mr. Berman. No.

5064 The Clerk. Mr. Berman votes no.

5065 Chairman Conyers. Mr. Schiff?

5066 Mr. Schiff. No.

5067 The Clerk. Mr. Schiff votes no.

5068 Chairman Conyers. Any others?

5069 The clerk will report.

5070 The Clerk. Mr. Chairman, 15 members voted aye, 20
5071 members voted nay.

5072 Chairman Conyers. The amendment fails.

5073 And as we recess for the vote, I implore the members to
5074 return immediately. We have probably about an hour before we
5075 will be called for final disposition on the floor, and we
5076 would like to have concluded the amending process on the
5077 measure.

5078 The committee stands in recess.

5079 [Recess.]

5080 Chairman Conyers. The committee will come to order.

5081 The chair recognizes Bob Goodlatte for an amendment.

5082 Mr. Goodlatte. Thank you, Mr. Chairman. I have an
5083 amendment at the desk, amendment number 52.

5084 Chairman Conyers. The clerk will report.

5085 Mr. Scott reserves a point of order.

5086 The Clerk. "Amendment to H.R. 1592 offered by Mr.
5087 Goodlatte—"

5088 [The amendment by Mr. Goodlatte follows:]

5089 ***** INSERT *****

5090 Mr. Goodlatte. I ask unanimous consent the amendment be
5091 considered as read.

5092 Chairman Conyers. Without objection. The gentleman is
5093 recognized.

5094 Mr. Goodlatte. Thank you, Mr. Chairman.

5095 This amendment adds the category of senior citizens to
5096 those protected under this legislation. Let me be clear: I
5097 have very strong reservations about this legislation. While
5098 I strongly support efforts to rid our schools, neighborhoods,
5099 and communities of violent crimes against any person, I do
5100 not believe that new federal laws specifically addressing
5101 hate crimes are necessary.

5102 Today, there are few, if any, cases in which law
5103 enforcement has not prosecuted violent crimes to the fullest
5104 extent of the law with regard to any person. Having said
5105 that, if the majority is insistent on moving this
5106 legislation, then we should make clear that the protections
5107 in this legislation also cover senior citizens, who are
5108 perhaps more than any other group in our society the targets
5109 of violent crimes because of their age.

5110 For example, on March 4, 2007, just a few weeks ago, a
5111 man was videotaped by a surveillance camera mugging a 101-
5112 year-old woman in the lobby of her apartment building. The
5113 heartlessness and hatred of this attack is clearly conveyed
5114 on the videotape, when Rose Morat was trying to leave her

5115 building to go to church.

5116 The robber acted like he was going to help her through
5117 the vestibule, and then turned and delivered three hard
5118 punches to her face and grabbed her purse. He pushed her and
5119 her walker to the ground. Rose Morat suffered a broken
5120 cheekbone and was hospitalized. The robber got away with \$33
5121 and her house keys.

5122 Police believe the same suspect robbed an 85-year-old
5123 woman shortly after fleeing from Rose Morat's apartment
5124 house. The criminal has not been caught.

5125 Under this bill, the prosecution of this heinous crime
5126 could occur at the federal level if we added senior citizens
5127 to the protection of the new Hate Crimes Law. I urge my
5128 colleagues to support this amendment.

5129 Chairman Conyers. Does Mr. Scott insist upon his point
5130 of order?

5131 Mr. Scott. I do not, Mr. Chairman.

5132 Chairman Conyers. The chair recognizes the gentlelady
5133 from Wisconsin.

5134 Ms. Baldwin. Thank you, Mr. Chairman.

5135 I think that this is a very important amendment to have
5136 a good discussion on. I previously indicated that we were
5137 likely to see several amendments brought forward to add
5138 different categories to this hate crimes bill. And I expect
5139 we probably will see several more.

5140 But in arguing in support of its amendment, its sponsor
5141 talks about specifically the fact that there have been
5142 recorded instances where elderly people have been targeted,
5143 and I think we may even have an amendment coming up that
5144 singles out children.

5145 But what I would say is, again, there is something that
5146 ties together the groups that we have chosen to protect
5147 historically and that we are endeavoring to protect today in
5148 the hate crimes. And that is a pattern of violence, an
5149 animus and bigotry and discrimination. And in a country that
5150 cherishes the freedom to be who we are, we have felt moved to
5151 add these categories.

5152 Now, the reason I wanted to spend a little time on this
5153 one is because you do make a very important point about the
5154 prevalence of elder abuse, and the vulnerability of certain
5155 people in our society to robbery, to other types of crime.
5156 And for those reasons, I think this Congress has recognized
5157 that over the course of many, many years.

5158 And indeed, we have a whole set of statutes at the
5159 federal level supplementing and working in coordination with
5160 statutes at the state and local level that deal with this
5161 serious issue, not as hate crimes, but as instances of elder
5162 abuse and violence against vulnerable populations that are
5163 appropriately dealt with in a slightly different manner than
5164 you propose today.

5165 I would cite Title VII of the Older Americans Act, which
5166 Congress recently reauthorized, which protects and enhances
5167 the basic rights and benefits for vulnerable older people,
5168 and defines abuse, neglect and exploitation as they relate to
5169 the elderly.

5170 I would cite in addition title 20 of the Social Security
5171 Act, which includes funding in the Social Security Block
5172 Grant Program that provides for adult protective services.

5173 I would add that in our Violence Against Women Act—and I
5174 remember this very clearly from my freshman term on this very
5175 committee—I put forward an amendment that I was very pleased
5176 that the committee adopted, that included training for law
5177 enforcement in dealing with elder abuse in domestic settings,
5178 and that is now a part of our federal law.

5179 Additionally, all 50 states and the District of Columbia
5180 have enacted some form of elder-abuse prevention law. So I
5181 want to agree with the gentleman to the extent that we should
5182 recognize vulnerabilities in the elderly population.

5183 If he or others proceed with a child-abuse-type
5184 amendment, I will make similar arguments. But again, I find
5185 this very distinct from our purposes and motivations in
5186 passing the original hate crimes law.

5187 Mr. Goodlatte. Would the gentlewoman yield on that
5188 point?

5189 Ms. Baldwin. I would certainly take a question if—

5190 Mr. Goodlatte. Well, my question is this. The
5191 gentlewoman points out a number of other statutes dealing
5192 with senior citizens. We also have a number of other
5193 statutes dealing with disabled persons, and yet this
5194 legislation specifically covers persons with disabilities.

5195 I am wondering why there would be a distinction that we
5196 would protect persons with disabilities but not senior
5197 citizens, many of whom do not qualify under our disabilities
5198 laws, but nonetheless because they are senior citizens, are
5199 specifically targets of crime brought up about with hate as
5200 an intent, including the one that I cited in my remarks in
5201 support of my amendment.

5202 Ms. Baldwin. In my view, it is because disability
5203 status does share a commonality and a link with this pattern
5204 that I have talked about that underlies all of the classes
5205 that are protected under current hate-crimes law and under
5206 what we are proposing today. And certainly, there is a
5207 pattern of this with regard to state legislation on the
5208 topic, but that people with disabilities throughout history
5209 have been singled out for violence, for discriminatory
5210 treatment.

5211 There has been patterns of animus throughout our
5212 nation's history, in fact throughout the world's history, but
5213 we are only dealing right now with the United States of
5214 America. And so I think that disability status shares a

5215 common thread with the other protected classes that age. All
5216 of us get older, and youth, all of us came from there, don't
5217 share with race—

5218 Chairman Conyers. The time of the gentlelady has
5219 expired.

5220 All those that are in favor of the Goodlatte amendment,
5221 signify by saying, "Aye," please.

5222 Those that are opposed, signify by saying, "No."

5223 The chair is almost in doubt, but the noes have it.

5224 Mr. Goodlatte. Mr. Chairman, I ask for a recorded vote.

5225 Chairman Conyers. Recorded vote is ordered. The clerk
5226 will call the roll.

5227 The Clerk. Mr. Conyers?

5228 Chairman Conyers. No.

5229 The Clerk. Mr. Berman?

5230 [No response.]

5231 Mr. Boucher?

5232 [No response.]

5233 Mr. Nadler?

5234 Mr. Nadler. No.

5235 The Clerk. Mr. Nadler votes no.

5236 Mr. Scott?

5237 Mr. Scott. No.

5238 The Clerk. Mr. Scott votes no.

5239 Mr. Watt?

5240 Mr. Watt. No.

5241 The Clerk. Mr. Watt votes no.

5242 Ms. Lofgren?

5243 Ms. Lofgren. No.

5244 The Clerk. Ms. Lofgren votes no.

5245 Ms. Jackson Lee?

5246 Ms. Jackson Lee. No.

5247 The Clerk. Ms. Jackson Lee votes no.

5248 Ms. Waters?

5249 Ms. Waters. No.

5250 Mr. Meehan?

5251 [No response.]

5252 Mr. Delahunt?

5253 [No response.]

5254 Mr. Wexler?

5255 [No response.]

5256 Ms. Sanchez?

5257 Ms. Sanchez. No.

5258 The Clerk. Ms. Sanchez votes no.

5259 Mr. Cohen?

5260 Mr. Cohen. No.

5261 The Clerk. Mr. Cohen votes no.

5262 Mr. Johnson?

5263 Mr. Johnson. No.

5264 The Clerk. Mr. Johnson votes no.

5265 Mr. Gutierrez?
5266 [No response.]
5267 Mr. Sherman?
5268 [No response.]
5269 Ms. Baldwin?
5270 Ms. Baldwin. No.
5271 The Clerk. Ms. Baldwin votes no.
5272 Mr. Wiener?
5273 [No response.]
5274 Mr. Schiff?
5275 Mr. Schiff. No.
5276 The Clerk. Mr. Schiff votes no.
5277 Mr. Davis?
5278 Mr. Davis. No.
5279 The Clerk. Mr. Davis votes no.
5280 Ms. Wasserman Schultz?
5281 [No response.]
5282 Mr. Ellison?
5283 [No response.]
5284 Mr. Smith?
5285 Mr. Smith. Aye.
5286 The Clerk. Mr. Smith votes aye.
5287 Mr. Sensenbrenner?
5288 Mr. Sensenbrenner. Aye.
5289 The Clerk. Mr. Sensenbrenner votes aye.

5290 Mr. Coble?
5291 Mr. Coble. Aye.
5292 The Clerk. Mr. Coble votes aye.
5293 Mr. Gallegly?
5294 Mr. Gallegly. Aye.
5295 The Clerk. Mr. Gallegly votes aye.
5296 Mr. Goodlatte?
5297 Mr. Goodlatte. Aye.
5298 The Clerk. Mr. Goodlatte votes aye.
5299 Mr. Chabot?
5300 The Clerk. Mr. Chabot votes aye.
5301 Mr. Lungren?
5302 [No response.]
5303 Mr. Cannon?
5304 Mr. Cannon. Aye.
5305 The Clerk. Mr. Cannon votes aye.
5306 Mr. Keller?
5307 Mr. Keller. Aye.
5308 The Clerk. Mr. Keller votes aye.
5309 Mr. Issa?
5310 [No response.]
5311 Mr. Pence?
5312 [No response.]
5313 Mr. Forbes?
5314 Mr. Forbes. Aye.

5315 The Clerk. Mr. Forbes votes aye.
5316 Mr. King?
5317 Mr. King. Aye.
5318 The Clerk. Mr. King votes aye.
5319 Mr. Feeney?
5320 [No response.]
5321 Mr. Franks?
5322 [No response.]
5323 Mr. Gohmert?
5324 Mr. Gohmert. Aye.
5325 The Clerk. Mr. Gohmert votes aye.
5326 Mr. Jordan?
5327 Mr. Jordan. Yes.
5328 The Clerk. Mr. Jordan votes yes.
5329 Chairman Conyers. Are there other members who wish to
5330 cast a vote?
5331 Mr. Berman?
5332 Mr. Berman. No.
5333 The Clerk. Mr. Berman votes no.
5334 Chairman Conyers. Any others?
5335 Mr. Weiner?
5336 Mr. Weiner. No.
5337 The Clerk. Mr. Weiner votes no.
5338 Chairman Conyers. Clerk will report.
5339 Oh, Mr. Brad Sherman?

5340 Mr. Sherman. No.

5341 The Clerk. Mr. Sherman votes no.

5342 Chairman Conyers. Clerk will report.

5343 The Clerk. Mr. Chairman, 12 members voted aye, 16

5344 members voted nay.

5345 Chairman Conyers. The amendment fails.

5346 And the chair recognizes now Bob Goodlatte for another

5347 amendment.

5348 Mr. Goodlatte. Mr. Chairman, I have an amendment at the

5349 desk.

5350 Chairman Conyers. The clerk will report the amendment.

5351 Which one?

5352 Mr. Goodlatte. That is number 54.

5353 Mr. Nadler. Chairman, reserving a point of order?

5354 Chairman Conyers. Mr. Nadler reserves a point of order.

5355 The Clerk. "Amendment to H.R. 1592, offered by Mr.

5356 Goodlatte. Page 12, line 1, after 'identity' insert 'status

5357 as a pregnant woman.'"

5358 [The amendment by Mr. Goodlatte follows:]

5359 ***** INSERT *****

5360 Chairman Conyers. Gentleman is recognized in support of
5361 his amendment.

5362 Mr. Goodlatte. Thank you, Mr. Chairman.

5363 This amendment adds pregnant women to the hate crime
5364 list of protected persons. All acts of violence against
5365 women are abhorrent, but they are especially disturbing when
5366 committed against pregnant women.

