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2 MARKUP OF: H.R. 1913, THE "LOCAL LAW
3 ENFORCEMENT HATE CRIMES PREVENTION ACT
4 OF 2009"

5 Wednesday, April 22, 2009
6 House of Representatives,
7 Committee on the Judiciary,
8 Washington, D.C.

9 The committee met, pursuant to call, at 10:39 a.m., in Room
10 2141, Rayburn House Office Building, Hon. John Conyers
11 [chairman of the committee] presiding.

12 Present: Representatives Conyers, Berman, Nadler,
13 Scott, Watt, Lofgren, Jackson Lee, Waters, Wexler, Cohen,

14 Johnson, Pierluisi, Gutierrez, Sherman, Baldwin, Gonzalez,
15 Weiner, Schiff, Sanchez, Wasserman Schultz, Maffei, Smith,
16 Sensenbrenner, Gallegly, Goodlatte, Issa, Forbes, King,
17 Franks, Gohmert, Jordan, Poe, Chaffetz, Rooney, and Harper.

18 Staff present: Perry Apelbaum, Staff Director/Chief
19 Counsel; Ted Kalo, General Counsel/Deputy Staff Director;
20 George Slover, Legislative Counsel/Parliamentarian; Sean
21 McLaughlin, Minority Chief of Staff/General Counsel; Allison
22 Halataei, Minority Deputy Chief of Staff/Parliamentarian; and
23 Anita L. Johnson, Clerk.

24 Chairman Conyers. [Presiding.] Good morning.

25 Now that we have a working quorum, pursuant to notice, I
26 call up the bill H.R. 1913, Local Law Enforcement Hate Crimes
27 Prevention Act.

28 And for purposes of markup, I ask the clerk to report
29 the bill.

30 The Clerk. H.R. 1913, a bill to provide federal
31 assistance to states, local jurisdictions, and Indian tribes
32 to prosecute hate crimes, and for other purposes.

33 [The bill follows:]

34 ***** COMMITTEE INSERT *****

35 Chairman Conyers. Without objection, the bill is
36 considered as read and open for amendment at any point.

37 I would like to invite Chairman Bobby Scott, chairman of
38 the Subcommittee on Crime to make the opening statement on
39 behalf of the majority.

40 Mr. Scott. Thank you. Thank you, Mr. Chairman.

41 Mr. Chairman, bias crimes are disturbing prevalent and
42 pose a significant threat to full participation of all
43 Americans in our democratic society.

44 Since 1991, the FBI has documented over 118,000 hate
45 crimes. For the year 2000, the most current data available,
46 the FBI has compiled reports from law enforcement agencies
47 across the country identifying over 7,500 bias-motivated
48 criminal incidents that were directed against individuals
49 because of their personal characteristics.

50 Despite the deep impact of hate violence on our
51 communities, current law limits federal jurisdiction over
52 hate crimes to incidents directed against individuals on the
53 basis of race, religion, color, or natural origin, but only
54 when the victim is targeted because he or she is engaged in a
55 federally protected activity, such as voting.

56 Further, the statutes do not permit federal involvement
57 in a range of cases where crimes are motivated by bias against
58 victims' perceived sexual orientation, gender, gender
59 identity, or disability. The federal government must have

60 authority to be involved in investigating and prosecuting
61 these crimes when state authorities cannot or will not do so.

62 This legislation will strengthen existing federal law in
63 the same way that the Church Arson Prevention Act of 1996
64 helped federal prosecutors combat church arson.

65 The bill only applies to bias-motivated violent crimes
66 and does not impinge upon public speech, religious
67 expression, or writing in any way. In fact, the measure
68 includes an explicit First Amendment free speech protection
69 for the accused and a rule of construction to address
70 concerns throughout the religious community that certain
71 expressions of belief could result in a charge of a federal
72 hate crime, particularly statements made from the pulpit.

73 Law enforcement authorities and civil leaders have
74 learned that a failure to address the problem of bias crime
75 can cause a seemingly isolated incident to fester into
76 widespread tension that can damage the social fabric of a
77 community. This problem cuts across party lines, and I hope
78 that we can support the bill and the chairman's amendment
79 that will be introduced, which will conform it to last year's
80 bill that we favorably reported.

81 Mr. Chairman, I hope we can make this great advancement
82 in civil rights. And I yield back the balance of my time.

83 Chairman Conyers. Thank you very much, Mr. Scott.

84 Bob Goodlatte is ranking member today. And we would

85 like to yield him for his opening observations.

86 Mr. Goodlatte. Well, thank you, Mr. Chairman.

87 Our ranking member, Lamar Smith, is away on—for personal
88 reasons, and he had asked me to take his place.

89 H.R. 1913, the Local Law Enforcement Hate Crimes
90 Prevention Act, is misguided legislation that undermines
91 basic principles of our criminal justice system and raises
92 significant constitutional and federalism concerns.

93 Our criminal justice system has been built on the ideal
94 of equal justice for all. However, this bill, no matter how
95 well intended, turns that fundamental principle on its head.

96 Justice will no longer be equal, but will depend on the
97 race, gender, gender identity, sexual orientation,
98 disability, or other protected status of the victim. In my
99 view, all victims should have equal worth in the eyes of the
100 law.

101 I also believe the bill itself is unconstitutional and
102 will likely be struck down by the courts. There is little
103 evidence to support the claim that such crimes have an impact
104 on interstate or foreign commerce, an important consideration
105 for any federal court reviewing the constitutionality of this
106 legislation.

107 In 2000, the Supreme Court, in *United States v.*
108 *Morrison*, struck down a prohibition on gender-motivated
109 violence. In that case, the court specifically warned

110 Congress that the commerce clause does not extend to "non-
111 economic violent criminal conduct" that does not cross state
112 lines.

113 Nor is the proposed legislation authorized under the
114 14th and 15th Amendments. Those amendments extend only to
115 state action and do not cover the actions of private persons
116 who commit violent crimes.

117 While the 13th Amendment reaches private conduct, such
118 as individual criminal conduct, it is difficult to argue that
119 one's sexual orientation, disability, or gender identity
120 constitutes a badge and incidence of slavery.

121 Aside from the constitutional defects of this bill, it
122 purports to federalize crimes that are being effectively
123 prosecuted by our states and local governments. This is not
124 only a vote of no confidence in their ability to mete out
125 justice, but will further strain federal resources that are
126 already stretched thin.

127 We all agree that every violent crime is deplorable,
128 regardless of its motivation. Every violent crime can be
129 devastating, to not only the victim, but the larger community
130 whose public safety has been violated. That is why all
131 violent crimes must be vigorously prosecuted.

132 However, individuals prosecuted under this legislation
133 will not be punished for their actions, but for their
134 thoughts. Indeed, it is not far-fetched that the government

135 would punish individuals for their thoughts.

136 A recent report by the Department of Homeland Security
137 labeled individuals with certain conservative views as
138 "right-wing extremists," and declared that DHS would be
139 working with state and local governments to scrutinize these
140 people.

141 According to Secretary Napolitano, those who "reject
142 federal authority in favor of state or local authority," are
143 right-wing extremists, as are those who "are dedicated to a
144 single issue, such as opposition to abortion or immigration."

145 Who will be added to this list next? Those who believe
146 that the private sector performs more efficiently than the
147 federal government? Those who wrote in opposition to a
148 particularly burdensome government regulation? This DHS
149 report shows how dangerous it is for the government to begin
150 punishing people for their thoughts.

151 Bennie Thompson, chairman of the House Committee on
152 Homeland Security, agreed. Last week, he wrote to Secretary
153 Napolitano explaining that he was "dumbfounded" that the
154 report was released. He wrote that, "The freedom of
155 association and freedom of speech are guaranteed to all
156 Americans, whether a person's beliefs, whatever their
157 political orientation, are extremist or not."

158 He goes on to say that, "This report appears to have
159 blurred the lines between violent belief, which is

160 constitutionally protected, and violent action, which is
161 not."

162 Likewise, H.R. 1913 inappropriately imposes additional
163 criminal penalties on individuals for their thoughts rather
164 than their violent actions. We should use all available
165 resources to prosecute to the fullest extent of the law all
166 those that commit violent acts, regardless of the motivation
167 behind these crimes, rather than set aside limited groups of
168 people for special protection.

169 For all these reasons, Mr. Chairman, I oppose the bill,
170 and I urge my colleagues to vote against it.

171 And, Mr. Chairman, if I might, I would ask unanimous
172 consent to enter into the record the report of the Department
173 of Homeland Security, amazingly entitled "Rightwing
174 Extremism: Current Economic and Political Climate Fueling
175 Resurgence in Radicalization and Recruitment," along with the
176 letter from Chairman Thompson to Secretary Napolitano
177 expressing his concerns about that report.

178 Chairman Conyers. Who did the first report that you
179 want in the record?

180 Mr. Goodlatte. It is a report of the U.S. Department of
181 Homeland Security.

182 Chairman Conyers. Absolutely.

183 Mr. Goodlatte. Released by Secretary Napolitano.

184 Chairman Conyers. Without objection, both of them.

185 [The information follows:]

186 ***** INSERT *****

187 Mr. Goodlatte. And, Mr. Chairman, I would also ask that
188 the following letters from organizations opposed to the
189 legislation be entered into the record: the Ethics and
190 Religious Liberty Commission of the Southern Baptist
191 Convention, the American Association of Christian Schools,
192 the legislative action arm of the Family Research Council,
193 the Alliance Defense Fund, the Concerned Women for America,
194 and the Traditional Values Coalition.

195 Chairman Conyers. How many is that all together?

196 Mr. Goodlatte. I think that is six, plus the other two.

197 Chairman Conyers. Without objection, so ordered.

198 [The information follows:]

199 ***** COMMITTEE INSERT *****

200 Mr. Goodlatte. Thank you, Mr. Chairman. We appreciate
201 that greatly.

202 Chairman Conyers. I would like now to call on the
203 gentleman from Georgia, Hank Johnson, himself a subcommittee
204 chairman of Judiciary, for just a few minutes' comments
205 before we go to Judge Gohmert.

206 Mr. Johnson. Thank you, Mr. Chairman.

207 I want to make my statement of strong support for this
208 bill's goal of providing law enforcement with tools to fight
209 fraud.

210 I am sorry. I am looking at the wrong info here.

211 If we could, let's just move on, Mr. Chairman.

212 Chairman Conyers. All right, well, you can put it in
213 the record later on.

214 Mr. Johnson. Yes, sir. Thank you.

215 Chairman Conyers. Yes.

216 Could I recognize the gentlelady from Wisconsin? She is
217 not a senior member of the committee, but she has been around
218 for quite a while, for as much time as you may need, not to
219 exceed 5 minutes.

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

221 I want to start by extending my sincere thanks to you
222 and your staff for your continued leadership on the Local Law
223 Enforcement Hate Crimes Prevention Act of 2009.

224 Our committee has an historic opportunity today to

225 expand upon the principles of equal rights and equal
226 protection so fundamentally embodied in our Constitution by
227 favorably reporting H.R. 1913.

228 This legislation would offer federal protection for
229 victims of hate crimes targeted because of their race,
230 religion, sexual orientation, gender, gender identity, or
231 disability. These characteristics are included in the hate
232 crimes legislation not because they deserve any special
233 protection, but because of a history of particularly heinous
234 and violent crimes committed against individuals based upon
235 these characteristics.

236 As many in this room know, hate crimes are different
237 than other violent crimes because they seek to instill fear
238 into a whole community, be it burning a cross in somebody's
239 yard, the burning of a synagogue, or a rash of violent
240 beatings in a-around a gay community center in a
241 neighborhood.

242 These crimes are motivated by prejudice and meant to
243 send a message to society and others who share the same
244 traits or characteristics. This sort of domestic terrorism
245 demands a strong federal response, because this country was
246 founded on the premise that persons should be free to be who
247 they are without fear of violence.

248 Opponents of this legislation may disseminate
249 misinformation today in order to derail the bill, but make no

250 mistake: The legislation we are considering today has been
251 carefully crafted to protect an individual's First Amendment
252 rights to speech, expression, and association. It also
253 provides much-needed federal resources to state, local and
254 tribal law enforcement authorities without usurping local
255 authority.

256 Finally, this bill is fully consistent with the Supreme
257 Court precedents on both First Amendment and interstate
258 commerce cases.

259 The passage of H.R. 1913 is critical for both
260 substantive and symbolic reasons. The legal protections are
261 essential to our system of ordered justice. But on a
262 symbolic basis, it is important for Congress to enunciate
263 clearly that hate-based violence targeting women, gays and
264 lesbians, transgender individuals, and people with
265 disabilities will not be tolerated.

266 Mr. Chairman, I look forward to sending a unified
267 message from our committee today that any hate-based crime
268 will not be tolerated.

269 Thank you, and I yield back the balance of my time.

270 Chairman Conyers. Before I go to Judge Gohmert, I am
271 going to—just for 2 minutes, but, first, Mr. Cohen of
272 Tennessee, and then 2 minutes to Mr. Pierluisi, and then to
273 Judge Gohmert, if that is all right with you, Judge.

274 Mr. Cohen. Thank you, Mr. Chairman. I appreciate the

275 opportunity to have these 2 minutes.

276 This is, in my opinion, a very, very important bill for
277 us to pass. We had it last year. And to be reminiscent, it
278 came up against me in my campaign. There was much false
279 information put out around this country about this bill, and
280 it was suggested by some at a national level that it would
281 criminalize speech. There is absolutely nothing that
282 criminalizes speech. There has to be a violent act.

283 And then in the manager's amendment, there is an
284 amendment that was offered by Artur Davis last year that will
285 be here that makes it clear that it doesn't violate—which
286 nothing can violate—the First Amendment rights of people to
287 speak.

288 They said that preachers couldn't come out and speak
289 against homosexuality. Well, preachers can speak out against
290 homosexuality, just like they spoke out against civil rights
291 in the 1960s in the South, and no preacher was ever put in
292 jail or threatened with jail with speaking out against civil
293 rights.

294 And preachers have done things and spoken in the same
295 ways, and politicians sometimes have to rationalize their
296 behavior. The fact is, an act against a person who was
297 religious, Mormon, Jewish, Christian, Muslim, or whatever,
298 and a speech—or actions—actions are against them because of
299 that religion, it is an act against all people of that

300 religion, just as it is against people of sexual orientation
301 or any other minority.

302 I just returned from a CODEL to Eastern Europe. I spent
303 6 days in Lithuania, Estonia, and the Czech Republic, and I
304 thought about the 50 years of repression under Nazis and
305 communists that those people suffered under. And I thought
306 about all the people that were taken to concentration camps,
307 and people didn't speak up.

308 And if the government isn't the first line of defense
309 against hate speech, who is going to be? And sometimes the
310 government needs to be to protect its culture and its
311 society, and this country is based on pluralism and
312 tolerance. And this bill will encourage pluralism and
313 tolerance.

314 And until we have this type of protections with our
315 state governments and our police able to see that America is
316 what it is supposed to be—a loving, caring, tolerant country
317 that welcomes all people as a melting pot—we will not be
318 America.

319 This is as American a bill as there is to be considered
320 by this Congress. And I urge all my colleagues to support
321 it. And I congratulate the sponsors for bringing it.

322 Thank you, Mr. Chairman.

323 Chairman Conyers. I thank the gentleman.

324 Just briefly, Mr. Pierluisi.

325 Mr. Pierluisi. Yes, I will be very brief, Mr. Chairman.
326 I strongly support H.R. 1913, but I am concerned, Mr.
327 Chairman, that, as currently drafted, it may be construed as
328 not covering Puerto Rico and the territories because it does
329 not include a definition of "state."

330 I will not raise an amendment at this point. Rather, I
331 request, Mr. Chairman, that you allow me to work with you
332 after this hearing to include the definition of state found
333 in 18 USC Section 245.

334 I repeat: My only concern is that the bill could be
335 construed as not including Puerto Rico and the territories
336 within its scope. I support it.

337 Chairman Conyers. Okay. Well, now you tell me.

338 [Laughter.]

339 I am happy to find that out.

340 Mr. Pierluisi. I am sorry I didn't tell you before,
341 Chairman, but I will work with you.

342 Chairman Conyers. Okay.

343 Judge Gohmert, thank you for your patience. The
344 gentleman is recognized.

345 Mr. Gohmert. Thank you, Chairman Conyers.

346 Though this bill may be well intended, it appears that
347 H.R. 1913 is misguided legislation that will open the door to
348 criminal investigations of an offender's thoughts and
349 beliefs, and particularly religious beliefs regarding sexual

350 immorality as never before allowed, to the detriment of
351 religious freedom and religious belief.

352 Ordinarily, criminal law does not require proof of
353 motive, but rather of intent, whether the perpetrator
354 intended or knew that he would cause harm. If someone
355 intended to harm a person, no motive makes them more or less
356 culpable for that conduct.

357 Under this legislation, law enforcement will have to
358 comb the offender's past to determine whether the offender
359 ever expressed antipathy to a protected group. Criminal
360 investigations will now focus on a suspect's philosophical,
361 political and religious beliefs and any past statements
362 possibly made by the suspect.

363 This is all a distraction from the primary goal of
364 ensuring that justice is served and people's personal safety
365 is protected. Even more dangerous, whether intended or not,
366 the bill raises the real possibility that religious leaders
367 or members of religious groups could be criminally prosecuted
368 based on their religious speech or protected activities.

369 Despite what has been said, the fact is, federal law, 18
370 USC 2a says that if you impart—if you induce someone into
371 committing an act, then you are just as guilty as they are.

372 That opens the door wide to any minister, rabbi, imam
373 who quotes from the Bible, from the Torah, from the Koran,
374 saying that homosexuality is wrong, and then some nut hears

375 them and goes out and commits an act of violence, and then,
376 when arrested, says, "Well, the minister, the rabbi, the imam
377 induced me by saying it was so wrong and so bad for society."

378 Under this bill, there is nothing that prevents the
379 religious leader from being arrested as a principal just as
380 if he had committed the act of violence, when he never
381 actually perpetrated the violence.

382 Now, some will say, "Well, it is a question of his
383 intent," but we know prosecutors will say, "Well, that is a
384 question"—at least some will say, "That is a question for the
385 jury." And after religious leaders are arrested, obviously,
386 that will have a clear chilling effect. Those who express
387 deeply held religious beliefs about the immorality of certain
388 lifestyles could then risk criminal prosecution.

389 It is not difficult to imagine a situation in which a
390 prosecutor seeks to link what they deem to be hateful speech
391 and to actually causing violent acts. That is where the
392 chilling effect on religious leaders and others who express
393 their constitutionally protected beliefs, unfortunately, will
394 result.

395 As the ranking member of the Crime Subcommittee, I would
396 have appreciated the opportunity to have witnesses in this
397 Congress investigate and discuss these issues regarding
398 criminal justice and protected speech and potential impact.
399 However, this bill was not subjected to the rigorous scrutiny

400 of regular committee process, and it was not reviewed in a
401 subcommittee hearing.

402 The egregious case of James Byrd from Texas is often
403 brought up. Now, if this bill were going to authorize the
404 punishment of the victim's family being able to select the
405 manner and means by which the convicted defendant could be
406 drug to death, I would probably support it.

407 But the death penalty is not even an option in this
408 bill. That was an egregious case in which the two most
409 culpable defendants got the death penalty. This bill would
410 not change that at all. The other got life in prison. This
411 bill—even though that is often quoted as the poster case
412 requiring hate crime legislation, it would do nothing to
413 affect that at all.

414 Instead, this bill was pushed to markup without proper
415 review, without these important considerations, having the
416 testimony and study that should be done. The bill even
417 inserts for the future that we will gather statistics on the
418 effect of possible hate and bias in crimes regarding sexual
419 gender and gender identity.

420 It also should be noted that offenses in which bias or
421 hatred is alleged are actually lower now in number than they
422 were 10 years ago. There is no epidemic that justifies this
423 kind of danger of religious freedom.

424 There is no epidemic—and I would ask indulgence, since

425 we had four Democrats speak and just the one of me in
426 response to the four—

427 Mr. Nadler. [Presiding.] I don't know that that is the
428 proper reason for indulgence, but nonetheless—

429 Mr. Gohmert. How much—

430 Mr. Nadler. Do you request additional—

431 Mr. Gohmert. Just another moment, another minute.

432 Mr. Nadler. Without objection, the gentleman is granted
433 an additional moment, minute.

434 Mr. Gohmert. I believe this will unwisely and
435 unconstitutionally expose religious groups to criminal
436 reliability. And it doesn't address one of the greatest
437 dangers to public safety. That is the antisocial.

438 As a judge, what I saw as a huge threat and what people
439 came in and testified was most difficult to ever rehabilitate
440 was the antisocial personality, the person who chooses
441 victims at random. What this bill says to criminals who are
442 thinking about committing an act of violence is, if you are
443 going to hurt me, brutalize me, harm me in any way, please,
444 don't hate me. Make it a random, senseless act of violence.

445 Thank you. I yield back.

446 Mr. Nadler. I thank the gentleman.

447 I will observe that I will not make an opening
448 statement, since I made an opening statement on this bill for
449 the last several years running and people know where I stand

450 on it.

451 I now recognize the gentleman from Iowa, Mr. King, for a
452 statement. The gentleman is recognized for 5 minutes.

453 Mr. King. Thank you.

454 Mr. Nadler. And I am told this is the last opening
455 statement, and then we will be open for amendments.

456 Mr. King?

457 Mr. King. Thank you, Mr. Chairman.

458 This is a piece of legislation that I think you will
459 know and those on this committee will know I have opposed
460 vigorously in the past. This is legislation—the hate crimes
461 legislation, I have defined it and others have this morning
462 as thought crimes legislation, rather than hate crimes
463 legislation.

464 This punishes what is in a person's mind or not the
465 perceived race, gender, ethnicity, or gender identity of the
466 victim so much as it is what is perceived to be in mind of
467 the perpetrator.

468 And I believe that this proposal before us today crosses
469 a profound line that has existed since the beginning of
470 criminal law in the United States of America and going far
471 back into old English common law and far back into the legal
472 traditions as far as I can find them back to Moses and
473 beyond.

474 We have always punished the overt act, not the thought.

475 We cannot divine what is in a person's mind. This
476 legislation proposes that we can, and then to increase the
477 penalty for what we define later as a thought, and I mean
478 specifically adding penalties on for a thought, rather than
479 for an act, an overt act.

480 I think this is an outrageous and egregious reach. I
481 want to come back to that, but I first want to address the
482 unconstitutionality of this legislation.

483 To read through the language that is in this bill that
484 defines that it is covered under interstate commerce, my
485 notes say this is a contorted rationale. The contortion of
486 this rationale that argues that this is interstate commerce
487 that says, well, members of such groups are forced to move
488 across state lines to escape the incidence or risk of such
489 violence.

490 If these are protected, covered groups, I know of none
491 that have had to cross the state line as a group or even as
492 an individual to—in order to avoid or escape an incident or
493 risk of such violence. And I know of no testimony that has
494 come before any hearings before this committee that can
495 support such a statement.

496 And if that is true, then I would like to know the name
497 or the names of the states that aren't safe for the group or
498 the groups that have had to migrate completely out of those
499 jurisdictions that are listed here on page three of the bill.

500 That perpetrators cross state lines to commit such
501 violence, that definition of interstate commerce is so broad
502 that the only limitation you would have on controlling the
503 interstate commerce clause would be if you had an individual
504 that was born in a state that never crossed a state line,
505 contorted rationale, Mr. Chairman.

506 It also argues the instrumentalities of interstate
507 commerce are used to facilitate the commission of such
508 violence. What is not an instrumentality of interstate
509 commerce? What might be used under this bill that could be
510 used to commit an act of such violence? And when you—and you
511 identify that, it could be anything in this very much mobile
512 society that we have. If you hit somebody with a loaf of
513 bread that was imported, that would be interstate commerce,
514 and it was part—one of the weapons that was used.

515 I would be embarrassed if I were endorsing a piece of
516 legislation that has that as the basis for its constitutional
517 rational. And that doesn't get us to this component that
518 crosses this line from overt act to thoughts.

519 These are thought crimes, Mr. Chairman, that are in this
520 bill. And we cross this line that—and I think it is
521 important to reiterate—now, I don't have the language in
522 front of me. And so I will just go from memory.

523 But we have constitutional protections that are very
524 specific. We are protected from discrimination and based

525 upon religion or creed. Those are constitutional protections
526 that exist either in the Constitution and the First Amendment
527 or covered in Title VII of the Civil Rights Act. Those are
528 the two exceptions to immutable characteristics that exist in
529 the Civil Rights Act, Title VII of the Civil Rights Act.

530 Now, my recollection is that we have specific
531 protections for race, creed, color, religion, ethnicity,
532 national origin. Those being the items within Title VII of
533 the Civil Rights Act, all but religion and creed, which are
534 specifically constitutionally protected, are immutable
535 characteristics, immutable characteristics often misdefined
536 by the activists on the left, immutable characteristics being
537 those characteristics that can be independently verified and
538 those that cannot be changed by the individual.

539 We are crossing a line over into something that cannot
540 be independently verified and that may or may not be able to
541 be changed by the victim.

542 And when we go down that path, then I hear that the
543 language of gender, gender identity, that is in the bill, I
544 will ask this question. And it comes from a statement made
545 by a state senator when he was asked the question. He said,
546 "Am I a heterosexual or am I a homosexual?" And the people
547 who were lobbying him looked him up and down, and they said,
548 "We don't know."

549 And his answer was, "Exactly my point. If you don't

550 know, how can you discriminate?"

551 We cannot, Mr. Chairman, determine gender. We can't
552 determine gender identity. We can't determine sexual
553 orientation, and we haven't drawn a definition between an
554 overt or covert act of homosexuality and a thought or a sense
555 of being.

556 This is mushy law. It is activist law. It is
557 unconstitutional, and I oppose it with all that I can. And I
558 think this precedent that is established by bringing this
559 language here is a horrible one that a basis upon which could
560 be built to any extreme.

561 And I would yield back the balance of my time.

562 Mr. Nadler. I thank the gentleman.

563 We will now turn to amendments.

564 And recognizing Mr. Scott to his amendment at the desk?

565 Mr. Scott. Mr. Chairman, I have an amendment at the
566 desk.

567 Mr. Nadler. The clerk will report the amendment.

568 The Clerk. Amendment to H.R. 1913, offered by Mr. Scott
569 of Virginia.

570 [The amendment by Mr. Scott follows:]

571 ***** COMMITTEE INSERT *****

572 Mr. Nadler. Without objection, the amendment is
573 considered as read.

574 The gentleman is recognized.

575 Mr. Scott. Thank you, Mr. Chairman.

576 Mr. Chairman, let me just first say that, in terms of
577 crimes that involve state of mind, we do differentiate crimes
578 from first-degree murder and second-degree murder. And all
579 of these are crimes already, these are violent acts, so that
580 this is nothing new about state-of-mind crimes.

581 Furthermore, in terms of the suggestion that someone may
582 be charged with a crime for something they may say from the
583 pulpit from a church, I would say that the only way that
584 could happen is if the underlying act of the crime already,
585 what is being said, for example, could be so outrageous that
586 it incites a riot, that would already be a crime, so they
587 could probably be prosecuted under that.

588 But short of that, short of what is not already a crime,
589 the language—the last section of the bill makes it crystal
590 clear that they cannot be prosecuted.

591 But this amendment conforms H.R. 1913 to the version of
592 H.R. 1592 that passed the Congress in the 110th—passed the
593 House in the 110th Congress. This amendment strikes the
594 findings—the section dealing with the collection—strikes the
595 findings and the section dealing with the collection of hate
596 crime statistics to focus the bill on violent crimes based on

597 bias or prejudice against distinctive groups.

598 It simplifies the bill, Mr. Chairman, conforms it to
599 what we have already passed, and I would hope we would pass
600 it again.

601 I yield back.

602 Mr. Nadler. I thank the gentleman.

603 Is there further discussion on the amendment?

604 Mr. Goodlatte. Mr. Chairman?

605 Mr. Nadler. The gentleman from Virginia is recognized.

606 Mr. Goodlatte. Mr. Chairman, the manager's amendment
607 strikes sections two and eight from the text of the bill.
608 Section two contains findings that purport to justify why
609 this hate crimes legislation is necessary. Section eight
610 contains a requirement for the FBI to report statistics on
611 hate crimes for additional classes of people.

612 Both sections were removed from the previous version of
613 this bill during the legislative process when this bill was
614 last considered in the last Congress.

615 I find it noteworthy that the majority would strike
616 section two, the findings purporting to justify why this hate
617 crimes legislation was necessary, since I think most people
618 on this side of the aisle would certainly agree that this
619 legislation is not necessary. Therefore, deleting the
620 findings that purport to justify why it is necessary is
621 certainly not objectionable on our part.

622 I do not object to this amendment. However, I would
623 urge the chairman to consider further deletions from this
624 bill, including the unconstitutional criminal provisions that
625 will restrict religious freedom and First Amendment rights.

626 I yield back.

627 Mr. Nadler. I thank the gentleman.

628 Is there any further discussion on the bill—on the
629 amendment, rather?

630 Hearing no further amendments—hearing no further
631 discussion, the question is on the amendment.

632 All in favor will say "aye."

633 [A chorus of ayes.]