5367 When a violent crime causes injury to a pregnant woman
5368 that results in a miscarriage or other damage to the fetus,
5369 we all share the desire to ensure that our criminal justice
5370 system responds decisively and firmly to exact appropriate
5371 punishment.

5372 Protecting pregnant women and our families from violence
5373 is a serious and compelling problem that deserves to be
5374 recognized as part of the hate crimes law. While there is
5375 little data on the prevalence of violence against pregnant
5376 women, a 2002 General Accounting Office report cited
5377 estimates from 15 states that between 2.2 percent and 6.4
5378 percent of pregnant women have been violently attacked. This
5379 is intolerable, and we must do more to protect pregnant women
5380 from attack.

5381 On December 16, 2004, Bobbi Jo Stinnett of Skidmore,
5382 Missouri, was 23 years old when she was strangled to death
5383 and had her unborn child cut from her womb. The killer, Lisa
5384 Montgomery, who was 36 years old, had met Stinnett in an

5385 online chat room and met with her at her home under the
5386 pretext of buying a dog. Montgomery specifically targeted
5387 Stinnett because she was pregnant. Montgomery had a lost
5388 child she was carrying prior to murdering Stinnett.

5389 Just last year, on September 22, 2006, Jimella Tunstall,
5390 who was 23 years old, was murdered in East St. Louis, and had
5391 her unborn child cut from her womb by Tiffany Hall, a woman
5392 who frequently babysat her three other children. Autopsy
5393 results showed that Tunstall bled to death after having her
5394 abdomen cut open by scissors. Tunstall's three other
5395 children, ages 7, 3, and 2, were found dead and stuffed into
5396 a dryer shortly after.

5397 On September 12, 1996, at Wright-Patterson Air Force
5398 Base, Airman Gregory Robbins assaulted his wife Karlene, who
5399 was 8 months pregnant with their daughter Jasmine. He
5400 covered his fists with a T-shirt and repeatedly struck her in
5401 the face and abdomen. Due to the assault, Karlene's uterus
5402 ruptured and expelled Jasmine into the abdominal cavity,
5403 killing Jasmine.

5404 I urge my colleagues to protect pregnant women from
5405 violence within this legislation.

5406 Ms. Lofgren. Mr. Chairman?

5407 Mr. Goodlatte. I yield back.

5408 Chairman Conyers. The chair recognizes the gentlelady
5409 from California, Ms. Lofgren.

5410 Ms. Lofgren. Thank you, Mr. Chairman.

5411 I, as the author of the Motherhood Protection Act in the
5412 109th, 108th Congresses, I would hope that the gentleman from
5413 Virginia, who I work with on so many items, would consider
5414 withdrawing his amendment at this point so that we might work
5415 together between now and the floor to see if we could come
5416 together on a motherhood-protection type of approach.

5417 I am mindful that in one of the Congresses, when we
5418 offered the Motherhood Protection Act on the floor, that we
5419 got a very broad majority on both sides of the aisles,
5420 including members who were so-called pro-life and pro-choice.
5421 And I think if the gentleman were to withdraw at this point,
5422 we might have an opportunity to collaborate on a motherhood
5423 protection act, or something of that nature.

5424 And that would be my request to the gentleman from
5425 Virginia.

5426 Mr. Goodlatte. Would the gentlewoman yield?

5427 Ms. Lofgren. I certainly would.

5428 Mr. Goodlatte. I very much appreciate the gentlewoman's
5429 generous offer. However, I have no assurances that any such
5430 language would be included in this statute in this
5431 legislation. And the legislation, the amendment, is very,
5432 very simple. It simply adds the words "status as a pregnant
5433 woman," five words.

5434 Ms. Lofgren. Reclaiming my time, as an amendment, it is

5435 not really possible for me to understand all of the
5436 ramifications that could occur from what appears to be a
5437 simple amendment that might have other implications that we
5438 cannot really be aware of without study, and an opportunity
5439 to really sort through it.

5440 I obviously—and I faced this same quandary as a member
5441 of the minority for 12 years—there is not ever a guarantee.
5442 But the gentleman does know, because of our past working
5443 experience, that I would not make an offer to work on
5444 something if I did not make that offer in good faith. And
5445 so, obviously, that is less than a guarantee, but certainly,
5446 based on our past working relationship, you would know it
5447 would not be a frivolous offer.

5448 And I would yield to the gentleman.

5449 Mr. Goodlatte. I appreciate the gentlewoman yielding.
5450 And I again appreciate her offer to do that, and would
5451 certainly be interested in pursuing that, but I also believe
5452 it should be included in this legislation. And quite
5453 frankly, I see no reason why the majority could not accept
5454 this amendment.

5455 Ms. Lofgren. Reclaiming my time, I would yield to the
5456 gentlelady, my colleague from Texas, for her additional
5457 comments.

5458 Ms. Jackson Lee. Well, first of all, let me
5459 congratulate the gentlelady for her legislation that we are

5460 aware of.

5461 But I do want to say to the gentleman from Virginia,
5462 those are enormously heinous crimes. I think it should be
5463 made very clear that they are heinous and they are horrific.
5464 So are the crimes that you articulated regarding the elderly.

5465 But I think when we speak of this question of pregnant
5466 women—not to suggest an interpretation of the act—but it was
5467 to snare, to take, to kidnap, the unborn child or the fetus,
5468 or a child that might be ready for birth. That, as I
5469 understand it, we have not had births from anyone but women.

5470 That is a gender crime. Gender is covered in this
5471 legislation. And so, frankly, I believe that the gentleman
5472 is trying to make more of a point than is necessary.
5473 Inasmuch as gender is explicit, the actions towards someone
5474 on the basis of gender which may be their status as a
5475 pregnant woman, I believe, is sufficiently covered. And I do
5476 believe that the gentlelady is right.

5477 Not knowing the far-reaching impact of your amendment, I
5478 hope all of us, Congresswoman Lofgren, can work with you on
5479 your amendment, and I would oppose the gentleman's amendment.

5480 Mr. Goodlatte. Would the gentlewoman yield?

5481 Ms. Lofgren. Reclaiming my time, I would certainly work
5482 with the gentlelady from Texas.

5483 And I would also yield to the gentleman from Virginia.

5484 Mr. Goodlatte. I thank the gentlewoman.

5485 And I would just point out to the gentlewoman from Texas
5486 that the gender provision in this legislation refers to both
5487 men and women. It does not specifically refer to pregnant
5488 women. We could easily rectify that by simply including the
5489 five words in my amendment.

5490 Ms. Lofgren. Well, reclaiming my time, I am hopeful,
5491 even if the gentleman will not withdraw his amendment, that
5492 we can pursue the Motherhood Protection Act further.

5493 And I thank the chairman for yielding to me for this
5494 question, and would yield back the balance of my time.

5495 Chairman Conyers. Well, we thank the gentlelady and the
5496 gentleman for his amendment.

5497 Those members who are in support of the Goodlatte
5498 amendment, indicate by saying, "Aye."

5499 Thank you.

5500 Those who are opposed, indicate by saying, "No."

5501 The noes have it.

5502 Mr. Goodlatte. Mr. Chairman, I request a recorded vote.

5503 Chairman Conyers. A recorded vote is demanded, and the
5504 clerk will call the roll, please.

5505 The Clerk. Mr. Conyers?

5506 Chairman Conyers. No.

5507 The Clerk. Mr. Conyers votes no.

5508 Mr. Berman?

5509 [No response.]

5510 Mr. Boucher?
5511 [No response.]
5512 Mr. Nadler?
5513 Mr. Nadler. No.
5514 The Clerk. Mr. Nadler votes no.
5515 Mr. Scott?
5516 Mr. Scott. No.
5517 The Clerk. Mr. Scott votes no.
5518 Mr. Watt?
5519 Mr. Watt. No.
5520 The Clerk. Mr. Watt votes no.
5521 Ms. Lofgren?
5522 Ms. Lofgren. No.
5523 The Clerk. Ms. Lofgren votes no.
5524 Ms. Jackson Lee?
5525 Ms. Jackson Lee. No.
5526 The Clerk. Ms. Jackson Lee votes no.
5527 Ms. Waters?
5528 [No response.]
5529 Mr. Meehan?
5530 [No response.]
5531 Mr. Delahunt?
5532 [No response.]
5533 Mr. Wexler?
5534 [No response.]

5535 Ms. Sanchez?
5536 [No response.]
5537 Mr. Cohen?
5538 [No response.]
5539 Mr. Johnson?
5540 Mr. Johnson. No.
5541 The Clerk. Mr. Johnson votes no.
5542 Mr. Gutierrez?
5543 [No response.]
5544 Mr. Sherman?
5545 [No response.]
5546 Ms. Baldwin?
5547 Ms. Baldwin. No.
5548 The Clerk. Ms. Baldwin votes no.
5549 Mr. Weiner?
5550 [No response.]
5551 Mr. Schiff?
5552 Mr. Schiff. No.
5553 The Clerk. Mr. Schiff votes no.
5554 Mr. Davis?
5555 Mr. Davis. No.
5556 The Clerk. Mr. Davis votes no.
5557 Ms. Wasserman Schultz?
5558 Ms. Wasserman Schultz. No.
5559 The Clerk. Ms. Wasserman Schultz votes no.

5560 Mr. Ellison?
5561 [No response.]
5562 Mr. Smith?
5563 Mr. Smith. Aye.
5564 The Clerk. Mr. Smith votes aye.
5565 Mr. Sensenbrenner?
5566 Mr. Sensenbrenner. Aye.
5567 The Clerk. Mr. Sensenbrenner votes aye.
5568 Mr. Coble?
5569 Mr. Coble. Aye.
5570 The Clerk. Mr. Coble votes aye.
5571 Mr. Gallegly?
5572 Mr. Gallegly. Aye.
5573 The Clerk. Mr. Gallegly votes aye.
5574 Mr. Goodlatte?
5575 Mr. Goodlatte. Aye.
5576 The Clerk. Mr. Goodlatte votes aye.
5577 Mr. Chabot?
5578 Mr. Chabot. Aye.
5579 The Clerk. Mr. Chabot votes aye.
5580 Mr. Lungren?
5581 Mr. Lungren. Aye.
5582 The Clerk. Mr. Lungren votes aye.
5583 Mr. Cannon?
5584 Mr. Cannon. Aye.

5585 The Clerk. Mr. Cannon votes aye.
5586 Mr. Keller?
5587 Mr. Keller. Aye.
5588 The Clerk. Mr. Keller votes aye.
5589 Mr. Issa?
5590 Mr. Issa. Aye.
5591 The Clerk. Mr. Issa votes aye.
5592 Mr. Pence?
5593 [No response.]
5594 Mr. Forbes?
5595 Mr. Forbes. Aye.
5596 The Clerk. Mr. Forbes votes aye.
5597 Mr. King?
5598 Mr. King. Aye.
5599 The Clerk. Mr. King votes aye.
5600 Mr. Feeney?
5601 [No response.]
5602 Mr. Franks?
5603 Mr. Franks. Aye.
5604 The Clerk. Mr. Franks votes aye.
5605 Mr. Gohmert?
5606 Mr. Gohmert. Aye.
5607 The Clerk. Mr. Gohmert votes aye.
5608 Mr. Jordan?
5609 Mr. Jordan. Yes.

5610 The Clerk. Mr. Jordan votes yes.

5611 Chairman Conyers. Are there other members that wish to
5612 vote?

5613 Mr. Berman?

5614 Mr. Berman. No.

5615 The Clerk. Mr. Berman votes no.

5616 Chairman Conyers. Mr. Cohen?

5617 Ms. Sanchez?

5618 The Clerk. Mr. Cohen votes no.

5619 Ms. Sanchez votes no.

5620 Chairman Conyers. Mr. Weiner?

5621 Mr. Weiner. No.

5622 The Clerk. Mr. Weiner votes no.

5623 Chairman Conyers. Mr. Sherman?

5624 Mr. Sherman. No.

5625 The Clerk. Mr. Sherman votes no.

5626 Chairman Conyers. Clerk will report.

5627 The Clerk. Mr. Chairman, 15 members voted aye, 16
5628 members voted nay.

5629 Chairman Conyers. The amendment fails.

5630 And the chair recognizes Steve Chabot from Ohio.

5631 Mr. Chabot. Thank you, Mr. Chairman. I have an
5632 amendment at the desk, amendment number 53.

5633 Chairman Conyers. Clerk will report.

5634 The Clerk. "Amendment to H.R. 1592—"

5635 [The amendment by Mr. Chabot follows:]

5636 ***** INSERT *****

5637 Mr. Chabot. Ask unanimous consent the amendment be
5638 considered as read.

5639 Chairman Conyers. Without objection, so ordered. The
5640 gentleman is recognized.

5641 Mr. Chabot. Thank you, Mr. Chairman.

5642 This amendment adds witnesses in a judicial proceeding
5643 to the categories protected by this legislation. Just
5644 yesterday, the Crime Subcommittee held a hearing to examine
5645 the problem of victim and witness intimidation, and the need
5646 for witness protection services at the state and local level.

5647 Witness protection services are very expensive. One
5648 easy way to reduce that cost is to deter crime, make it a
5649 hate crime when a criminal attacks someone because of his or
5650 her status as a witness in a judicial proceeding. At a
5651 recent subcommittee field hearing in New Orleans, we heard
5652 extensive evidence on how witness intimidation has brought
5653 the judicial system to a halt.

5654 And Representative Cummings has been a leader on this
5655 issue in response to a horrific attack in 2002 on the Dawson
5656 family, when seven members of a family were murdered because
5657 of their cooperation with law enforcement.