634 Opposed?

635 In the opinion of the chair, the ayes have it. The
636 amendment is agreed to.

637 Are there any other amendments?

638 Mr. Goodlatte. Mr. Chairman?

639 Mr. Nadler. The gentleman from Virginia?

640 Mr. Goodlatte. I have an amendment at the desk.

641 Mr. Nadler. Clerk will report the amendment.

642 Mr. Goodlatte. This is which one?

643 Mr. Scott. Mr. Chairman, whichever it is, I reserve a
644 point of order.

645 Mr. Nadler. The point of order is reserved.

646 Mr. Goodlatte. Goodlatte amendment number nine, Mr.

647 Chairman.

648 Mr. Nadler. Number what?

649 Mr. Goodlatte. Number nine.

650 Mr. Nadler. Number nine. The clerk doesn't have it.

651 The Clerk. Amendment to H.R. 1913, authored by-

652 [The amendment by Mr. Goodlatte follows:]

653 ***** COMMITTEE INSERT *****

654 Mr. Nadler. Without objection, the amendment is
655 considered as read.

656 The gentleman from Virginia is recognized for 5 minutes
657 in support of the amendment.

658 Mr. Goodlatte. Thank you, Mr. Chairman.

659 Mr. Chairman, this amendment adds the category of senior
660 citizens to those protected under this legislation.

661 On March 4, 2007, a man was videotaped by a surveillance
662 camera mugging a 101-year-old woman in the lobby of her
663 apartment building. The heartlessness and hatred of this
664 attack is clearly conveyed on the videotape when Rose Morat
665 was trying to leave her building to go to church.

666 The robber acted like he was going to help her through
667 the vestibule and then turned and delivered three hard
668 punches to her face and grabbed her purse. He pushed her and
669 her walker to the ground. Rose Morat suffered a broken
670 cheekbone and was hospitalized. The robber got away with \$33
671 and her house keys.

672 The suspect in the crime was later captured by police.
673 Police believe the same suspect robbed another 85-year-old
674 woman shortly after fleeing from Rose Morat's apartment
675 house.

676 In response to media reports about this attack, a New
677 York state senator introduced a bill in the state legislature
678 that would make it a felony to assault anyone over 70 years

679 old. The bill would also lengthen the possible sentence a
680 defendant would face if a victim was injured during the
681 assault.

682 Are crimes targeting senior citizens any less deserving
683 of punishment than crimes targeting homosexuals or the
684 disabled? Those who work against this amendment are
685 effectively saying that senior citizens are, indeed, less
686 deserving of protection than these other groups.

687 On the other hand, if this committee adopts the
688 amendment that I am proposing, we could ensure that this hate
689 crimes bill will allow for further prosecution of similar
690 attacks against senior citizens that occur at the federal
691 level.

692 I urge my colleagues to support this amendment.

693 Mr. Nadler. The gentleman from Virginia?

694 Mr. Scott. Mr. Chairman, first, I would insist on my
695 point of order. The underlying purpose of the bill is to
696 protect those against whom bias is the characteristic for
697 selecting the—selecting the victim, not the fact that it is a
698 vulnerable population. And so I think it falls outside the
699 scope of the bill.

700 Mr. Nadler. Does the gentleman—does anyone wish to be
701 heard against the point of order?

702 Mr. Goodlatte. Mr. Chairman?

703 Mr. Nadler. The gentleman from Virginia?

704 Mr. Goodlatte. Mr. Chairman, this amendment is entirely
705 germane. It simply adds a new classification to the
706 legislation. It was found to be germane and was made in
707 order during the markup of this legislation in the last
708 Congress. It is the exact same amendment.

709 And this legislation should be allowed to be amended for
710 this purpose because it is simply a new classification that
711 is also appropriate under the law.

712 Mr. Nadler. I am prepared to rule on the point of
713 order. I think it is hard to draw a distinction here. And I
714 am going to rule that the amendment, although borderline,
715 perhaps is germane. And we will entertain debate on the
716 amendment.

717 Is there any—

718 Mr. Goodlatte. Thank you, Mr. Chairman.

719 Mr. Nadler. Who seeks recognition?

720 Mr. Scott. Mr. Chairman?

721 Mr. Nadler. The gentleman from Virginia?

722 Mr. Scott. Well, Mr. Chairman, for the same reason that
723 I did not think it was germane, because it is outside the
724 scope of the act, it is why I would oppose the amendment.

725 These people—senior citizens are not selected because of
726 bias. They may be frail or otherwise a group that is
727 vulnerable, but there is no need for federal involvement.
728 Prosecutions against—for crimes against seniors, in fact, are

729 politically popular. There is no need for federal
730 involvement in a case like that.

731 And you have the potential of converting every purse-
732 snatching as a potential hate crime because it is against a
733 senior citizen involving the federal government rather than
734 the local police. I would hope that we would not add on to
735 the bill and divert federal resources from the purpose of the
736 bill, which is actual hate crimes.

737 Mr. Franks. Mr. Chairman? Mr. Chairman?

738 Mr. Nadler. Who seeks recognition?

739 Mr. Franks. Down here.

740 Mr. Nadler. The gentleman from Arizona?

741 Mr. Franks. Way down here at the end.

742 Mr. Nadler. The gentleman is recognized.

743 Mr. Franks. Yes, Mr. Chairman, I think that Mr. Scott
744 illustrates one of the fundamental challenges to this bill in
745 the first place. I think that his point, in a sense, is a
746 good one, in that, you know, we talk about that perhaps older
747 people are more popular in society than some other groups,
748 but that is the danger, really.

749 There are so many different categories that we could be
750 talking about there today, and it really goes to the
751 underlying flaw in the bill.

752 The reality is in this country that we still, I hope,
753 hold these truths to be self-evident that all men are

754 created, and that is what makes them equal, and that all
755 people on this planet are God's children and should be
756 treated with the same respect.

757 And we have laws in this country that say, if you hurt
758 one of your fellow human beings, if you do violence to their
759 person or fraud to their freedom or their property, that you
760 can be held accountable by the government and by the people's
761 government.

762 And the challenge when we begin to break these things up
763 into different categories and saying, "Well, you are worth
764 more protection than this other person," or, "We are going to
765 federalize protection here to this group, but not this
766 group," you really run into a nightmare.

767 And Mr. Scott is correct. He said, you know, that this
768 could divert resources to different kinds of areas, you know,
769 that we could federalize every purse-snatching. Well, I
770 think he makes a good point.

771 And that is really the underlying problem with this
772 bill. We are doing things that the federal government is
773 going to get involved in—everything could be a hate crime at
774 some point. You could make that case that every group is
775 somehow—has some need for special protection.

776 Well, the fact is, with senior citizens, you know, there
777 is age bias. We make laws against saying that you can fire
778 someone because of their age, and there are all kinds of

779 biases against people of senior status.

780 So the bottom, bottom line here is that, not only do I
781 support the amendment, of course, but it really illustrates
782 the flaw in this legislation. And that is that when we start
783 treating different groups in different ways, we really
784 undermine the very essence of America.

785 And no matter whether a person is homosexual, white,
786 black, old, young, whatever the case is, they deserve equal
787 protection under the law. That is the foundational premise
788 of the nation. And we are stepping outside that parameter in
789 a profound way today. And I hope that somehow cooler heads
790 will prevail.

791 And I support the amendment and yield back.

792 Mr. Nadler. I thank the gentleman.

793 The gentlelady from Wisconsin is recognized.

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

795 I would oppose the amendment that has been offered and
796 want to speak to the reasons for that.

797 We have in this Congress over the years taken
798 significant federal actions to protect senior citizens from
799 elder abuse. We have Title VII of the Older Americans Act.
800 We have Title XX of the Social Security Act. We have
801 provisions actually that I had a hand in crafting a decade
802 ago in the Violence Against Women Act that helped address
803 elder abuse in domestic settings.

804 Additionally, all 50 states and the District of
805 Columbia—and I don't know, I will ask if Puerto Rico also—
806 have enacted some sort of elder abuse prevention laws. I am
807 working currently with members across the aisle on this
808 committee on the Elder Justice Act that I hope we will
809 consider and become law, senior fraud provisions acts.

810 And I really enjoyed working across the aisle and
811 focusing on the issue, very real issue, of violence against
812 senior citizens, in part, as was stated by Chairman Scott,
813 because it is a vulnerable population and certainly deserves
814 our protections. But I don't believe these provisions are
815 appropriate in the bill before us today.

816 Now, some people—and I haven't heard anyone say this
817 specifically, but some people are opposed to hate crimes laws
818 altogether. And had they their druthers, they would repeal
819 the current protections that exist in federal law that
820 protect against hate crimes based on race, color, national
821 origin, or religion.

822 I believe those laws have been tested and are justified
823 and that, at this point, there is a justification for adding
824 three new—sorry, four new categories to the hate crimes laws:
825 gender, sexual orientation, gender identity, and people with
826 disabilities.

827 I believe that is justified based on an incredible
828 amount of data, as well as many powerful stories that we can

829 all recall. But I do like to be driven by evidence, and the
830 evidence is out there that this protection is needed and
831 warranted.

832 So I would say that, while perhaps well meaning, we have
833 taken many other steps to protect seniors, and there is
834 certainly more to do, but it is not appropriate in this
835 legislative vehicle. And I would urge my colleagues to
836 oppose this amendment.

837 Mr. Coble. Mr. Chairman? Mr. Chairman?

838 Mr. Nadler. The gentleman is recognized.

839 Mr. Coble. Move to strike the last word, and I yield to
840 the gentleman from Virginia, Mr. Goodlatte.

841 Mr. Goodlatte. I thank the gentleman for yielding.

842 Mr. Chairman, the gentleman from Virginia raises an
843 interesting point when he talks about favored classes of
844 people, that some groups of people are liked better than
845 others.

846 The fact of the matter is that, no matter what class of
847 people you may consider yourself to be in, no matter what
848 your background is, no matter what your point of view, there
849 are people that like you and there are people that dislike
850 you for the very reason of that, whether it is because you
851 are old, whether it is because you are disabled, whether it
852 is because you are gay, whether it is because you are
853 African-American, whether it is because you are Republican,

854 whether it is because you are Democrat.

855 But the victims of crimes that are perpetrated against
856 people, those victims are all entitled to be treated equally
857 under the law. The law should be blind to their treatment.

858 And the comments of the gentlewoman from Wisconsin begs
859 the question: Why wouldn't you extend this protection to
860 senior citizens? Clearly, there are people who attack senior
861 citizens because they are senior citizens, because they
862 identify them as somebody that they either do not like or
863 because they believe that they are easier to victimize,
864 easier to mistreat.

865 And this mistreatment takes many, many different forms,
866 some of which are violent acts. And why you would say that
867 our society should single out particular groups of people and
868 say that, if violent crimes are perpetrated against them,
869 they should be treated one way, and if they are perpetrated
870 against other people for the same wrong, hateful motive, they
871 should be treated with a lesser penalty under the law, is to
872 break down the rule of law in our society, to build lack of
873 respect, not greater respect, for enforcing the law.

874 Why would we do that? Why would segregate out
875 particular groups of people and say that they are entitled to
876 different protections under the law and not say that everyone
877 is entitled to equal protection under the law?

878 But particularly our senior citizens, who have

879 experienced much in their life, and hopefully they are
880 treated with great respect by the vast majority of Americans,
881 but clearly, since they are a higher profile percentage
882 victims of various types of crimes, including violent crimes,
883 it would seem to me that their protection would be warranted.

884 And I would urge my colleagues to support this
885 amendment.

886 Mr. Scott. Would the gentleman from North Carolina
887 yield?

888 Mr. Coble. I will yield. I will yield.

889 Mr. Scott. Thank you.

890 Just very briefly, I think the question is whether or
891 not there is a need for federal protection. There are
892 certain issues that occur from time to time, like
893 unsympathetic juries that will not convict, or lack of
894 prosecution for political reasons, there is no prosecution.

895 And, therefore, we have established routinely protected
896 classes. In employment discrimination, there are protected
897 classes, groups for which protection is deemed to be needed.

898 And it is that reason why the limit is in this bill, for
899 those who are traditionally subject to adverse bias, that
900 need specific protection in the bill against hate crimes.
901 And that is why we have listed in the bill those protected
902 classes.

903 And I would thank the gentleman for yielding.

904 Mr. Goodlatte. Would the gentleman yield?

905 Mr. Coble. I yield to Mr. Goodlatte.

906 Mr. Goodlatte. I thank the gentleman for yielding. And
907 in response to my good friend from Virginia, I would just
908 say, well, we just adopted an amendment that removed the
909 findings clause in the bill that was allegedly going to
910 identify why these particular classes of people were
911 deserving of this additional protection.

912 And I don't think there is any basis for saying that
913 certain particular groups of people are subject to greater
914 protection under the law when there is no evidence that
915 people are being not prosecuted under state or local
916 jurisdictions.

917 I think there may have been evidence of that in the past
918 when this issue was originally addressed a long, long time
919 ago, but I think that the evidence has trended in the
920 direction for a long time that, no matter where you are in
921 this country, if you commit a violent crime, the likelihood
922 of your being prosecuted in state and local courts is very,
923 very high.

924 And I think the best proof of that that I can cite is
925 that the section of the bill, section two, was just stricken
926 from the legislation by an amendment offered by the
927 gentleman.

928 Mr. Coble. Mr. Chairman, if I still have time, the

929 gentleman from Texas has asked me to yield, if time permits.

930 Mr. Nadler. You have 6 seconds left.

931 Mr. Coble. I will reclaim and yield back.

932 Mr. Nadler. I appreciate the gentleman yielding back.

933 Mr. Gohmert. Mr. Chairman?

934 Mr. Nadler. I recognize myself for 5 minutes, but I

935 won't take nearly that time.

936 I will simply observe that, with or without the findings

937 section of the bill, we as a society have ample evidence of

938 prejudices against certain groups, of crimes motivated by

939 those prejudices, and of the fact that those crimes are

940 really attacks not against the person only, but against the

941 group, and are intended to inhibit the group from going to

942 the wrong places—the so-called wrong places, or engaging in

943 certain acts, or just showing up where they are not wanted.

944 That is the reason for this legislation. I don't think

945 we have to spell it out in findings. They have been

946 voluminously documented for years and years in hearings that

947 we have held and other parties have held, et cetera.

948 And they are different than what—as the gentlelady from

949 Wisconsin said, we have laws that protect senior citizens.

950 And while senior citizens may be seen by criminals, criminals

951 who are motivated by reasons of theft or whatever is more

952 vulnerable, I don't think that senior citizens as a group are

953 hated in society by large numbers of people and, therefore,

954 are attacked.

955 And I think it is a difference in kind. And I don't
956 think it is a question—or any of this is a question of some
957 people more important than others. It is a question of
958 recognizing the realities that some people are attacked
959 because of their groups and as an incentive to members of
960 their groups not to do certain things or go certain places.

961 And we are trying through this bill to effectuate real
962 equality of opportunity, an equality of travel, an equality
963 of just being who you are. That is the purpose of the bill.
964 It discriminates against nobody, and it tries to deal with
965 some very specific problems that we have.

966 And that is why we should do the—we should pass the
967 bill. And that is why I would urge the defeat of this
968 amendment, because it doesn't serve the purpose of the bill
969 and is simply distracting from it, and I think intended to
970 distract from it.

971 Mr. Gohmert. Mr. Chairman?

972 Mr. Nadler. I will yield back the balance of my time.

973 Who seeks recognition?

974 Mr. Gohmert. Mr. Chairman?

975 Mr. Nadler. The gentleman from Texas?

976 Mr. Gohmert. Thank you, Mr. Chairman.

977 A comment was made by my friend from Virginia that it is
978 politically popular to prosecute elder abuse cases. It has

979 been politically popular to prosecute cases in which violence
980 has been inflicted upon gays.

981 I mean, you can go to my home county, where
982 homosexuality is not necessarily popular at all, and yet one
983 of the—a potential poster case for this type of the law,
984 underlying law, would be the egregious case of Nicholas West
985 being killed by a couple of guys.

986 He was confronted at an area where gay men were known to
987 gather, and they killed him. And he was vigorously
988 prosecuted, as has been anyone else who inflicts violence
989 upon gay individuals, because it is wrong to inflict violence
990 on anyone, no matter who they are.

991 And in that case, those two individuals have already had
992 the death penalty inflicted. It was not prosecuted as a hate
993 crimes violation, even though Texas has hate crimes.

994 And my friend, Ms. Baldwin, is—there is nobody that
995 fights harder for elder—against elder abuse and for the
996 rights of the elderly, but let's face it. If you look at the
997 actions surrounding violence upon the elderly, there are
998 normally the same earmarks of what we are hearing will be
999 evident in hate crimes prosecutions about words that are said
1000 around the time, words that have been said leading up to the
1001 violence, that would clearly show a contempt, which I would
1002 submit is just a hatred or contempt for elderly individuals.

1003 So if you are going to have a hate crime legislation,

1004 why wouldn't you want to protect the elderly as part of the
1005 protected class?

1006 And we come back again to this findings issue. We keep
1007 talking about the voluminous evidence. I haven't seen any
1008 evidence that the presence or existence of this bill in the
1009 law would make any difference in any of the poster cases
1010 which people hold up as a reason to have hate crimes
1011 legislation.

1012 I would submit, whether you are gay, whether you are
1013 elderly, whether you are anyone living, if you have violence
1014 inflicted upon you, it is egregious, and you should be
1015 punished, and I have sent people to prison for committing
1016 violence against gays or anyone. It doesn't matter.

1017 If it is violence, those people deserve to be protected,
1018 unless, of course, it is the state inflicting the death
1019 penalty, in my opinion.

1020 I yield back the balance of my time.

1021 Mr. Nadler. The gentleman yields back.

1022 Mr. King. Mr. Chairman?

1023 Mr. Nadler. Who seeks recognition?

1024 Mr. King. Of Iowa?

1025 Mr. Nadler. Who?

1026 Mr. King. Steve of Iowa?

1027 Mr. Nadler. Haven't you been recognized on this
1028 amendment yet?

1029 Mr. King. No.

1030 Mr. Nadler. The gentleman is recognized.

1031 Mr. King. I thank you, Mr. Chairman.

1032 As I listen to this debate, it troubles me that I think
1033 that we are engaged in something here that we don't
1034 understand the definitions of very well.

1035 And as I listen to the distinction—and the gentlelady
1036 from Wisconsin, who has said that—that we have laws that
1037 protect the elderly, and I recognize we have those in my
1038 state, at least, but we also have laws to protect homosexuals
1039 and others that are part of this list within most of the
1040 states, probably not all the states.

1041 But I am troubled by the blurring of the language here.
1042 And in my opening statement, I raised the question, and I
1043 have heard no one address it, and that is—I will say, for
1044 those who were on this committee in 1998, they know what sex
1045 is.

1046 But I don't think those of us on this committee today
1047 know what the difference is between sex and gender, what the
1048 definition is of gender identity, transgender, all of these
1049 lists that are protected now or would be proposed to be
1050 protected by this legislation.

1051 And I recognize that the gentlelady from Wisconsin, as
1052 coming to this committee and being very active on this case,
1053 and I would ask if—I would be happy to yield—if you could

1054 help clarify for me and for this committee the distinction
1055 between sex and gender, and then gender identity,
1056 transgender, perceived or actual.

1057 How does an individual—how does an objective observer
1058 know the difference? And then how could we punish people if
1059 we can't tell the difference, at least objectively?

1060 And I would be happy to yield to the gentlelady from
1061 Wisconsin.

1062 Mr. Nadler. The gentlelady is recognized for the
1063 remaining 10 seconds.

1064 [Laughter.]

1065 Ms. Baldwin. Well, first of all—

1066 Mr. King. Mr. Chairman—excuse me. A point of order and
1067 a parliamentary inquiry, actually, is that it seems like that
1068 clock just went by like it was 1 minute instead of 5. Could
1069 that be the case?

1070 Mr. Nadler. No, I am told the clock has not been sped
1071 up.

1072 Mr. King. That would amaze me. And I hope the tape can
1073 confirm that, Mr. Chairman. And I would—

1074 Mr. Nadler. We have the tape. I am sure it will
1075 confirm it. Can we—

1076 Mr. King. I would ask unanimous consent then to extend
1077 the clock so we can finish this dialogue? Reset the clock.

1078 Mr. Nadler. Without objection, the gentleman is granted

1079 2 additional minutes.

1080 Mr. King. Thank you, Mr. Chairman.

1081 Ms. Baldwin. Well, let's confine ourselves to the
1082 definitions that are presented in the legislation before us.
1083 On page 14, we have a definition, "For the purposes of this
1084 chapter, the term gender identity means actual or perceived
1085 gender-related characteristics."

1086 And I don't believe we find in the legislation itself,
1087 if I recall correctly, a definition of the other terms that
1088 you listed, which means we would look elsewhere in federal
1089 statute for those. There are plentiful examples.

1090 And I feel, based on the extensive collaboration with
1091 the Department of Justice, which would obviously take the
1092 lead role in enforcing this, that there is no discomfort that
1093 they have with the definitions that exist in federal law of
1094 gender, of sexual orientation. We have, of course, a
1095 definition here of gender identity, because that doesn't
1096 currently exist elsewhere in federal law.

1097 Mr. King. Reclaiming my time—

1098 Ms. Baldwin. Just let me further say, in consultation
1099 with the Department of Justice in crafting this legislation
1100 over many years and many sessions—as you know, this has been
1101 around for a long, long time—they feel very comfortable with
1102 their ability to enforce—

1103 Mr. King. Reclaiming my time from the gentlelady from

1104 Wisconsin—and I appreciate the response—but I still am
1105 troubled by two things that remain. And I really haven't
1106 learned very much.

1107 And that is, first, can an objective individual
1108 determine the difference between gender and gender identity?
1109 And the actual or perceived, does that mean perceived by the
1110 perpetrator or perceived by the victim? And is this
1111 something that is determined after the fact?

1112 And I would yield to the lady.

1113 Ms. Baldwin. On that latter question, I believe it is
1114 perceived by the perpetrator.

1115 Mr. King. And then how do I tell? How do I know?

1116 Ms. Baldwin. I don't know what your question is.

1117 Mr. King. How does an individual, objective person
1118 identify someone's gender, rather than their sex?

1119 Mr. Nadler. The time of the gentleman has again
1120 expired.

1121 If there is no further discussion on the amendment, the
1122 question is on the amendment.

1123 All those in favor will say "aye."

1124 [A chorus of ayes.]

1125 Opposed, "no."

1126 [A chorus of noes.]

1127 In the opinion of the chair, the noes have it. The
1128 amendment—

1129 Mr. Goodlatte. Mr. Chairman, on that I ask for a
1130 recorded vote.

1131 Mr. Nadler. —and the amendment is not agreed to.

1132 The gentleman from Virginia?

1133 Mr. Goodlatte. Mr. Chairman, I request a recorded vote.

1134 Mr. Nadler. Recorded vote has been requested. The
1135 clerk will call the roll.

1136 The Clerk. Mr. Conyers?

1137 [No response.]

1138 Mr. Berman?

1139 [No response.]

1140 Mr. Boucher?

1141 [No response.]

1142 Mr. Nadler?

1143 Mr. Nadler. No.

1144 The Clerk. Mr. Nadler votes no.

1145 Mr. Scott?

1146 Mr. Scott. No.

1147 The Clerk. Mr. Scott votes no.

1148 Mr. Watt?

1149 Mr. Watt. No.

1150 The Clerk. Mr. Watt votes no.

1151 Ms. Lofgren?

1152 [No response.]

1153 Ms. Jackson Lee?

1154 [No response.]
1155 Ms. Waters?
1156 Ms. Waters. No.
1157 The Clerk. Ms. Waters votes no.
1158 Mr. Delahunt?
1159 [No response.]
1160 Mr. Wexler?
1161 [No response.]
1162 Mr. Cohen?
1163 Mr. Cohen. No.
1164 The Clerk. Mr. Cohen votes no.
1165 Mr. Johnson?
1166 Mr. Johnson. No.
1167 The Clerk. Mr. Johnson votes no.
1168 Mr. Pierluisi?
1169 Mr. Pierluisi. No.
1170 The Clerk. Mr. Pierluisi votes no.
1171 Mr. Gutierrez?
1172 [No response.]
1173 Mr. Sherman?
1174 [No response.]
1175 Ms. Baldwin?
1176 Ms. Baldwin. No.
1177 The Clerk. Mr. Baldwin votes no.
1178 Mr. Gonzalez?

1179 [No response.]
1180 Mr. Weiner?
1181 [No response.]
1182 Mr. Schiff?
1183 Mr. Schiff. No.
1184 The Clerk. Mr. Schiff votes no.
1185 Ms. Sanchez?
1186 Ms. Sanchez. No.
1187 The Clerk. Ms. Sanchez votes no.
1188 Ms. Wasserman Schultz?
1189 [No response.]
1190 Mr. Maffei?
1191 Mr. Maffei. No.
1192 The Clerk. Mr. Maffei votes no.
1193 Mr. Smith?
1194 [No response.]
1195 Mr. Goodlatte?
1196 Mr. Goodlatte. Aye.
1197 The Clerk. Mr. Goodlatte votes aye.
1198 Mr. Sensenbrenner?
1199 [No response.]
1200 Mr. Coble?
1201 Mr. Coble. Aye.
1202 The Clerk. Mr. Coble votes aye.
1203 Mr. Gallegly?

1204 [No response.]
1205 Mr. Lungren?
1206 [No response.]
1207 Mr. Issa?
1208 Mr. Issa. Aye.
1209 The Clerk. Mr. Issa votes aye.
1210 Mr. Forbes?
1211 [No response.]
1212 Mr. King?
1213 Mr. King. Aye.
1214 The Clerk. Mr. King votes aye.
1215 Mr. Franks?
1216 Mr. Franks. Aye.
1217 The Clerk. Mr. Franks votes aye.
1218 Mr. Gohmert?
1219 Mr. Gohmert. Aye.
1220 The Clerk. Mr. Gohmert votes aye.
1221 Mr. Jordan?
1222 Mr. Jordan. Aye.
1223 The Clerk. Mr. Jordan votes aye.
1224 Mr. Poe?
1225 [No response.]
1226 Mr. Chaffetz?
1227 Mr. Chaffetz. Aye.
1228 The Clerk. Mr. Chaffetz votes aye.

1229 Mr. Rooney?

1230 Mr. Rooney. Aye.

1231 The Clerk. Mr. Rooney votes aye.

1232 Mr. Harper?

1233 [No response.]

1234 Mr. Nadler. Mr. Berman, how do you vote?

1235 Mr. Berman. No.

1236 The Clerk. Mr. Berman votes no.

1237 Mr. Nadler. The gentleman—Forbes?

1238 Mr. Forbes. Aye.

1239 The Clerk. Mr. Forbes votes aye.

1240 Mr. Nadler. Mr. Sherman?

1241 Mr. Sherman. No.

1242 The Clerk. Mr. Sherman votes no.

1243 Mr. Nadler. Mr. Sensenbrenner?

1244 Mr. Sensenbrenner. Aye.

1245 The Clerk. Mr. Sensenbrenner votes aye.

1246 Mr. Nadler. Ms. Lofgren?

1247 Ms. Lofgren. No.

1248 The Clerk. Ms. Lofgren votes no.

1249 Mr. Nadler. Mr. Weiner?

1250 Mr. Weiner. No.

1251 The Clerk. Mr. Weiner votes no.

1252 Mr. Nadler. Is there anyone else yet to vote?

1253 The clerk will report.

1254 The Clerk. Mr. Chairman, 11 members voted aye, 15
1255 members voted nay.

1256 Mr. Nadler. Then the amendment is not agreed to.

1257 Are there any other amendments?

1258 Mr. Jordan. Mr. Chairman?

1259 Mr. Nadler. Sorry, who seeks recognition?

1260 Mr. Jordan. Mr. Jordan.

1261 Mr. Nadler. Mr. Jordan?

1262 Mr. Jordan. Yes—amendment at the desk.

1263 Mr. Johnson. Mr. Chairman, I would reserve a point of
1264 order.

1265 Mr. Nadler. Point of order is reserved.

1266 The Clerk. Amendment to H.R. 1913, offered by Mr.
1267 Jordan.

1268 [The amendment by Mr. Jordan follows:]

1269 ***** INSERT *****

1270 Mr. Nadler. Without objection, the amendment is
1271 considered as read, and Mr. Jordan is recognized.

1272 Mr. Jordan. Thank you, Mr. Chairman.

1273 If we are going to single out certain groups and give
1274 them enhanced status under the law, then let's protect the
1275 most defenseless, the most vulnerable group in our society,
1276 and that is unborn children.

1277 Specifically, this amendment addresses situations in
1278 which section 531 of the criminal code, the section
1279 pertaining to the ban on partial-birth abortion, is violated.

1280 As you know, the partial-birth abortion ban passed by
1281 Congress has been upheld by the Supreme Court of the United
1282 States in a victory for all defenders of innocent human life.

1283 This amendment would codify this committee's intent to
1284 treat unborn children with the dignity and respect they
1285 deserve as innocent human beings. If there was ever a group
1286 of individuals who needed the protection of this Congress, it
1287 is unborn children who are completely defenseless, as I said
1288 earlier, against the world.

1289 Nearly 50 million children have lost their lives to the
1290 procedure since it was legalized in 1973. To put this
1291 staggering number into perspective, this represents more than
1292 35 times the total number of American lives lost in war
1293 throughout our history.

1294 In poll after poll, the American people have clearly

1295 stated their abhorrence of this now-illegal procedure. The
1296 intent of our amendment is to protect any further victims
1297 from such acts of violence.

1298 I would urge my colleagues to support this amendment and
1299 would yield back the balance of my time.

1300 Thank you, Mr. Chairman.

1301 Mr. Nadler. Does the gentleman from Virginia insist on
1302 his point of order?

1303 Mr. Scott. Yes, Mr. Chairman. The purpose of the bill
1304 is to marshal a commitment of federal law enforcement
1305 resources against acts of violence against persons, and the
1306 U.S. code defines persons to exclude those who are unborn.
1307 And, therefore, that is out of the scope of the bill.

1308 Mr. Nadler. Does anyone else wish to be heard on the
1309 point of order?

1310 Mr. Franks. Mr. Chairman?

1311 Mr. Nadler. Who seeks recognition?

1312 Mr. Franks. Down here at the end again, Mr. Chairman.

1313 Mr. Nadler. The gentleman from Arizona?

1314 Mr. Franks. Mr. Chairman, I just want to speak against
1315 the point of order. It is true that, in 1973, the Supreme
1316 Court of the United States, through Harry Blackmun, said the
1317 word "person" as used in the 14th Amendment does not include
1318 the unborn child.

1319 I would suggest to you that that is not exactly a

1320 precedent. The same court said that African-Americans were
1321 also not persons under the Constitution. The courts have
1322 made errors before, but in many areas of our statutes, we
1323 recognize the personhood of the child for purposes of
1324 anything essentially but abortion. Abortion, it seems like
1325 all the rules change.

1326 And, Mr. Chairman, I guess I would just remind all of us
1327 that, you know, there will be a time when we walk off this
1328 committee and we are not here anymore and we can only reflect
1329 on the things that we did.

1330 But to somehow suggest that those that hold their
1331 humanity on unborn—are not persons, are not human beings, is
1332 to miss what this entire committee is all about. We fail to
1333 recognize that our first purpose here is to protect the
1334 innocent especially and to protect the lives and
1335 constitutional rights of all people in this country.

1336 And that reality is that the gentleman is correct. I
1337 don't know how many hate crimes were perpetrated last year in
1338 this country under this legislation where the victim died. I
1339 don't know how many it is. But I can tell you that there was
1340 about 1.1 million unborn children were not protected.

1341 And if we don't have the courage or the will to protect
1342 the most innocent in our society on this committee, we will
1343 never find the will or the courage to protect any kind of
1344 liberty for anyone in the long run.

1345 And there is no greater question that could be before
1346 us, if we are truly concerned about protecting the
1347 foundational rights, the constitutional rights of the
1348 innocent here, certainly we should consider those who are
1349 taking the brunt of the violence.

1350 And with that, I yield back.

1351 Mr. Nadler. The gentleman yields back.

1352 Mr. Sensenbrenner. Mr. Chairman?

1353 Mr. Nadler. The gentleman from Wisconsin is recognized
1354 on the point of order.

1355 Mr. Sensenbrenner. Mr. Chairman, the point of order
1356 should be ruled not well taken. What this bill proposes to
1357 do is to establish an additional crime when certain other
1358 crimes are committed. And the definition is quite plain on
1359 that.

1360 It excludes other crimes. And what the gentleman from
1361 Ohio's amendment is trying to do is to say one other crime
1362 should be brought underneath of the umbrella of the hate
1363 crimes law, and that is the crime of performing a partial-
1364 birth abortion.

1365 We can talk all about the policy of partial-birth
1366 abortion and whether we think it should be banned or not.
1367 That is not the issue before the committee and the point of
1368 order, which the chair has to rule on.

1369 What the chair has to rule on is whether we can expand

1370 the number of crimes that are committed under the hate crimes
1371 statute, or contract them, whether we can expand the number
1372 of protected classes, as we have done in the last amendment,
1373 or contract them.

1374 And all this amendment does is to say that, if the
1375 animus of the additional crime of performing a partial-birth
1376 abortion, which is already criminal and has been upheld by
1377 the Supreme Court, if the person who commits that crime ends
1378 up being doing it as a result of a hated animus toward the
1379 unborn baby, then that is covered by the hate crimes law, as
1380 well.

1381 You know, I would really ask the chair to set aside his
1382 own personal preferences on the issue of partial-birth
1383 abortion and to enforce the rules, which do allow this
1384 amendment to be held in order.

1385 I yield back.

1386 Mr. Nadler. The chair is prepared to rule on the—

1387 Mr. Issa. Mr. Chairman? I ask to speak on the—

1388 Mr. Nadler. The gentleman is recognized.

1389 Mr. Issa. Thank you, Mr. Chairman. I will be very
1390 brief.

1391 Between the two earlier statements lies one other that I
1392 think is not being appreciated in the point of order, and
1393 that is that we have a long tradition in this country of
1394 realizing that an expectant mother, if murdered or if her

1395 child is murdered within her womb, that, in fact, that is a
1396 crime.

1397 There have been a number of states who have recently
1398 further amended to ensure that they protect the life of the
1399 unborn inside a mother's womb from an attack being only
1400 battery, when, in fact, the child is deliberately murdered by
1401 the assailant.

1402 So it is not that a child is always—an unborn child is
1403 always not a person. Very clearly, we have both state and
1404 federal protections in that case.

1405 So to leave out the example of a woman who is attacked
1406 and her child is murdered within her womb from being a
1407 potential enhancement under hate crime begs the whole
1408 question of, are you here to talk about true hate crimes or
1409 are you here only to move a short, simple political agenda of
1410 adding it for certain select groups?

1411 And I would hope that your ruling would at least be
1412 consistent with the recognition that one of the most
1413 egregious hate crimes, if a hate crime is to be a category,
1414 is, in fact, the attack and murder of an unborn within a
1415 woman's womb, which has occurred and has been tried in our
1416 state.

1417 And I yield back.

1418 Mr. Nadler. The chair is prepared to rule on the point
1419 of order. However, we have been advised by the minority that

1420 the parliamentarian may have some advice on this. And I am
1421 going to recommend that we suspend this until we get—and that
1422 we move on to another amendment. We will come back to this
1423 in a few—hopefully in a few minutes. And I will make a
1424 ruling on the germaneness at that time.

1425 Mr. Goodlatte. Thank you, Mr. Chairman. I think that
1426 is a fair way to proceed. And we will await the input from
1427 the parliamentarian.

1428 Mr. Nadler. And so we will suspend further
1429 consideration of the point of order and of this amendment
1430 until further notice.

1431 And in the meantime, does anyone else have another—

1432 Mr. Franks. Mr. Chairman?

1433 Mr. Nadler. Are there any other amendments? Who seeks—

1434 Mr. Franks. Mr. Chairman? I have an amendment at the
1435 desk.

1436 Mr. Nadler. The gentleman from Arizona has an amendment
1437 at the desk.

1438 Mr. Scott. Mr. Chairman, I reserve a point of order.

1439 Mr. Nadler. Point of order is reserved.

1440 The clerk will report the amendment.

1441 The Clerk. Amendment to H.R. 1913, offered by Mr.

1442 Franks.

1443 [The amendment by Mr. Franks follows:]

1444 ***** INSERT *****

1445 Mr. Nadler. Without objection, the amendment is
1446 considered as read. Mr. Franks is recognized.

1447 Mr. Franks. Well, thank you, Mr. Chairman.

1448 Mr. Chairman, this amendment bars prosecution of a
1449 criminal under the hate crimes statute based on words or
1450 expressive conduct that is protected by the First Amendment.

1451 The Supreme Court has struck down hate crimes that
1452 selectively criminalize bias-motivated speech or symbolic
1453 speech under the First Amendment, while at times have upheld
1454 statutes that criminalize bias-motivated violence.

1455 The line between bias-motivated speech and biased
1456 violence is often not so easy to draw, Mr. Chairman. Under
1457 existing criminal law principles, the bill raises the
1458 possibility that religious leaders or members of religious
1459 groups could be prosecuted criminally based on their speech
1460 or protected activities.

1461 For instance, using conspiracy laws or section two of
1462 Title XVIII, which includes anyone who aids, abets, counsels,
1463 induces, or procures the commission of a crime or anyone who
1464 "willfully causes an act to be done by another."

1465 It is easy to imagine a situation in which prosecutors
1466 may seek to link so-called hateful speech, which may simply
1467 be opinionated speech critical of a group, as causing
1468 hateful, violent acts.

1469 Mr. Chairman, this would have a devastating and chilling

1470 effect on speech. In prosecuting an individual for a hate
1471 crime, it may be necessary to seek testimony relating to the
1472 offender's thought processes, leading to his motivation to
1473 attack a person out of hatred, or perhaps simply disapproval
1474 of a particular group.

1475 So, for example, members of an organization or religious
1476 group may be called to witness—or called as witnesses to
1477 provide testimony as to ideas that may be more ideological
1478 than hateful, that may have influenced the defendant's
1479 thoughts or motivations for his crimes, thereby expanding the
1480 focus of an investigation to include ideas that may have
1481 influenced a person to commit an act of violence.

1482 Such groups or religious organizations will be chilled
1483 from expressing their ideas out of a fear from involvement in
1484 the criminal process. In fact, chilled is probably an
1485 understatement. Some might be terrified or intimidated to
1486 complete silence.

1487 In other instances, the connection need not be so
1488 indirect. For example, reports of the 2004 case in
1489 Philadelphia detailed that 11 individuals were arrested at a
1490 festival and charged with hate crimes for holding signs and
1491 reading verses from religious texts.

1492 Police arrested the 11 individuals—who became known as
1493 the Philadelphia 11—for multiple felonies and misdemeanors.
1494 Their felony charges included possessions of instruments of

1495 crime—in this case, it was a bullhorn—ethnic intimidation for
1496 discussing ideas to disapprove of the group's lifestyle—the
1497 other group's lifestyle—and inciting a riot, because they
1498 read religious passages that were critical of some of the
1499 festival's attendees and activities or lifestyles.

1500 For this, Mr. Chairman, they faced \$90,000 in fines and
1501 possible 47-year prison sentences.

1502 Ted Hoppe, attorney for the Philadelphia 11, stated, "We
1503 believe that this is the first case in the United States
1504 where someone was charged with a hate crime for administering
1505 the gospel in public." Now, he left out the offending
1506 conduct was probably and arguably solely speaking the gospel.

1507 So, in fact, the charges were dismissed after the judge
1508 found, based on video footage and other proof, that the
1509 authorities had to release the Philadelphia 11, because the
1510 evidence did not support the prosecution.

1511 Unfortunately, this finding came only after the
1512 Philadelphia 11 had served jail for so-called crimes they
1513 didn't commit. One scrupulous government—let me put it—this
1514 is the equation. One unscrupulous government entity plus
1515 hate crimes legislation equals the perfect combination for
1516 aggressive stripping of constitutional rights.

1517 Might the specter of a 47-year sentence chill speech in
1518 Philadelphia? Might the specter of any jail sentence be
1519 sufficient to chill fundamental freedoms?

1520 The answer is obviously yes, Mr. Chairman. The statute
1521 used against the Philadelphia 11 and the bill before us
1522 operate under exactly the same principle, and the effect
1523 would be the same.

1524 My amendment makes it clear that hate crimes law cannot
1525 be used to hold a person liable for exercising First
1526 Amendment rights. For these reasons, I urge my colleagues to
1527 support the amendment.

1528 I yield back.

1529 Mr. Nadler. I yield myself 5 minutes.

1530 Let me say that, Mr. Franks, the intent of your
1531 amendment is laudable. And, in fact, it is the same as the
1532 Davis amendment from the last Congress, which is incorporated
1533 in the bill.

1534 And the last paragraph of the bill on page 16, where it
1535 says, "Nothing in this act, or the amendments made by this
1536 act, shall be construed to prohibit any expressive conduct
1537 protected from legal prohibition by, or any activities
1538 protected by the free speech or free exercises clause of, the
1539 First Amendment of the Constitution."

1540 We think that totally does what your amendment is trying
1541 to do, so we think it is unnecessary because it is already
1542 done.

1543 And, secondly, I would say that there is a problem with
1544 the drafting of your amendment, which I assume is not what

1545 you intended, because it says it is to bar the prosecution
1546 for an offense under subsection eight if the offender was at
1547 the time of the offense engaged in conduct protected by the
1548 First Amendment.

1549 Now, what that seems to say is that, while I am making a
1550 speech, a protected speech, I see somebody that I don't like
1551 and assault him, while speaking about something else, so the
1552 assault didn't arise from that speech, but it happened while
1553 I was making the speech, which your amendment would seem to
1554 immunize. And I don't think that is the intent of the
1555 amendment.

1556 I think what you are trying to get at and what I think
1557 most of us would agree with is that no free speech protected
1558 by the First Amendment should be construed as the cause—
1559 should be a predicate under this—for a hate crime under this.

1560 And I think that the final paragraph of the bill, the
1561 Davis amendment from the last Congress, entirely does this.
1562 In fact, I am not—I don't see from your amendment that it
1563 goes any further in any way you would want to go than the
1564 Davis amendment that is in the bill already.

1565 Mr. Franks. If the gentleman would yield, I will
1566 explain.

1567 Mr. Sensenbrenner. Mr. Chairman?

1568 Mr. Nadler. I would urge the non-adoption of this
1569 amendment, and I have a couple of—I will yield to the

1570 gentleman.

1571 Mr. Franks. Just extremely briefly, Mr. Chairman, in
1572 answer to your first question, the only difference in my
1573 amendment and what you already have put in, which I think is
1574 laudable and I find it kind of amazing that, here I am, the
1575 ACLU, I guess, required this information, and so perhaps I
1576 need to pause and reflect entirely here. I don't know.

1577 But I do think that you have done a good thing and a
1578 good step in the right direction. My amendment covers the
1579 entire First Amendment, rather than just the free speech or
1580 free exercise clause.

1581 And keep in mind that, to your question—and I am done,
1582 Mr. Chairman—to your question of whether someone can say,
1583 "Well, I was praying while I was beating his head in," it is
1584 still completely against the law for someone to be attacked
1585 while I am praying, even though I am perhaps in the free
1586 speech situation, because these are separate crimes.

1587 The only thing that this would bar prosecution to is
1588 this new hate crimes idea that somehow my prayer would be
1589 considered as hate speech. So with that, I yield back.

1590 Mr. Sensenbrenner. Mr. Chairman?

1591 Mr. Nadler. The gentleman from Wisconsin?

1592 Mr. Sensenbrenner. Mr. Chairman—

1593 Mr. Nadler. Wait a minute. I yield back the balance of
1594 my time.

1595 The gentleman from Wisconsin is recognized.

1596 Mr. Sensenbrenner. I thank the chair. Mr. Chairman,
1597 this amendment is necessary, and here is why.

1598 The provision that is contained in section 10 of the
1599 bill essentially establishes an affirmative defense. If
1600 someone is charged with a hate crime, they are going to have
1601 to say that they are under the exception of rule 10, and the
1602 burden of proof is on the defendant to say that they qualify
1603 under the exception, which has been referred to by the
1604 chairman.

1605 The Franks amendment goes one better, and that is, is
1606 that it contains a bar to prosecution, meaning that, if an
1607 overzealous prosecutor—and we have found out a lot about
1608 those in the last few weeks or so relating to the Stevens
1609 prosecution—decides to go after someone for a violation of
1610 the statute that is created in this bill—

1611 Mr. Nadler. Would the gentleman yield for a moment?

1612 Mr. Sensenbrenner. No, I will make my point first.

1613 Then I will yield.

1614 If an overzealous prosecutor goes after them, then
1615 essentially they have to carry the burden that what they said
1616 in the hate crimes was covered under section 10 of the bill,
1617 whereas, under the Franks amendment, it is simply a bar to
1618 prosecution. And instead of this being a jury question, this
1619 ends up being decided by a court in a pretrial motion.

1620 Now, if we want to balance out the scales of justice on
1621 this, the Franks amendment is absolutely essential, because
1622 that way an overzealous prosecutor can get nipped in the bud
1623 by a motion saying that there is a bar to prosecution, which
1624 the court can rule on.

1625 And it seems to me, if we want to be defendant-oriented
1626 on this, we ought to have a bar to prosecution if a
1627 prosecutor oversteps his bounds.

1628 I now yield to the chairman.

1629 Mr. Nadler. Thank you. I thank the gentleman for
1630 yielding.

1631 I don't see the distinction, frankly. I think both
1632 section 10 of the bill and this amendment would operate in
1633 exactly the same way. Whether you call it a bar to
1634 prosecution or you simply say, nothing shall be construed to
1635 prohibit the expressive conduct, you have still got to raise—
1636 if an overzealous or not overzealous—if a prosecutor indicts
1637 somebody, whether you have this amendment or section 10 of
1638 the bill, someone—the defense has got to say, "Wait a
1639 minute," and move a defense—

1640 Mr. Sensenbrenner. Well, reclaiming my time, the First
1641 Amendment begins by saying, "Congress shall pass no law," and
1642 then it gives a whole long list of things that Congress shall
1643 pass laws on. And we don't need an amendment to protect
1644 politically correct speech. The First Amendment was designed

1645 to protect politically incorrect speech.

1646 Mr. Nadler. Let's move forward.

1647 Mr. Sensenbrenner. And I do think that there is a great
1648 distinction between what is contained in section 10 of the
1649 bill and what is contained in the Franks amendment.

1650 And I would ask my colleagues on the other side of the
1651 aisle, and the chairman in particular, that if anyone is
1652 concerned about overzealous prosecutors, whether it is an
1653 Eric Holder-led Department of Justice or an Alberto Gonzales-
1654 led Department of Justice, the Franks amendment is essential
1655 and really should not be a controversial issue.

1656 I yield back the balance of my time.

1657 Mr. Nadler. The gentlelady from Wisconsin is
1658 recognized.

1659 Ms. Baldwin. Thank you, Mr. Chairman.

1660 I urge my colleagues to defeat this amendment. I do
1661 believe it is unnecessary and that the underlying bill,
1662 through its rule of construction found at the end of the bill
1663 in section 10, as well as its rule of evidence found on page
1664 15, really address what the gentleman is concerned about.

1665 And I think that, again, the bill is very, very
1666 carefully crafted with much consultation. And it has also
1667 crafted at a time where the issue of whether hate crimes laws
1668 violate the First Amendment has been decided by the U.S.
1669 Supreme Court.

1670 Interestingly, in a case entitled Wisconsin v. Mitchell—
1671 now, I want to underscore that, obviously, the Wisconsin
1672 statute is not identical to what we are looking at today, but
1673 it tests the issues that we are addressing today.

1674 And in that case, a unanimous Supreme Court, in a case
1675 authored by then-Chief Justice Rehnquist, found that there
1676 was no inconsistency between hate crimes laws and the First
1677 Amendment.

1678 And underscoring that these laws punish conduct based on
1679 bias, not the bias itself, this bill before us is very, very
1680 specific on underscoring that in several cases, as I pointed
1681 out, section 10 and section 7.

1682 But we have to just keep on remembering that fact. And
1683 in the Mitchell case, it underscores the First Amendment does
1684 not protect violence. It protects speech, expression,
1685 association, but not violence. And that is what we are at in
1686 this hate crimes law.

1687 I urge defeat of the amendment.

1688 Mr. Nadler. The gentlelady's time—the gentlelady yields
1689 back. I thank the gentlelady.

1690 Is there any further discussion on the amendment?

1691 Mr. Goodlatte. Mr. Chairman?

1692 Mr. King. Mr. Chairman?

1693 Mr. Nadler. Who seeks recognition?

1694 The gentleman from Virginia?

1695 Mr. Goodlatte. Mr. Chairman, thank you. I support this
1696 amendment, which bars prosecution under the hate crimes
1697 statute based on words or expressive conduct that is
1698 protected by the First Amendment.

1699 I do agree with the gentleman from Arizona that this is
1700 a more comprehensive coverage of the First Amendment. I
1701 agree with the gentleman from Wisconsin that the bar to
1702 prosecution will provide greater assurance to those who
1703 should be able to freely exercise speech.

1704 As the proponent of the amendment noted and as currently
1705 drafted, the legislation raises the possibility that
1706 religious leaders or members of religious groups could be
1707 criminally prosecuted based on their speech or protected
1708 activities, and then have to raise the defense provided for
1709 in section 10.

1710 The bar to prosecution will provide greater relief from
1711 the concern that many have that this legislation has a
1712 chilling effect on First Amendment free speech and religious
1713 exercise rights. And, therefore, I think this amendment is
1714 needed and is a good supplement to the section 10 effort,
1715 which I applaud.

1716 I am glad that that is in the legislation, but I think
1717 that the legislation needs a bar to prosecution to provide
1718 people with the ample protection for free speech and other
1719 First Amendment rights that are called for by the amendment,

1720 by the American Civil Liberties Union, and others who want to
1721 protect those freedoms.

1722 Mr. Nadler. I think we are now ready to take the vote
1723 on the amendment.

1724 Mr. King. Mr. Chairman?

1725 Mr. Nadler. Does anyone—the gentleman from Iowa?

1726 Mr. King. Thank you, Mr. Chairman. I presume I am
1727 recognized for 5 minutes.

1728 I rise in support of the Franks amendment. And I just
1729 think it is important to make the clear clarification that—
1730 and I do applaud, also, in the last—in section 10 of the
1731 bill, the language that is introduced that protects—protected
1732 by free speech and free exercise clauses of the First
1733 Amendment of the Constitution.

1734 It has been spoken to by the gentleman from Arizona,
1735 Wisconsin, and Virginia the distinctions between the language
1736 that exists in the bill before us and the First Amendment in
1737 the Constitution.

1738 I want to make it clear that there are—the other
1739 provisions that were referenced as a list of things that
1740 Congress shall make no law respecting and establishment—
1741 respect any establishment of religion, for example, the free
1742 exercise thereof, but additionally freedom of speech, press,
1743 freedom to assemble, and freedom to petition your government.

1744 Those are all covered underneath the Franks amendment.

1745 They are not covered under section 10 of this bill. And this
1746 vote that we are about to have is a clear vote to establish
1747 full First Amendment protection underneath this legislation
1748 that is before us, rather than carve out some narrow
1749 provisions here that will later on be defined by judges,
1750 rather than this Judiciary Committee.

1751 So I emphatically urge adoption of the Franks amendment
1752 on the basis of, it restates the constitutional protections
1753 so that the liberal judges can't twist this later on. They
1754 will be bound by different case law that exists, Supreme
1755 Court precedents that more clearly define these protections
1756 that are in the First Amendment, rather than some of the
1757 activism that would blur these lines of free speech, which is
1758 what this basic underlying bill actually does.

1759 So as we have a recorded vote on the Franks amendment, I
1760 want to make it clear we all know, you will either be voting
1761 for the Franks amendment and the First Amendment to the
1762 United States Constitution, or you are voting against the
1763 protection of the First Amendment of the United States
1764 Constitution.

1765 And I would yield back the balance of my time.

1766 Mr. Nadler. The gentleman from Virginia?

1767 Mr. Scott. Mr. Chairman, move to strike the last word.

1768 Mr. Nadler. The gentleman is recognized for 5 minutes.

1769 Mr. Scott. Just very briefly, just to remind some of

1770 the points you mind, first of all, it is already covered in
1771 section 10, what we are talking about.

1772 Second, we are only talking about crimes, things that
1773 are crimes to begin with. And so if you are just engaged in
1774 protected speech, then we are not—that wouldn't be covered by
1775 the prosecution.

1776 And, furthermore, Mr. Chairman, as you have pointed out,
1777 this amendment, as it is drafted, will give you immunity to
1778 prosecution if you are reading Bible verses as you are
1779 beating somebody with a baseball bat.

1780 Just the construction of the amendment ought to require
1781 its defeat. And I yield back.

1782 Mr. Nadler. The gentleman yields back—vote on the
1783 amendment.

1784 All in favor of the amendment will say "aye."

1785 [A chorus of ayes.]

1786 Opposed, "no."

1787 [A chorus of noes.]

1788 In the opinion of the chair, the noes have it, and the
1789 amendment is not agreed to.

1790 Mr. King. Mr. Chairman, I ask for a recorded vote.

1791 Mr. Nadler. Recorded vote is requested. The clerk will
1792 call the roll.

1793 The Clerk. Mr. Conyers?

1794 Mr. Berman?

1795 Mr. Berman. No.

1796 The Clerk. Mr. Berman votes no.

1797 Mr. Boucher?

1798 [No response.]

1799 Mr. Nadler?

1800 Mr. Nadler. No.

1801 The Clerk. Mr. Nadler votes no.

1802 Mr. Scott?

1803 Mr. Scott. No.

1804 The Clerk. Mr. Scott votes no.

1805 Mr. Watt?

1806 Mr. Watt. No.

1807 The Clerk. Mr. Watt votes no.

1808 Ms. Lofgren?

1809 [No response.]

1810 Ms. Jackson Lee?

1811 [No response.]

1812 Ms. Waters?

1813 Ms. Waters. No.

1814 The Clerk. Ms. Waters votes no.

1815 Mr. Delahunt?

1816 [No response.]

1817 Mr. Wexler?

1818 [No response.]

1819 Mr. Cohen?

1820 Mr. Cohen. No.

1821 The Clerk. Mr. Cohen votes no.

1822 Mr. Johnson?

1823 Mr. Johnson. No.

1824 The Clerk. Mr. Johnson votes no.

1825 Mr. Pierluisi?

1826 Mr. Pierluisi. No.

1827 The Clerk. Mr. Pierluisi votes no.

1828 Mr. Gutierrez?

1829 [No response.]

1830 Mr. Sherman?

1831 [No response.]

1832 Ms. Baldwin?

1833 Ms. Baldwin. No.

1834 The Clerk. Mr. Baldwin votes no.

1835 Mr. Gonzalez?

1836 [No response.]

1837 Mr. Weiner?

1838 [No response.]

1839 Mr. Schiff?

1840 Mr. Schiff. No.

1841 The Clerk. Mr. Schiff votes no.

1842 Ms. Sanchez?

1843 Ms. Sanchez. No.

1844 The Clerk. Ms. Sanchez votes no.

1845 Ms. Wasserman Schultz?
1846 Ms. Wasserman Schultz. No.
1847 The Clerk. Ms. Wasserman Schultz votes no.
1848 Mr. Maffei?
1849 Mr. Maffei. No.
1850 The Clerk. Mr. Maffei votes no.
1851 Mr. Smith?
1852 [No response.]
1853 Mr. Goodlatte?
1854 Mr. Goodlatte. Aye.
1855 The Clerk. Mr. Goodlatte votes aye.
1856 Mr. Sensenbrenner?
1857 Mr. Sensenbrenner. Aye.
1858 The Clerk. Mr. Sensenbrenner votes aye.
1859 Mr. Coble?
1860 Mr. Coble. Aye.
1861 The Clerk. Mr. Coble votes aye.
1862 Mr. Gallegly?
1863 [No response.]
1864 Mr. Lungren?
1865 [No response.]
1866 Mr. Issa?
1867 Mr. Issa. Aye.
1868 The Clerk. Mr. Issa votes aye.
1869 Mr. Forbes?

1870 Mr. Forbes. Aye.

1871 The Clerk. Mr. Forbes votes aye.

1872 Mr. King?

1873 Mr. King. Aye.

1874 The Clerk. Mr. King votes aye.

1875 Mr. Franks?

1876 Mr. Franks. Aye.

1877 The Clerk. Mr. Franks votes aye.

1878 Mr. Gohmert?

1879 Mr. Gohmert. Aye.

1880 The Clerk. Mr. Gohmert votes aye.

1881 Mr. Jordan?

1882 Mr. Jordan. Yes.

1883 The Clerk. Mr. Jordan votes yes.

1884 Mr. Poe?

1885 Mr. Poe. Aye.

1886 The Clerk. Mr. Poe votes aye.

1887 Mr. Chaffetz?

1888 [No response.]

1889 Mr. Rooney?

1890 Mr. Rooney. Yes.

1891 The Clerk. Mr. Rooney votes yes.

1892 Mr. Harper?

1893 [No response.]

1894 Mr. Nadler. Mr. Wexler?

1895 Mr. Wexler. No.

1896 The Clerk. Mr. Wexler votes no.

1897 Mr. Nadler. Mr. Gonzalez?

1898 Mr. Gonzalez. No.

1899 The Clerk. Mr. Gonzalez votes no.

1900 Mr. Nadler. Mr. Weiner?

1901 Mr. Weiner. No.

1902 The Clerk. Mr. Weiner votes no.

1903 Mr. Nadler. Is there anyone else not voted?

1904 The clerk will report.

1905 The Clerk. Mr. Chairman, 11 members voted aye, 15

1906 members voted nay.

1907 Mr. Nadler. The amendment is not agreed to.

1908 Are there further amendments?

1909 Mr. Franks. Mr. Chairman? Mr. Chairman? Down here

1910 again.

1911 Mr. Nadler. The gentleman from Arizona is recognized.

1912 Mr. Franks. Mr. Chairman, I probably would not have

1913 introduced or gone forward with this amendment if the last

1914 one had passed, because I believe the last-

1915 Mr. Nadler. Excuse me. Does the gentleman have an

1916 amendment?

1917 Mr. Franks. I do.

1918 Mr. Nadler. At the desk?

1919 Mr. Franks. At the desk, yes, I do.

1920 Mr. Nadler. The gentleman has an amendment at the desk.

1921 Mr. Scott. Point of order—reserve—

1922 Mr. Nadler. Point of order is reserved.

1923 The clerk will report the amendment.

1924 The Clerk. Amendment to H.R. 1913, offered by Mr.

1925 Franks. And this is amendment 022.

1926 [The amendment by Mr. Franks follows:]

1927 ***** INSERT *****

1928 Mr. Nadler. Without objection, the amendment is
1929 considered as read.

1930 And the gentleman from Arizona is recognized for 5
1931 minutes.

1932 Mr. Franks. Well, thank you, Mr. Chairman.

1933 I may have withdrawn this amendment if the last one had
1934 passed, but I feel like it is especially important to do it.
1935 There is a significant difference on two fronts between this
1936 amendment and the last one.

1937 This amendment, Mr. Chairman, is a rule of construction.
1938 This amendment adds a rule of construction to clarify and
1939 emphasize that the proposed hate crimes laws shall not have
1940 any effect on constitutional rights.

1941 And I realize the majority has added this rule of
1942 construction to this version of the bill. But for whatever
1943 reason, the rule appears to be limited to only the free
1944 speech clause and the free exercise clause of the First
1945 Amendment of the Constitution.

1946 And I am concerned that specifying only two clauses of
1947 one amendment in the Constitution is inadequate. And it begs
1948 the question of why the bill doesn't explicitly afford the
1949 protection of the full Constitution, which is—shouldn't
1950 really be an option, again, recognizing the committee that we
1951 sit on here.