5658 A Justice Department study in the 1990s concluded that,
5659 "Witness intimidation is a pervasive and insidious problem.
5660 No part of the country is spared, and no witness can feel
5661 entirely free or safe." Prosecutors interviewed in this

5662 study estimated that witness intimidation occurs in 75
5663 percent to 100 percent of the violent crimes committed in
5664 some gang-dominated neighborhoods.

5665 Prosecutors in Baltimore estimate that 35 percent to 50
5666 percent of nonfatal shooting cases in the city cannot proceed
5667 because of reluctant witnesses, and about 90 percent of all
5668 homicide cases involve some manner of witness intimidation.
5669 Witnesses need to be protected against intimidation and
5670 violence, and I urge my colleagues to support this amendment.

5671 I yield back the balance of my time.

5672 Chairman Conyers. The chair recognizes the gentlelady
5673 from Wisconsin.

5674 Ms. Baldwin. Thank you, Mr. Chairman.

5675 I will endeavor to be brief, because I have already made
5676 some comments in response to a previous amendment, where I
5677 believe this is going to be an attempt to add a number of
5678 categories on page 12 to this legislation, but that these
5679 categories really bear no commonality. They don't bear the
5680 common thread.

5681 But I did want to mention a case that hasn't really been
5682 much discussed so far in this debate, and that is the
5683 Wisconsin v. Mitchell case, where the United States Supreme
5684 Court upheld the constitutionality of my home state's
5685 sentencing enhancement statute for bias-motivated crimes.

5686 This was a unanimous court decision authored by Justice

5687 Rehnquist. And in the opinion, the court recognized that the
5688 Wisconsin Legislature had the right to single out bias-
5689 inspired conduct, because such conduct is thought to inflict
5690 greater societal and individual harm.

5691 There has been no evidence and no documentation to
5692 demonstrate that an individual serving as a witness in a
5693 judicial proceeding has historically suffered the type of
5694 longstanding enmity and prejudice as African-Americans or gay
5695 and lesbian individuals that would justify inclusion in a
5696 hate crimes statute to outlaw bias-motivated crime.

5697 So in short, a person's status as a witness in a
5698 judicial proceeding simply does not share the same
5699 characteristics as race, gender, and other protected
5700 categories that qualify them for protections under this bill.
5701 So I would urge defeat of this amendment.

5702 Mr. Scott. Would the gentlewoman yield?

5703 Ms. Baldwin. And I would be happy to yield to Mr.
5704 Scott.

5705 Mr. Scott. Thank the gentlewoman for yielding.

5706 I would say to the gentleman that this is a decent
5707 amendment, it is just the wrong bill. We have a bill dealing
5708 with witness protection that we will be considering in due
5709 course. What they need is witness protection funds to
5710 provide the protection.

5711 What the testimony yesterday was, the criminal justice

5712 system provided very little deterrent. If they are up on
5713 charges that have very serious charges, they are not going to
5714 be deterred at all by the criminal justice system. What the
5715 witnesses need is money to relocate or other kinds of
5716 services.

5717 So I would hope that we would consider the issue of
5718 witness protection in the bill that is pending dealing with
5719 witness protection, and not as the gentlelady from Wisconsin
5720 has indicated, put things that don't belong in the hate
5721 crimes bill in the hate crimes bill.

5722 I yield back. Thank you very much.

5723 Mr. Goodlatte. Mr. Chairman?

5724 Chairman Conyers. The chair is prepared to vote, and I
5725 will tell you why. We are running out of time, Brother
5726 Goodlatte.

5727 Mr. Goodlatte. Mr. Chairman, I ask to be recognized.

5728 Chairman Conyers. Well, I don't choose to recognize
5729 you, my dear friend. I am trying to get to a vote. Do you
5730 know how many more amendments are on your side?

5731 Mr. Goodlatte. I don't.

5732 Mr. King. Well, I don't have any more myself, but I
5733 would like to address this amendment.

5734 Chairman Conyers. Well, I would like to recognize Steve
5735 King too. I would like to recognize everybody. But we are
5736 going to have to, ladies and gentlemen, repair to a way that

5737 we are going to end this debate.

5738 And my proposal is this, is that everybody's amendment
5739 be nominally recognized, put into the record, an equally
5740 brief response, and a vote on all of them.

5741 I understand, Mr. Smith, that there may be as many as
5742 five or six?

5743 Mr. Smith. I am guessing at five to seven, Mr.
5744 Chairman.

5745 Chairman Conyers. Five to seven.

5746 Mr. Forbes. Would the gentleman yield?

5747 Chairman Conyers. Of course.

5748 Mr. Forbes. Mr. Chairman, the problem with that, and I
5749 understand the chairman has the right to do what he wants to
5750 do. But earlier today, in ruling on the germaneness of one
5751 of the issues, the very first amendment that came before us,
5752 part of the chairman's explanation for that ruling—and it may
5753 have been inadvertent, but it was still there—was the fact
5754 that particular issues had not been raised in the
5755 subcommittee before they came here.

5756 When we go to the floor, we will hear the same
5757 arguments—nobody raised that in the committee, it wasn't
5758 brought forth. If we cut off debate, in all due respect to
5759 the chairman, we are essentially saying that we are not able
5760 to present these issues now in this full committee. But I
5761 leave it up, obviously, to—

5762 Chairman Conyers. I apologize to the gentleman, and I
5763 agree with him. I can assure you that I may be able to have
5764 everybody on this side of the aisle not raise that argument
5765 when we go to the floor. Trust me.

5766 Mr. Issa. For a closed rule?

5767 Chairman Conyers. I have no control over the Rules
5768 Committee, and I don't think you do either.

5769 Mr. Chabot. Thank you, Mr. Chairman. That is the
5770 reason that we clearly need to have all our amendments heard,
5771 but perhaps defer the debate.

5772 Chairman Conyers. But that is why I am proposing that
5773 we do get them on the record. And if this comes up on the
5774 floor, I will concede that we had to terminate the regular
5775 procedure everybody getting their amendment on the record.

5776 Mr. Schiff. Mr. Chairman?

5777 Chairman Conyers. Oh, yes. Mr. Issa?

5778 Mr. Schiff. Oh no, actually, it is Mr. Schiff seeking
5779 recognition.

5780 Chairman Conyers. Oh.

5781 Mr. Schiff. Mr. Chairman, it would seem to me, if your
5782 suggestion is followed, and the remaining five to seven
5783 amendments are voted on block, that we would effectively have
5784 a vote on all the issues covered within those amendments, and
5785 then the argument could be made on the House floor that in
5786 fact, it was raised and voted on in committee.

5787 Chairman Conyers. I would be the first to concede that
5788 we truncated the regular procedure here, and this isn't my
5789 plan—

5790 Mr. Forbes. Parliamentary inquiry, Mr. Chairman?

5791 Chairman Conyers. Of course.

5792 Mr. Forbes. Mr. Chairman, would the chairman have the
5793 intention then of also cutting off debate on the full bill
5794 before its final passage?

5795 Chairman Conyers. I don't think I could or would want
5796 to do that, no sir.

5797 Mr. Forbes. Well, we are doing that on the amendments,
5798 Mr. Chairman.

5799 Chairman Conyers. Well, yes. We are doing it on the
5800 amendments. We are trying to go to final passage on these
5801 amendments tonight in time to coincide with us going to the
5802 floor for the final vote, which will probably be at about
5803 8:35, according to the best guess.

5804 So please accept my apologies. I had no idea. I don't
5805 even know which amendments are still yet to be considered,
5806 but I am—

5807 Mr. Gallegly. Mr. Chairman?

5808 Chairman Conyers. Yes?

5809 Mr. Gallegly. I would make a suggestion for what it is
5810 worth, and perhaps it would satisfy the majority between both
5811 sides, that perhaps we could come in, if we don't finish

5812 tonight, at 9 a.m. in the morning and start before we do a
5813 regular, so we don't have interruptions for an hour, and
5814 finish the bill.

5815 Chairman Conyers. No, no. My dear friends, we have
5816 said more than once, and I think there are subcommittee
5817 hearings that are already scheduled, that we would finish
5818 tonight. It is my intention to do that. Who has an
5819 amendment?

5820 Mr. Issa. I have an amendment, Mr. Chairman.

5821 Chairman Conyers. All right, let's take the names down.
5822 Yes?

5823 Mr. Chabot. Mr. Chairman, we haven't voted on this. I
5824 know the chairman is interested in trying to wrap this up, so
5825 I am not going to insist on debate any further on this
5826 amendment, but I would be happy to call for a vote on this
5827 amendment.

5828 Chairman Conyers. That is precisely what I was going to
5829 do, and I thank you very much, Steve.

5830 Those in favor of the Chabot amendment, indicate by
5831 saying, "Aye."

5832 Those opposed to the Chabot amendment, indicate by
5833 saying, "No."

5834 The chair would ask for a record vote on this matter.

5835 Mr. Chabot. Mr. Chairman, how did the vote go, the oral
5836 vote there? I am not—

5837 Chairman Conyers. The ayes had it.

5838 Mr. Chabot. I have no reason to ask for a vote.

5839 [Laughter.]

5840 Mr. Issa. Hey, Mr. Chairman, if you let us have one or
5841 two, this could end sooner, too.

5842 Chairman Conyers. Well, that is what I was trying to
5843 do. A record vote has been called for, however, and we will
5844 ask that the roll be called.

5845 The Clerk. Mr. Conyers?

5846 Chairman Conyers. No.

5847 The Clerk. Mr. Conyers votes no.

5848 Mr. Berman?

5849 Mr. Berman. No.

5850 The Clerk. Mr. Berman votes no.

5851 Mr. Boucher?

5852 [No response.]

5853 Mr. Nadler?

5854 Mr. Nadler. No.

5855 The Clerk. Mr. Nadler votes no.

5856 Mr. Scott?

5857 Mr. Scott. No.

5858 The Clerk. Mr. Scott votes no.

5859 Mr. Watt?

5860 Mr. Watt. No.

5861 The Clerk. Mr. Watt votes no.

5862 Ms. Lofgren?

5863 Ms. Lofgren. No.

5864 The Clerk. Ms. Lofgren votes no.

5865 Ms. Jackson Lee?

5866 Ms. Jackson Lee. No.

5867 The Clerk. Ms. Jackson Lee votes no.

5868 Ms. Waters?

5869 Ms. Waters. No.

5870 The Clerk. Ms. Waters votes no.

5871 Mr. Meehan?

5872 [No response.]

5873 Mr. Delahunt?

5874 [No response.]

5875 Mr. Wexler?

5876 [No response.]

5877 Ms. Sanchez?

5878 Ms. Sanchez. No.

5879 The Clerk. Ms. Sanchez votes no.

5880 Mr. Cohen?

5881 Mr. Cohen. No.

5882 The Clerk. Mr. Cohen votes no.

5883 Mr. Johnson?

5884 Mr. Johnson. No.

5885 The Clerk. Mr. Johnson votes no.

5886 Mr. Guttierrez?

5887 Mr. Gutierrez. No.

5888 The Clerk. Mr. Gutierrez votes no.

5889 Mr. Sherman?

5890 [No response.]

5891 Ms. Baldwin?

5892 Ms. Baldwin. No.

5893 The Clerk. Ms. Baldwin votes no.

5894 Mr. Weiner?

5895 Mr. Weiner. No.

5896 The Clerk. Mr. Weiner votes no.

5897 Mr. Schiff?

5898 Mr. Schiff. No.

5899 The Clerk. Mr. Schiff votes no.

5900 Mr. Davis?

5901 Mr. Davis. No.

5902 The Clerk. Mr. Davis votes no.

5903 Ms. Wasserman Schultz?

5904 Ms. Wasserman Schultz. No.

5905 The Clerk. Ms. Wasserman Schultz votes no.

5906 Mr. Ellison?

5907 [No response.]

5908 Mr. Smith?

5909 Mr. Smith. Aye.

5910 The Clerk. Mr. Smith votes aye.

5911 Mr. Sensenbrenner?

5912 Mr. Sensenbrenner. Aye.

5913 The Clerk. Mr. Sensenbrenner votes aye.

5914 Mr. Coble?

5915 Mr. Coble. Aye.

5916 The Clerk. Mr. Coble votes aye.

5917 Mr. Gallegly?

5918 Mr. Gallegly. Aye.

5919 Mr. Gallegly votes aye.

5920 The Clerk. Mr. Goodlatte?

5921 Mr. Goodlatte. Aye.

5922 The Clerk. Mr. Goodlatte votes aye.

5923 Mr. Chabot?

5924 Mr. Chabot. Aye.

5925 The Clerk. Mr. Chabot votes aye.

5926 Mr. Lungren?

5927 Mr. Lungren. Aye.

5928 The Clerk. Mr. Lungren votes aye.

5929 Mr. Cannon?

5930 Mr. Cannon. Aye.

5931 The Clerk. Mr. Cannon votes aye.

5932 Mr. Keller?

5933 Mr. Keller. Aye.

5934 The Clerk. Mr. Keller votes aye.

5935 Mr. Issa?

5936 Mr. Issa. Aye.

5937 The Clerk. Mr. Issa votes aye.
5938 Mr. Pence?
5939 [No response.]
5940 Mr. Forbes?
5941 Mr. Forbes. Aye.
5942 The Clerk. Mr. Forbes votes aye.
5943 Mr. King?
5944 Mr. King. Aye.
5945 The Clerk. Mr. King votes aye.
5946 Mr. Feeney?
5947 [No response.]
5948 Mr. Franks?
5949 Mr. Franks. Aye.
5950 The Clerk. Mr. Franks votes aye.
5951 Mr. Gohmert?
5952 Mr. Gohmert. Aye.
5953 The Clerk. Mr. Gohmert votes aye.
5954 Mr. Jordan?
5955 Mr. Jordan. Yes.
5956 The Clerk. Mr. Jordan votes yes.
5957 Chairman Conyers. Clerk will report.
5958 Are there any who have not voted?
5959 Brad Sherman?
5960 Mr. Sherman. No.
5961 The Clerk. Mr. Sherman votes no.