1952 The bill is in need of serious and explicit protections

1953 if it is to withstand constitutional scrutiny, if that is in
1954 any way possible under any circumstances.

1955 I appreciate that the last two clauses were taken into
1956 consideration, but I would like to suggest that we afford as
1957 broad a protection as possible, especially given the
1958 fundamental rights at stake.

1959 The intent of this amendment is to ensure that courts do
1960 not construe the statute to infringe on a person's
1961 constitutional rights. Hate crimes legislation can have a
1962 devastating chilling effect on constitutional rights by
1963 injecting criminal investigations and prosecutions into areas
1964 traditionally reserved for protected activity that has
1965 traditionally been off-limits.

1966 And essentially we are extending federal jurisdiction
1967 over the hearts and minds of Americans. This is common in
1968 totalitarian and foreign governments, but relatively new to
1969 America.

1970 For example, in prosecuting an individual for a hate
1971 crime, it may be necessary to seek testimony relating to the
1972 offender's thought process, leading to his motivation to
1973 attack a person out of alleged hatred of or maybe mere
1974 disagreement with a particular group.

1975 So, for example, members of an organization or religious
1976 group may be called as witnesses to provide testimony as to
1977 ideas that may have influenced the defendant's thoughts or

1978 motivation for his crimes, thereby expanding the focus of an
1979 investigation to include ideas that may have influenced the
1980 person to commit an act of violence.

1981 Such groups or religious organizations may be chilled
1982 from expressing their ideas out of fear from involvement in
1983 the criminal process.

1984 Hate crimes, Mr. Chairman, improperly focus on personal
1985 beliefs rather than actual conduct. All hate crimes laws
1986 inevitably degenerate into an intrusive investigation into a
1987 person's beliefs and thought processes. And this is very
1988 dangerous territory.

1989 Ordinarily, criminal law does not concern itself with
1990 motivations. This is one of the misunderstandings here in
1991 the committee, why a person acted, but rather with the
1992 intent. We must not confuse intent with motivation, whether
1993 the perpetrator knew or intended that he would cause harm.

1994 If someone intended to cause a person harm, no motive
1995 makes that conduct more or less culpable. Hate crimes laws
1996 improperly focus on what is in a person's head, rather than
1997 what they did. The law should not punish—and the law should
1998 punish conduct and not beliefs.

1999 So, Mr. Chairman, I am hoping that my amendment will
2000 make it clear that a hate crime prosecution cannot depend on
2001 the antagonism of constitutional rights. And I urge the
2002 support of the amendment.

2003 Mr. Nadler. The gentlelady—does the gentleman insist on
2004 his point of order, by the way?

2005 The gentleman does not insist on his point of order.

2006 The gentlelady from Wisconsin is recognized.

2007 Ms. Baldwin. Thank you, Mr. Chairman. I move to strike
2008 the last word.

2009 Mr. Nadler. The gentlelady is recognized for 5 minutes.

2010 Ms. Baldwin. The argument just raised is, you know,
2011 when the gentleman says that the law ought to focus on
2012 conduct and not on bias, that is precisely what this does.

2013 If you look at—we have been talking about the rule of
2014 construction in section 10, but I want to draw your attention
2015 to the rule of evidence on page 15. In a prosecution—I am
2016 reading starting at line one. "In a prosecution for an
2017 offense under this section, evidence of expression or
2018 associations of the defendant may not be introduced as
2019 substantive evidence at trial, unless the evidence
2020 specifically relates to that offense."

2021 Second sentence: "However, nothing in this section
2022 affects the rules of evidence governing impeachment of a
2023 witness."

2024 So when you read the rule of evidence in combination
2025 with the rule of construction, you are concerns are addressed
2026 in the bill.

2027 I would secondly take you back to the case that I just

2028 cited in my remarks in opposition to your previous amendment,
2029 and that is that, in Wisconsin v. Mitchell in 1993, a
2030 unanimous Supreme Court said that hate crimes legislation of
2031 the type we have before us today does not violate the
2032 Constitution, does not violate the First Amendment, and it
2033 doesn't because precisely it goes after conduct, not people's
2034 opinions, not their beliefs. However obnoxious they might
2035 be, it doesn't go after those.

2036 I would urge that we defeat this amendment. It is
2037 absolutely unnecessary.

2038 Mr. Gohmert. Mr. Chairman?

2039 Mr. Nadler. Who seeks recognition?

2040 The gentleman from Iowa?

2041 I am sorry, the—

2042 Mr. King. I do.

2043 Mr. Gohmert. Oh, I know. We look a lot alike. Mr.
2044 King may hit you, but I am flattered.

2045 But, anyway, with regard to this issue, I understand the
2046 provision says that the only way religious beliefs could be
2047 is if they pertain to this offense, but under 18 USC 2a, if
2048 someone is alleged to have induced someone, then all of the
2049 things that they have said as a religious leader come into
2050 play.

2051 I was looking online. There are a number of things in
2052 discussing Islam and homosexuality. There are quotes from

2053 the Koran that—as this writer, M. Siddiqui—and ask
2054 forgiveness about pronunciation problems—but homosexuality,
2055 he says, is prohibited in the Koran per the example of the
2056 people of Lot. The following verse will make this very
2057 clear, God willing, and then quotes from this Koran.

2058 "Lot said to his people, 'You commit such an
2059 abomination, no one in the world has done it before. You
2060 practice sex with the men instead of the women, indeed, you
2061 are transgressing people. Do you have sex with the males of
2062 all the people? You forsake the wives that your lord has
2063 created for you, indeed, you are transgressing people.'"

2064 And it goes on to talk about what an abomination
2065 homosexuality is under Islam. Well, if someone heard their
2066 imam talking about this and quoting from the Koran, and went
2067 out and committed a violent act, and when arrested that
2068 person said, "I was induced by the teachings of my imam when
2069 he quoted the Koran," well, then, of course, these religious
2070 teachings are going to come into evidence. They specifically
2071 apply to the offense of whether or not the imam induced the
2072 nut in the congregation.

2073 It could also be said, you know, someone in a Jewish
2074 synagogue, with a quote from Leviticus about—of course, in
2075 Leviticus, where it says, if a man lies with mankind as he
2076 lies with a woman, both of them committed an abomination.
2077 They shall surely be put to death. Their blood shall be on

2078 them.

2079 If someone in a Jewish synagogue hears that from the
2080 Jewish teaching and goes out and commits an act, same
2081 problem. If someone reads in a Christian church from Romans
2082 I about the sin of homosexuality and goes out and has someone
2083 there who is a nut, goes out and commits an act of violence,
2084 then, of course, in those cases, the religious teachings,
2085 reading from the Koran, reading from the Torah, reading from
2086 the Bible are going to come into evidence, even with this
2087 provision in the bill.

2088 So I am not sure that the amendment goes far enough, but
2089 I think it helps get a little further down the road in
2090 preventing religious persecution because of beliefs over
2091 these sexual immorality issues, as contended in the Koran,
2092 the Bible, and the Torah.

2093 So I support the amendment, but here, again, as this
2094 individual purporting to be Muslim, he said, "What I find
2095 absolutely incredible, however, is why someone would base
2096 their identity on their sexual practices. This is something
2097 unique about homosexuals."

2098 "A person may understandably identify themselves as
2099 primarily a Christian or a socialist or a mathematician, to
2100 name a few examples. Why on Earth would someone choose as
2101 their identity something related to their sexual habits? If
2102 a heterosexual went around preaching the virtues of a

2103 specific sexual habit of theirs, what would most people think
2104 of them?"

2105 "To anyone with a basic level of decency, their private
2106 activities are kept exactly that, private. They are no one's
2107 business, and most people would not want to know about them."

2108 And so with this kind of statements coming from an
2109 individual that purports online to be an Islamic teacher, you
2110 know, well, those kind of things would come into evidence if
2111 somebody reads that and commits an act of violence against a
2112 homosexual.

2113 And the point earlier I was making is, I sentenced
2114 people for committing acts of violence against homosexuals
2115 not because they were homosexuals, but because the victims
2116 were human beings and they deserved protection that the law
2117 could give them. That was without hate crime legislation.

2118 I yield back.

2119 Mr. Nadler. The gentleman yields back.

2120 I recognize myself for 5 minutes.

2121 Let me say it strikes me that this amendment is entirely
2122 and completely, 100 percent superfluous and that most of the
2123 comments on it have been missing the point.

2124 One can debate whether certain activities are protected
2125 by the Constitution or not, but either they are or they
2126 aren't. If they are protected by the Constitution, then this
2127 bill cannot affect them, and this amendment doesn't—is

2128 unnecessary.

2129 If they are not protected by the Constitution, then this
2130 amendment doesn't help, because what does the amendment say?

2131 Nothing in this section prevents or restrains a person from
2132 engaging in speech or conduct protected by the Constitution.

2133 Well, if the speech or conduct is not protected by the
2134 Constitution, the amendment's irrelevant. And the speech or
2135 conduct is protected by the Constitution, then it is by
2136 definition protected by the Constitution, the bill can't
2137 affect it, and the amendment is again irrelevant.

2138 So I don't think we should clutter up bills with
2139 completely irrelevant amendments that say and do nothing,
2140 which is what this does. It may make us feel good, but,
2141 again, if some conduct or speech is protected by the
2142 Constitution, it doesn't need this amendment. The bill
2143 cannot affect it. And if it is not protected by the
2144 Constitution, the amendment doesn't protect it.

2145 So either way, the amendment is a total waste of ink,
2146 and I would oppose it.

2147 I yield back.

2148 Mr. Goodlatte. Mr. Chairman?

2149 Mr. King. Mr. Chairman?

2150 Mr. Nadler. Who seeks recognition?

2151 The gentleman from Virginia.

2152 Mr. Goodlatte. Thank you, Mr. Chairman.

2153 Mr. Chairman, I have a different take on your
2154 interpretation of this. And I think the very fact that
2155 section 10 was placed in the legislation and the same
2156 analysis you provided for the amendment offered by the
2157 gentleman from Arizona could apply to that rule of
2158 construction, necessitates pointing out that, while section
2159 10 is a welcome addition to the bill, it was raised by
2160 Congressman Artur Davis in the last Congress and was added to
2161 the legislation, I think rightfully, to attempt to address
2162 this problem, it does not completely address the problem.

2163 And there are two reasons for that. First of all, it
2164 only applies to two aspects of the First Amendment to the
2165 Constitution and not to the entire Constitution.

2166 And, secondly, it does not address the problem of
2167 allaying the concerns of people that these provisions will
2168 not provide them with a bar to prosecution, as the earlier
2169 amendment that was offered and rejected would have done, but
2170 this amendment also helps to clarify that.

2171 I support the amendment because the legislation, it
2172 helps to clarify and emphasize that the legislation shall not
2173 have an effect on constitutional rights, because hate crime
2174 laws improperly focus on personal beliefs rather than actual
2175 conduct. They can have a chilling effect on speech and First
2176 Amendment rights and other constitutional rights.

2177 This amendment will ensure that a hate crime prosecution

2178 cannot depend solely on constitutionally protected speech or
2179 conduct. And I urge my colleagues to support the amendment.

2180 Mr. King. Mr. Chairman?

2181 Mr. Nadler. If there is no—

2182 Mr. King. Thank you, Mr. Chairman. I rise in support
2183 of the Franks amendment, as well. And I endorse the analysis
2184 of the statutory construction that is—the rule of
2185 construction that is the component of this.

2186 But I would yield to the gentleman from Arizona.

2187 Mr. Franks. And I thank the gentleman for yielding.

2188 Mr. Chairman, it is difficult to improve on Mr.
2189 Goodlatte's response to your discussion, but I do hope that
2190 you will send a nasty letter to the ACLU for sending you an
2191 amendment that is a waste of ink and clutters up this bill
2192 like it does.

2193 But what I wanted to do, in all seriousness, is to
2194 respond to Representative Baldwin's comments related to this
2195 being about conduct, because I think she is entirely sincere.
2196 I believe she is wrong.

2197 I think, if it was about conduct, we wouldn't be having
2198 this meeting here at all. The bill is at its core a bill
2199 about motivation.

2200 And one of the things I wanted to try to do is to try to
2201 make a distinction between motivation and intent. There are
2202 many motivations for someone to commit cold-blooded murder.

2203 There are monetary motivations. Maybe somebody is having an
2204 argument. Maybe there are all kinds of motivations.

2205 But we really don't consider those kinds of things as
2206 the principle considerations in court. What we consider is
2207 intent. Did you intend to kill this person? Was your intent
2208 to protect someone else?

2209 Intent is a viable basis to consider, but motivation
2210 doesn't change the ultimate intent. And so I want to make
2211 that difference.

2212 And, finally, Mr. Chairman, as we have seen here, there
2213 are so many different groups that we are all divided into,
2214 and perhaps that is part of the problem. Maybe if we would
2215 simply consider ourselves all one part of the human family
2216 and recognize that, when we intend to do harm to each other,
2217 to our lives or our freedom or our property or pursuit of our
2218 dreams, that those are the things that we should hold
2219 closest.

2220 Because, you see, one of the great tragedies is when we
2221 have made these distinctions in the past, not necessarily to
2222 protect a particular group, but we have seen these
2223 distinctions also happen where a particular group was
2224 terribly discriminated against and terribly hurt because of
2225 the distinction that we made in society.

2226 When we try to create these distinctions, these
2227 different groups, whether it is Jews or African-Americans or

2228 whatever it might be, we know that our history points out
2229 that those groups then can become under terrible
2230 discrimination and be part of being victimized in a terrible
2231 way.

2232 So perhaps it is time that we recognize that we
2233 sincerely all are children of God and start treating each
2234 other as such and quit making all of these categories and
2235 distinctions of the human family.

2236 With that, I yield back.

2237 Mr. Scott. Mr. Chairman?

2238 Mr. Nadler. For what purpose does the gentleman from
2239 Virginia seek recognition?

2240 Mr. Scott. Move to strike the last word and a unanimous
2241 consent request.

2242 Mr. Nadler. The gentleman will state the unanimous
2243 consent request.

2244 The gentleman is recognized, and he will state the—

2245 Mr. Scott. Okay. First of all, Mr. Chairman, I would
2246 ask unanimous consent that, on page 16 of the bill, on line
2247 9, that the words "the free speech or free exercises clauses
2248 of the First Amendment" be deleted so that—

2249 Mr. Nadler. To—

2250 Mr. Scott. —the language would be "any activities
2251 protected by the Constitution" would be how the amendment—how
2252 the bill would read.

2253 Mr. Nadler. Is there any objection to that unanimous
2254 consent request?

2255 Hearing none—

2256 Mr. Rooney. Mr. Chairman? Reserving my right to
2257 object.

2258 Mr. Nadler. The gentleman is recognized.

2259 Mr. Rooney. I would just ask for a clarification. To
2260 strike the words from line nine, "free speech or free
2261 exercise clauses," as the gentleman from Virginia has stated,
2262 does he intend to leave in at the language "the First
2263 Amendment of the Constitution" in the last line or to strike
2264 it entirely?

2265 Mr. Nadler. Strike that—

2266 Mr. Scott. No, strike the First Amendment so that it
2267 would read "any activities protected by the Constitution."

2268 Mr. Nadler. Which makes it as broad as you can ask for.

2269 Mr. Rooney. I withdraw my reservation.

2270 Mr. Franks. Mr. Chairman? Reserving my right to
2271 object, I just want to say that, if the gentleman's unanimous
2272 consent is accepted, I will withdraw my amendment.

2273 Mr. Nadler. That is the intent, I think. Is there any
2274 objection?

2275 Hearing no objection, so ordered.

2276 Does the gentleman wish to be recognized?

2277 Mr. Franks. I withdraw my amendment, Mr. Chairman.

2278 Mr. Nadler. The amendment, without objection, is
2279 withdrawn.

2280 Are there any further amendments?

2281 Mr. Rooney. Mr. Chairman? Florida.

2282 Mr. Nadler. The gentleman from Florida is recognized.

2283 Mr. Rooney. Mr. Chairman, I have an amendment at the
2284 desk.

2285 Mr. Scott. Mr. Chairman, I reserve a point of order.

2286 Mr. Nadler. The clerk will report.

2287 The Clerk. Amendment to H.R. 1913, offered by Mr.

2288 Rooney.

2289 [The amendment by Mr. Rooney follows:]

2290 ***** INSERT *****

2291 Mr. Nadler. Without objection, the amendment is
2292 considered as read.

2293 The gentleman from Florida is recognized for 5 minutes.

2294 Mr. Rooney. Mr. Chairman, this is an amendment—this
2295 amendment adds the category of members of the armed forces to
2296 those this legislation seeks to protect. Hate crimes against
2297 the military members because of their military status and
2298 association are a definite threat and one that should be
2299 deterred by including them in the list of protected groups.

2300 Historically, as well as evidenced by recent mixed
2301 message classifications by our federal government, members of
2302 the military may be included as suspicious for potential
2303 illegal conduct. We have a responsibility to make clear the
2304 actual regard this body and our government truly has for
2305 those who wear or have worn the uniform of this country.

2306 To be sure, this amendment would seek to dissuade future
2307 hate crimes against military members motivated by that mixed
2308 message by our government, referenced earlier.

2309 We honor our men and women of the military because of
2310 their patriotism, their commitment to protecting our freedom,
2311 and to serving our country. In times of controversy
2312 surrounding the use of our military, we have seen unfortunate
2313 acts by those who use their hostility towards the military to
2314 further their political agenda.

2315 For example, in recent times, we were faced with the

2316 practice of groups protesting at military funerals of
2317 servicemembers killed in Iraq. This despicable behavior
2318 intruded on the families of the lost servicemembers and their
2319 need for privacy to grieve.

2320 In response, in the last Congress, the body acted last
2321 year in passing legislation to restrict the right of
2322 protestors to interfere with military funerals.

2323 And with the rising debate over the Iraqi and Afghan
2324 wars, we are seeing increasing threats to war veterans. In
2325 2005, during a peace rally, a war veteran was assaulted by a
2326 protestor at the rally, not because of who he was, but solely
2327 because he was a member of the military.

2328 Such incidents were all too commonplace during the
2329 upheaval surrounding the Vietnam War, when hundreds of
2330 threats and assault incidents occurred against Vietnam War
2331 veterans, again, solely because they were part of the
2332 military, not because of who they were.

2333 Congress needs to make it clear to everyone that we
2334 honor our members of the armed forces. Any act of violence
2335 against a member of the armed forces must be met with swift
2336 and sure punishment. Congress can make that message clear
2337 that hate of our armed forces will be punished at a
2338 heightened level, just like the other groups that are given
2339 protection under this act.

2340 As an Army veteran, I urge my colleagues to approve this

2341 amendment.

2342 I yield back, Mr. Chairman.

2343 Ms. Wasserman Schultz. Mr. Chairman?

2344 Mr. Scott. [Presiding.] The gentlelady from—for what
2345 reasons does the gentlelady seek recognition?

2346 Ms. Wasserman Schultz. Mr. Chairman, I move to strike
2347 the last word.

2348 Mr. Scott. The gentlelady is recognized for 5 minutes.

2349 Ms. Wasserman Schultz. Thank you, Mr. Chairman.

2350 You know what, Mr. Chairman? I would like to redirect
2351 the debate now to individuals who this law is actually meant
2352 to protect.

2353 And I have sat here silently for the last hour or so
2354 listening to a litany of categories that are non-existent
2355 when it comes to violence perpetrated against them, the
2356 members of the armed forces being yet another example.

2357 Now, I am from a state, as Mr. Rooney is, that includes—
2358 and represents a district that includes real victims, large
2359 groups of real victims of hate crime. I represent a very
2360 large—one of the largest gay populations in the United States
2361 of America, one of the largest Jewish populations in the
2362 United States of America.

2363 My region—our region has a very large African-American
2364 population, all groups who are real victims of targeted hate
2365 crimes. It really is belittling of the respect that we

2366 should have for these groups to suggest that members of the
2367 armed services have somehow systematically been the victims
2368 of hate crime.

2369 Let's focus on what real hate crimes are. Let's focus
2370 on Ryan Skipper, who was a 25-year-old gay man from Polk
2371 County, Florida.

2372 In March of 2007, Ryan's body was found dumped along the
2373 side of the road. His body had been stabbed 20 times and his
2374 throat was slit. His car was found abandoned nearby and
2375 contained the fingerprints of his two killers. One of his
2376 attackers claimed he acted in self-defense to fend off
2377 unwanted sexual advances.

2378 Think about that. He was stabbed 20 times and his
2379 throat was slit. Self-defense.

2380 Ryan Skipper's killers were charged with murder, but
2381 there was no hate crime to charge them with. Why do we need
2382 a hate crimes law? Because sadly, in this day and age, we
2383 must send a strong message that all Americans should be able
2384 to feel safe in their communities.

2385 Hate crimes do more than threaten our safety and well-
2386 being. Hate crimes do more than inflict incalculable pain
2387 and suffering on their victims. Hate crimes also terrorize
2388 communities.

2389 Mr. Rooney, do you think that there are hate crimes
2390 running rampant through the military bases in the United

2391 States of America? Or are you really just offering a
2392 disingenuous amendment to distract from what the real issue
2393 is here? I think the latter is the case.

2394 Let's—

2395 Mr. Rooney. Will the gentlelady yield, please?

2396 Ms. Wasserman Schultz. No, I will not yield. I would
2397 like to continue my point.

2398 Left unpunished, hate crimes send powerful messages of
2399 intolerance. I am proud once again to be an original co-
2400 sponsor of this legislation, and I want to commend Chairman
2401 Conyers and my colleague, Tammy Baldwin, both of whom I
2402 admire so much for your leadership in bringing this issue
2403 forward again this year.

2404 So we need to get this done. Let's announce here and
2405 now that we will not tolerate this kind of terror in America.
2406 Let's end the ridiculous distractions that occur year after
2407 year in this committee when this legislation is introduced.
2408 Let us vow that we will not turn a blind eye to hatred and
2409 violence, real hatred and real violence in America.

2410 And let us pledge to give police and prosecutors all the
2411 resources they need to stamp out this scourge. I really
2412 can't wait for days like today to be behind us. It is sad,
2413 frankly, that we need to pass these kinds of laws.

2414 But I have strong hope for the future. I believe our
2415 challenges in this area are not fundamental. They are

2416 generational.

2417 As the mother of three young children, I can tell you
2418 that sexual orientation just isn't a big deal anymore. And
2419 that is because my children's generation doesn't look at gays
2420 and lesbians and see "them." They look at gays and lesbians
2421 and see "us."

2422 One day, they will scratch their heads and ask me how it
2423 is that we ever turned a blind eye to hate crimes committed
2424 against their gay and lesbian friends. What will we tell
2425 them?

2426 Mr. Chairman, Ryan Skipper may be gone, but we can
2427 choose to honor his life today and the lives of all gay and
2428 lesbian Americans and tell them that Americans in this
2429 country have respect for them and don't want violence
2430 perpetrated against them, specifically because of who they
2431 are.

2432 I urge my colleagues to support this important
2433 legislation, and I yield back the balance of my time.

2434 Mr. Goodlatte. Mr. Chairman?

2435 Mr. Scott. First of all, we need to be reminded that we
2436 will not question the possible motives of people, just the
2437 bill—address the bill itself.

2438 The gentleman from Virginia, my colleague?

2439 Mr. Goodlatte. I thank you, Mr. Chairman.

2440 And I want to commend the gentleman from Florida for

2441 offering a very sensible amendment. And anyone who argues
2442 that members of our armed forces today and in the past have
2443 not been subject to hateful actions, including violent
2444 actions against them, simply does not know the history of our
2445 country, particularly going back to the Vietnam War era.

2446 The victims that we saw have violent acts perpetrated
2447 against them, who came home after serving their country, are
2448 every bit as entitled to protection under the law for violent
2449 crimes perpetrated against them as anybody else in this
2450 country, anyone else.

2451 And I certainly hope that the individuals that
2452 perpetrated the crime referred to by the gentlewoman from
2453 Florida were fully prosecuted under the law. Those are
2454 heinous crimes. And whatever their motivation was, that was
2455 an incredibly violent act for which they should have been
2456 prosecuted.

2457 But to argue that members of our armed forces are not-
2458 both today and in the past-subject to being violent victims
2459 of hatred begs the question-you know, we just have a report
2460 that our own United States government released in which they
2461 specifically suggest that military veterans could be the
2462 perpetrators of violent acts.

2463 You know, in a most reprehensible statement, to show
2464 that hatred can take many, many different forms, this
2465 government report notes the possible passage of new

2466 restrictions on firearms and the return of military veterans
2467 facing significant challenges reintegrating into their
2468 communities could lead to the potential emergence of
2469 terrorist groups or lone wolf extremists capable of carrying
2470 out violent attacks.

2471 What a—that is an attack in and of itself on members of
2472 our armed services. And to suggest that there aren't people
2473 in this country, including, perhaps, people in our United
2474 States government who show hatred for members of the military
2475 is to beg the question of why we would need this legislation
2476 for anybody.

2477 This is important to note. Everyone on this side of the
2478 aisle strongly believes that anyone who commits a violent
2479 crime against any victim should be prosecuted to the fullest
2480 extent of the law. And if the laws and the penalties imposed
2481 on people who commit violent crimes aren't strong enough, we
2482 stand ready to work to make sure that those laws are
2483 enhanced.

2484 But to say that members of our armed services who are
2485 the victims of violent crimes, many instances motivated by
2486 hateful motives of people, are not entitled to the same
2487 protection as others who have been put into this legislation
2488 as protected classes is, I think, a disgrace.

2489 I strongly support the amendment of the gentleman from
2490 Florida.

2491 Mr. Forbes. Mr. Chairman?

2492 Mr. Scott. I recognize myself for 5 minutes.

2493 First of all, the bill is called a hate crimes bill for
2494 a reason. There are some groups that are targeted for
2495 widespread targeting because of hatred. Although there may
2496 be with other groups an occasional here or there, that is
2497 certainly not the case that servicemen—first of all, with
2498 servicemen, there is already a crime, 18 USC 1114, which
2499 makes it a crime to kill or attempt to kill any officer or
2500 employee of the United States, including any member of the
2501 United States—of the uniformed services on account of the
2502 performance of official duties. That is already against the
2503 law.

2504 We also have a law dealing with funerals of
2505 servicemembers. And so they are not subject to this kind of
2506 widespread attacks.

2507 The Vietnam era was over 30 years ago, so anything going
2508 back that far is clearly not the situation here.

2509 There is, therefore, no rationale for federal
2510 intervention. There is no lack of prosecution of these
2511 cases. There are no biased local juries that would require
2512 federal intervention.

2513 And we certainly don't—I mean, we have our—our
2514 servicemen today are considered, I think rightfully,
2515 courageous, honorable servicemen and women, and therefore

2516 this certainly doesn't fit into the category of something
2517 that needs to be protected from hate crimes.

2518 Mr. Goodlatte. Would the gentleman yield?

2519 Mr. Scott. I yield.

2520 Mr. Goodlatte. I appreciate the gentleman citing the
2521 federal code section that makes it a crime to attempt to kill
2522 a member of our armed services. Does that legislation have
2523 an enhanced sentence of an additional 10 years in prison
2524 because of the fact that they are a member of the armed
2525 services?

2526 Mr. Scott. Well, it includes any official or employee
2527 of the United States on account of performance of official
2528 duties, including a member of the uniformed services.

2529 Mr. Goodlatte. But does it add an additional 10 years
2530 of sentencing because of that?

2531 Mr. Scott. I will defer and get back to you.

2532 Mr. Goodlatte. I thank the chairman.

2533 Mr. Forbes. Mr. Chairman? Mr. Chairman?

2534 Mr. Scott. The gentleman from Virginia, Mr. Forbes?

2535 Mr. Forbes. Thank you. Mr. Chairman, I was appalled at
2536 the last discussion I heard, too, because it makes it clear
2537 that this is not about whether or not we are protecting
2538 individuals who need to be protected. It is who we want to
2539 protect.

2540 To suggest that military people are not being attacked

2541 on the military bases totally misses the point that where
2542 they are attacked oftentimes is when they are off those bases
2543 with their families.

2544 And to suggest it is not happening is to totally miss
2545 the fact that some of these groups out there are so filled
2546 with hate with our military that they are constantly having
2547 situations where they are spit upon, they are attacked, and
2548 they are done other kinds of things. And we just don't want
2549 to protect them.

2550 But I think the most appalling thing is to have a member
2551 of this committee impugn the motives of another member and
2552 not give them an opportunity to respond.

2553 So with that, I would like to do what I think should
2554 have been done earlier and yield to the gentleman of Florida
2555 to be able to respond.

2556 Mr. Rooney. Thank you for yielding.

2557 You know, the motive of this amendment certainly was not
2558 meant to make a mockery of previous classifications of people
2559 that have had bias or racism or prejudice against, certainly,
2560 in the past.

2561 And the motive of this amendment was simply to add on to
2562 what I believe, as somebody who wore the uniform, that
2563 historically, as we talked about with Vietnam, but also
2564 recently, when you have the federal government basically
2565 saying that people—because of their military history or their

2566 military membership could potentially be suspicious
2567 classifications and what retribution there might be against
2568 them because of that.

2569 So I make no apologies whatsoever that I include men and
2570 women who have worn the uniform, as people I think that this
2571 body should protect against potential heightened-potential
2572 crimes within the category of this bill.

2573 And I yield back. Thank you.

2574 Mr. Scott. The gentlelady from Wisconsin?

2575 Ms. Baldwin. Thank you, Mr. Chairman. I move to strike
2576 the last word. Move to strike the last word?

2577 Mr. Scott. The gentlelady is recognized for 5 minutes.

2578 Ms. Baldwin. Thank you.

2579 I would urge that we defeat this amendment for many of
2580 the same reasons I argued that we should defeat the amendment
2581 adding seniors to this underlying legislation. And I want to
2582 talk about this from a couple different angles.