5962 Chairman Conyers. Mr. Wexler?
5963 Mr. Wexler. No.
5964 The Clerk. Mr. Wexler votes no.
5965 Chairman Conyers. Mr. Delahunt?
5966 Mr. Delahunt. No.
5967 The Clerk. Mr. Delahunt votes no.
5968 Chairman Conyers. Are there any others in the room that
5969 have not voted?
5970 Clerk will report.
5971 The Clerk. Mr. Chairman, 15 members voted aye, 20
5972 members voted nay.
5973 Chairman Conyers. The amendment does not succeed.
5974 Ms. Jackson Lee. Mr. Chairman?
5975 Chairman Conyers. Gentlelady from Texas?
5976 Ms. Jackson Lee. Chairman, I have an amendment at the
5977 desk.
5978 Mr. Issa. Oh, goody.
5979 [Laughter.]
5980 Ms. Jackson Lee. Thank you, Mr. Issa.
5981 Chairman Conyers. And the clerk will report the
5982 amendment.
5983 The Clerk. "Amendment to H.R. 1592, offered by Ms.
5984 Jackson Lee of Texas. At the end of Section 7 of the bill—"

5985 [The amendment by Ms. Jackson Lee follows:]

5986 ***** INSERT *****

5987 Chairman Conyers. I ask unanimous consent that the
5988 amendment be considered as read, and recognize the gentlelady
5989 for 1 minute.

5990 Ms. Jackson Lee. I thank the distinguished gentleman
5991 for his generosity and simply say that we have seen over the
5992 years the utilization of young skinheads and others propelled
5993 by adults to perpetrate hate crimes.

5994 This simply provides us with a basis of understanding
5995 that. I think it is an important contribution to the bill,
5996 and I yield back my time. I ask my colleagues to support it.

5997 Chairman Conyers. I congratulate the gentlelady on her
5998 brevity. The chair was prepared to accept this amendment.
5999 It is a study that goes into the bill.

6000 Ms. Jackson Lee. Thank you.

6001 Chairman Conyers. The chair yields to Lamar Smith.

6002 Mr. Smith. Mr. Chairman, it looks like it is a helpful
6003 amendment, but I do have a question for the gentlewoman from
6004 Texas.

6005 On page 2, lines 4 and 5, is the phrase "avoid
6006 duplicative punishments for substantially the same offense."
6007 I just wonder what my colleague from Texas means by those
6008 words, and why they are necessary.

6009 Ms. Jackson Lee. I think they are instructive. They
6010 are not binding. They would ask and make sure that in the
6011 process of sentencing, and as they study, that the sentencing

6012 is even-handed.

6013 They make sure that the sentencing commission crosses
6014 its Ts and dots its Is, that they take a look at making sure
6015 sentences fit the particular offense, and that they are not
6016 piling on without stated enhancement provisions.

6017 Mr. Smith. Reclaiming my time, I wonder if the
6018 gentlewoman from Texas would be willing to strike those
6019 lines, 4 and 5, just because they might be unconstitutionally
6020 broad, and there may be other reasons to scratch it.

6021 Ms. Jackson Lee. I would be happy to, and look forward
6022 to working on that as we go to the floor. And I would be
6023 happy to, at this time, withdraw those lines on page 2, and
6024 5.

6025 Chairman Conyers. By unanimous consent, the gentlelady
6026 withdraws line 4 and 5.

6027 Mr. Smith. Mr. Chairman, that is much appreciated, and
6028 I do recommend that my colleagues support the amendment as it
6029 now reads.

6030 Chairman Conyers. The question is on the amendment.

6031 All in favor, say, "Aye."

6032 Those opposed, say, "No."

6033 Amendment is agreed to.

6034 Ms. Jackson Lee. Thank you.

6035 Chairman Conyers. The chair recognizes Steve Chabot.

6036 Mr. Chabot. Thank you, Mr. Chairman. I have an

6037 amendment at the desk, amendment number 58.

6038 Chairman Conyers. The clerk will report.

6039 The Clerk. "Amendment to H.R. 1592, offered by Mr.

6040 Chabot. Page 12, line 1, after 'identity' insert 'status as

6041 being the victim of a prior crime.'"

6042 [The amendment by Mr. Chabot follows:]

6043 ***** INSERT *****

6044 Mr. Chabot. Thank you. Mr. Chairman, I move to strike
6045 the last word.

6046 Chairman Conyers. Without objection, the gentleman is
6047 recognized.

6048 Mr. Chabot. Thank you. I will try to be brief.

6049 This amendment adds the category of a prior victim of
6050 crime to the protected categories of groups. This week is
6051 the 2007 National Crime Victims' Rights Week.

6052 In honor of every victim, we should renew our commitment
6053 to protecting crime victims from violent acts, whether
6054 carried out to intimidate or silence them as witnesses, or
6055 for any other motivation because of their status as a victim.

6056 We need to recognize that victims' rights should be
6057 highlighted not just this week, but every day of the year by
6058 adding them to the hate crimes law. The loss of innocent
6059 lives affects so many others who are left behind.

6060 Victims and survivors of crimes should not be ignored,
6061 and their safety is critical to the criminal justice system.
6062 I urge my colleagues to support this amendment, and yield
6063 back the balance of my time.

6064 Chairman Conyers. I thank the gentleman for his
6065 brevity.

6066 I would just point out that this is the subset of an
6067 amendment that has already been previously rejected, and with
6068 that reluctance, I have to oppose the amendment.

6069 All in favor of the amendment, signify by saying, "Aye."

6070 Those opposed, signify by saying, "No."

6071 In opinion of the chair, the noes have it.

6072 Mr. Chabot. Mr. Chairman?

6073 Chairman Conyers. Yes?

6074 Mr. Chabot. It certainly sounded like the ayes

6075 prevailed in that particular case—

6076 Chairman Conyers. Well—

6077 Mr. Chabot. But I yield to the chairman, and I would

6078 ask for a recorded vote.

6079 Chairman Conyers. A recorded vote has been requested.

6080 The clerk will call the roll.

6081 The Clerk. Mr. Conyers?

6082 Chairman Conyers. No.

6083 The Clerk. Mr. Conyers votes no.

6084 Mr. Berman?

6085 Mr. Berman. No.

6086 The Clerk. Mr. Berman votes no.

6087 Mr. Boucher?

6088 [No response.]

6089 Mr. Nadler?

6090 Mr. Nadler. No.

6091 The Clerk. Mr. Nadler votes no.

6092 Mr. Scott?

6093 Mr. Scott. No.

6094 The Clerk. Mr. Scott votes no.
6095 Mr. Watt?
6096 Mr. Watt. No.
6097 The Clerk. Mr. Watt votes no.
6098 Ms. Lofgren?
6099 Ms. Lofgren. No.
6100 The Clerk. Ms. Lofgren votes no.
6101 Ms. Jackson Lee?
6102 Ms. Jackson Lee. No.
6103 The Clerk. Ms. Jackson Lee votes no.
6104 Ms. Waters?
6105 Ms. Waters. No.
6106 The Clerk. Ms. Waters votes no.
6107 Mr. Meehan?
6108 [No response.]
6109 Mr. Delahunt?
6110 Mr. Delahunt. No.
6111 The Clerk. Mr. Delahunt votes no.
6112 Mr. Wexler?
6113 Mr. Wexler. No.
6114 The Clerk. Mr. Wexler votes no.
6115 Ms. Sanchez?
6116 Ms. Sanchez. No.
6117 The Clerk. Ms. Sanchez votes no.
6118 Mr. Cohen?

6119 Mr. Cohen. No.

6120 The Clerk. Mr. Cohen votes no.

6121 Mr. Johnson?

6122 Mr. Johnson. No.

6123 The Clerk. Mr. Johnson votes no.

6124 Mr. Gutierrez?

6125 Mr. Gutierrez. No.

6126 The Clerk. Mr. Gutierrez votes no.

6127 Mr. Sherman?

6128 [No response.]

6129 Ms. Baldwin?

6130 Ms. Baldwin. No.

6131 The Clerk. Ms. Baldwin votes no.

6132 Mr. Weiner?

6133 Mr. Weiner. No.

6134 The Clerk. Mr. Weiner votes no.

6135 Mr. Schiff?

6136 Mr. Schiff. No.

6137 The Clerk. Mr. Schiff votes no.

6138 Mr. Davis?

6139 Mr. Davis. No.

6140 The Clerk. Mr. Davis votes no.

6141 Ms. Wasserman Schultz?

6142 Ms. Wasserman Schultz. No.

6143 The Clerk. Ms. Wasserman Schultz votes no.

6144 Mr. Ellison?
6145 [No response.]
6146 Mr. Smith?
6147 Mr. Smith. Aye.
6148 The Clerk. Mr. Smith votes aye.
6149 Mr. Sensenbrenner?
6150 Mr. Sensenbrenner. Aye.
6151 The Clerk. Mr. Sensenbrenner votes aye.
6152 Mr. Coble?
6153 Mr. Coble. Aye.
6154 The Clerk. Mr. Coble votes aye.
6155 Mr. Gallegly?
6156 Mr. Gallegly. Aye.
6157 The Clerk. Mr. Gallegly votes aye.
6158 Mr. Goodlatte?
6159 Mr. Goodlatte. Aye.
6160 The Clerk. Mr. Goodlatte votes aye.
6161 Mr. Chabot?
6162 Mr. Chabot. Aye.
6163 The Clerk. Mr. Chabot votes aye.
6164 Mr. Lungren?
6165 Mr. Lungren. Aye.
6166 The Clerk. Mr. Lungren votes aye.
6167 Mr. Cannon?
6168 Mr. Cannon. Aye.

6169 The Clerk. Mr. Cannon votes aye.
6170 Mr. Keller?
6171 Mr. Keller. Aye.
6172 The Clerk. Mr. Keller votes aye.
6173 Mr. Issa?
6174 Mr. Issa. Aye.
6175 The Clerk. Mr. Issa votes aye.
6176 Mr. Pence?
6177 [No response.]
6178 Mr. Forbes?
6179 Mr. Forbes. Aye.
6180 The Clerk. Mr. Forbes votes aye.
6181 Mr. King?
6182 Mr. King. Aye.
6183 The Clerk. Mr. King votes aye.
6184 Mr. Feeney?
6185 [No response.]
6186 Mr. Franks?
6187 Mr. Franks. Aye.
6188 The Clerk. Mr. Franks votes aye.
6189 Mr. Gohmert?
6190 Mr. Gohmert. Aye.
6191 The Clerk. Mr. Gohmert votes aye.
6192 Mr. Jordan?
6193 Mr. Jordan. Yes.

6194 The Clerk. Mr. Jordan votes yes.

6195 Chairman Conyers. Are there other members who wish to
6196 vote?

6197 Clerk will report.

6198 The Clerk. Mr. Chairman, 15 members voted aye—

6199 Mr. Sherman. Mr. Chairman?

6200 Chairman Conyers. Mr. Sherman?

6201 Mr. Sherman. No.

6202 The Clerk. Mr. Sherman votes no.

6203 Mr. Chairman, 15 members voted aye, 20 members voted
6204 nay.

6205 Chairman Conyers. The amendment fails.

6206 Mr. Issa. Mr. Chairman?

6207 Chairman Conyers. The chair recognizes Mr. Darrell

6208 Issa.

6209 Mr. Issa. Thank you, Mr. Chairman. I have an amendment
6210 at the desk.

6211 Chairman Conyers. Clerk will report.

6212 Mr. Nadler. Reserve a point of order?

6213 Mr. Issa. I have two. This would be the one that
6214 begins "page 12, line 2."

6215 Chairman Conyers. Mr. Nadler reserves a point of order.

6216 And the clerk, are you reporting one amendment?

6217 Mr. Issa. I have two amendments, but the one I am
6218 reporting begins "page 12, line 2."

6219 Chairman Conyers. Could you bundle them for us, please?

6220 Mr. Issa. They are very different. I will be quick,
6221 though. They can be brief.

6222 Chairman Conyers. All right.

6223 The Clerk. "Amendment number 1, authored by Mr. Issa.
6224 H.R. 1592, the Local Law Enforcement Hate Crimes Prevention
6225 Act of 2007. Page 12, line 2, after 'person' insert 'or any
6226 other animus toward that person.'"

6227 [The amendment by Mr. Issa follows:]

6228 ***** INSERT *****

6229 Chairman Conyers. The gentleman is recognized.

6230 Mr. Issa. Thank you, Mr. Chairman. I will be very
6231 brief in explaining this.

6232 Recently and sadly, a person murdered 32 students and
6233 teachers at Virginia Tech. He did not do so—Mr. Chairman,
6234 can we have order?—he did not do so because of their race,
6235 their creed, their national origin, their religion, or their
6236 sexual or gender preferences.

6237 He did so because they were rich, because they were
6238 successful. He did so because he felt the world had treated
6239 him badly as a Korean-American. Notwithstanding the fact
6240 that he is dead, hate crimes for the greatest hate act on a
6241 college campus in history would not have covered this.

6242 And yet, he in fact was filled with hate because of what
6243 others had, what he didn't have, in his perception. The fact
6244 that he happened to hate people who had excelled in
6245 engineering, or hated people who had done well in some other
6246 area, these were classic hate.

6247 So I propose that in fact, we cover the fact that it is
6248 not who you hate that makes the hate crime. It is in fact
6249 the hate that you demonstrate. And this now-dead perpetrator
6250 demonstrated amazing hate, which was not covered, but that
6251 this amendment would cover.

6252 And with that, I yield back for brevity.

6253 Chairman Conyers. I thank the gentleman.

6254 Does the gentleman insist upon his point of order? Mr.
6255 Nadler?

6256 Mr. Nadler. Yes. Yes, Mr. Chairman, I am insisting on
6257 the point of order.

6258 Mr. Chairman, the bill deals with crimes of violence
6259 motivated by bias against the victim on account of one of the
6260 number of specified characteristics that the victim shares
6261 with others in a group.

6262 The amendment would expand the bill beyond that purpose
6263 to include crimes of violence motivated by any animus toward
6264 the victim, not simply towards certain characteristics that
6265 the victim shares with others in a group. This expands
6266 beyond the four corners of the bill, and the amendment is
6267 therefore not germane.

6268 Chairman Conyers. Gentleman from California, would you
6269 respond?

6270 Mr. Issa. Mr. Chairman, "I want my bill the way I want
6271 it" is not making it less than germane. It is very clear
6272 that in fact expansion or trimming around the edges does not
6273 fall outside the four corners.

6274 It is very clear that this is a hate crime bill. We are
6275 not seeking to expand it beyond hate, but in fact the hate
6276 that occurred at Virginia Tech was not covered, and would be
6277 covered by this.

6278 We are not intending to go beyond people's actions

6279 resulting from hate, and to say that one man's animus is
6280 acceptable and another one's isn't, I think, is thoroughly
6281 unfair.

6282 Vote this down if you choose to. Don't broaden this
6283 bill to include additional hate, but please don't say that it
6284 is not germane simply because it doesn't hit the narrow
6285 limitations that one decides to craft in a bill.

6286 This is the committee of jurisdiction, and this is well
6287 within our jurisdiction and well within the basic guidelines
6288 of the bill. And so I insist that we be ruled in order, and
6289 voted appropriately.

6290 Chairman Conyers. May I say to my friend that although
6291 this may not be germane, the chair is prepared to allow the
6292 amendment to go forward—

6293 Mr. Issa. Thank you, Mr. Chairman.

6294 Chairman Conyers. —in the interest of the time.

6295 The question occurs on the amendment by the gentleman
6296 from California, Mr. Issa.

6297 All those in favor, please indicate by saying, "Aye."

6298 And all those opposed, please indicate by saying, "No."

6299 In the opinion of the chair, the noes have it, and the
6300 amendment is unsuccessful.

6301 Mr. Issa. Mr. Chairman, I have an amendment at the
6302 desk.

6303 Chairman Conyers. Mr. Issa is again recognized for

6304 another amendment.

6305 Mr. Issa. Thank you, Mr. Chairman.

6306 Chairman Conyers. Clerk will report.

6307 The Clerk. "Amendment offered to H.R. 1592 by Mr. Issa.

6308 At the appropriate place or places, insert the following:

6309 the terms 'person'—"

6310 [The amendment by Mr. Issa follows:]

6311 ***** INSERT *****

6312 Mr. Nadler. Mr. Chairman, I reserve a point of order.
6313 Chairman Conyers. The amendment will be considered as
6314 read.

6315 The gentleman from California is again recognized.

6316 Mr. Issa. Thank you, Mr. Chairman.

6317 Earlier today, there was in fact an amendment which was
6318 in some ways similar which was not ruled germane, and so this
6319 was crafted specifically because in fact I believe that there
6320 is a clear understanding of people on both sides of the aisle
6321 now that in fact the act is not intended to cover the unborn.

6322 This simply codifies that, and so it is well within the
6323 question of germane. We are asking in this amendment, if you
6324 do not want to cover the life of the unborn as a person, you
6325 simply say so. And again, this is the reverse, but it makes
6326 it very germane. And we would simply want an up-or-down vote
6327 on that.

6328 And again, for brevity, I will yield back.

6329 Chairman Conyers. Well, I thank the gentleman.

6330 And without going into the question of germaneness, I am
6331 going to, since we have been through this, and this is more
6332 or less a reverse amendment, I will call for a vote.

6333 Those who are in support of this amendment, indicate by
6334 saying, "Aye."

6335 Those who are opposed, indicate by saying, "No."

6336 Mr. Issa. Mr. Chairman, on that, I ask for a recorded

6337 vote. Of course I want a recorded vote.

6338 Chairman Conyers. The clerk will call the roll.

6339 The Clerk. Mr. Conyers?

6340 Chairman Conyers. No.

6341 The Clerk. Mr. Conyers votes no.

6342 Mr. Berman?

6343 Mr. Berman. No.

6344 The Clerk. Mr. Berman votes no.

6345 Mr. Boucher?

6346 [No response.]

6347 Mr. Nadler?

6348 Mr. Nadler. No.

6349 The Clerk. Mr. Nadler votes no.

6350 Mr. Scott?

6351 Mr. Scott. No.

6352 The Clerk. Mr. Scott votes no.

6353 Mr. Watt?

6354 Mr. Watt. No.

6355 The Clerk. Mr. Watt votes no.

6356 Ms. Lofgren?

6357 Ms. Lofgren. Pass.

6358 The Clerk. Ms. Lofgren passes.

6359 Ms. Jackson Lee?

6360 Ms. Jackson Lee. No.

6361 The Clerk. Ms. Jackson Lee votes no.

6362 Ms. Waters?

6363 Ms. Waters. No.

6364 The Clerk. Ms. Waters votes no.

6365 Mr. Meehan?

6366 [No response.]

6367 Mr. Delahunt?

6368 Mr. Delahunt. Pass.

6369 The Clerk. Mr. Delahunt passes.

6370 Mr. Wexler?

6371 Mr. Wexler. Pass.

6372 The Clerk. Mr. Wexler passes.

6373 Ms. Sanchez?

6374 Ms. Sanchez. No.

6375 The Clerk. Ms. Sanchez votes no.

6376 Mr. Cohen?

6377 Mr. Cohen. No.

6378 The Clerk. Mr. Cohen votes no.

6379 Mr. Johnson?

6380 Mr. Johnson. No.

6381 The Clerk. Mr. Johnson votes no.

6382 Mr. Gutierrez?

6383 Mr. Gutierrez. No.

6384 The Clerk. Mr. Gutierrez votes no.

6385 Mr. Sherman?

6386 Mr. Sherman. No.

6387 The Clerk. Mr. Sherman votes no.
6388 Ms. Baldwin?
6389 Ms. Baldwin. No.
6390 The Clerk. Ms. Baldwin votes no.
6391 Mr. Weiner?
6392 Mr. Weiner. Pass.
6393 The Clerk. Mr. Weiner passes.
6394 Mr. Schiff?
6395 [No response.]
6396 Mr. Davis?
6397 Mr. Davis. No.
6398 The Clerk. Mr. Davis votes no.
6399 Ms. Wasserman Schultz?
6400 Ms. Wasserman Schultz. Pass.
6401 The Clerk. Ms. Wasserman Schultz passes.
6402 Mr. Ellison?
6403 [No response.]
6404 Mr. Smith?
6405 Mr. Smith. Pass.
6406 The Clerk. Mr. Smith passes.
6407 Mr. Sensenbrenner?
6408 Mr. Sensenbrenner. No.
6409 The Clerk. Mr. Sensenbrenner votes no.
6410 Mr. Coble?
6411 Mr. Coble. No.

6412 The Clerk. Mr. Coble votes no.
6413 Mr. Gallegly?
6414 Mr. Gallegly. No.
6415 The Clerk. Mr. Gallegly votes no.
6416 Mr. Goodlatte?
6417 Mr. Goodlatte. No.
6418 The Clerk. Mr. Goodlatte votes no.
6419 Mr. Chabot?
6420 Mr. Chabot. No.
6421 The Clerk. Mr. Chabot votes no.
6422 Mr. Lungren?
6423 Mr. Lungren. No.
6424 The Clerk. Mr. Lungren votes no.
6425 Mr. Cannon?
6426 Mr. Cannon. No.
6427 The Clerk. Mr. Cannon votes no.
6428 Mr. Keller?
6429 Mr. Keller. No.
6430 The Clerk. Mr. Keller votes no.
6431 Mr. Issa?
6432 Mr. Issa. Absolutely no.
6433 The Clerk. Mr. Issa votes no.
6434 Mr. Pence?
6435 Mr. Pence. No.
6436 The Clerk. Mr. Pence votes no.

6437 Mr. Forbes?

6438 Mr. Forbes. No.

6439 The Clerk. Mr. Forbes votes no.

6440 Mr. King?

6441 Mr. King. No.

6442 The Clerk. Mr. King votes no.

6443 Mr. Feeney?

6444 Mr. Feeney. No.

6445 The Clerk. Mr. Feeney votes no.

6446 Mr. Franks?

6447 Mr. Franks. No.

6448 The Clerk. Mr. Franks votes no.

6449 Mr. Gohmert?

6450 Mr. Gohmert. No.

6451 The Clerk. Mr. Gohmert votes no.

6452 Mr. Jordan?

6453 Mr. Jordan. No.

6454 The Clerk. Mr. Jordan votes no.

6455 Chairman Conyers. Are there any members that wish to

6456 change their vote?

6457 Ms. Wasserman Schultz?

6458 Ms. Wasserman Schultz. How am I recorded?

6459 The Clerk. Ms. Wasserman Schultz is recorded as

6460 passing.

6461 Ms. Wasserman Schultz. No.

6462 The Clerk. Ms. Wasserman Schultz votes no.

6463 Chairman Conyers. Mr. Weiner?

6464 The Clerk. Mr. Meehan?

6465 Chairman Conyers. Wait. Mr. Weiner?

6466 Mr. Weiner. No.

6467 The Clerk. Mr. Weiner votes no.

6468 Chairman Conyers. Mr. Wexler?

6469 Mr. Wexler. No.

6470 The Clerk. Mr. Wexler votes no.

6471 Chairman Conyers. Are there any other changes of vote
6472 or persons who may not have voted?

6473 Clerk will report.

6474 The Clerk. Mr. Chairman, 33 members voted no, and 3
6475 members passed.

6476 Chairman Conyers. The amendment fails.

6477 The chair recognizes Louie Gohmert for an amendment.

6478 Mr. Gohmert. Thank you, Mr. Chairman. And this is not
6479 one of the category amendments. I think this could be one of
6480 the most important amendments of the day.

6481 Chairman Conyers. The clerk will report the amendment.

6482 Mr. Gohmert. This is amendment number 28.

6483 Mr. Nadler. Chairman, I reserve a point of order.

6484 Chairman Conyers. Mr. Nadler reserves a point of order.

6485 Clerk will report.

6486 The Clerk. "Amendment number 28 to H.R. 1592, offered

6487 by Mr. Gohmert. Page 15, line 10, insert 'religious' before
6488 'expression'—"

6489 [The amendment by Mr. Gohmert follows:]

6490 ***** INSERT *****

6491 Chairman Conyers. I ask unanimous consent that the
6492 amendment be considered as read, and recognize the gentleman
6493 from Texas briefly.

6494 Mr. Gohmert. Mr. Chairman, this has to do with what has
6495 been discussed earlier today. Mr. Davis made an amendment.
6496 Another amendment was made and failed by Mr. Pence. But this
6497 is critical. And I think the answer that Mr. Davis gave
6498 earlier to my question about what is protected religious
6499 expression and what isn't makes it very clear that this is
6500 extremely important.

6501 Because those who say this doesn't pertain to just
6502 speech, it has to be crimes of violence, have apparently
6503 neglected to notice that the crimes of violence can include
6504 crimes of violence against property. That is in the code
6505 that is referenced. It can also include anything that
6506 creates bodily harm.

6507 Anybody that has been a judge or an attorney in assault
6508 or battery cases note bodily harm can be next to anything.
6509 And it is from that that you can start a witch hunt after any
6510 minister, any rabbi, any imam, who has ever quoted from the
6511 Bible or from the—I am sorry, I am having trouble myself—

6512 Chairman Conyers. Committee shall be in order, please.

6513 Mr. Gohmert. This is really critical stuff here.
6514 Because what we are about to push through, and what the
6515 majority has the votes to do, will create this hospital-gown

6516 provision whereby we say, "Oh, it is covered. It is covered
6517 in here." And it is like a hospital gown. You just think
6518 you are covered. You are not covered.

6519 [Laughter.]

6520 So it moves to strike this language unless the evidence
6521 specifically relates to that offense, and if those who didn't
6522 hear the scenario painted earlier to Mr. Davis need to hear
6523 this, because it is critical.

6524 A minister, a rabbi, an imam, can preach a sermon from
6525 their religious book and say that it is wrong according to
6526 their religious principles to have sexual relations outside
6527 of marriage between a man and a woman.

6528 Someone goes from there, commits an act of violence, and
6529 says, "Well, that sermon from my minister, rabbi, imam
6530 induced me to commit this act." And that is not protected
6531 under this provision, not under Mr. Davis's provision.

6532 Under page 15, line 12 and 13, that will be deemed to be
6533 specifically relating to the offense. You can go into bible
6534 studies, anything that preacher, that minister, rabbi or imam
6535 has ever done.