2583 One is, I have recognized that some of my colleagues
2584 genuinely disagree with the whole idea of having any type of
2585 hate crimes statutes. And if that is the case, I wish they
2586 would simply say that, rather than offer category after
2587 category to add to this.

2588 That is certainly a difference of opinion we can have.
2589 But people, you know, certainly out there object to having
2590 hate crimes legislation.

2591 I think, though, that it is incredibly important
2592 legislation, and especially when you look back to the history
2593 of this country, why did we pass hate crimes to cover race?

2594 Because there were horrible, horrible, heinous things
2595 happening in our country based on race, violence, and it was
2596 meant to send a message that terrorized entire communities.

2597 We added national origin. We added religion. We added
2598 color. I think the argument has been made, the evidence has
2599 been proffered, the lives have been lost that justify adding
2600 the categories that we have before us today.

2601 I do not believe that we have the history in this nation
2602 that would justify additional categories at this point. If
2603 that changes, we should look at that and we should talk about
2604 that, but I want this to be a genuine discussion.

2605 I also want to just touch on one of the ironies of this
2606 whole discussion. Yes, Congress acted to address the issue
2607 of protests around military funerals, and I strongly
2608 supported that legislation. It was carefully crafted to
2609 balance First Amendment concerns.

2610 The irony here is the group that was protesting military
2611 funerals happened to be an anti-gay—you know, holding anti-
2612 gay extreme views, and they were protesting—as I recall, the
2613 head of the protestors making the argument that we are
2614 protesting these military funerals because it is the
2615 punishment that God is bringing to the United States because

2616 of tolerance of homosexuality.

2617 So the irony of the military funeral protest is it was
2618 really an anti-gay protest, and which I think argues, again,
2619 why we actually need these protections.

2620 Mr. Scott. Mr. Chairman, I want to respond to my
2621 colleague from Virginia, who had asked a question about
2622 sentencing. Under the code section 1114, the penalties are
2623 the same, but because—as the murder of anyone else. However,
2624 since it is a separate code section, I would assume that the
2625 sentencing guidelines would be more severe under that code
2626 section than under the normal murder section.

2627 Mr. Nadler. [Presiding.] The gentlelady yields back.
2628 Is there any further—

2629 Mr. Gohmert. Mr. Chairman?

2630 Mr. Nadler. Who seeks recognition?

2631 The gentleman from Texas?

2632 Mr. Gohmert. Thank you, Mr. Chairman.

2633 We heard about the egregious case of Mr. Skipper in
2634 Florida. And my friend from Florida said the killer was
2635 charged with murder because there were no hate crimes.

2636 I would like to yield to my friend to specifically
2637 answer what happened to the individuals who were involved in
2638 that horrible murder. Were they convicted of murder? Were
2639 they sentenced? And is there any evidence that a hate crimes
2640 legislation bill from this body would change the outcome at

2641 all?

2642 Ms. Wasserman Schultz. I thank the gentleman for
2643 yielding.

2644 One of the individuals was convicted and one was
2645 acquitted. And the point that I was making was that, if
2646 there was hate crimes legislation at the time that that
2647 murder occurred and the prosecution occurred, then an
2648 enhanced penalty for specifically targeting Ryan Skipper for
2649 his sexual orientation would have been an option. It was not
2650 an option upon their conviction.

2651 Mr. Gohmert. Did they—did the individual convicted get
2652 the life sentence?

2653 Ms. Wasserman Schultz. No, he did not.

2654 Mr. Gohmert. Thanks. That does say something about the
2655 people that made up the jury or the judge—

2656 Ms. Wasserman Schultz. Well, but that is—

2657 Mr. Gohmert. —because he certainly—

2658 Ms. Wasserman Schultz. If the gentleman would yield—

2659 Mr. Gohmert. Reclaiming my time, because this needs to
2660 be addressed. When we talk about making a mockery out of
2661 this, let me tell you: I have stated, I don't think this
2662 hate crime legislation is necessary.

2663 And I appreciate my friend from Wisconsin raising that.
2664 I don't think it is necessary. But if we are going to have
2665 it, and the majority here is intent on making it happen, then

2666 we ought to at least put things in there that make it more
2667 fair and more appropriate.

2668 Now, as far as saying the military has not been picked
2669 on, let me tell you. I went to Texas A&M. I had an Army
2670 scholarship. I expected to go to Vietnam when I graduated
2671 from A&M, but Vietnam ended before I graduated. And I went
2672 to training camp in Fort Riley, Kansas, in 1974.

2673 We were ordered not to wear our uniforms off-post
2674 because of all of the violence that occurred to military
2675 members. Now, I was spit on, even though I wasn't in
2676 uniform, because it was obvious that somebody with short hair
2677 like me and some of my friends were in the Army.

2678 When I was at Fort Benning, Georgia, later, it was not a
2679 good time to be in the military. When I had people in my
2680 campaign asking, "Give us some pictures from being in the
2681 military," because some people really liked that, we went
2682 back—we didn't take pictures of us in the military because it
2683 was not considered a good thing. We were out of uniform when
2684 we went off-post. It was just not a good time to be in the
2685 military.

2686 And here I have got a story that Columbus, Ohio, Barton
2687 was home on leave from Iraq, recovering from knee surgery,
2688 when he was attacked in the Germain Amphitheatre parking lot
2689 after a Toby Keith concert. Barton says his attacked beat
2690 him up because he was wearing an Operation Iraqi Freedom T-

2691 shirt. He was so badly beaten, he was knocked unconscious.

2692 He had already won a Purple Heart for his efforts in
2693 Iraq. He was wounded, nearly lost his leg when his Humvee
2694 was attacked. He was home on leave when the alleged attack
2695 occurred after the concert. I also remember in San Antonio
2696 recently, a member of the Navy was attacked because he was in
2697 uniform.

2698 There is a hatred for the military. I did not recall an
2699 anti-homosexual group protesting. I know the one that was
2700 going to come to my district didn't bring up anything about
2701 homosexuality. They were accusing our guys of, you know,
2702 being baby-killers kind of stuff. So I don't see the nexus
2703 there.

2704 But my friend from Florida said she is proud, of course,
2705 and appropriately, that my children don't see gays when they
2706 look at people. I don't see gays when I look at people. I
2707 don't care. When people ask me what I thought about Mark
2708 Foley being gay, I didn't know he was gay. I didn't care.
2709 It didn't matter.

2710 We look at people as human beings. If they practice
2711 lifestyles that we believe are detrimental to society, we are
2712 supposed to be able to hold those religious beliefs without
2713 being persecuted. And if we express that freedom of speech,
2714 we are supposed to be able to do it without being persecuted,
2715 even if some nut unintentionally takes that and goes too far

2716 and hurts somebody, because we do not advocate violence
2717 because of someone's lifestyle.

2718 That is not what Jesus was about. He was about love,
2719 but he did advocate that there are some things that are sins.
2720 And—but you love people. You love the sin, though you hate
2721 the sinner. And my time is expired, so I yield back.

2722 Mr. Nadler. The gentleman yields back.

2723 The question—

2724 Mr. King. Mr. Chairman? Mr. Chairman?

2725 Mr. Nadler. The gentleman from Iowa?

2726 Mr. King. Move to strike the last word.

2727 Mr. Nadler. Strike the last word.

2728 Mr. King. Thank you, Mr. Chairman. And I regret that I
2729 wasn't recognized in time to address this issue while the
2730 gentlelady from Florida was in the room or the gentleman from
2731 Virginia was in the room, because I think there are two
2732 important points that have not been raised in this dialogue.
2733 And, of course, I rise in support of the Rooney amendment.

2734 One of those points that was made by the gentleman from
2735 Virginia, Mr. Scott, was that Vietnam was over, over 30 years
2736 ago; therefore, it is not relevant to today's discussion,
2737 that it is somehow an artifact of history what took place
2738 there.

2739 And I think Mr. Gohmert has spoken to the issue very
2740 articulately, having experienced that kind of discrimination

2741 himself. I don't recall Mr. Gohmert ever wanting special
2742 protection for that reason. He was simply wanting to punish
2743 the act, rather than the thought that takes place, as would
2744 I.

2745 But I would point out that if it is a valid point made
2746 by the gentleman from Virginia that it was more than 30 years
2747 ago that Vietnam was over, I think it is important to make
2748 the point that it was 144 years ago that slavery was over.

2749 And I don't argue that there is not discrimination today
2750 against people based upon race, but I will argue that, when
2751 you commit an act, then the act should be punished.

2752 And then, the gentlelady from Florida, she read to us,
2753 told us of a horrible crime that was committed in her area,
2754 where the victim was stabbed, she told us, more than 20 times
2755 and his throat was slit. But the outrage that I heard, that
2756 I would like to have the opportunity to ask her about was,
2757 the outrage that the perpetrator said that he was fighting
2758 off or fending off a sexual advance.

2759 It sounded to me, the tone that I heard was the
2760 indignation was about what was perceived and probably was a
2761 lie, rather than the actual act itself, and I am disappointed
2762 that the punish that was meted out to that—the individual
2763 that was convicted was not more severe than it was.

2764 I am one who will take someone who has committed a
2765 premeditated act of murder, and I would send them to

2766 eternity. That is how seriously I take the sanctity of human
2767 life. And I am curious as to whether the gentlelady from
2768 Florida would actually take such a position, if that
2769 reverence really exists there for life or the indignation
2770 exists for some other reason.

2771 And since we have been admonished or cautioned not to
2772 challenge motives—I might want to challenge that rule
2773 someday—but today, I would be happy to yield to the gentleman
2774 from Texas, Mr. Gohmert.

2775 Mr. Gohmert. I thank my friend.

2776 Apparently, because this is such an important issue to
2777 me when we talk religious freedom, I misspoke. Jesus taught
2778 love the sinner and hate the sin, very clearly. And if I
2779 misspoke that, I apologize, because clearly he was about
2780 loving the sinner and hating the sin. So thank you.

2781 I yield back to my friend.

2782 Mr. King. Reclaiming my time. And I hope they didn't
2783 discriminate against you for being an Aggie, Mr. Gohmert.

2784 But I would point out, too—and I solidly support the
2785 amendment by the gentleman, Mr. Rooney—but there lingers out
2786 here still this abiding question that at least the gentlelady
2787 from Wisconsin I don't think was articulate enough in
2788 answering, and that is, what are these definitions for
2789 gender, gender identity, real or perceived?

2790 And it lingers out in front of us that the perception is

2791 in the mind of the victim, was the response that I heard,
2792 rather than in the mind of the perpetrator—

2793 Mr. Nadler. Would the gentleman yield?

2794 Mr. King. —and—in a moment, I would yield.

2795 Mr. Nadler. Would the gentleman yield for a second, for
2796 one second?

2797 Mr. King. I would yield.

2798 Mr. Nadler. She said the mind of the perpetrator, not
2799 the victim.

2800 Mr. King. Then I misheard a statement that I understood
2801 was in the mind of the victim, rather than the perpetrator.

2802 So this is—the perception is in the mind of the
2803 perpetrator. Okay. That narrows this down a little bit.

2804 And thanks for that clarification. And I never want to live
2805 with a misconception.

2806 The language I am reading directly from the bill says
2807 gender, sexual orientation, gender identity, those three.
2808 And I still—if I can't hear a definition for these three
2809 terms from any member of this esteemed panel, even though
2810 there might be definitions that exist somewhere else in
2811 statute, how in the world can we believe that we are making a
2812 decision here on a piece of legislation if no one here
2813 understands the definitions of these terms, that I will say
2814 are broad and open and undefined, and undefined with any
2815 specificity, that the perpetrator can determine this?

2816 And so I would just pose a question to the gentlelady
2817 from Wisconsin. Can you please make another attempt at
2818 defining those terms, gender, sexual orientation, gender
2819 identity? And then tell me how I can tell. And I would be
2820 happy to yield to the gentlelady from Wisconsin.

2821 Ms. Baldwin. Well, I would ask that, for purposes of
2822 debate, I am going to ask the gentleman, do you understand
2823 the term "race," "color," "national origin," or "religion"?
2824 Do you need any extra definitional assistance with—

2825 Mr. King. I can exactly define those, reclaiming my
2826 time, and it is this, that religion is protected under the
2827 First Amendment of the Constitution—

2828 Mr. Nadler. Time is expired.

2829 Mr. King. —and those others are immutable
2830 characteristics. And that is another definition—

2831 Mr. Nadler. The time of the gentleman—

2832 Mr. King. —and I yield back.

2833 Mr. Nadler. The time of the gentleman has expired.

2834 The question occurs on the amendment. All those in
2835 favor will say "aye."

2836 [A chorus of ayes.]

2837 Opposed, "no."

2838 [A chorus of noes.]

2839 In the opinion of the chair, the noes have it, and the
2840 amendment is not agreed to.

2841 Mr. Rooney. Mr. Chairman, I had asked for a recorded
2842 vote.

2843 Mr. Nadler. Recorded vote is requested. The clerk will
2844 call the roll.

2845 The Clerk. Mr. Conyers?

2846 Mr. Berman?

2847 [No response.]

2848 Mr. Boucher?

2849 [No response.]

2850 Mr. Nadler?

2851 Mr. Nadler. No.

2852 The Clerk. Mr. Nadler votes no.

2853 Mr. Scott?

2854 Mr. Scott. No.

2855 The Clerk. Mr. Scott votes no.

2856 Mr. Watt?

2857 Mr. Watt. No.

2858 The Clerk. Mr. Watt votes no.

2859 Ms. Lofgren?

2860 [No response.]

2861 Ms. Jackson Lee?

2862 [No response.]

2863 Ms. Waters?

2864 [No response.]

2865 Mr. Delahunt?

2866 [No response.]
2867 Mr. Wexler?
2868 [No response.]
2869 Mr. Cohen?
2870 Mr. Cohen. No.
2871 The Clerk. Mr. Cohen votes no.
2872 Mr. Johnson?
2873 Mr. Johnson. No.
2874 The Clerk. Mr. Johnson votes no.
2875 Mr. Pierluisi?
2876 Mr. Pierluisi. No.
2877 The Clerk. Mr. Pierluisi votes no.
2878 Mr. Gutierrez?
2879 [No response.]
2880 Mr. Sherman?
2881 [No response.]
2882 Ms. Baldwin?
2883 Ms. Baldwin. No.
2884 The Clerk. Mr. Baldwin votes no.
2885 Mr. Gonzalez?
2886 [No response.]
2887 Mr. Weiner?
2888 [No response.]
2889 Mr. Schiff?
2890 Mr. Schiff. No.

2891 The Clerk. Mr. Schiff votes no.
2892 Ms. Sanchez?
2893 [No response.]
2894 Ms. Wasserman Schultz?
2895 [No response.]
2896 Mr. Maffei?
2897 [No response.]
2898 Mr. Smith?
2899 [No response.]
2900 Mr. Goodlatte?
2901 Mr. Goodlatte. Aye.
2902 The Clerk. Mr. Goodlatte votes aye.
2903 Mr. Sensenbrenner?
2904 Mr. Sensenbrenner. Aye.
2905 The Clerk. Mr. Sensenbrenner votes aye.
2906 Mr. Coble?
2907 [No response.]
2908 Mr. Gallegly?
2909 Mr. Gallegly. Aye.
2910 The Clerk. Mr. Gallegly votes aye.
2911 Mr. Lungren?
2912 [No response.]
2913 Mr. Issa?
2914 [No response.]
2915 Mr. Forbes?

2916 Mr. Forbes. Aye.
2917 The Clerk. Mr. Forbes votes aye.
2918 Mr. King?
2919 Mr. King. Aye.
2920 The Clerk. Mr. King votes aye.
2921 Mr. Franks?
2922 [No response.]
2923 Mr. Gohmert?
2924 Mr. Gohmert. Aye.
2925 The Clerk. Mr. Gohmert votes aye.
2926 Mr. Jordan?
2927 Mr. Jordan. Yes.
2928 The Clerk. Mr. Jordan votes yes.
2929 Mr. Poe?
2930 [No response.]
2931 Mr. Chaffetz?
2932 Mr. Chaffetz. Aye.
2933 The Clerk. Mr. Chaffetz votes aye.
2934 Mr. Rooney?
2935 Mr. Rooney. Yes.
2936 The Clerk. Mr. Rooney votes yes.
2937 Mr. Harper?
2938 [No response.]
2939 Mr. Weiner. No.
2940 The Clerk. Mr. Weiner votes no.

2941 Chairman Conyers. No.

2942 The Clerk. Mr. Conyers votes no.

2943 Mr. Nadler. Wexler?

2944 Mr. Wexler. No.

2945 The Clerk. Mr. Wexler votes no.

2946 Mr. Nadler. -reported?

2947 The clerk will report.

2948 The Clerk. Mr. Chairman, 9 members voted aye, 11

2949 members voted nay.

2950 Mr. Nadler. The amendment is not agreed to-

2951 Mr. Gohmert. Mr. Chairman, I have an amendment at the

2952 desk?

2953 Mr. Scott. Mr. Chairman? Mr. Chairman, I would reserve

2954 a point of order.

2955 Mr. Gohmert. Mr. Chairman?

2956 Chairman Conyers. [Presiding.] Who has an amendment?

2957 Mr. Gohmert. I have an amendment.

2958 Chairman Conyers. Yes, Judge Gohmert's amendment will-

2959 Mr. Gohmert. Amendment number one to H.R. 1913.

2960 Mr. Scott. And, Mr. Chairman, I reserve a point of

2961 order.

2962 Chairman Conyers. Point of order is reserved by

2963 Chairman Scott.

2964 Clerk will report the amendment.

2965 The Clerk. Amendment number one to H.R. 1913, offered

2966 by Mr. Gohmert.

2967 [The amendment by Mr. Gohmert follows:]

2968 ***** INSERT *****

2969 Chairman Conyers. The amendment will be considered as
2970 read.

2971 And the gentleman is recognized in support of his
2972 proposal.

2973 Mr. Gohmert. Thank you, Mr. Chairman.

2974 As I discussed, I don't think the underlying legislation
2975 is necessary because it doesn't change the outcome of any of
2976 the hate crime cases that we have heard. There is no
2977 evidence that it does. It doesn't even provide for a death
2978 penalty, so this does.

2979 And there are jurisdictions that don't provide the death
2980 penalty. Well, this will. And this will make it more
2981 serious. If somebody commits one of these egregious acts,
2982 then this will be a way that it can be dealt with and hate
2983 crime legislation will make a difference.

2984 And so in the cases in my home county where a young man
2985 was brutally killed, then the two perpetrators in that case
2986 got the death penalty, it has already been inflicted, that
2987 opportunity will be had around the country. And so it will
2988 actually put some teeth into the laws that I don't think
2989 actually has it at this point.

2990 With that, Mr. Chairman, I would yield back.

2991 Chairman Conyers. Thank you.

2992 Well, I will recognize Mr. Scott just to begin this
2993 discussion in opposition to the amendment.

2994 Mr. Scott. I will begin it, Mr. Chairman, by
2995 withdrawing my point of order.

2996 Chairman Conyers. Very good.

2997 Mr. Scott. Unfortunately, it looks like germane.

2998 Mr. Chairman, this unfortunately will just complicate
2999 the issue. We are trying to prevent hate crimes from
3000 happening. The death penalty has not been shown to deter any
3001 crimes, and therefore this does not help the situation.

3002 Furthermore, many of the supporters, including myself,
3003 who oppose the death penalty generally and would not want the
3004 death penalty added to code, if we can possibly help it.

3005 So for those reasons, Mr. Chairman, I oppose the
3006 amendment.

3007 Mr. Goodlatte. Mr. Chairman?

3008 Chairman Conyers. Opposition is heard.

3009 The gentleman, Mr. Goodlatte, is recognized.

3010 Mr. Goodlatte. Thank you, Mr. Chairman.

3011 Mr. Chairman, I support the amendment offered by the
3012 gentleman from Texas. Proponents of this legislation believe
3013 that these crimes are significant enough and serious enough
3014 to warrant elevating them to the federal level. Proponents
3015 also believe that existing criminal rights statutes and
3016 federal sentencing enhancement are insufficient to address
3017 these crimes.

3018 So despite these existing federal penalties and despite

3019 hate crimes laws in 45 states and the District of Columbia,
3020 proponents believe we need a new, separate criminal offense
3021 for hate crimes.

3022 Yet the proponents do not believe these crimes are
3023 serious enough to warrant the penalties already prescribed in
3024 chapter 13 of title 18 to criminal civil rights violations.
3025 Perhaps the motive behind someone's actions is truly less
3026 important than their actions.

3027 I would urge the adoption of the amendment offered by
3028 the gentleman from Texas, and I yield back.

3029 Chairman Conyers. I thank you very much.

3030 I think we have heard about this amendment once before.
3031 And if the discussion is exhausted, I will call for a vote up
3032 on it.

3033 All in favor, say "aye."

3034 [A chorus of ayes.]

3035 All opposed, say "no."

3036 [A chorus of noes.]

3037 Noes have it.

3038 Mr. Gohmert. Mr. Chairman, I would request a recorded
3039 vote.

3040 Chairman Conyers. Of course.

3041 Clerk will call the roll.

3042 The Clerk. Mr. Conyers?

3043 Chairman Conyers. No.

3044 The Clerk. Mr. Conyers votes no.
3045 Mr. Berman?
3046 [No response.]
3047 Mr. Boucher?
3048 [No response.]
3049 Mr. Nadler?
3050 [No response.]
3051 Mr. Scott?
3052 Mr. Scott. No.
3053 The Clerk. Mr. Scott votes no.
3054 Mr. Watt?
3055 [No response.]
3056 Ms. Lofgren?
3057 [No response.]
3058 Ms. Jackson Lee?
3059 [No response.]
3060 Ms. Waters?
3061 Ms. Waters. No.
3062 The Clerk. Ms. Waters votes no.
3063 Mr. Delahunt?
3064 [No response.]
3065 Mr. Wexler?
3066 [No response.]
3067 Mr. Cohen?
3068 [No response.]

3069 Mr. Johnson?
3070 Mr. Johnson. No.
3071 The Clerk. Mr. Johnson votes no.
3072 Mr. Pierluisi?
3073 Mr. Pierluisi. No.
3074 The Clerk. Mr. Pierluisi votes no.
3075 Mr. Gutierrez?
3076 [No response.]
3077 Mr. Sherman?
3078 [No response.]
3079 Ms. Baldwin?
3080 Ms. Baldwin. No.
3081 The Clerk. Mr. Baldwin votes no.
3082 Mr. Gonzalez?
3083 [No response.]
3084 Mr. Weiner?
3085 [No response.]
3086 Mr. Schiff?
3087 Mr. Schiff. No.
3088 The Clerk. Mr. Schiff votes no.
3089 Ms. Sanchez?
3090 [No response.]
3091 Ms. Wasserman Schultz?
3092 [No response.]
3093 Mr. Maffei?

3094 [No response.]
3095 Mr. Smith?
3096 [No response.]
3097 Mr. Goodlatte?
3098 Mr. Goodlatte. Aye.
3099 The Clerk. Mr. Goodlatte votes aye.
3100 Mr. Sensenbrenner?
3101 [No response.]
3102 Mr. Coble?
3103 [No response.]
3104 Mr. Gallegly?
3105 [No response.]
3106 Mr. Gallegly. Aye.
3107 The Clerk. Mr. Gallegly votes aye.
3108 Mr. Lungren?
3109 [No response.]
3110 Mr. Issa?
3111 [No response.]
3112 Mr. Forbes?
3113 Mr. Forbes. Aye.
3114 The Clerk. Mr. Forbes votes aye.
3115 Mr. King?
3116 Mr. King. Aye.
3117 The Clerk. Mr. King votes aye.
3118 Mr. Franks?

3119 [No response.]

3120 Mr. Gohmert?

3121 Mr. Gohmert. Aye.

3122 The Clerk. Mr. Gohmert votes aye.

3123 Mr. Jordan?

3124 [No response.]

3125 Mr. Poe?

3126 [No response.]

3127 Mr. Chaffetz?

3128 Mr. Chaffetz. Aye.

3129 The Clerk. Mr. Chaffetz votes aye.

3130 Mr. Rooney?

3131 Mr. Rooney. Yes.

3132 The Clerk. Mr. Rooney votes yes.

3133 Mr. Harper?

3134 [No response.]

3135 Chairman Conyers. Are there members that wish to cast a
3136 vote?

3137 Mr. Wexler?

3138 Mr. Wexler. No.

3139 The Clerk. Mr. Wexler votes no.

3140 Chairman Conyers. Mr. Issa?

3141 Mr. Issa. Aye.

3142 The Clerk. Mr. Issa votes aye.

3143 Chairman Conyers. Mr. Nadler?

3144 Mr. Nadler. No.

3145 The Clerk. Mr. Nadler votes no.

3146 Chairman Conyers. Mr. Cohen?

3147 Mr. Cohen. No.

3148 The Clerk. Mr. Cohen votes no.

3149 Chairman Conyers. Mr. Watt?

3150 Mr. Watt. No.

3151 The Clerk. Mr. Watt votes no.

3152 Chairman Conyers. Are there others?

3153 Clerk will report.

3154 The Clerk. Mr. Chairman, 8 members voted aye, 11
3155 members voted nay.

3156 Chairman Conyers. The amendment is unsuccessful.

3157 Mr. Gohmert. Mr. Chairman?

3158 Chairman Conyers. Yes, sir?

3159 Mr. Gohmert. I have an amendment at the desk, amendment
3160 number three to H.R. 1913.

3161 Chairman Conyers. The clerk will report the amendment,
3162 but before he does, let me advise Judge Gohmert that the
3163 Finance Committee, which—upon which many of our members are
3164 members, as well, is going to go back in at—what is it, 2:30?

3165 And so what I am trying to do with the cooperation of
3166 yourself and others is that we try to get through by 2:30.

3167 Mr. Scott. Mr. Chairman, I reserve a point of order on
3168 the amendment.

3169 Mr. Issa. That, of course, is adding to the time, Mr.
3170 Chairman. If we could just pass a few of our amendments, I
3171 am sure we could get through quickly.

3172 Chairman Conyers. Well, I don't know. The debate is so
3173 small on these amendments, Mr. Issa, that I don't know how we
3174 would speed it up by just—whether they win or lose, you still
3175 give me the same number of amendments.

3176 But, anyway, let me talk with you about it.

3177 Mr. Issa. Mr. Chairman, if we could just pick three
3178 that you would approve, we could move right into the final
3179 vote.

3180 Chairman Conyers. Excellent idea.

3181 Can we get a list of how many I am picking three from?

3182 Mr. Goodlatte. Mr. Chairman, we believe that there are—
3183 including the amendment that Mr. Gohmert has now, we believe
3184 we have 12 or 13 amendments remaining. And I know that both
3185 Mr. Gohmert and Mr. King, who have not—until Mr. Gohmert just
3186 offered the last amendment, offered any amendments to this
3187 point.

3188 And they have a desire to offer several amendments that
3189 we believe are important. I don't know that we are in a
3190 position at this point to commit to how many, but obviously,
3191 if you look at some and tell us that those are agreeable to
3192 you, we could save time on those.

3193 Chairman Conyers. I would love to do that. Show me the

3194 amendments.

3195 And in the meantime, we recognize Mr. Gohmert.

3196 Mr. Gohmert. And I would ask—

3197 Chairman Conyers. Oh, wait a minute. Let me have the
3198 clerk report it first.

3199 The Clerk. Amendment number three to H.R. 1913, offered
3200 by Mr. Gohmert.

3201 [The amendment by Mr. Gohmert follows:]

3202 ***** INSERT *****

3203 Chairman Conyers. Thank you.

3204 And Mr. Scott has reserved a point of order.

3205 Judge, you are recognized.

3206 Mr. Gohmert. Thank you. I always hate to say—as it be
3207 considered read, because I really enjoy hearing our clerk
3208 read. It is one of the most pleasant voices in—on Capitol
3209 Hill.

3210 But this simply states that this will not apply—or will
3211 only apply if the state has no law prohibiting the conduct
3212 constituting the defendant's alleged crimes.

3213 Again, one of our concerns—one of my concerns has been
3214 the usurpation of states' rights. There are efforts in this
3215 bill to try to bring in federal issues and say, "This
3216 justifies the intervention of federal law and taking states'
3217 rights into federal hands."

3218 This makes clear and makes it absolute that this law
3219 would only apply if the state has no law prohibiting the
3220 conduct constituting the defendant's alleged crimes. That is
3221 why I make the amendment and, probably surprisingly to some,
3222 would now yield back.

3223 Chairman Conyers. Could I ask the Subcommittee on
3224 Crime's chairman to take a position contrary to this?

3225 Mr. Goodlatte. Well, Mr. Chairman, that prejudices the
3226 amendment in such a way that—

3227 Chairman Conyers. Oh, I thought you would—

3228 Mr. Goodlatte. We were hoping that you would accept
3229 some of these amendments, and this one seems eminently
3230 sensible one to accept. Maybe the chairman of the Crime
3231 Subcommittee would join us in-

3232 Chairman Conyers. You know, I wanted to start the
3233 agreement we have tentatively entered into after this
3234 amendment, where we get a chance to look at them before they
3235 have reported, if you don't mind.

3236 Mr. Gohmert. I obviously did catch the chairman by
3237 surprise by yielding so quickly into my time, but I said what
3238 I needed to. I think it is an appropriate amendment.

3239 Chairman Conyers. Well, let me put it on the
3240 Subcommittee on Crime's responsibility. If he accepts this
3241 amendment, I will vote for it.

3242 And I recognize the gentleman from Virginia.

3243 [Laughter.]

3244 Mr. Scott. Mr. Chairman, I hate--well, I will see what I
3245 can do.

3246 Mr. Chairman, I move to strike the last word to oppose
3247 the amendment.

3248 Chairman Conyers. The gentleman is recognized.

3249 Chairman Conyers. Mr. Chairman, I think you have to
3250 look at what is being stricken by the amendment. It says,
3251 "The state does not have jurisdiction or does not intend to
3252 exercise jurisdiction."