6536 Chairman Conyers. I thank the gentleman for his
6537 thorough—

6538 Mr. Nadler. Mr. Chairman?

6539 Chairman Conyers. Does the gentleman insist on his
6540 point of order?

6541 Mr. Nadler. I withdraw the point of order.

6542 Chairman Conyers. All those in favor of the Gohmert
6543 amendment, indicate by saying, "Aye."

6544 All those opposed to the Gohmert amendment, indicate by
6545 saying, "No."

6546 Mr. Gohmert. I would ask for a recorded vote.

6547 Chairman Conyers. The clerk will call the roll.

6548 The Clerk. Mr. Conyers?

6549 Chairman Conyers. No.

6550 The Clerk. Mr. Conyers votes no.

6551 Mr. Berman?

6552 Mr. Berman. No.

6553 The Clerk. Mr. Berman votes no.

6554 Mr. Boucher?

6555 [No response.]

6556 Mr. Nadler?

6557 Mr. Nadler. No.

6558 The Clerk. Mr. Nadler votes no.

6559 Mr. Scott?

6560 Mr. Scott. No.

6561 The Clerk. Mr. Scott votes no.

6562 Mr. Watt?

6563 Mr. Watt. No.

6564 The Clerk. Mr. Watt votes no.

6565 Ms. Lofgren?

6566 Ms. Lofgren. No.

6567 The Clerk. Ms. Lofgren votes no.

6568 Ms. Jackson Lee?

6569 Ms. Jackson Lee. No.

6570 The Clerk. Ms. Jackson Lee votes no.

6571 Ms. Waters?

6572 [No response.]

6573 Mr. Meehan?

6574 [No response.]

6575 Mr. Delahunt?

6576 Mr. Delahunt. No.

6577 The Clerk. Mr. Delahunt votes no.

6578 Mr. Wexler?

6579 [No response.]

6580 Ms. Sanchez?

6581 Ms. Sanchez. No.

6582 The Clerk. Ms. Sanchez votes no.

6583 Mr. Cohen?

6584 Mr. Cohen. No.

6585 The Clerk. Mr. Cohen votes no.

6586 Mr. Johnson?

6587 Mr. Johnson. No.

6588 The Clerk. Mr. Johnson votes no.

6589 Mr. Gutierrez?

6590 Mr. Gutierrez. No.

6591 The Clerk. Mr. Gutierrez votes no.
6592 Mr. Sherman?
6593 Mr. Sherman. No.
6594 The Clerk. Mr. Sherman votes no.
6595 Ms. Baldwin?
6596 Ms. Baldwin. No.
6597 The Clerk. Ms. Baldwin votes no.
6598 Mr. Weiner?
6599 Mr. Weiner. No.
6600 The Clerk. Mr. Weiner votes no.
6601 Mr. Schiff?
6602 Mr. Schiff. No.
6603 The Clerk. Mr. Schiff votes no.
6604 Mr. Davis?
6605 Mr. Davis. No.
6606 The Clerk. Mr. Davis votes no.
6607 Ms. Wasserman Schultz?
6608 Ms. Wasserman Schultz. No.
6609 The Clerk. Ms. Wasserman Schultz votes no.
6610 Mr. Ellison?
6611 [No response.]
6612 Mr. Smith?
6613 Mr. Smith. Aye.
6614 The Clerk. Mr. Smith votes aye.
6615 Mr. Sensenbrenner?

6616 Mr. Sensenbrenner. Aye.

6617 The Clerk. Mr. Sensenbrenner votes aye.

6618 Mr. Coble?

6619 Mr. Coble. Aye.

6620 The Clerk. Mr. Coble votes aye.

6621 Mr. Gallegly?

6622 Mr. Gallegly. Aye.

6623 The Clerk. Mr. Gallegly votes aye.

6624 Mr. Goodlatte?

6625 Mr. Goodlatte. Aye.

6626 The Clerk. Mr. Goodlatte votes aye.

6627 Mr. Chabot?

6628 Mr. Chabot. Aye.

6629 The Clerk. Mr. Chabot votes aye.

6630 Mr. Lungren?

6631 Mr. Lungren. Aye.

6632 The Clerk. Mr. Lungren votes aye.

6633 Mr. Cannon?

6634 Mr. Cannon. Aye.

6635 The Clerk. Mr. Cannon votes aye.

6636 Mr. Keller?

6637 Mr. Keller. Aye.

6638 The Clerk. Mr. Keller votes aye.

6639 Mr. Issa?

6640 Mr. Issa. Aye.

6641 The Clerk. Mr. Issa votes aye.
6642 Mr. Pence?
6643 Mr. Pence. Aye.
6644 The Clerk. Mr. Pence votes aye.
6645 Mr. Forbes?
6646 Mr. Forbes. Aye.
6647 The Clerk. Mr. Forbes votes aye.
6648 Mr. King?
6649 Mr. King. Aye.
6650 The Clerk. Mr. King votes aye.
6651 Mr. Feeney?
6652 Mr. Feeney. Aye.
6653 The Clerk. Mr. Feeney votes aye.
6654 Mr. Franks?
6655 [No response.]
6656 Mr. Gohmert?
6657 Mr. Gohmert. Aye.
6658 The Clerk. Mr. Gohmert votes aye.
6659 Mr. Jordan?
6660 Mr. Jordan. Yes.
6661 The Clerk. Mr. Jordan votes yes.
6662 Chairman Conyers. Anyone not voting?
6663 Ms. Waters?
6664 Ms. Waters. Waters, no.
6665 The Clerk. Ms. Waters votes no.

6666 Chairman Conyers. Mr. Wexler?

6667 Mr. Wexler. No.

6668 The Clerk. Mr. Wexler votes no.

6669 Chairman Conyers. Any others?

6670 Clerk will report.

6671 The Clerk. Mr. Chairman, 20 members voted aye—I am

6672 sorry. Mr. Chairman, 16 members voted aye, and 20 members

6673 voted nay.

6674 Chairman Conyers. Are there any further amendments?

6675 Well, no, I saw hands raised.

6676 Mr. Forbes from Virginia?

6677 Mr. Forbes. Mr. Chairman, I have amendment number 51 at

6678 the desk.

6679 Chairman Conyers. The clerk will report the amendment.

6680 The Clerk. "Amendment to H.R. 1592, offered by Mr.

6681 Forbes. Page 12, line 1, after 'identity' insert 'status as

6682 a child who has not attained the age of 18 years.'"

6683 [The amendment by Mr. Forbes follows:]

6684 ***** INSERT *****

6685 Mr. Forbes. Mr. Chairman, this amendment adds the
6686 category children to the protected categories of groups.
6687 Hate crimes against children, that is, acts of violence
6688 perpetrated against them because of their status as children
6689 occur in far larger numbers than any of the hate crimes
6690 reported by the FBI.

6691 Our country has been shocked by a series of brutal
6692 attacks against children. In 2005, we were horrified by the
6693 kidnapping and murders of the members of the Groene family by
6694 a convicted sex offender.

6695 Two well-publicized tragedies that same year in Florida,
6696 in which 9-year-old Jessica Lunsford and 13-year-old Sarah
6697 Lundy were murdered by convicted sex offenders further
6698 underscore the need for quick congressional action to address
6699 the danger posed by individuals who prey on children.

6700 Mr. Chairman, there are a number of other statistics,
6701 but since we are limiting debate on these bills, I will
6702 simply request that this amendment be adopted.

6703 Chairman Conyers. The question occurs on the amendment
6704 from the gentleman from Virginia.

6705 All in favor of the amendment, say, "Aye."

6706 All opposed to the amendment, say, "No."

6707 The noes have it, and the amendment fails.

6708 Mr. Forbes. Request recorded—

6709 Chairman Conyers. Ladies and gentlemen of the

6710 committee—

6711 Mr. Forbes. Recorded vote, Mr. Chairman. I requested a
6712 recorded vote.

6713 Chairman Conyers. The gentleman requests a recorded
6714 vote, and the clerk will call the roll.

6715 The Clerk. Mr. Conyers?

6716 Chairman Conyers. No.

6717 The Clerk. Mr. Conyers votes no.

6718 Mr. Berman?

6719 Mr. Berman. No.

6720 The Clerk. Mr. Berman votes no.

6721 Mr. Boucher?

6722 [No response.]

6723 Mr. Nadler?

6724 Mr. Nadler. No.

6725 The Clerk. Mr. Nadler votes no.

6726 Mr. Scott?

6727 Mr. Scott. No.

6728 The Clerk. Mr. Scott votes no.

6729 Mr. Watt?

6730 Mr. Watt. No.

6731 The Clerk. Mr. Watt votes no.

6732 Ms. Lofgren?

6733 Ms. Lofgren. No.

6734 The Clerk. Ms. Lofgren votes no.

6735 Ms. Jackson Lee?

6736 Ms. Jackson Lee. No.

6737 The Clerk. Ms. Jackson Lee votes no.

6738 Ms. Waters?

6739 Ms. Waters. No.

6740 The Clerk. Ms. Waters votes no.

6741 Mr. Meehan?

6742 [No response.]

6743 Mr. Delahunt?

6744 Mr. Delahunt. No.

6745 The Clerk. Mr. Delahunt votes no.

6746 Mr. Wexler?

6747 Mr. Wexler. No.

6748 The Clerk. Mr. Wexler votes no.

6749 Ms. Sanchez?

6750 Ms. Sanchez. No.

6751 The Clerk. Ms. Sanchez votes no.

6752 Mr. Cohen?

6753 Mr. Cohen. No.

6754 The Clerk. Mr. Cohen votes no.

6755 Mr. Johnson?

6756 Mr. Johnson. No.

6757 The Clerk. Mr. Johnson votes no.

6758 Mr. Gutierrez?

6759 Mr. Gutierrez. No.

6760 The Clerk. Mr. Gutierrez votes no.
6761 Mr. Sherman?
6762 Mr. Sherman. No.
6763 The Clerk. Mr. Sherman votes no.
6764 Ms. Baldwin?
6765 Ms. Baldwin. No.
6766 The Clerk. Ms. Baldwin votes no.
6767 Mr. Weiner?
6768 Mr. Weiner. No.
6769 The Clerk. Mr. Weiner votes no.
6770 Mr. Schiff?
6771 Mr. Schiff. No.
6772 The Clerk. Mr. Schiff votes no.
6773 Mr. Davis?
6774 Mr. Davis. No.
6775 The Clerk. Mr. Davis votes no.
6776 Ms. Wasserman Schultz?
6777 Ms. Wasserman Schultz. No.
6778 The Clerk. Ms. Wasserman Schultz votes no.
6779 Mr. Ellison?
6780 Mr. Ellison. No.
6781 The Clerk. Mr. Ellison votes no.
6782 Mr. Smith?
6783 Mr. Smith. Aye.
6784 The Clerk. Mr. Smith votes aye.

6785 Mr. Sensenbrenner?
6786 Mr. Sensenbrenner. Aye.
6787 The Clerk. Mr. Sensenbrenner votes aye.
6788 Mr. Coble?
6789 Mr. Coble. Aye.
6790 The Clerk. Mr. Coble votes aye.
6791 Mr. Gallegly?
6792 Mr. Gallegly. Aye.
6793 The Clerk. Mr. Gallegly votes aye.
6794 Mr. Goodlatte?
6795 Mr. Goodlatte. Aye.
6796 The Clerk. Mr. Goodlatte votes aye.
6797 Mr. Chabot?
6798 Mr. Chabot. Aye.
6799 The Clerk. Mr. Chabot votes aye.
6800 Mr. Lungren?
6801 Mr. Lungren. Aye.
6802 The Clerk. Mr. Lungren votes aye.
6803 Mr. Cannon?
6804 Mr. Cannon. Aye.
6805 The Clerk. Mr. Cannon votes aye.
6806 Mr. Keller?
6807 Mr. Keller. Aye.
6808 The Clerk. Mr. Cannon votes aye.
6809 Mr. Keller?

6810 Mr. Keller. Aye.

6811 The Clerk. Mr. Keller votes aye.

6812 Mr. Issa?

6813 Mr. Issa. Aye.

6814 The Clerk. Mr. Issa votes aye.

6815 Mr. Pence?

6816 Mr. Pence. Aye.

6817 The Clerk. Mr. Pence votes aye.

6818 Mr. Forbes?

6819 Mr. Forbes. Aye.

6820 The Clerk. Mr. Forbes votes aye.

6821 Mr. King?

6822 [No response.]

6823 Mr. Feeney?

6824 Mr. Feeney. Aye.

6825 The Clerk. Mr. Feeney votes aye.

6826 Mr. Franks?

6827 [No response.]

6828 Mr. Gohmert?

6829 Mr. Gohmert. Aye.

6830 The Clerk. Mr. Gohmert votes aye.

6831 Mr. Jordan?

6832 Mr. Jordan. Yes.

6833 The Clerk. Mr. Jordan votes yes.

6834 Chairman Conyers. Are there members who have not cast

6835 their vote?

6836 Yes, Steve King?

6837 Mr. King. Aye.

6838 The Clerk. Mr. King votes aye.

6839 Chairman Conyers. The clerk will report.

6840 The Clerk. Mr. Chairman, 16 members voted aye, 21

6841 members voted nay.

6842 Chairman Conyers. The amendment is not agreed to.

6843 And I would like to announce, pursuant to the agreement
6844 between myself and the ranking members, that we have another
6845 10 minutes approximately. We will go until we finish the
6846 four amendments that have been cited to us, and then come
6847 back after the vote to conclude if we have not finished by
6848 then.

6849 I would appreciate the cooperation of all the committee,
6850 and I have received assurances that we would all come back.
6851 And I thank you in advance for your consideration.

6852 Are there other amendments?

6853 Steve King?

6854 Mr. King. Thank you, Mr. Chairman. I have an amendment
6855 at the desk, designated King number 2.

6856 Chairman Conyers. If you are not going to ask for a
6857 roll-call vote, I will ask the clerk to report the amendment
6858 forthwith.

6859 Mr. King. I would be real happy if you would accept the

6860 amendment, and I would not, Mr. Chairman.

6861 [Laughter.]

6862 Mr. Nadler. Mr. Chairman, I reserve a point of order.

6863 Chairman Conyers. Reservation of a point of order is

6864 made by Mr. Nadler.

6865 The Clerk. "Amendment to H.R. 1592—"

6866 [The amendment by Mr. King follows:]

6867 ***** INSERT *****

6868 Chairman Conyers. Without objection, the amendment is
6869 considered as read, and I yield to the gentleman for his
6870 explanation.

6871 Mr. King. Thank you, Mr. Chairman.

6872 First, I want to state that we are here to perfect this
6873 legislation, this process of this committee, we process in.
6874 We have members that are very committed to doing the best we
6875 can to improve and perfect this legislation, and every piece
6876 that I offer I think does that. And I have significant
6877 frustration with what this bill does to this society for the
6878 long term.

6879 My amendment is a very simple amendment that just
6880 corrects a flaw in the definition that is in the bill. And
6881 what it does is, it goes into the bill where the term gender
6882 is used, and replaces it with the word sex.

6883 Because, after all, sex is a definable term. Gender is
6884 not a defined term, in fact, it is not a definable term. And
6885 it opens up this bill to a lot of ambiguity, a lot of
6886 litigation, a lot of court decisions.

6887 And if you want to look back through this history, as I
6888 referenced a little bit earlier this afternoon, I will say
6889 that the Civil Rights Act reads, prohibits discrimination
6890 based on race, religion, sex, and national origin.

6891 And I notice when I go into the bill on page 10, line-
6892 whatever it might be—about 22 or so, that is not the correct

6893 line. But at any rate, on page 10, it substitutes the word
6894 sex for gender, and then it goes on with sexual orientation,
6895 gender identity.

6896 We have discussed sexual orientation, gender identity.
6897 We have not discussed the distinction between the word sex
6898 and the word gender. Gender is what you think you are. Sex
6899 is what any physician can tell you are.

6900 There is no definition in Black's Law for gender. There
6901 is no definition in this bill for gender. There is no
6902 definition that any train of linked legislation that I can
6903 find that defines gender.

6904 The word gender is an ambiguity. It lets a person
6905 assign themselves whatever they want to be, and the word sex
6906 says, this can be independently verified. And so, the
6907 definition for the word sex is in Black's Law, and it says:
6908 the sum of the peculiarities of structure and function that
6909 distinguish a male from a female organism. That is actually
6910 any species.

6911 There is another definition that is a verb, but I will
6912 spare the chairman the definition of that, and stick with the
6913 Black's Law definition here, and point out that even if we go
6914 into the definition of gender in a series of dictionaries—
6915 American Heritage, for example—

6916 Chairman Conyers. Well, the gentleman has thoroughly
6917 explained his amendment.

6918 Mr. King. I was hoping that I had made my point
6919 emphatically enough, Mr. Chairman, that you might be able to
6920 accept this simple corrective amendment, and we could move on
6921 without having a recorded vote.

6922 Chairman Conyers. Well, I first want to ask if the
6923 gentleman from New York insists on his point of order?

6924 Mr. Nadler. I do not insist. I withdraw the point of
6925 order.

6926 Chairman Conyers. The question, then, occurs on the
6927 amendment by Steve King.

6928 All those in favor, say, "Aye."

6929 All those opposed, say, "No."

6930 The noes appear to have it. The noes have it. The
6931 amendment is not agreed to.

6932 Mr. King. Mr. Chairman, I request a recorded vote.

6933 Chairman Conyers. A recorded vote is requested. The
6934 clerk will call the roll.

6935 The Clerk. Mr. Conyers?

6936 Chairman Conyers. No.

6937 The Clerk. Mr. Conyers votes no.

6938 Mr. Berman?

6939 Mr. Berman. No.

6940 The Clerk. Mr. Berman votes no.

6941 Mr. Boucher?

6942 [No response.]

6943 Mr. Nadler?

6944 Mr. Nadler. No.

6945 The Clerk. Mr. Nadler votes no.

6946 Mr. Scott?

6947 Mr. Scott. No.

6948 The Clerk. Mr. Scott votes no.

6949 Mr. Watt?

6950 [No response.]

6951 Ms. Lofgren?

6952 Ms. Lofgren. No.

6953 The Clerk. Ms. Lofgren votes no.

6954 Ms. Jackson Lee?

6955 [No response.]

6956 Ms. Waters?

6957 [No response.]

6958 Mr. Meehan?

6959 [No response.]

6960 Mr. Delahunt?

6961 [No response.]

6962 Mr. Wexler?

6963 Mr. Delahunt. No.

6964 Mr. Wexler. No.

6965 The Clerk. Mr. Delahunt votes no. Mr. Wexler votes no.

6966 Ms. Sanchez?

6967 Ms. Sanchez. No.

6968 The Clerk. Ms. Sanchez votes no.
6969 Mr. Cohen?
6970 Mr. Cohen. No.
6971 The Clerk. Mr. Cohen votes no.
6972 Mr. Johnson?
6973 Mr. Johnson. No.
6974 The Clerk. Mr. Johnson votes no.
6975 Mr. Gutierrez?
6976 Mr. Gutierrez. No.
6977 The Clerk. Gutierrez votes no.
6978 Mr. Sherman?
6979 Mr. Sherman. No.
6980 The Clerk. Mr. Sherman votes no.
6981 Ms. Baldwin?
6982 Ms. Baldwin. No.
6983 The Clerk. Ms. Baldwin votes no.
6984 Mr. Weiner?
6985 Mr. Weiner. No.
6986 The Clerk. Mr. Weiner votes no.
6987 Mr. Schiff?
6988 Mr. Schiff. No.
6989 The Clerk. Mr. Schiff votes no.
6990 Mr. Davis?
6991 Mr. Davis. Mr. Davis votes no.
6992 Ms. Wasserman Schultz?

6993 Ms. Wasserman Schultz. No.

6994 The Clerk. Ms. Wasserman Schultz votes no.

6995 Mr. Ellison?

6996 Mr. Ellison. No.

6997 The Clerk. Mr. Ellison votes no.

6998 Mr. Smith?

6999 Mr. Smith. Aye.

7000 The Clerk. Mr. Smith votes aye.

7001 Mr. Sensenbrenner?

7002 Mr. Sensenbrenner. Aye.

7003 The Clerk. Mr. Sensenbrenner votes aye.

7004 Mr. Coble?

7005 [No response.]

7006 Mr. Gallegly?

7007 Mr. Gallegly. Aye.

7008 The Clerk. Mr. Gallegly votes aye.

7009 Mr. Goodlatte?

7010 Mr. Goodlatte. Aye.

7011 The Clerk. Mr. Goodlatte votes aye.

7012 Mr. Chabot?

7013 Mr. Chabot. Aye.

7014 The Clerk. Mr. Chabot votes aye.

7015 Mr. Lungren?

7016 Mr. Lungren. Aye.

7017 The Clerk. Mr. Lungren votes aye.

7018 Mr. Cannon?
7019 Mr. Cannon. Aye.
7020 The Clerk. Mr. Cannon votes aye.
7021 Mr. Keller?
7022 Mr. Keller. Aye.
7023 The Clerk. Mr. Keller votes aye.
7024 Mr. Issa?
7025 Mr. Issa. Aye.
7026 The Clerk. Mr. Issa votes aye.
7027 Mr. Pence?
7028 Mr. Pence. Aye.
7029 The Clerk. Mr. Pence votes aye.
7030 Mr. Forbes?
7031 Mr. Forbes. Aye.
7032 The Clerk. Mr. Forbes votes aye.
7033 Mr. King?
7034 Mr. King. Aye.
7035 The Clerk. Mr. King votes aye.
7036 Mr. Feeney?
7037 [No response.]
7038 Mr. Franks?
7039 Mr. Franks. Aye.
7040 The Clerk. Mr. Franks votes aye.
7041 Mr. Gohmert?
7042 Mr. Gohmert. Aye.

7043 The Clerk. Mr. Gohmert votes aye.

7044 Mr. Jordan?

7045 Mr. Jordan. Yes.

7046 The Clerk. Mr. Jordan votes yes.

7047 Chairman Conyers. Are there members who have not voted?

7048 Mr. Watt?

7049 Mr. Watt. No.

7050 The Clerk. Mr. Watt votes no.

7051 Ms. Jackson Lee? Sheila Jackson Lee?

7052 Ms. Jackson Lee. No.

7053 The Clerk. Ms. Jackson Lee votes no.

7054 Chairman Conyers. Any others who have not voted?

7055 The clerk will report.

7056 The Clerk. Mr. Chairman, 15 members voted aye, 20

7057 members voted nay.

7058 Chairman Conyers. The amendment fails.

7059 Are there any other amendments?

7060 Mr. King. Mr. Chairman?

7061 Chairman Conyers. Mr. King?

7062 Mr. King. Mr. Chairman, I have an amendment at the desk

7063 designated King 3.

7064 Chairman Conyers. Clerk will report the amendment.

7065 The Clerk. "Amendment to H.R. 1592 offered by Mr. King

7066 of Iowa. Page 2, line 4 through 5, strike 'Local Law

7067 Enforcement Hate Crimes Prevention Act of 2007' and replace

7068 with-

7069 [The amendment by Mr. King follows:]

7070 ***** INSERT *****

7071 Chairman Conyers. The chair asks unanimous consent that
7072 the amendment be considered as read. And the gentleman,
7073 Steve King, is recognized.

7074 Mr. King. Thank you, Mr. Chairman.

7075 My amendment amends the title of the bill, and, you
7076 know, as I read the bill and it says, "hate crimes," it
7077 occurs to me that you are really trying to identify what goes
7078 on in a person's mind, and in the end, the jury would have to
7079 decide what was that person thinking when they committed an
7080 act that is obviously an act of hate against someone, and
7081 what were the definitions they were using in their own head?

7082 I was actually born in 1949. That was the year that
7083 George Orwell published the book "1984," and it occurred to
7084 me that, as I read that—when I got a little older, of course—
7085 that Orwell had written extensively about thought crimes, and
7086 so I think it is important for us to consider that this bill
7087 really deals with thought crimes rather than hate crimes so
7088 that the definition of what goes on in a person's mind has to
7089 be the criteria for which we would give somebody an extended
7090 penalty in the penitentiary.

7091 And so I would ask the members of this committee to
7092 consider a couple of excerpts from the book "1984" by George
7093 Orwell, written in 1949, that I believe predicted this day
7094 here in this Judiciary Committee in the United States
7095 Congress, and it goes like this, "We are not interested in

7096 those stupid crimes that you have committed. The party is
7097 not interested in any overt act. The thought is all we care
7098 about. We do not merely destroy our enemies. We change
7099 them. Do you understand what I mean by that?"

7100 And Orwell goes on, "Crime think. The definition of
7101 crime think is to even consider any thought not in line with
7102 the principles of Engsoc," which is shorthand for English
7103 socialism. "Doubting any of the principles of Engsoc, all
7104 crimes begin with a thought."

7105 So, if you control thought, you control crime. Thought
7106 crime is death. Thought crime does not entail death.
7107 Thought crime is death. The essential crime that contains
7108 all others in itself.

7109 George Orwell in the book "1984," written in 1949, and
7110 here we are—

7111 Chairman Conyers. Steve King, you have thoroughly—

7112 Mr. King. Mr. Chairman, I still have some pent-up
7113 frustration in me, and I would appreciate if I could just
7114 conclude.

7115 Chairman Conyers. All right. Please do.

7116 Mr. King. Thank you, Mr. Chairman.

7117 These years, 57-plus years, this society has been
7118 building to this point, and now we are seeking to divine what
7119 goes on in a person's mind and punish them for what they are
7120 thinking. Orwell got it more precise than the title of this

7121 bill got it. It is thought. It is not hate. It is wrong to
7122 try to punish that.

7123 You will recall that we have had this exchange and
7124 discussion, but at a point on the floor of the United States
7125 Congress, I was labeled a racist there for using the term
7126 "cultural continuity." That issue was raised by the
7127 gentleman from New Jersey who is today a United States
7128 Senator, and that issue was taken to the Hispanic Caucus
7129 where they brought up the issue and labeled me a racist on
7130 the steps of the office building, of the Cannon Building, and
7131 the press picked that up and took that across the country
7132 because I used the term "cultural continuity," a very
7133 inclusive term, a very American term, something that has
7134 today actually been passed out of this Judiciary Committee, I
7135 believe, with your support.

7136 But how can we presume to punish people for their crimes
7137 and know what goes on in their mind if we have people in the
7138 United States Congress that would label something like the
7139 term "cultural continuity" a hate crime? I think this is a
7140 colossal error to go down this path, and we ought to be
7141 punishing acts, not thoughts, but if we are going to do so,
7142 we should call it thought crime, rather than call it hate
7143 crime.

7144 With that, Mr. Chairman, I conclude my remarks and yield
7145 back the balance of my time.

7146 Chairman Conyers. Thank you, Steve King.

7147 The vote recurs on the King amendment to change the
7148 title of the bill.

7149 All those in favor, say, "Aye."

7150 All those opposed, say, "No."

7151 The noes have it, and the amendment fails.

7152 Mr. King. Mr. Chairman, I would ask to record a vote.

7153 Chairman Conyers. Oh, fine. All right. A recorded
7154 vote is requested.

7155 The Clerk. Mr. Conyers?

7156 Chairman Conyers. No.

7157 The Clerk. Mr. Conyers votes no.

7158 Mr. Berman?

7159 Mr. Berman. No.

7160 The Clerk. Mr. Berman votes no.

7161 Mr. Boucher?

7162 [No response.]