3253 The whole need for federal intervention is the fact that
3254 many of these crimes are not prosecuted and with certain
3255 victims and certain communities. And that is why we are
3256 promoting a federal bill.

3257 The language that is proposed is the state has no law
3258 prohibiting the--the defendant's alleged crimes. I don't know
3259 any state that has "no law prohibiting the conduct" for the
3260 things that are prohibited under the bill. All of them have
3261 laws prohibiting the conducts. Unfortunately, they are not
3262 enforcing the laws.

3263 So putting this language in there that we have to
3264 certify that the state has no criminal law against violent
3265 crimes would essentially mean that there would be in no case
3266 any federal intervention, whether the state is prosecuting
3267 the crimes or not.

3268 So I think this would just essentially eliminate the
3269 ability of the federal government to prosecute the crimes,
3270 because they couldn't certify that the state has no violent
3271 crime criminal provisions.

3272 I would hope that we would defeat the legislation, not
3273 undermine the bill.

3274 Mr. Goodlatte. Mr. Chairman?

3275 Chairman Conyers. Yes, the gentleman from Virginia, Mr.
3276 Goodlatte.

3277 Mr. Goodlatte. Mr. Chairman, thank you very much.

3278 And I have to take exception to the observations of my
3279 good friend and colleague from Virginia.

3280 The fact of the matter is, I don't believe we have
3281 discussed a single case here where there hasn't been
3282 prosecution at the state level. We have heard about cases in
3283 Florida. We have heard about a case in Texas. We have heard
3284 about other cases cited.

3285 In every single instance, these horrendous crimes have
3286 been prosecuted and been prosecuted successfully at the state
3287 level. So to me, this amendment is very well intentioned and
3288 will avoid a very, very serious problem that we already have
3289 in our federal courts, and that is bringing up matters in
3290 federal court that can be well enough taken care of in our
3291 state courts.

3292 So I support the amendment. It would restrict the
3293 government's ability to bring a federal hate crimes
3294 prosecution to only those situations where there is no state
3295 law prohibiting such conduct.

3296 And I haven't seen any evidence that states are not
3297 prosecuting these cases. In fact, as I noted earlier, the
3298 gentleman earlier offered an amendment in which we struck the
3299 findings clause from this legislation.

3300 So, obviously, there must be some pretty serious concern
3301 about whether there is any significant evidence of a failure
3302 on the part of our state courts to prosecute if we even

3303 remove the finding provision from the legislation we are
3304 considering.

3305 As we have discussed today, the underlying bill raises
3306 significant federalism concerns. Limiting the ability of the
3307 federal government to prosecute a crime when a state has the
3308 ability to do so makes sense, especially when one considers
3309 the limited prosecutorial resources of the Department of
3310 Justice.

3311 It has been well documented that 45 states and the
3312 District of Columbia have enacted some sort of hate crimes
3313 legislation.

3314 Mr. Goodlatte. The states and the district have the
3315 ability and capability to prosecute crimes that our
3316 colleagues in the majority would federalize. By adopting
3317 this amendment, the committee would recognize and demonstrate
3318 respect for that fact, respect for the process of federalism,
3319 respect for the ability of our states to address this
3320 problem, which I would argue they are taking care of quite
3321 well, and this legislation is not needed.

3322 But certainly we could cause the government to be able
3323 to focus on those areas where there truly isn't this
3324 protection by adopting the gentleman from Texas' amendment.

3325 So I would urge my colleagues to support it.

3326 Ms. Baldwin. Mr. Chairman?

3327 Chairman Conyers. The gentlelady from Wisconsin is

3328 recognized.

3329 Ms. Baldwin. Thank you, Mr. Chairman.

3330 This particular amendment would truly gut the bill, as
3331 the chairman of the Crime Subcommittee pointed out in his
3332 remarks. And so I strenuously oppose it.

3333 Sensitive to the concerns that the gentleman raises in
3334 offering the amendment, there is, in this section of a bill,
3335 a set of criteria that have to be made—have to be achieved in
3336 order for there to be a federal prosecution of a hate crime.
3337 And that is what you see set forth in subsection two that you
3338 amend. This is precisely because of a sensitivity to the
3339 concerns that you raise.

3340 But, you know, I have mentioned in my remarks throughout
3341 this debate on this measure, I have drawn a lot of attention
3342 to our nation's history of violence targeted at certain
3343 groups.

3344 But I haven't really expanded on the point that Chairman
3345 Scott raised, which is, the prosecutorial reluctance that we
3346 have sometimes seen. And that is also a history of our
3347 nation.

3348 The ranking member just talked about, "Show me some
3349 examples." Well, I think one of the profound ones that many
3350 people know about, because the story was actually made into
3351 an Oscar-winning film, called "Boys Don't Cry," was the case
3352 of Brandon Teena, a transgender man who was raped and beaten

3353 by two male acquaintances who discovered that Brandon, while
3354 living as a male, was anatomically a female.

3355 After the rape and beating, the men threatened to kill
3356 Teena if he went to the authorities to report the rape. And
3357 despite these threats—despite these threats, Teena reported
3358 the crime to the police.

3359 Even so, the county sheriff—who referred to Teena as
3360 "it"—did not allow his deputies to arrest the two men. And 5
3361 days later, the two men sought out Teena and shot and stabbed
3362 him to death.

3363 It is a horrible example. But, unfortunately, because
3364 of bias and prejudice that exists in our country, in our
3365 history that led to the original hate crime statutes, and
3366 today with regard to certain groups that are proposed to be
3367 added, we need these measures, and we need to allow
3368 occasional federal intervention when standards are met, when
3369 instances like this occur and federal law enforcement or
3370 judicial officials fail to act.

3371 Chairman Conyers. I thank the gentlelady.

3372 And could I add, Judge Gohmert, especially when I
3373 consider the years that you have spent on—in a state court,
3374 if we take the back-stopping effect of the hate crimes law at
3375 the federal level away, and we would have nothing left.

3376 Do you—I won't use the term "gutting," but this
3377 seriously changes the whole nature of the hate crimes laws,

3378 which have been in effect since 1968. And was that your
3379 intention?

3380 Sure, I will yield.

3381 Mr. Gohmert. Well, thank you, Chairman.

3382 No, actually, because of the judicial state of things, I
3383 would expect that this would actually give it a better chance
3384 of—at least on the states' rights issue, being held more—
3385 being held constitutional. I think, without this, there is a
3386 better chance it will be held unconstitutional.

3387 So to the contrary of actually gutting it—

3388 Chairman Conyers. Okay.

3389 Mr. Gohmert. —I think it actually gives it a better
3390 chance of being upheld on the issue, 9th and 10th Amendment
3391 issues.

3392 Chairman Conyers. I am going to call a vote, but are
3393 you—do you realize, Judge, that there has been a Supreme
3394 Court case since 1993 that has validated the principal
3395 reasons for hate crimes legislation that has flowed for over
3396 14 years?

3397 Mr. Gohmert. You are talking about in a state hate
3398 crimes—

3399 Chairman Conyers. No. I am talking about federally,
3400 United States Supreme Court. So for me to be worrying about
3401 the likely constitutionality of this law at this point is a
3402 little late.

3403 I must point out that this amendment with this point of
3404 view has never been brought forward in any of our
3405 undertakings, hearings on hate crimes legislation.

3406 Usually I am confronted with amendments that we have
3407 seen before. This one is new and original. And I commend
3408 you for that.

3409 Mr. Gohmert. It is—well—

3410 [Laughter.]

3411 It is an attempt to help preserve states' rights.

3412 Mr. Issa. Mr. Chairman?

3413 Chairman Conyers. Yes?

3414 Mr. Issa. I move to strike the last word.

3415 Chairman Conyers. I recognize the gentleman from
3416 California.

3417 Mr. Issa. Thank you.

3418 And I will try to be brief, but if I could enter into a
3419 colloquy with the gentleman from Texas, Mr. Gohmert—Mr.
3420 Gohmert, if I understand your amendment correctly, nothing in
3421 your amendment would stop the federal government from
3422 pursuing a prosecution should a state fail to pursue a
3423 prosecution within their purview? Is that correct?

3424 Mr. Gohmert. Actually, if the state law addresses the
3425 issue and prohibits the conduct constituting the alleged
3426 offense of the hate crime—because that is what we are talking
3427 about, an alleged hate crime offense—then it is the state's

3428 duty to pursue that or not, rather than the federal
3429 government usurping a state's obligation and duty.

3430 Mr. Issa. Well, a further question. If we look at the
3431 era of civil rights and federal intervention, if a state
3432 failed, outright failed—let's just say that the sheriff
3433 failed to do his job, the court failed to do their job—if I
3434 understand your amendment correctly, it would not prohibit
3435 the federal government under the statute as amended from
3436 asserting authority. Is that correct?

3437 Mr. Gohmert. Now you are getting to the real heart of
3438 things. There are federal civil rights laws. And if
3439 someone's civil rights are violated, absolutely the federal
3440 government needs to, can, and should intervene and address
3441 things.

3442 That is exactly what happened in a racially motivated
3443 case that occurred in a county outside of mine, where an
3444 African-American was killed in jail. It was not properly
3445 addressed by the state court there. It was a civil rights
3446 violation.

3447 So the perpetrators, including the sheriff, were brought
3448 to my county and prosecuted by the U.S. attorney for civil
3449 rights violations and appropriately sent to prison.

3450 So that gets to the heart of it. If it is a civil
3451 rights matter, we don't need this law. The federal
3452 government can and should intervene.

3453 Chairman Conyers. Would my colleague yield briefly?

3454 Mr. Issa. Of course I would yield, Mr. Chairman.

3455 Chairman Conyers. I take you back—I turn the clock back
3456 to 1996, Clinton, Reno, et cetera. We were having a spate of
3457 church burnings in the South.

3458 Mr. Issa. That was before or after Waco?

3459 Chairman Conyers. After.

3460 Mr. Issa. Okay.

3461 Chairman Conyers. And the point of the matter is, is
3462 that the president called in southern governors and me and
3463 Henry Hyde, and he said, "Look, we know that arson is a
3464 violation of state law, but this church burning has got to be
3465 reduced."

3466 And so, as a result of this meeting and discussions and
3467 proposed legislation, we passed a bill that made it a federal
3468 law against burning churches. It became a federal law, out
3469 of which grew hate crimes.

3470 So for me to entertain discussions about the fact that
3471 state laws must be observed before we can get—and then, if
3472 they aren't, we get a federal law, that is how church burning
3473 law and hate crimes all originated, because we had the
3474 complement, we had the backstop, the federal statutes.

3475 And I thank the gentleman.

3476 Mr. Issa. And I thank the gentleman.

3477 And I remember those days for two reasons. First of

3478 all, I was still making money in the private sector. And,
3479 secondly, because the issues that Henry Hyde and you dealt
3480 with were issues clearly delineated within the Constitution,
3481 both as to race and as to religion.

3482 And I also remember that ultimately it turned out that
3483 black-and-white churches were being burned proportionately,
3484 but, in fact, they were being burned and they are protected
3485 overtly in the Constitution.

3486 And I think, rightfully so, that is within the
3487 understanding that the federal government has a special
3488 obligation delineated that does not fall in any unique way to
3489 the states.

3490 And I think all of us, if we were talking about
3491 religious protection here, would be much more as you were
3492 with Henry Hyde in those days.

3493 And I thank the chairman for pointing that out and yield
3494 back.

3495 Chairman Conyers. The vote now occurs on the Gohmert
3496 amendment.

3497 All in favor, say "aye."

3498 [A chorus of ayes.]

3499 All opposed, say "no."

3500 [A chorus of noes.]

3501 The noes—unfortunately, this time, the noes prevailed.

3502 The noes have it.

3503 Does anyone seek a recorded vote?

3504 Mr. Goodlatte. Mr. Chairman, I would ask for a recorded
3505 vote.

3506 Chairman Conyers. The clerk will call the roll.

3507 The Clerk. Mr. Conyers?

3508 Chairman Conyers. No.

3509 The Clerk. Mr. Conyers votes no.

3510 Mr. Berman?

3511 Mr. Berman. No.

3512 The Clerk. Mr. Berman votes no.

3513 Mr. Boucher?

3514 [No response.]

3515 Mr. Nadler?

3516 [No response.]

3517 Mr. Scott?

3518 Mr. Scott. No.

3519 The Clerk. Mr. Scott votes no.

3520 Mr. Watt?

3521 [No response.]

3522 Ms. Lofgren?

3523 [No response.]

3524 Ms. Jackson Lee?

3525 [No response.]

3526 Ms. Waters?

3527 [No response.]

3528 Mr. Delahunt?
3529 [No response.]
3530 Mr. Wexler?
3531 [No response.]
3532 Mr. Cohen?
3533 Mr. Cohen. No.
3534 The Clerk. Mr. Cohen votes no.
3535 Mr. Johnson?
3536 Mr. Johnson. No.
3537 The Clerk. Mr. Johnson votes no.
3538 Mr. Pierluisi?
3539 Mr. Pierluisi. No.
3540 The Clerk. Mr. Pierluisi votes no.
3541 Mr. Gutierrez?
3542 [No response.]
3543 Mr. Sherman?
3544 [No response.]
3545 Ms. Baldwin?
3546 Ms. Baldwin. No.
3547 The Clerk. Mr. Baldwin votes no.
3548 Mr. Gonzalez?
3549 [No response.]
3550 Mr. Weiner?
3551 [No response.]
3552 Mr. Schiff?

3553 Mr. Schiff. No.

3554 The Clerk. Mr. Schiff votes no.

3555 Ms. Sanchez?

3556 [No response.]

3557 Ms. Wasserman Schultz?

3558 [No response.]

3559 Mr. Maffei?

3560 Mr. Maffei. No.

3561 The Clerk. Mr. Maffei votes no.

3562 Mr. Smith?

3563 [No response.]

3564 Mr. Goodlatte?

3565 Mr. Goodlatte. Aye.

3566 The Clerk. Mr. Goodlatte votes aye.

3567 Mr. Sensenbrenner?

3568 [No response.]

3569 Mr. Coble?

3570 [No response.]

3571 Mr. Gallegly?

3572 Mr. Gallegly. Aye.

3573 The Clerk. Mr. Gallegly votes aye.

3574 Mr. Lungren?

3575 [No response.]

3576 Mr. Issa?

3577 Mr. Issa. Aye.

3578 The Clerk. Mr. Issa votes aye.
3579 Mr. Forbes?
3580 Mr. Forbes. Yes.
3581 The Clerk. Mr. Forbes votes yes.
3582 Mr. King?
3583 Mr. King. Aye.
3584 The Clerk. Mr. King votes aye.
3585 Mr. Franks?
3586 [No response.]
3587 Mr. Gohmert?
3588 Mr. Gohmert. Aye.
3589 The Clerk. Mr. Gohmert votes aye.
3590 Mr. Jordan?
3591 [No response.]
3592 Mr. Poe?
3593 [No response.]
3594 Mr. Chaffetz?
3595 Mr. Chaffetz. Aye.
3596 The Clerk. Mr. Chaffetz votes aye.
3597 Mr. Rooney?
3598 Mr. Rooney. Yes.
3599 The Clerk. Mr. Rooney votes yes.
3600 Mr. Harper?
3601 [No response.]
3602 The Clerk. Mr. Chaffetz?

3603 Mr. Chaffetz. Aye.

3604 The Clerk. Mr. Chaffetz votes aye.

3605 Mr. Rooney?

3606 Mr. Rooney. Yes.

3607 The Clerk. Mr. Rooney votes yes.

3608 Mr. Harper?

3609 [No response.]

3610 Chairman Conyers. Are there any members that wish to
3611 cast their vote?

3612 Mr. Sensenbrenner?

3613 Mr. Sensenbrenner. Aye.

3614 The Clerk. Mr. Sensenbrenner votes aye.

3615 Chairman Conyers. Mr. Nadler?

3616 Mr. Nadler. No.

3617 The Clerk. Mr. Nadler votes no.

3618 Chairman Conyers. Mr. Watt?

3619 Mr. Watt. No.

3620 The Clerk. Mr. Watt votes no.

3621 Chairman Conyers. The gentlelady from Florida?

3622 Ms. Wasserman Schultz. No.

3623 The Clerk. Ms. Wasserman Schultz votes no.

3624 Chairman Conyers. Anyone else?

3625 The clerk will report.

3626 The Clerk. Mr. Chairman, nine members voted aye, 12
3627 members voted nay.

3628 Chairman Conyers. The amendment fails.

3629 Members of the committee, it is now 1:36. At 2:30, we
3630 will have to rise. And so I would like to entertain each and
3631 every amendment and motion that there is between now and
3632 then.

3633 Mr. Gohmert. Mr. Chairman?

3634 Chairman Conyers. Yes, sir?

3635 Mr. Gohmert. I have two amendments remaining. There
3636 are some that I had that I will not be offering, but I have
3637 two that I wish to offer.

3638 Chairman Conyers. I thank you.

3639 Could you join those both together?

3640 Mr. Gohmert. Well, they are different.

3641 Chairman Conyers. They are not joinable. All right.
3642 Which one?

3643 Mr. Gohmert. Amendment 7.

3644 Mr. Scott. Mr. Chairman, I reserve a point of order.

3645 Chairman Conyers. Have you seen the amendment?

3646 Mr. Scott. I suspect it needs a little supervision, Mr.
3647 Chairman.

3648 Chairman Conyers. Mr. Scott reserves a point of order.

3649 The clerk will report.

3650 The Clerk. Amendment No. 7 to H.R. 1913, offered by Mr.
3651 Gohmert.

3652 [The amendment by Mr. Gohmert follows:]

3653 ***** INSERT *****

3654 Mr. Gohmert. I ask that it be considered as read.

3655 Chairman Conyers. Without objection, the amendment will
3656 be considered as read.

3657 The gentleman from Texas is recognized in support of his
3658 amendment.

3659 Mr. Gohmert. I do acknowledge and appreciate my friend
3660 from Virginia always having reservations about me or anything
3661 I bring to the committee.

3662 But this amendment really goes to the heart of my
3663 biggest concern, and that is the attempt to muzzle religious
3664 ministers or religious teachers from teaching from the Bible,
3665 from the Tanakh, the Koran, regarding sexual immorality.

3666 So this simply says, "No prosecution can be based, in
3667 whole or in part, on religious beliefs quoted from the Bible,
3668 the Tanakh or the Koran, and it still would permit
3669 prosecution for any crime of violence based on hatred, but it
3670 would prevent the situation I have outlined a number of times
3671 where a Christian minister, a Jewish rabbi, or a Muslim imam
3672 quote from one of those books, some nut hears that, who,
3673 unlike the minister, the rabbi or the imam, is prone to
3674 violence, which the minister, rabbi and imam were not, goes
3675 out, commits some act of violence and says he was induced
3676 into doing it by the teaching from the Bible, the Tanakh or
3677 the Koran.

3678 And so this would eliminate that as even a possibility.

3679 It would cause the one committing the violent act to be the
3680 one who is actually punished rather than a religious teacher.

3681 And so that is the purpose for which this amendment is
3682 brought. I tried to make it as bare bones as possible. It
3683 will not prevent the violence from being pursued and
3684 persecuted under this bill or prosecuted, but it will prevent
3685 a religious teacher from being prosecuted, because as we
3686 know, all it would take is someone swearing out the affidavit
3687 to get a warrant to arrest.

3688 And when the issue of intent is raised as to, "Well, did
3689 he intend to induce someone to commit the activity," the
3690 response we have heard is, "Well, that is a question for the
3691 jury to decide."

3692 Well, it won't take very many arrests of ministers,
3693 rabbis or imams before the chilling effect on religious
3694 expression, which was guaranteed in the Constitution, will be
3695 completely undermined.

3696 That is the purpose of offering this. I yield back.

3697 Chairman Conyers. I thank the gentleman.

3698 I would like to point out that since I was at the White
3699 House and away from the duties of the committee, we have
3700 taken up this subject or something very similar to it on at
3701 least two or three occasions, plus a unanimous consent
3702 request.

3703 And two of the other amendments were one of Mr. Franks,

3704 at page 14, line 15, the other was, again, Mr. Franks, page
3705 15, line 7. So, again, in the creative originality of the
3706 judge from Texas, we are duplicating what we thought we
3707 addressed in several other previous amendments; namely,
3708 clarifying constitutionally protected free speech.

3709 Now, I am familiar with this ministerial discussion,
3710 because I entertained meetings with ministers from the Church
3711 of God and Christ, the Baptist denomination, Pentecostal
3712 church leaders of various descriptions, and we went over—this
3713 was a year or two ago.

3714 And I think that the proponent of this amendment will be
3715 more satisfied to know that none of them have come back to
3716 visit with me. We have somehow reached some kind of an
3717 accord, and I hope my colleague, for both of those reasons
3718 that—and I have fairly close connections with a number of
3719 branches of the Protestant church, and that that, plus the
3720 fact that it has been handled several times before, leads me
3721 not to be supportive of this amendment.

3722 Does anyone else seek recognition?

3723 The gentleman from California, Mr. Gallegly, is
3724 recognized.

3725 Mr. Gallegly. Thank you, Mr. Chairman.

3726 I would yield a couple minutes to my friend from Texas,
3727 Mr. Gohmert.

3728 Mr. Gohmert. Thank you.

3729 I appreciate the chairman's statement, but, Mr.
3730 Chairman, this does not duplicate those things already done.
3731 I would respectfully submit to you they do not eliminate the
3732 issue of 18 USC 2A, where someone can be charged with
3733 inducing someone to commit an act of violence, a minister be
3734 arrested and put in jail, maybe making bond, maybe not, and
3735 the prosecutor, the persecutor, actually, just saying, "Well,
3736 the intention here will have to be determined by the trier of
3737 fact. We will let a jury decide that."

3738 That is still a possibility, a very distinct
3739 possibility, even under the things that have been agreed to,
3740 and this is not a duplicate.

3741 And I do appreciate my friend, the chairman, bringing up
3742 the groups that have visited. It was my high honor back at
3743 that very time, I think, you were addressing, to stand with
3744 probably three or four dozen brothers and sisters, fellow
3745 Christians, all, I think, but one or two who happened to be
3746 African-American, but brother and sister Christians, some of
3747 whom had mentioned they had visited and were still concerned
3748 and were dissatisfied, so felt the need to come forward and
3749 have a press event, at which I was invited to stand with them
3750 and which was my great honor.

3751 And actually, maybe you will be surprised to know we
3752 have been in touch about having another press event to call
3753 attention to the problems this creates for them in their

3754 pulpits and ministries.

3755 So that is still going forward.

3756 Chairman Conyers. Would my colleague yield? Would you
3757 yield to me at this point?

3758 Mr. Gallegly. I would be happy to yield.

3759 Chairman Conyers. Thank you very much, Mr. Gallegly.

3760 I presume that the gentleman from Texas is aware that
3761 there has to be not only speech, but an overt act, as well.
3762 And I would invite him to bring to the attention of this
3763 committee any case in which the problem that he purports to
3764 solve has ever occurred with a minister or maybe even a non-
3765 religious person, a circumstance in which speech alone was
3766 prosecutable.

3767 Mr. Gallegly. Yield back, Mr. Chairman.

3768 Chairman Conyers. I now call the question on the
3769 Gohmert amendment.

3770 Mr. Goodlatte. Mr. Chairman, move to strike the last
3771 word.

3772 Chairman Conyers. All right. The gentleman is
3773 recognized.

3774 Mr. Goodlatte. I think Mr. Gohmert was ready to
3775 respond, and I want to yield to him.

3776 Mr. Gohmert. Thank you. This is supposed to be about
3777 conduct and you say it hasn't been done. This hasn't been
3778 made into law yet.

3779 But it looks like, according to the majority and the
3780 president's position, that it could very well be made into
3781 law and then, for the first time, you are right, in this
3782 country's history, it hasn't been done before, but it could,
3783 under this bill, if there are not changes made.

3784 And this before was about conduct. It was not about
3785 speech. So I don't understand the resistance to an amendment
3786 that says if it is just speech, for example, from the Bible,
3787 the Tanakh, or the Koran, then we are not going after you.

3788 That will give that level of comfort to religious
3789 leaders that they don't have right now, because this hasn't
3790 been a law. But once it happens, all it takes is one
3791 prosecutor to go after some minister because there is a nut
3792 that heard them in the congregation, and then you won't be
3793 able to say it is never happened before.

3794 This hasn't been in the law before and we are trying to
3795 prevent a bad outcome before it occurs.

3796 Mr. Goodlatte. Reclaiming my time.

3797 Mr. Chairman, while you were away, we had a similar
3798 discussion regarding the offering of an amendment, I think,
3799 by Mr. Franks of Arizona that would have been a bar to
3800 prosecution.

3801 This amendment is similarly a bar to prosecution. It is
3802 more narrowly drafted than the one offered by Mr. Franks, but
3803 it is a tremendous concern to religious leaders of all

3804 denominations and a wide array of different points of view,
3805 that the effect of the legislation before us is going to have
3806 a chilling effect on their ability to speak out.

3807 And this amendment, which is so narrowly tailored simply
3808 to the primary religious works of the three largest religious
3809 groups, I think, represented in the United States, would seem
3810 to me to be something that the chairman could accept.

3811 What would be the basis for saying that somebody who
3812 read a passage from the Bible that somebody else might find
3813 offense, somebody else might disagree with, but surely, in
3814 protecting their First Amendment rights, we could
3815 specifically say that if they read something from the Bible
3816 or the Koran or the Torah or any other part of the Tanakh
3817 would have this protection from any prosecution whatsoever.

3818 So they wouldn't have to worry that they would first be
3819 prosecuted and then could raise the final section in the
3820 bill, I think it is section 10, as a defense. They shouldn't
3821 have to do that.

3822 They should know that there is a bar to prosecution in
3823 the first place. And your acceptance of such a bar, I think,
3824 would send a resounding message that religious freedom in
3825 this country is alive and well, and I would urge my
3826 colleagues to support the amendment.

3827 Chairman Conyers. Could the gentleman yield?

3828 Mr. Goodlatte. I would be happy to yield, Mr. Chairman.

3829 Chairman Conyers. Thank you very much, because if I
3830 listened to you and followed my judge, I would be directly
3831 contradicting the communications of 45 different religious
3832 communities, starting—and I will make this letter available—I
3833 am going to have it reprinted, in addition to putting it in
3834 the record—who all say just the opposite.

3835 They are giving us comfort and I won't read the letter,
3836 but it is signed, 45 different religious faiths, African-
3837 American Ministers in Action, Alliance of Baptists, American
3838 Arab Anti-Discrimination Committee, American Conference of
3839 Cantors, American Islamic Congress, American Jewish
3840 Committee, Anti-Defamation League, B'nai B'rith
3841 International, Central Conference of American Rabbis,
3842 Disciples of Justice, Action Network, the Episcopal Church.

3843 Well, I have only read 10 of the 45, and I would be in a
3844 very difficult position to point out that the two persuasive
3845 members from Virginia and Texas persuaded me to override
3846 their support for the provision.

3847 So I am reluctantly unable to come to compromise on this
3848 amendment. Maybe we can find another one.

3849 Mr. Goodlatte. I am sure we will continue to try, Mr.
3850 Chairman, but—

3851 Ms. Jackson Lee. Would the gentleman yield?

3852 Mr. Goodlatte. —with regard to—I will in just a moment—
3853 with regard to the amendment offered by the gentleman, I am

3854 sure that there are many religious leaders—we submitted for
3855 the record six letters representing the views of many, many
3856 thousands of religious leaders in our country in opposition
3857 to the legislation, and I can assure you that while that
3858 letter, as your letter, doesn't specifically address Mr.
3859 Gohmert's amendment, it certainly would reflect the fact that
3860 there are a great many religious leaders who feel that this
3861 will have a chilling effect on their ability to be outspoken
3862 about their religious beliefs.

3863 Ms. Jackson Lee. Would the gentleman yield?

3864 Mr. Goodlatte. I would be happy to yield.

3865 Ms. Jackson Lee. And I appreciate the gentleman.

3866 I come from a community, as we all do, that is rich with
3867 faith, leaders who are diverse.

3868 In our last Congress, we debated this question and I
3869 believe that we answered it in its entirety.

3870 Let me just say this. We expanded a response by
3871 suggesting that there was nothing in the speech of religion
3872 that would come under this legislation because of the
3873 outright provoking of violence, and I don't think that is the
3874 case of those who are exercising religious freedom.

3875 And I would just suggest, if you looked at the language,
3876 you would see that they were, in fact, covered.

3877 I would also just ask, very quickly, that I be
3878 registered for the amendments that previously went on, I

3879 believe there were eight, and be registered as casting a "no"
3880 vote for the amendments to this legislation.

3881 I thank the gentleman for yielding.

3882 Mr. Goodlatte. I yield back, Mr. Chairman.

3883 Chairman Conyers. The vote now occurs on the last
3884 Gohmert amendment.

3885 All those in favor, say "aye."

3886 [A chorus of ayes.]

3887 All those opposed, say "no."

3888 [A chorus of noes.]

3889 The noes have it and the amendment is unsuccessful.

3890 Mr. Goodlatte. Mr. Chairman, I would ask for a recorded
3891 vote.

3892 Chairman Conyers. A recorded vote.

3893 Will the articulate clerk read the names of the members
3894 more swiftly, please?

3895 Thank you.

3896 The Clerk. Mr. Conyers?

3897 Chairman Conyers. No.

3898 The Clerk. Mr. Conyers votes no.

3899 Mr. Berman?

3900 [No response.]

3901 Mr. Boucher?

3902 [No response.]

3903 Mr. Nadler?

3904 [No response.]

3905 Mr. Scott?

3906 Mr. Scott. No.

3907 The Clerk. Mr. Scott votes no.

3908 Mr. Watt?

3909 [No response.]

3910 Ms. Lofgren?

3911 [No response.]

3912 Ms. Jackson Lee?

3913 Ms. Jackson Lee. No.

3914 The Clerk. Ms. Jackson Lee votes no.

3915 Ms. Waters?

3916 Ms. Waters. No.

3917 The Clerk. Ms. Waters votes no.

3918 Mr. Delahunt?

3919 [No response.]

3920 Mr. Wexler?

3921 [No response.]

3922 Mr. Cohen?

3923 [No response.]

3924 Mr. Johnson?

3925 Mr. Johnson. No.

3926 The Clerk. Mr. Johnson votes no.

3927 Mr. Pierluisi?

3928 Mr. Pierluisi. No.

3929 The Clerk. Mr. Pierluisi votes no.
3930 Mr. Gutierrez?
3931 [No response.]
3932 Mr. Sherman?
3933 [No response.]
3934 Ms. Baldwin?
3935 Ms. Baldwin. No.
3936 The Clerk. Ms. Baldwin votes no.
3937 Mr. Gonzalez?
3938 [No response.]
3939 Mr. Weiner?
3940 [No response.]
3941 Mr. Schiff?
3942 [No response.]
3943 Ms. Sanchez?
3944 [No response.]
3945 Ms. Wasserman Schultz?
3946 [No response.]
3947 Mr. Maffei?
3948 Mr. Maffei. No.
3949 The Clerk. Mr. Maffei votes no.
3950 Mr. Smith?
3951 [No response.]
3952 Mr. Goodlatte?
3953 Mr. Goodlatte. Aye.

3954 The Clerk. Mr. Goodlatte votes aye.
3955 Mr. Sensenbrenner?
3956 [No response.]
3957 Mr. Coble?
3958 Mr. Coble. Aye.
3959 The Clerk. Mr. Coble votes aye.
3960 Mr. Gallegly?
3961 Mr. Gallegly. Aye.
3962 The Clerk. Mr. Gallegly votes aye.
3963 Mr. Lungren?
3964 [No response.]
3965 Mr. Issa?
3966 [No response.]
3967 Mr. Forbes?
3968 [No response.]
3969 Mr. King?
3970 Mr. King. Aye.
3971 The Clerk. Mr. King votes aye.
3972 Mr. Franks?
3973 [No response.]
3974 Mr. Gohmert?
3975 Mr. Gohmert. Aye.
3976 The Clerk. Mr. Gohmert votes aye.
3977 Mr. Jordan?
3978 [No response.]

3979 Mr. Poe?

3980 [No response.]

3981 Mr. Chaffetz?

3982 Mr. Chaffetz. Aye.

3983 The Clerk. Mr. Chaffetz votes aye.

3984 Mr. Rooney?

3985 Mr. Rooney. Yes.

3986 The Clerk. Mr. Rooney votes yes.

3987 Mr. Harper?

3988 [No response.]

3989 Chairman Conyers. Are there other members that wish to
3990 cast a vote?

3991 Mr. Cohen?

3992 Mr. Cohen. No.

3993 The Clerk. Mr. Cohen votes no.

3994 Chairman Conyers. Mr. Watt?

3995 Mr. Watt. No.

3996 The Clerk. Mr. Watt votes no.

3997 Chairman Conyers. Mr. Forbes?

3998 Mr. Forbes. Yes.

3999 The Clerk. Mr. Forbes votes yes.

4000 Mr. Maffei. Mr. Chairman, how am I recorded?

4001 The Clerk. Mr. Maffei as voting no.

4002 Chairman Conyers. Mr. Wexler?

4003 Mr. Wexler. No.

4004 The Clerk. Mr. Wexler votes no.

4005 Chairman Conyers. The clerk will report.

4006 The Clerk. Mr. Chairman, eight members voted aye, 11
4007 members voted nay.

4008 Chairman Conyers. The amendment is unsuccessful.

4009 It is now 5 minutes to 2. The full committee is working
4010 against a 2:30 deadline.

4011 Mr. Gohmert. Mr. Chairman?

4012 Chairman Conyers. Just a moment.

4013 We wished to get both bills out, but we may have to
4014 settle for just getting the hate crimes bill out.

4015 So I would not ask if there are any other amendments to
4016 be brought forward.

4017 Mr. Gohmert. Mr. Chairman?

4018 Chairman Conyers. Yes, sir, Judge Gohmert?

4019 Mr. Nadler. Mr. Chairman, I reserve a point of order.

4020 Mr. Gohmert. Amendment No. 8.

4021 Chairman Conyers. The clerk will report Gohmert-8.

4022 Mr. Nadler. Mr. Chairman?

4023 Chairman Conyers. Yes.

4024 Mr. Nadler. I would like to reserve a point of order,
4025 please.

4026 Chairman Conyers. Mr. Nadler reserves a point of order.

4027 The Clerk. Amendment No. 8 to H.R. 1913, offered by Mr.
4028 Gohmert.

4029 [The amendment by Mr. Gohmert follows:]

4030 ***** INSERT *****

4031 Mr. Gohmert. I request it be considered as read.

4032 Chairman Conyers. Without objection, so ordered.

4033 And the gentleman is recognized in support of his
4034 amendment.

4035 Mr. Gohmert. And I have called amendments that I didn't
4036 think were necessary, based on prior discussions, and this is
4037 the last amendment I have.

4038 But this is based on factual situations that have arisen
4039 as a result—we saw, for example, from the vote in California,
4040 where Christian and Mormon churches were targeted who
4041 supported a vote in California.

4042 The churches were disrupted. There were people who were
4043 harassed, a cross yanked off a lady's person, clearly, an
4044 assault, but it was clearly, also, a hate crime.

4045 And if we are going to protect one side of an issue,
4046 then we should be protecting another side of the issue, if
4047 that side has shown it needs protection from such violence,
4048 and, in this case, we have.

4049 That is why the amendment adds in, so that another
4050 situation that would be protected is that if the conduct,
4051 which is a violent offense, is against someone in the process
4052 of practicing his or her religion in a place of worship,
4053 including, not limited to, but including a Christian church,
4054 a Jewish synagogue, a Muslim mosque—and the other language is
4055 added because it may be that if one of these institutions is

4056 promoting violence against someone or preparing bombs or
4057 something of that nature, that due process, gets a warrant,
4058 goes in and takes action within that church synagogue or
4059 mosque.

4060 But otherwise, it is an offense under this hate crimes
4061 bill, so it would allow these institutions to be just as
4062 protected as their free speech expression could be attacked
4063 by the passage of this bill.

4064 Chairman Conyers. I thank the gentleman and I thank him
4065 for his cooperation, and I would like to see if we can work
4066 something out on the last amendment that he offers to this
4067 bill.

4068 And I will say this, if the gentleman from New York
4069 indicates any support for this amendment, I would be happy to
4070 go into negotiations with you about it.

4071 I recognize the gentleman from New York.

4072 Mr. Nadler. First of all, I will not insist on the
4073 point of order.

4074 Chairman Conyers. The point of order is withdrawn.

4075 Mr. Nadler. Thank you.

4076 Second of all, I am a little confused by this amendment
4077 since—and maybe the gentleman can enlighten me.

4078 Religion is already covered by the bill and this
4079 amendment seems to narrow the coverage, which I don't think
4080 is the intent of the offeror.

4081 Mr. Gohmert. Will the gentleman yield?

4082 Mr. Nadler. Yes, I will.

4083 Mr. Gohmert. It can't be limiting the coverage when it
4084 is expressed in the disjunctive, which adds "or" and adds
4085 this. So it is cumulative. It adds to what is already
4086 there. It is not limiting.

4087 Mr. Nadler. Reclaiming my time.

4088 The bill now makes it a hate crime when you do anybody
4089 bodily injury, et cetera, et cetera, because the acts are
4090 perceived, race, color, religion or national origin. That
4091 seems to be all encompassing for anything to do with
4092 religion.

4093 So anything you say can't expand it. You might read
4094 this either as having no effect and you might read it as
4095 narrowing it, but religion is already covered, covered
4096 totally.

4097 So I don't see the point. I would oppose this as
4098 conceivably the court might read it as narrowing it. But in
4099 any event, it doesn't broaden it.

4100 It is either harmless or hurtful. I don't see how it
4101 can help someone who is a victim of a hate crime because of
4102 any kind of religious consideration.

4103 Mr. Gohmert. Would the gentleman yield?

4104 Mr. Nadler. Yes, I will yield.

4105 Mr. Gohmert. If the gentleman doesn't see how it would

4106 hurt—

4107 Mr. Nadler. Reclaiming my time.

4108 I said it is either harmless or hurtful, it can't help,
4109 which might be read by a court as narrowing it, it might not.
4110 But I don't see how it can be possibly be read as expanding
4111 the protection of the bill.

4112 Chairman Conyers. Would the gentleman yield to me?

4113 Mr. Nadler. Certainly, I will yield to the chairman.

4114 Chairman Conyers. I find that the amendment more likely
4115 is redundant rather—it goes one way or the other, because the
4116 measure before us already clearly protects constitutionally
4117 protected conduct, such as practicing a religion.

4118 So writing in all of this about Jews and Muslims and
4119 Christians is totally unnecessary, in my view.

4120 And so my original olive leaf that we might enter into
4121 compromise is withdrawn.

4122 All those in favor of the amendment, indicate by saying
4123 "aye."

4124 [A chorus of ayes.]

4125 All those opposed, say "no."

4126 [A chorus of noes.]

4127 The noes have it.

4128 I now recognize Steve King, the gentleman from Iowa, who
4129 has patiently been waiting to be recognized to offer an
4130 amendment.

4131 Mr. King. Thank you, Mr. Chairman.

4132 I have an amendment at the desk, designated Amendment

4133 No. 1, please.

4134 Chairman Conyers. The clerk will report it.

4135 Mr. Nadler. Reserving a point of order, Mr. Chairman.

4136 Chairman Conyers. The gentleman from New York reserves

4137 a point of order.

4138 The Clerk. Amendment to H.R. 1913, offered by Mr. King

4139 of Iowa.

4140 [The amendment by Mr. King follows:]

4141 ***** INSERT *****

4142 Chairman Conyers. I ask unanimous consent that the
4143 amendment be considered as read and note that it is exactly 2
4144 minutes past 2 o'clock.

4145 And the gentleman is recognized in support of his
4146 amendment.

4147 Mr. King. I thank the chairman. And I would point out
4148 to the committee that, as the chairman knows, I have
4149 patiently waited all day to offer my amendments, and others
4150 have done so.

4151 Chairman Conyers. Would the gentleman yield for a
4152 moment?

4153 Mr. King. I would yield to the chairman.

4154 Chairman Conyers. You said amendments in the plural.

4155 Mr. King. Yes.

4156 Chairman Conyers. Do you mean there is one more after
4157 this?

4158 Mr. King. No, Mr. Chairman, I mean I have several and I
4159 seek to perfect this legislation.

4160 And my staff has worked diligently, as I have, for some
4161 days now and I must respect their effort.

4162 Chairman Conyers. Can the gentleman accomplish his
4163 goals within the 28 minutes that are remaining?

4164 Mr. King. The goal of perfecting the legislation is
4165 unlikely, but I would say, at the pace of the other
4166 amendments, it would be also unlikely to achieve this by

4167 2:30.

4168 Chairman Conyers. You don't think we can.

4169 Mr. King. I don't think we can, Mr. Chairman.

4170 Chairman Conyers. Well, is there any way that you can
4171 take out or put forth the most important of your amendments?

4172 Mr. King. Mr. Chairman, I hope to be offering them in
4173 an order that would be the most important, and I can't
4174 actually package them up.

4175 Chairman Conyers. Well, could I tell the gentleman that
4176 if we do not finish, you are suggesting that all 34 members
4177 come back after the votes today.

4178 Mr. King. I actually think, Mr. Chairman, that this
4179 legislation is so far-reaching that we ought to sleep on it.

4180 Mr. Goodlatte. Mr. Chairman, if I might, if the
4181 chairman would yield.

4182 I also have two amendments remaining. So I don't know
4183 if other members have additional amendments, but I don't want
4184 to put all the burden on Mr. King. He has been very patient
4185 and I think he is entitled to be heard.

4186 Chairman Conyers. Well, everybody is entitled to be
4187 heard. But if the gentleman—he does want us to come back.
4188 We will sleep on the amendments and then we will come back
4189 tomorrow and finish up this measure.

4190 Mr. King. Mr. Chairman, I think that would be
4191 constructive for both sides of the aisle, I really do.

4192 Chairman Conyers. Well, can anybody in the committee
4193 give me some idea of how many more amendments are we going to
4194 be confronted with tomorrow?

4195 Mr. King. Mr. Chairman, I will tell you that we had
4196 prepared 10 amendments as of the sun coming up this morning
4197 and I would make my commitment that I would prepare no future
4198 amendments before the sun comes up tomorrow morning or before
4199 you might gavel in.

4200 Chairman Conyers. Well, that is quite consoling. I
4201 never thought I would have it so lucky. Plus two amendments
4202 here.

4203 Well, that is 12 amendments, 14 amendments, we could be—
4204 what is the legislative schedule tomorrow? Can we get 14
4205 amendments in tomorrow?

4206 The gentleman noticed that on our agenda for today,
4207 there were at least six bills.

4208 Mr. King. I did happen to notice that, Mr. Chairman,
4209 although I believe the rest of those bills are not nearly as
4210 time-consuming as this one.

4211 Chairman Conyers. Well, I quite agree with that.

4212 Well, the gentleman is recognized in support of his
4213 amendment.

4214 Mr. King. Thank you, Mr. Chairman.

4215 This amendment is—it addresses the plague of crimes
4216 committed by illegal immigrants against U.S. citizens. Every

4217 day, we can open a newspaper and read of a citizen whose life
4218 has been snuffed out or changed unalterably by the depraved
4219 crime of an illegal alien.

4220 I have estimated from data that has been provided to me
4221 that on a given day, as many as 25 Americans may die at the
4222 hands of illegal aliens.

4223 And I would just give a examples. The director of "A
4224 Christmas Story," Bob Clark, was killed by an illegal
4225 immigrant drunk driver in Los Angeles in April of 2007.

4226 An illegal immigrant MS-13 gang member shot three
4227 students in Newark, New Jersey execution style in August of
4228 2007. He was free on bail and was facing charges of
4229 aggravated assault and sexual abuse of a child at the time of
4230 the murders.

4231 An illegal immigrant from Mexico was arrested in January
4232 of 2008 after DNA matched him to a series of rapes of teenage
4233 girls in Chandler, Arizona.

4234 A 17-year-old high school football star named Jamil
4235 Shaw, Jr., whose mother testified before the Immigration
4236 Subcommittee, was murdered by an illegal immigrant in Los
4237 Angeles in March 2008. He had been released from jail on an
4238 assault charge the day before he killed Jamil Shaw, Jr.

4239 An illegal immigrant who had numerous past violent crime
4240 convictions savagely murdered Tony, Michael and Matthew
4241 Bologna in San Francisco in July of 2008. The father and two

4242 sons were all shot while sitting in a car.

4243 Last November, an 83-year-old Lila Meizell was murdered
4244 in Wheaton, Maryland by three illegal immigrants who beat her
4245 to death and burned her alive to cover up a check-writing
4246 scheme.

4247 An illegal immigrant gang member shot 14-year-old Tye
4248 Lamb in October of last year in Montgomery County, Maryland.

4249 Crimes committed by illegal immigrants are the most
4250 senseless, the most preventable, and the most depraved crimes
4251 of all.

4252 Why? Because no illegal immigrant should be in the
4253 country in the first place, Mr. Chairman. No illegal
4254 immigrant should have had the opportunity to commit their
4255 crimes in the first place.

4256 Had the federal government adequately enforced
4257 immigration laws, American citizens would have been spared
4258 immense suffering.

4259 It is my hope that in the future, the federal government
4260 becomes more adept at deporting illegal aliens before they
4261 commit crimes.

4262 Today, unfortunately, we usually have to wait until
4263 after they commit their crimes before any serious attempt is
4264 made to remove illegal immigrants.

4265 If many Democrats had their way, we would never deport
4266 any illegal aliens until we have given them the chance to

4267 victimize Americans. They wouldn't enforce the exiting
4268 immigration laws for illegal border crossing, for example.

4269 Today, we are marking up the Local Law Enforcement Hate
4270 Crimes Prevention Act. What crime can be considered more
4271 hateful, more motivated by hatred than the willful infliction
4272 of body harm on an American citizen by an illegal alien?

4273 To come as a guest to this country, even worse, breaking
4274 in as an uninvited guest and then inflicting injury on your
4275 host is the ultimate in depravity.

4276 It signifies a hatred of America and a hatred of
4277 Americans.

4278 My amendment simply provides that when an illegal alien
4279 willfully causes bodily injury to a U.S. national, the crime
4280 shall be considered a hate crime and punished as a hate
4281 crime, Mr. Chairman, and I believe that that message is
4282 implicit in the crime itself and I think it would send the
4283 appropriate message to our law enforcement officers, who have
4284 been redirected now, if not by written policy, by the
4285 implicit messages that are through the media, through the
4286 discussions, that they should now go down to the southern
4287 border, turn their backs on Mexico and guard against legal
4288 American guns which become illegal when they cross the border
4289 into Mexico rather than to enforce our borders to stop the
4290 bleeding and to enforce laws against these perpetrators.

4291 Every victim of—every American victim, every American

4292 national who is victimized by an illegal alien is a victim of
4293 a preventable crime. These crimes are preventable, Mr.
4294 Chairman. They need to be prevented.

4295 And if crimes can be prevented, as the gentlelady from
4296 Florida said, by having an enhanced penalty, the enhanced
4297 penalty that would be if someone had perceived that another
4298 individual was of a protected group and we could punish them
4299 because of the perpetrator's perception, wouldn't it be also
4300 a perception that an illegal alien has when he commits a
4301 crime against an American national?

4302 Would they not know that they are an American national
4303 just as much as someone who commits a crime against someone
4304 because of their gender or their gender identity, perceives
4305 their gender or their gender identity?

4306 Are we not perceived to be American nationals sitting
4307 here on this committee and should we not be protected in a
4308 standard that is reflective of the spirit of this
4309 legislation?

4310 I would urge adoption of my amendment, Mr. Chairman.

4311 And with time left, I would note, I yield back the
4312 balance of my time.

4313 Chairman Conyers. I thank the gentleman from Iowa.

4314 And I yield to the gentleman from New York.

4315 Mr. Nadler. Thank you, Mr. Chairman.

4316 I will insist on the point of order. This amendment is

4317 not germane to the bill. It has nothing to do with the bill,
4318 in fact.

4319 The whole point of the bill is to enhance the degree of
4320 a crime when the crime is motivated by animus toward specific
4321 groups, toward people because of their religion, their creed,
4322 their color, their national origin, their sex, whatever.

4323 This bill has nothing to do with animus. It has nothing
4324 to do with a crime motivated by animus toward a particular
4325 group. There is no requirement for that in the bill—there is
4326 no requirement for that in the amendment, I should say.

4327 All the amendment says is if you are an illegal alien,
4328 you commit a crime against an American, you get a penalty,
4329 presumably an enhanced penalty, but it has nothing to do with
4330 the basic architecture or the thrust of this bill.

4331 And regardless of its merits, which I would be
4332 interested in debating on some other bill, it is not germane
4333 to this one.

4334 Chairman Conyers. I thank the gentleman and ask Mr.
4335 King for any response he would offer.

4336 Mr. King. Thank you, Mr. Chairman.

4337 I would argue that it is germane to the bill and even
4338 though Rule 16, Clause 7 prohibits amendments that are of a
4339 subject different than that under consideration, my amendment
4340 deals with the same subject matter as is in this bill.

4341 The underlying bill deals with so-called hate crimes,

4342 which includes crimes motivated by national origin, and I
4343 would emphasize the national origin issue.

4344 My amendment also deals with crimes relating to national
4345 origin, specifically, by including violent crimes perpetrated
4346 by illegal aliens against U.S. nationals who are mostly of
4347 national origin here in the United States and identifies them
4348 as hate crimes.

4349 And for the gentleman from New York to argue that
4350 Americans are not a group, they are a group. In fact,
4351 Americans are the largest group.

4352 But I would expand this discussion a little bit, and I
4353 am still curious about the definitions of some of the
4354 language in this bill that I am not satisfied that I have
4355 heard.

4356 But this legislation protects homosexuals, it protects
4357 people of specific—has a crime committed against them because
4358 of their gender, their gender identity, then doesn't it also
4359 include heterosexuals, as well as homosexuals?

4360 And I would presume that it does and that is a fairly
4361 large group of people here in the country and, in fact, there
4362 may be more heterosexuals than there are actually American
4363 nationals.

4364 Mr. Nadler. Would the gentleman yield?

4365 Mr. King. I would yield to the gentleman.

4366 Chairman Conyers. I don't think we can yield on a point

4367 of order.

4368 Mr. Nadler. Then can I be recognized?

4369 Chairman Conyers. No.

4370 Mr. King. Mr. Chairman, I believe that the group of
4371 heterosexuals that are specifically—as we have had language
4372 here in our dialogue—that they would be protected under this
4373 same legislation.

4374 If someone commits a crime against a heterosexual
4375 because of their perceived gender identity, then that is a
4376 large group of people that are protected by this legislation.

4377 Groups are discriminated against specifically because of
4378 the group they are a member of and I will argue that some
4379 crimes committed against American nationals are also
4380 committed because of the group that they are a member of.

4381 And I will submit, Mr. Chairman, that the group of
4382 American nationals is likely smaller than the group of
4383 heterosexuals we have in this country.

4384 And if the chairman rules against me on this, I am going
4385 to presume that he believes it is the opposite. And I would
4386 also urge that whether or not the chair believes that this
4387 amendment is germane, the votes have been there to vote down
4388 every Republican amendment that has been brought forward, and
4389 that may actually be a better course to follow if the
4390 chairman disagrees with my position.

4391 And I would yield back.

4392 Chairman Conyers. Well, the chair is prepared to
4393 examine the point of order that has been made by the
4394 gentleman from New York and the response that the gentleman
4395 from Iowa has offered, and it has nothing to do with the way
4396 the votes have been cast in this committee up until now and
4397 it has nothing to do with what I believe about the amendment.

4398 This is a parliamentary ruling and H.R. 1913 deals with
4399 crimes of violence base upon a bias or a hatred against a
4400 group.

4401 The amendment that is before us now from the gentleman
4402 deals with crimes based on no bias whatsoever.

4403 That being the circumstance, as I examine this
4404 amendment, which deals, in truth, with victims of random
4405 violence, the amendment is not germane to the bill for the
4406 simple reason it would expand the scope of the bill to deal
4407 with a subject matter that was not originally included nor
4408 intended in the bill.

4409 So, therefore, the point of order is sustained and the
4410 gentleman's amendment cannot go further.

4411 But we would entertain him bringing forward one of the
4412 12 others that he may have.

4413 Mr. King. Thank you, Mr. Chairman.

4414 I would ask to offer Amendment No. 2.

4415 Chairman Conyers. The clerk will report.

4416 Mr. Scott. Mr. Chairman, I reserve a point of order.

4417 Chairman Conyers. King Amendment No. 2.

4418 Mr. Scott. Mr. Chairman, I reserve a point of order.

4419 Chairman Conyers. The gentleman from Virginia reserves
4420 a point of order.

4421 The Clerk. Amendment to H.R. 1913, offered by Mr. King
4422 of Iowa.

4423 [The amendment by Mr. King follows:]

4424 ***** INSERT *****

4425 Chairman Conyers. The amendment will be considered, by
4426 unanimous consent, to be read and Mr. King is recognized in
4427 support of his amendment.

4428 Mr. King. Thank you, Mr. Chairman.

4429 I want to say, before I address my amendment, that your
4430 statement with regard to the ruling being independent of your
4431 position on the bill, I recognize that point. I am glad you
4432 made it and I concede it, and I do honor the motive behind it
4433 and don't question it at all.

4434 So this amendment, Amendment No. 2, deals with the title
4435 of the bill. It amends the title of the bill. It amends the
4436 title of the bill to reflect the actual functionality of this
4437 legislation that is before us.

4438 This hate crimes bill is actually a bill to control our
4439 thoughts and as I quoted in my opening statement, the party—I
4440 will just take us to some language here that comes from the
4441 book "1984" by George Orwell.

4442 And as I read through this, and it echoes back for me in
4443 the years past when I actually read this as a literary study,
4444 a quote from George Orwell's book, "1984," where he states,
4445 "The party is not interested in the overt act. The thought
4446 is all we care about. We do not merely destroy our enemies,
4447 we change them.

4448 We are not content with negative obedience nor even with
4449 the most abject submission. When finally you surrender to

4450 us, it must be of your own free will. It is intolerable to
4451 us that an erroneous thought should exist in anywhere in the
4452 world, however secret and powerless it may be. Even in the
4453 instant of death, we cannot permit any deviation."

4454 That is a quote, that is a summary from an exchange that
4455 took place in the book "1984." It is apropos. It is
4456 chilling to me that George Orwell could, in 1949, predict
4457 something that would happen in 1984 and we didn't get around
4458 to this in 1984, but in 2009, now we are sitting here having
4459 this debate about what goes on in people's minds and we have
4460 a specific punishment that is laid out in this bill for the
4461 sake of punishing people for what they thought, not for what
4462 they did.

4463 And I did mention in my opening statement the
4464 distinction between the overt act and the thought that might
4465 accompany that overt act. We simply cannot define what is in
4466 a person's mind. And from the time of Moses on, we have
4467 punished overt acts. We have not punished thoughts.

4468 This is a thought crime bill. It is not a hate crime
4469 bill and it seeks to punish the thoughts, not the hate.

4470 So I would submit this, that if we believe in
4471 preventative medicine, preventative medicine being go get a
4472 physical, check you out, if something goes wrong, we will
4473 adjust your insulin, give you some treatment, fix you up
4474 before it gets chronic and you end up with an amputee, for

4475 example.

4476 If we believe in preventative medicine and if we believe
4477 that we can look into the skulls of perpetrators and
4478 understand what was going on there and punish them for what
4479 was taking place inside their head at the time that the
4480 premeditated or carried out an act of violence against
4481 someone, and we can come to that conclusion by
4482 psychoanalyzing them, couldn't we also then just
4483 psychoanalyze them before they perpetrate so as to have
4484 actual thought crime prevention rather than the after the
4485 fact prevention that is supposedly going to be a deterrent,
4486 as was illustrated by the gentlelady from Florida.

4487 So I think this takes us to the point where if you think
4488 we can define a thought and punish a thought and do so after
4489 the fact, because we identify the people who are thinking
4490 wrongly by the overt act of the crime itself, couldn't we
4491 just psychoanalyze all of these American nationals and find
4492 out which ones are most likely to commit a crime, go in there
4493 and address that accordingly with the psychiatrist, fix their
4494 brain, punish them for their thoughts, get it over with, so
4495 we don't actually have to have victims of these crimes.

4496 Mr. Chairman, this is a thought crime legislation. That
4497 is what this bill does. We might as well call it that and be
4498 honest with it, because it seemed inconceivable in 1949, when
4499 George Orwell wrote the book "1984"—which I would ask

4500 unanimous consent to introduce, not a hard copy, but a soft
4501 copy into the record.

4502 Chairman Conyers. I am sorry, we cannot introduce books
4503 into the record.

4504 Mr. King. Okay, Mr. Chairman. I accept that and I
4505 don't intend to advertise one, as some of our witnesses have
4506 in the past.

4507 But I would submit, Mr. Chairman, that if we can punish
4508 thoughts, we can do so before they commit crimes instead of
4509 after. And as improbable as it seemed in 1949 that 1984
4510 really didn't come about until 2009, then the next step will
4511 be when our descendents sit here and look back on this debate
4512 and they say, "Sure, we can. We can preempt overt acts of
4513 crime by looking into the minds of perpetrators, punish them,
4514 control their thoughts."

4515 This is a thought crime bill and I urge adoption of this
4516 amendment that amends the title to say what it actually is,
4517 and I would yield back.

4518 Chairman Conyers. I thank the gentleman and note that
4519 has ended his discourse before his time has expired for the
4520 second time today and for the second time in the 111th
4521 Congress, as well.

4522 Does the gentleman from New York insist upon his point
4523 of order?

4524 Mr. Nadler. No.

4525 Chairman Conyers. He doesn't. All right, it is
4526 withdrawn.

4527 The chair recognizes the gentlelady from Wisconsin,
4528 Tammy Baldwin.

4529 Ms. Baldwin. Thank you. I move to strike the last
4530 word.

4531 Chairman Conyers. The gentlelady is recognized in her—
4532 Ms. Baldwin. Presumed opposition to the—

4533 Chairman Conyers. Presumed opposition to the amendment.

4534 Ms. Baldwin. Speaking of reading thoughts.

4535 I do, indeed, oppose the amendment. First of all, the
4536 amendment itself is frivolous, actually. I just want to say
4537 that just because you say something over and over and over
4538 doesn't—

4539 Mr. King. Would the gentlelady yield?

4540 Ms. Baldwin. No, not yet. Just because you say
4541 something over and over and over again doesn't make it true.

4542 This is not a bill about hate speech. This is not a
4543 bill about hate thought. It is a bill about hate crime. It
4544 punishes crime based on hate.

4545 It requires violent conduct for there to be a
4546 prosecution. I will state it once again, but the Supreme
4547 Court has reviewed hate crimes legislation and unanimously
4548 determined, in an opinion written by Chief Justice Rehnquist
4549 in 1993, that so long as it is crafted to focus on the

4550 conduct and the violence, that it is entirely constitutional.

4551 They mentioned specifically in *Wisconsin v. Mitchell*,
4552 the case that I refer to, it is equally true that a
4553 defendant's abstract beliefs, however obnoxious to most
4554 people, may not be taken into consideration by a sentencing
4555 judge.