7163 Mr. Nadler?

7164 Mr. Nadler. No.

7165 The Clerk. Mr. Nadler votes no.

7166 Mr. Scott?

7167 Mr. Scott. No.

7168 The Clerk. Mr. Scott votes no.

7169 Mr. Watt?

7170 Mr. Watt. No.

7171 The Clerk. Mr. Watt votes no.
7172 Ms. Lofgren?
7173 Ms. Lofgren. No.
7174 The Clerk. Ms. Lofgren votes no.
7175 Ms. Jackson Lee?
7176 Ms. Jackson Lee. No.
7177 The Clerk. Ms. Jackson Lee votes no.
7178 Ms. Waters?
7179 [No response.]
7180 Mr. Meehan?
7181 [No response.]
7182 Mr. Delahunt?
7183 [No response.]
7184 Mr. Wexler?
7185 Mr. Wexler. No.
7186 The Clerk. Mr. Wexler votes no.
7187 Ms. Sanchez?
7188 Ms. Sanchez. No.
7189 The Clerk. Ms. Sanchez votes no.
7190 Mr. Cohen?
7191 Mr. Cohen. No.
7192 The Clerk. Mr. Cohen votes no.
7193 Mr. Johnson?
7194 Mr. Johnson. No.
7195 The Clerk. Mr. Johnson votes no.

7196 Mr. Gutierrez?
7197 Mr. Gutierrez. No.
7198 The Clerk. Mr. Gutierrez votes no.
7199 Mr. Sherman?
7200 Mr. Sherman. No.
7201 The Clerk. Mr. Sherman votes no.
7202 Ms. Baldwin?
7203 Ms. Baldwin. No.
7204 The Clerk. Ms. Baldwin votes no.
7205 Mr. Weiner?
7206 Mr. Weiner. No.
7207 The Clerk. Mr. Weiner votes no.
7208 Mr. Schiff?
7209 Mr. Schiff. No.
7210 The Clerk. Mr. Schiff votes no.
7211 Mr. Davis?
7212 Mr. Davis. No.
7213 The Clerk. Mr. Davis votes no.
7214 Ms. Wasserman Schultz?
7215 Ms. Wasserman Schultz. No.
7216 The Clerk. Ms. Wasserman Schultz votes no.
7217 Mr. Ellison?
7218 Mr. Ellison. No.
7219 The Clerk. Mr. Ellison votes no.
7220 Mr. Smith?

7221 Mr. Smith. Aye.

7222 The Clerk. Mr. Smith votes aye.

7223 Mr. Sensenbrenner?

7224 Mr. Sensenbrenner. Aye.

7225 The Clerk. Mr. Sensenbrenner votes aye.

7226 Mr. Coble?

7227 [No response.]

7228 Mr. Gallegly?

7229 Mr. Gallegly. Aye.

7230 The Clerk. Mr. Gallegly votes aye.

7231 Mr. Goodlatte?

7232 Mr. Goodlatte. Aye.

7233 The Clerk. Mr. Goodlatte votes aye.

7234 Mr. Chabot?

7235 Mr. Chabot. Aye.

7236 The Clerk. Mr. Chabot votes aye.

7237 Mr. Lungren?

7238 [No response.]

7239 Mr. Cannon?

7240 Mr. Cannon. Aye.

7241 The Clerk. Mr. Cannon votes aye.

7242 Mr. Keller?

7243 Mr. Keller. Aye.

7244 The Clerk. Mr. Keller votes aye.

7245 Mr. Issa?

7246 [No response.]

7247 Mr. Pence?

7248 Mr. Pence. Aye.

7249 The Clerk. Mr. Pence votes aye.

7250 Mr. Forbes?

7251 Mr. Forbes. Aye.

7252 The Clerk. Mr. Forbes votes aye.

7253 Mr. King?

7254 Mr. King. Aye.

7255 The Clerk. Mr. King votes aye.

7256 Mr. Feeney?

7257 [No response.]

7258 Mr. Franks?

7259 Mr. Franks. Aye.

7260 The Clerk. Mr. Franks votes aye.

7261 Mr. Gohmert?

7262 Mr. Gohmert. Aye.

7263 The Clerk. Mr. Gohmert votes aye.

7264 Mr. Jordan?

7265 Mr. Jordan. Yes.

7266 The Clerk. Mr. Jordan votes yes.

7267 Chairman Conyers. Are there any in the chamber who have

7268 not voted?

7269 Ms. Waters?

7270 Ms. Waters. No.

7271 The Clerk. Ms. Waters votes no.

7272 Chairman Conyers. Mr. Delahunt?

7273 The Clerk. He is not recorded.

7274 Mr. Delahunt. No.

7275 The Clerk. Mr. Delahunt votes no.

7276 Chairman Conyers. The clerk will report.

7277 The Clerk. Mr. Chairman, 13 members voted aye, 21
7278 members voted nay.

7279 Chairman Conyers. Ladies and gentlemen, thanks to the
7280 cooperation of the ranking member and the members on this
7281 side, we are down to two amendments, and they are both Mr.
7282 Gohmert's, and so I plead with you. We have all agreed to
7283 come back immediately after this vote and dispose of those
7284 two amendments.

7285 Mr. Gohmert. I could probably do them now.

7286 Chairman Conyers. No, I am afraid to take that chance.

7287 Mr. Gohmert. It will be quick.

7288 Chairman Conyers. All right. I will recognize the
7289 gentleman.

7290 Mr. Gohmert. I have an amendment at the desk. This is
7291 number 49, and I would request unanimous consent—

7292 Chairman Conyers. The clerk will report the amendment.

7293 The Clerk. "Amendment to H.R. 1592 offered by Mr.
7294 Gohmert. Page 12, line 1, after 'identity' insert ', status
7295 as a law enforcement officer.'"

7296 [The amendment by Mr. Gohmert follows:]

7297 ***** INSERT *****

7298 Mr. Gohmert. Law enforcement ought to be a protected
7299 class.

7300 And I yield back the remainder of my time.

7301 Chairman Conyers. I thank the gentleman. I commend him
7302 for his brevity.

7303 All those in favor of the Gohmert amendment, indicate by
7304 saying, "Aye."

7305 All those who are opposed to the Gohmert amendment,
7306 indicate by saying, "No."

7307 In the opinion of the chair, the noes have it, and the
7308 amendment is unsuccessful.

7309 And we recognize Mr. Gohmert for the final amendment of
7310 the evening.

7311 Mr. Gohmert. All right. This is number 39.

7312 Chairman Conyers. The clerk will report.

7313 The Clerk. "Amendment to H.R. 1592 offered by Mr.
7314 Gohmert—"

7315 [The amendment by Mr. Gohmert follows:]

7316 ***** INSERT *****

7317 Chairman Conyers. Unanimous consent that the amendment
7318 be considered as read.

7319 Mr. Gohmert. I will give you the shorthand version.
7320 Everybody has said how heinous the hate crimes are. This is
7321 a chance for you to put your money where your mouth is. This
7322 provides for the death penalty for hate crimes.

7323 So, with that, I would yield back the balance of my
7324 time.

7325 Chairman Conyers. The vote occurs on the final Gohmert
7326 amendment.

7327 All in favor, say, "Aye."

7328 All opposed, say, "No."

7329 The noes have it.

7330 A reporting quorum being present, the question is on
7331 reporting the bill favorably to the House.

7332 All those in favor, signify by saying, "Aye."

7333 All those opposed, signify by saying, "No."

7334 The ayes have it.

7335 Mr. Smith. Mr. Chair, I would like a recorded vote on
7336 that.

7337 Chairman Conyers. A recorded vote is requested by the
7338 ranking member. The clerk will call the roll.

7339 The Clerk. Mr. Conyers?

7340 Chairman Conyers. Aye.

7341 The Clerk. Mr. Conyers votes aye.

7342 Mr. Berman?

7343 Mr. Berman. Aye.

7344 The Clerk. Mr. Berman votes aye.

7345 Mr. Boucher?

7346 [No response.]

7347 Mr. Nadler?

7348 Mr. Nadler. Aye.

7349 The Clerk. Mr. Nadler votes aye.

7350 Mr. Scott?

7351 Mr. Scott. Aye.

7352 The Clerk. Mr. Scott votes aye.

7353 Mr. Watt?

7354 Mr. Watt. Aye.

7355 The Clerk. Mr. Watt votes aye.

7356 Ms. Lofgren?

7357 Ms. Lofgren. Aye.

7358 The Clerk. Ms. Lofgren votes aye.

7359 Ms. Jackson Lee?

7360 Ms. Jackson Lee. Aye.

7361 The Clerk. Ms. Jackson Lee votes aye.

7362 Ms. Waters?

7363 Ms. Waters. Aye.

7364 The Clerk. Ms. Waters votes aye.

7365 Mr. Meehan?

7366 [No response.]

7367 Mr. Delahunt?
7368 Mr. Delahunt. Aye.
7369 The Clerk. Mr. Delahunt votes aye.
7370 Mr. Wexler?
7371 Mr. Wexler. Aye.
7372 The Clerk. Mr. Wexler votes aye.
7373 Ms. Sanchez?
7374 Ms. Sanchez. Aye.
7375 The Clerk. Ms. Sanchez votes aye.
7376 Mr. Cohen?
7377 Mr. Cohen. Aye.
7378 The Clerk. Mr. Cohen votes aye.
7379 Mr. Johnson?
7380 Mr. Johnson. Aye.
7381 The Clerk. Mr. Johnson votes aye.
7382 Mr. Gutierrez?
7383 Mr. Gutierrez. Aye.
7384 The Clerk. Mr. Gutierrez votes aye.
7385 Mr. Sherman?
7386 Mr. Sherman. Aye.
7387 The Clerk. Mr. Sherman votes aye.
7388 Ms. Baldwin?
7389 Ms. Baldwin. Aye.
7390 The Clerk. Ms. Baldwin votes aye.
7391 Mr. Weiner?

7392 Mr. Weiner. Aye.

7393 The Clerk. Mr. Weiner votes aye.

7394 Mr. Schiff?

7395 Mr. Schiff. Aye.

7396 The Clerk. Mr. Schiff votes aye.

7397 Mr. Davis?

7398 Mr. Davis. Aye.

7399 The Clerk. Mr. Davis votes aye.

7400 Ms. Wasserman Schultz?

7401 [No response.]

7402 Mr. Ellison?

7403 Mr. Ellison. Aye.

7404 The Clerk. Mr. Ellison votes aye.

7405 Mr. Smith?

7406 Mr. Smith. No.

7407 The Clerk. Mr. Smith votes no.

7408 Mr. Sensenbrenner?

7409 Mr. Sensenbrenner. No.

7410 The Clerk. Mr. Sensenbrenner votes no.

7411 Mr. Coble?

7412 [No response.]

7413 Mr. Gallegly?

7414 Mr. Gallegly. No.

7415 The Clerk. Mr. Gallegly votes no.

7416 Mr. Goodlatte?

7417 Mr. Goodlatte. No.

7418 The Clerk. Mr. Goodlatte votes no.

7419 Mr. Chabot?

7420 Mr. Chabot. No.

7421 The Clerk. Mr. Chabot votes no.

7422 Mr. Lungren?

7423 Mr. Lungren. No.

7424 The Clerk. Mr. Lungren votes no.

7425 Mr. Cannon?

7426 Mr. Cannon. No.

7427 The Clerk. Mr. Cannon votes no.

7428 Mr. Keller?

7429 Mr. Keller. No.

7430 The Clerk. Mr. Keller votes no.

7431 Mr. Issa?

7432 [No response.]

7433 The Clerk. Mr. Pence?

7434 Mr. Pence. No.

7435 The Clerk. Mr. Pence votes no.

7436 Mr. Forbes?

7437 Mr. Forbes. No.

7438 The Clerk. Mr. Forbes votes no.

7439 Mr. King?

7440 Mr. King. No.

7441 The Clerk. Mr. King votes no.

7442 Mr. Feeney?

7443 [No response.]

7444 Mr. Franks?

7445 Mr. Franks. No.

7446 The Clerk. Mr. Franks votes no.

7447 Mr. Gohmert?

7448 Mr. Gohmert. No.

7449 The Clerk. Mr. Gohmert votes no.

7450 Mr. Jordan?

7451 Mr. Jordan. No.

7452 The Clerk. Mr. Jordan votes no.

7453 Chairman Conyers. Are there any who have not voted?

7454 Does anyone wish to change their vote?

7455 The clerk will report.

7456 The Clerk. Mr. Chairman, 20 members voted aye, 14

7457 members voted nay.

7458 Chairman Conyers. A majority having voted in favor of
7459 the bill, H.R. 1592, it is ordered reported favorably to the
7460 House.

7461 Without objection, the bill will be reported favorably
7462 to the House in the form of a single amendment in the nature
7463 of a substitute incorporating any amendments adopted here
7464 today.

7465 Without objection, the staff is directed to make any
7466 technical and conforming changes.

7467 All members will be given 2 days, as provided by House
7468 rules, in which to submit additional dissenting or
7469 supplemental or minority views.

7470 Pursuant to committee rule 2(j), the chair is authorized
7471 to offer such motions as may be necessary in the House to go
7472 to conference with the Senate on the bill.

7473 There being no further business before the committee, I
7474 thank the committee, and the meeting is adjourned.

7475 [Whereupon, at 9:15 p.m., the subcommittee was
7476 adjourned.]