4556 And if the Supreme Court's analysis of this issue is not
4557 enough, their unanimous analysis of this issue is not enough,
4558 I would refer you once again back to the rule of evidence, in
4559 addition to the rule of construction, in this bill.

4560 In a prosecution for an offense under this section,
4561 evidence of expression or associations of the defendant may
4562 not be introduced as substantive evidence at trial unless it
4563 specifically relates to the offense, meaning the conduct, the
4564 violence.

4565 The First Amendment does not protect violence. It does
4566 protect thought and speech.

4567 This is not a hate speech bill. It is not a hate
4568 thought bill. It is a hate crime bill.

4569 Mr. King. Would the gentlelady yield?

4570 Ms. Baldwin. And I would yield back my—

4571 Mr. King. Would the gentlelady please yield?

4572 Ms. Baldwin. Go ahead.

4573 Mr. King. I thank the lady from Wisconsin.

4574 First, I just wanted to—two subjects I would like to

4575 raise. One of them is a comment about my amendment being
4576 frivolous, and I think the gentlelady knows that I am serious
4577 about what I think this legislation is.

4578 So I would move on from that to the point that I think
4579 needs clarification yet, although I think there are many, and
4580 that is that—do I understand you to say that there is no
4581 punishment under this bill that can be meted out for a
4582 thought or a hate unless it is accompanied by an overt act?

4583 Ms. Baldwin. That is correct.

4584 Mr. King. And so we identify the perpetrators by the
4585 overt act and then we evaluate the level of punishment
4586 according to the act itself, plus the perception that was in
4587 the mind of the perpetrator. Is that not correct?

4588 Ms. Baldwin. Yes, just as we do right now with contract
4589 tilling versus random acts of violence. We often look at the
4590 animus in criminal law. This is a very specific way.

4591 Mr. King. If the gentlelady would further yield.

4592 Then is it not accurate, the statement that I have made,
4593 that is the act and the thought that are punished in two
4594 categories that come up to be the summation of the full
4595 punishment for the perpetrator?

4596 Ms. Baldwin. You cannot prosecute without a crime,
4597 underlying crime.

4598 Mr. King. If the gentlelady would further yield.

4599 Isn't there a specific punishment for the hate itself

4600 and it is an additional punishment on top of the overt act
4601 itself and doesn't that identify itself as punishment for
4602 hate, even though it has to be accompanied by an overt act of
4603 a crime?

4604 Ms. Baldwin. We differentiate in our criminal statutes,
4605 time and time again, based on motivation, animus, et cetera.
4606 This is entirely consistent with that.

4607 Mr. King. I thank the gentlelady for her indulgence and
4608 I would yield back to her.

4609 Chairman Conyers. The vote occurs on the gentleman from
4610 Iowa's amendment.

4611 All those in favor, say "aye."

4612 [A chorus of ayes.]

4613 All those opposed, say "no."

4614 [A chorus of noes.]

4615 The noes have it.

4616 Mr. King. Mr. Chairman?

4617 Chairman Conyers. Would you like a recorded vote?

4618 Mr. King. I would like a recorded vote, please, Mr.
4619 Chairman.

4620 Chairman Conyers. The clerk will call the roll.

4621 The Clerk. Mr. Conyers?

4622 Chairman Conyers. No.

4623 The Clerk. Mr. Conyers votes no.

4624 Mr. Berman?

4625 [No response.]

4626 Mr. Boucher?

4627 [No response.]

4628 Mr. Nadler?

4629 Mr. Nadler. No.

4630 The Clerk. Mr. Nadler votes no.

4631 Mr. Scott?

4632 Mr. Scott. No.

4633 The Clerk. Mr. Scott votes no.

4634 Mr. Watt?

4635 [No response.]

4636 Ms. Lofgren?

4637 [No response.]

4638 Ms. Jackson Lee?

4639 [No response.]

4640 Ms. Waters?

4641 Ms. Waters. No.

4642 The Clerk. Ms. Waters votes no.

4643 Mr. Delahunt?

4644 [No response.]

4645 Mr. Wexler?

4646 [No response.]

4647 Mr. Cohen?

4648 Mr. Cohen. No.

4649 The Clerk. Mr. Cohen votes no.

4650 Mr. Johnson?
4651 Mr. Johnson. No.
4652 The Clerk. Mr. Johnson votes no.
4653 Mr. Pierluisi?
4654 Mr. Pierluisi. No.
4655 The Clerk. Mr. Pierluisi votes no.
4656 Mr. Gutierrez?
4657 [No response.]
4658 Mr. Sherman?
4659 [No response.]
4660 Ms. Baldwin?
4661 Ms. Baldwin. No.
4662 The Clerk. Ms. Baldwin votes no.
4663 Mr. Gonzalez?
4664 [No response.]
4665 Mr. Weiner?
4666 [No response.]
4667 Mr. Schiff?
4668 [No response.]
4669 Ms. Sanchez?
4670 [No response.]
4671 Ms. Wasserman Schultz?
4672 [No response.]
4673 Mr. Maffei?
4674 Mr. Maffei. No.

4675 The Clerk. Mr. Maffei votes no.
4676 Mr. Smith?
4677 [No response.]
4678 Mr. Goodlatte?
4679 Mr. Goodlatte. Aye.
4680 The Clerk. Mr. Goodlatte votes aye.
4681 Mr. Sensenbrenner?
4682 Mr. Sensenbrenner. Aye.
4683 The Clerk. Mr. Sensenbrenner votes aye.
4684 Mr. Coble?
4685 Mr. Coble. Aye.
4686 The Clerk. Mr. Coble votes aye.
4687 Mr. Gallegly?
4688 [No response.]
4689 Mr. Lungren?
4690 [No response.]
4691 Mr. Issa?
4692 [No response.]
4693 Mr. Forbes?
4694 [No response.]
4695 Mr. King?
4696 Mr. King. Aye.
4697 The Clerk. Mr. King votes aye.
4698 Mr. Franks?
4699 [No response.]

4700 Mr. Gohmert?

4701 Mr. Gohmert. Aye.

4702 The Clerk. Mr. Gohmert votes aye.

4703 Mr. Jordan?

4704 Mr. Jordan. Yes.

4705 The Clerk. Mr. Jordan votes yes.

4706 Mr. Poe?

4707 [No response.]

4708 Mr. Chaffetz?

4709 Mr. Chaffetz. Aye.

4710 The Clerk. Mr. Chaffetz votes aye.

4711 Mr. Rooney?

4712 Mr. Rooney. Yes.

4713 The Clerk. Mr. Rooney votes yes.

4714 Mr. Harper?

4715 Mr. Harper. Aye.

4716 The Clerk. Mr. Harper votes aye.

4717 Chairman Conyers. The clerk will report.

4718 Are there other members? Other members?

4719 First of all, Finance Committee people.

4720 Mr. Watt?

4721 Mr. Watt. No.

4722 The Clerk. Mr. Watt votes no.

4723 Chairman Conyers. Mr. Berman?

4724 Mr. Berman. No.

4725 The Clerk. Mr. Berman votes no.
4726 Chairman Conyers. Mr. Forbes?
4727 Mr. Forbes. Yes.
4728 The Clerk. Mr. Forbes votes yes.
4729 Chairman Conyers. Mr. Weiner?
4730 Mr. Weiner. No.
4731 The Clerk. Mr. Weiner votes no.
4732 Chairman Conyers. Mr. Wexler?
4733 Mr. Wexler. No.
4734 The Clerk. Mr. Wexler votes no.
4735 Chairman Conyers. Mr. Brad Sherman?
4736 Mr. Sherman. No.
4737 The Clerk. Mr. Sherman votes no.
4738 Chairman Conyers. Ms. Sanchez?
4739 Ms. Sanchez. No.
4740 The Clerk. Ms. Sanchez votes no.
4741 Chairman Conyers. If there are no further persons that
4742 choose to vote, the clerk will report.
4743 The Clerk. Mr. Chairman, 10 members voted aye, 15
4744 members voted nay.
4745 Chairman Conyers. The amendment is unsuccessful.
4746 Members of the committee, we will now return to the
4747 pending point of order by Mr. Scott made against the
4748 amendment of Jim Jordan of Ohio.
4749 The House parliamentarian has, in the interim, been

4750 consulted and the chair is now prepared to rule on the point
4751 of order.

4752 In the opinion of the chair, H.R. 1913 deals with hate
4753 crimes against persons, which, as defined in the United
4754 States code, does not include the unborn.

4755 Therefore, in my humble opinion, the amendment is not
4756 germane to the bill, because it would expand the scope of the
4757 bill to deal with a subject matter not included in the bill.

4758 So the point of order of Mr. Scott is sustained.

4759 Now, may I point out—

4760 Mr. Jordan. Mr. Chairman?

4761 Chairman Conyers. Yes, sir.

4762 Mr. Jordan. I respectfully ask to appeal the rule of
4763 the chair, Mr. Chairman.

4764 Mr. Nadler. Mr. Chairman, move to table the appeal of
4765 the ruling of the chair.

4766 Chairman Conyers. The motion has been made by Jim
4767 Jordan.

4768 Mr. Jordan. Ask for a roll call vote, Mr. Chairman.

4769 Chairman Conyers. And the motion to table by the
4770 gentleman from New York, Mr. Nadler, has been made.

4771 All those in favor of the motion to table, indicate by
4772 saying "aye."

4773 [A chorus of ayes.]

4774 All those opposed, say "no."

4775 [A chorus of noes.]

4776 The noes have it.

4777 Mr. Jordan. Recorded vote, Mr. Chairman.

4778 Chairman Conyers. So a recorded vote is ordered.

4779 The clerk will call the roll.

4780 The Clerk. Mr. Conyers?

4781 Chairman Conyers. Aye.

4782 The Clerk. Mr. Conyers votes aye.

4783 Mr. Berman?

4784 Mr. Berman. Aye.

4785 The Clerk. Mr. Berman votes aye.

4786 Mr. Boucher?

4787 [No response.]

4788 Mr. Nadler?

4789 Mr. Nadler. Aye.

4790 The Clerk. Mr. Nadler votes aye.

4791 Mr. Scott?

4792 Mr. Scott. Aye.

4793 The Clerk. Mr. Scott votes aye.

4794 Mr. Watt?

4795 [No response.]

4796 Ms. Lofgren?

4797 [No response.]

4798 Ms. Jackson Lee?

4799 [No response.]

4800 Ms. Waters?
4801 [No response.]
4802 Mr. Delahunt?
4803 [No response.]
4804 Mr. Wexler?
4805 [No response.]
4806 Mr. Cohen?
4807 Mr. Cohen. Aye.
4808 The Clerk. Mr. Cohen votes aye.
4809 Mr. Johnson?
4810 Mr. Johnson. Aye.
4811 The Clerk. Mr. Johnson votes aye.
4812 Mr. Pierluisi?
4813 Mr. Pierluisi. Yes.
4814 The Clerk. Mr. Pierluisi votes yes.
4815 Mr. Gutierrez?
4816 [No response.]
4817 Mr. Sherman?
4818 [No response.]
4819 Ms. Baldwin?
4820 Ms. Baldwin. Aye.
4821 The Clerk. Ms. Baldwin votes aye.
4822 Mr. Gonzalez?
4823 [No response.]
4824 Mr. Weiner?

4825 [No response.]

4826 Mr. Schiff?

4827 [No response.]

4828 Ms. Sanchez?

4829 Ms. Sanchez. Aye.

4830 The Clerk. Ms. Sanchez votes aye.

4831 Ms. Wasserman Schultz?

4832 [No response.]

4833 Mr. Maffei?

4834 Mr. Maffei. Aye.

4835 The Clerk. Mr. Maffei votes aye.

4836 Mr. Smith?

4837 [No response.]

4838 Mr. Goodlatte?

4839 Mr. Goodlatte. No.

4840 The Clerk. Mr. Goodlatte votes no.

4841 Mr. Sensenbrenner?

4842 [No response.]

4843 Mr. Coble?

4844 Mr. Coble. No.

4845 The Clerk. Mr. Coble votes no.

4846 Mr. Gallegly?

4847 [No response.]

4848 Mr. Lungren?

4849 [No response.]

4850 Mr. Issa?
4851 [No response.]
4852 Mr. Forbes?
4853 Mr. Forbes. No.
4854 The Clerk. Mr. Forbes votes no.
4855 Mr. King?
4856 Mr. King. No.
4857 The Clerk. Mr. King votes no.
4858 Mr. Franks?
4859 [No response.]
4860 Mr. Gohmert?
4861 Mr. Gohmert. No.
4862 The Clerk. Mr. Gohmert votes no.
4863 Mr. Jordan?
4864 Mr. Jordan. No.
4865 The Clerk. Mr. Jordan votes no.
4866 Mr. Poe?
4867 [No response.]
4868 Mr. Chaffetz?
4869 Mr. Chaffetz. No.
4870 The Clerk. Mr. Chaffetz votes no.
4871 Mr. Rooney?
4872 [No response.]
4873 Mr. Harper?
4874 Mr. Harper. No.

4875 The Clerk. Mr. Harper votes no.

4876 Chairman Conyers. Mr. Issa?

4877 Mr. Issa. No.

4878 The Clerk. Mr. Issa votes no.

4879 Chairman Conyers. Mr. Watt?

4880 Mr. Watt. Aye.

4881 The Clerk. Mr. Watt votes aye.

4882 Chairman Conyers. Mr. Weiner?

4883 Mr. Weiner. Aye.

4884 The Clerk. Mr. Weiner votes aye.

4885 Chairman Conyers. Mr. Sherman?

4886 Mr. Sherman. Aye.

4887 The Clerk. Mr. Sherman votes aye.

4888 Chairman Conyers. Ms. Waters?

4889 Ms. Waters. Aye.

4890 The Clerk. Ms. Waters votes aye.

4891 Chairman Conyers. Mr. Sensenbrenner?

4892 Mr. Sensenbrenner. No.

4893 The Clerk. Mr. Sensenbrenner votes no.

4894 Chairman Conyers. Are there others that choose to vote?

4895 The clerk will report.

4896 The Clerk. Mr. Chairman, 14 members voted aye, 10

4897 members voted nay.

4898 Chairman Conyers. The ayes have it and the motion is

4899 tabled.

4900 The chair recognizes the gentleman from Virginia.
4901 Mr. Goodlatte. Mr. Chairman, I have an amendment at the
4902 desk.
4903 Chairman Conyers. The clerk will report the amendment.
4904 Mr. Scott. Reserve a point of order.
4905 Chairman Conyers. Mr. Scott reserves a point of order.
4906 The clerk will report the amendment.
4907 Mr. Goodlatte. There should be only one down there with
4908 my name on it. I do have one other amendment.
4909 The Clerk. Amendment to H.R. 1913, offered by Mr.
4910 Goodlatte. This is Amendment 0011.

4911 [The amendment by Mr. Goodlatte follows:]

4912 ***** INSERT *****

4913 Chairman Conyers. Without objection, the amendment will
4914 be considered as read.

4915 The gentleman from Virginia is recognized in support of
4916 his amendment.

4917 Mr. Goodlatte. Well, thank you, Mr. Chairman.

4918 Mr. Chairman, we very much regret that the amendment
4919 offered by the gentleman from Ohio, Mr. Jordan, was ruled out
4920 of order, because we think that there certainly is a
4921 construction that allow for his amendment providing for the
4922 protection for unborn children.

4923 My amendment, I am confident, is germane and that adds
4924 pregnant women to the hate crime list of protected persons.

4925 All acts of violence against women are abhorrent, but
4926 they are especially disturbing when committed against
4927 pregnant women.

4928 When a violent crime causes injury to a pregnant woman
4929 that results in a miscarriage or other damage to the fetus,
4930 we all share the desire to ensure that our criminal justice
4931 system responds decisively and firmly to exact appropriate
4932 punishment.

4933 Protecting pregnant women and our families from violence
4934 is a serious and compelling problem that deserves to be
4935 recognized as part of the hate crimes law.

4936 While there is little data on the prevalence of violence
4937 against pregnant women, a 2002 GAO reported cited statistics

4938 from 15 states that between 2.2 percent and 6.4 percent of
4939 pregnant women had been violently attacked.

4940 This is intolerable and we must do more to protect
4941 pregnant women from attack.

4942 On December 16, 2004, Bobbie Jo Stinnett, in Skidmore,
4943 Louisiana, was 23 years old when she was strangled to death
4944 and her unborn child was killed.

4945 The killer, Lisa Montgomery, who was 36 years old, had
4946 met Stinnett in an online chat room and met with her at her
4947 home under the pretext of buying a dog.

4948 Montgomery specifically targeted Stinnett because she
4949 was pregnant. Montgomery had lost a child that she was
4950 carrying prior to murdering Stinnett.

4951 I urge my colleagues to protect pregnant women like
4952 Bobbie Jo from violence and urge them to adopt this
4953 amendment, which would provide such protection.

4954 Chairman Conyers. I thank the gentleman for his
4955 amendment.

4956 I recognize the gentleman from Virginia, Mr. Scott.

4957 Mr. Scott. Mr. Chairman, first, I would withdraw my
4958 reservation. I think, based on previous rulings, it is
4959 clearly germane.

4960 Chairman Conyers. The amendment is withdrawn.

4961 Mr. Scott. And, Mr. Chairman, for the reasons I have
4962 opposed other amendments, this group is not one that is

4963 targeted because of hatred or bias in widespread ways that
4964 need federal protection.

4965 There is no evidence that these crimes are not
4966 prosecuted in state courts and, therefore, Mr. Chairman,
4967 there is no rational basis for the federal government to get
4968 involved in what are obviously local crimes.

4969 Chairman Conyers. Would the gentleman yield?

4970 Mr. Scott. I yield.

4971 Chairman Conyers. Could I inquire of the author of the
4972 amendment if he has some rash of incidents based upon this
4973 amendment that he would bring to the attention of the
4974 committee?

4975 Mr. Scott. I will yield to whoever wants to respond.

4976 Chairman Conyers. Well, the author of the amendment is
4977 preferable.

4978 Mr. Goodlatte?

4979 Mr. Scott. I will yield to Mr. Goodlatte.

4980 Mr. Goodlatte. I would be delighted to respond, because
4981 there is far more evidence of violence against pregnant women
4982 than there is of any other classes that you are seeking to
4983 add to this amendment, and it is based upon a United States
4984 government report.

4985 The General Accounting Office cited estimates from 15
4986 states that 2.2 percent to 6.4 percent of pregnant women have
4987 been violently attacked.

4988 Now, if you took the average of that, 4 percent, between
4989 2.2 and 6.4, roughly 4 percent of the more than four million
4990 pregnancies in the United States, you are talking about
4991 160,000 women who are attacked, on average, each year who are
4992 pregnant.

4993 If that is not an important and sizeable class of people
4994 who are deserving of protection, give me some statistics that
4995 support any of the other classes that you are offering.

4996 And I would again note that the findings section of this
4997 legislation was withdrawn based upon an amendment offered by
4998 the gentleman from Virginia.

4999 So I think we are offering better evidence here of the
5000 deserving protection of pregnant women than have been offered
5001 for any of the other classes that have been sought to be
5002 added in this legislation.

5003 Chairman Conyers. Will the gentleman yield?

5004 Mr. Scott. Reclaiming my time, Mr. Chairman.

5005 I would point out that the number of cases is not the
5006 gravamen of the bill. It is hatred and the fact that there
5007 have been traditionally problems getting them prosecuted in
5008 local courts.

5009 I would yield to the chairman.

5010 Chairman Conyers. The gentleman is correct that this is
5011 a hate crimes bill. This is not a crimes bill. And perhaps
5012 it is not widely recognized, but Section 1841 of the criminal

5013 code already makes it a separate crime to injure a pregnant
5014 woman—these are the exact words—"and thereby cause bodily
5015 injury or death to the fetus in the course of committing
5016 specific enumerated offenses."

5017 And so it isn't a case of these heinous crimes, which I
5018 commend the gentleman for pulling out all of the offenses
5019 possible, but there is no evidence that they are not being
5020 prosecuted already and there is certainly no evidence that
5021 the crime is being directed because of hate against pregnant
5022 women.

5023 So I think that notwithstanding the shocking statistics
5024 that the gentleman has offered, it is still irrelevant to the
5025 purpose of this bill.

5026 Mr. Goodlatte. Mr. Chairman, would the chairman yield
5027 on that point?

5028 Chairman Conyers. I don't have the time.

5029 Mr. Scott. I yield.

5030 Mr. Goodlatte. I thank the gentleman for yielding,
5031 because, quite frankly, we cited the case of Bobbie Jo
5032 Stinnett, who was clearly attacked because of the fact that
5033 she was pregnant and there was clearly hatred on the part of
5034 the Ms. Montgomery, who attacked her, because she had lost a
5035 child herself.

5036 But I would suggest that logic would dictate that many,
5037 many crimes against pregnant women are motivated by hatred,

5038 hatred on the part of somebody who finds that somebody they
5039 thought was in a relation with them turns out is pregnant by
5040 their relationship with somebody else.

5041 Pregnancy that occurs because somebody wants them to
5042 have an abortion, pregnant women attacked because of a
5043 variety of hateful activities that would be deserving of
5044 protection under this particular statute and this particular
5045 guideline for the amount of time to which somebody could be
5046 subjected to receiving imprisonment for doing so.

5047 Again, it is my opinion that everyone should be treated
5048 equally under the law, but surely, surely, if we are going to
5049 protect the classes that are being added in this legislation,
5050 surely, pregnant women would be one.

5051 Chairman Conyers. The time of the gentleman from
5052 Virginia—

5053 Mr. Goodlatte. I thank the gentleman for yielding.

5054 Chairman Conyers. —has expired.

5055 All those in favor of the Goodlatte amendment, indicate
5056 by saying "aye."

5057 [A chorus of ayes.]

5058 Those opposed, indicate by saying "no."

5059 [A chorus of noes.]

5060 The noes have it. The amendment is unsuccessful.

5061 Mr. Goodlatte. Mr. Chairman, on that, I ask for a
5062 recorded vote.

5063 Chairman Conyers. A recorded vote is required.

5064 The clerk will call the roll.

5065 The Clerk. Mr. Conyers?

5066 Chairman Conyers. No.

5067 The Clerk. Mr. Conyers votes no.

5068 Mr. Berman?

5069 [No response.]

5070 Mr. Boucher?

5071 [No response.]

5072 Mr. Nadler?

5073 Mr. Nadler. No.

5074 The Clerk. Mr. Nadler votes no.

5075 Mr. Scott?

5076 Mr. Scott. No.

5077 The Clerk. Mr. Scott votes no.

5078 Mr. Watt?

5079 [No response.]

5080 Ms. Lofgren?

5081 Ms. Lofgren. No.

5082 The Clerk. Ms. Lofgren votes no.

5083 Ms. Jackson Lee?

5084 [No response.]

5085 Ms. Waters?

5086 [No response.]

5087 Mr. Delahunt?

5088 [No response.]

5089 Mr. Wexler?

5090 [No response.]

5091 Mr. Cohen?

5092 Mr. Cohen. No.

5093 The Clerk. Mr. Cohen votes no.

5094 Mr. Johnson?

5095 Mr. Johnson. No.

5096 The Clerk. Mr. Johnson votes no.

5097 Mr. Pierluisi?

5098 Mr. Pierluisi. No.

5099 The Clerk. Mr. Pierluisi votes no.

5100 Mr. Gutierrez?

5101 [No response.]

5102 Mr. Sherman?

5103 [No response.]

5104 Ms. Baldwin?

5105 Ms. Baldwin. No.

5106 The Clerk. Ms. Baldwin votes no.

5107 Mr. Gonzalez?

5108 [No response.]

5109 Mr. Weiner?

5110 [No response.]

5111 Mr. Schiff?

5112 [No response.]

5113 Ms. Sanchez?
5114 Ms. Sanchez. No.
5115 The Clerk. Ms. Sanchez votes no.
5116 Ms. Wasserman Schultz?
5117 [No response.]
5118 Mr. Maffei?
5119 [No response.]
5120 Mr. Smith?
5121 [No response.]
5122 Mr. Goodlatte?
5123 Mr. Goodlatte. Aye.
5124 The Clerk. Mr. Goodlatte votes aye.
5125 Mr. Sensenbrenner?
5126 Mr. Sensenbrenner. Aye.
5127 The Clerk. Mr. Sensenbrenner votes aye.
5128 Mr. Coble?
5129 [No response.]
5130 Mr. Gallegly?
5131 [No response.]
5132 Mr. Lungren?
5133 [No response.]
5134 Mr. Issa?
5135 Mr. Issa. Yes.
5136 The Clerk. Mr. Issa votes yes.
5137 Mr. Forbes?

5138 Mr. Forbes. Aye.

5139 The Clerk. Mr. Forbes votes aye.

5140 Mr. King?

5141 Mr. King. Aye.

5142 The Clerk. Mr. King votes aye.

5143 Mr. Franks?

5144 [No response.]

5145 Mr. Gohmert?

5146 Mr. Gohmert. Aye.

5147 The Clerk. Mr. Gohmert votes aye.

5148 Mr. Jordan?

5149 Mr. Jordan. Yes.

5150 The Clerk. Mr. Jordan votes yes.

5151 Mr. Poe?

5152 [No response.]

5153 Mr. Chaffetz?

5154 Mr. Chaffetz. Aye.

5155 The Clerk. Mr. Chaffetz votes aye.

5156 Mr. Rooney?

5157 [No response.]

5158 Mr. Harper?

5159 [No response.]

5160 The Clerk. Mr. Harper votes aye.

5161 Chairman Conyers. Mr. Brad Sherman?

5162 Mr. Sherman. No.

5163 The Clerk. Mr. Sherman votes no.

5164 Chairman Conyers. Mr. Mel Watt?

5165 Mr. Watt. No.

5166 The Clerk. Mr. Watt votes no.

5167 Chairman Conyers. Mr. Weiner?

5168 Mr. Weiner. No.

5169 The Clerk. Mr. Weiner votes no.

5170 Chairman Conyers. Mr. Berman, Chairman Berman?

5171 Mr. Berman. No.

5172 The Clerk. Mr. Berman votes no.

5173 Chairman Conyers. Are there any members that choose to
5174 cast a vote?

5175 The clerk will report.

5176 The Clerk. Mr. Chairman, nine members voted aye, 13
5177 members voted nay.

5178 Chairman Conyers. The amendment is unsuccessful.

5179 Who chooses to offer the last amendment?

5180 Mr. King. Mr. Chairman, I would be happy to—

5181 Chairman Conyers. Steve King is recognized.

5182 Mr. King. Thank you, Mr. Chairman.

5183 From my inventory, I would offer King Amendment No. 3.

5184 Chairman Conyers. No. 3 it is.

5185 Mr. Scott. Mr. Chairman, I reserve a point of order.

5186 Chairman Conyers. A point of order is reserved by the
5187 gentleman from Virginia.

5188 The clerk will report the amendment.

5189 The Clerk. Amendment to H.R. 1913, offered by Mr. King
5190 of Iowa.

5191 [The amendment by Mr. King follows:]

5192 ***** INSERT *****

5193 Chairman Conyers. Without objection, the amendment will
5194 be considered as read, and Steve King is recognized in
5195 support of his amendment.

5196 Mr. King. Thank you, Mr. Chairman.

5197 This amendment strikes the ambiguous term "gender"
5198 throughout the bill and replaces it with the more definite
5199 term "sex."

5200 This amendment also strikes the undefined phrase "gender
5201 identity."

5202 According to the American Heritage Dictionary of the
5203 English Language, "gender" can mean anything from the
5204 condition of being male or female to that of sexual identity.

5205 But according to Black's law, the term "sex" is
5206 definitively defined as the sum of the peculiarities of
5207 structure and function that distinguish a male from a female
5208 organism, whatever the species.

5209 If we are going to pass this hate crimes legislation and
5210 create more classes of protected persons, we must ensure that
5211 each of these definitions are as narrow and concise as
5212 possible so that the statute is not misconstrued.

5213 This is why my amendment also removes the undefined
5214 phrase "gender identity," Mr. Chairman.

5215 I urge my colleagues to take a look at this definition,
5216 the definitions that exist in Black's law and the definitions
5217 that I have identified in the dictionary.

5218 And I am looking at a definition from the American
5219 Heritage Dictionary of the English Language, fourth edition,
5220 and under "gender," when we look down the list a ways, it is
5221 the fifth definition of gender that says "the condition of
5222 being male or female."

5223 So I would argue that we don't have a definition for
5224 gender in the bill. We don't have a definition for gender
5225 identity in the bill. They are ambiguous.

5226 I have tried mightily to get those definitions clarified
5227 here in this Judiciary Committee today, and I don't think the
5228 main proponents of the bill have the capability of defining
5229 the difference.

5230 And I can tell you, Mr. Chairman, that I have been to
5231 court on this subject matter of gender and gender identity
5232 and I have prevailed in the case that I brought before the
5233 court in my home state, as a state senator, and I do
5234 understand the distinctions between the two.

5235 And I would point out the ambiguous nature of the term
5236 "gender" and "gender identity," and it is this, sex, as in
5237 male or female. That is what anyone can observe and verify,
5238 particularly, let's just say you don't have to be a
5239 professional, but a doctor could do that.

5240 They are physical characteristics that are clearly
5241 defined and clearly understood in all species, at least all
5242 species that I can think of. But gender and gender identity

5243 are self-assigned. They are assigned by the individual that
5244 might be the victim of these hate crimes.

5245 And yet, the perception, according to the gentlelady
5246 from Wisconsin, is that it is in the mind of the perpetrator,
5247 not the mind of the victim.

5248 So we want to punish someone on this legislation because
5249 of what goes on in their mind that might inspire them to
5250 commit an act, a crime, a violent crime or an overt act,

5251 We want to punish them for what goes on in their mind
5252 and, yet, we are going to identify the victims by gender and
5253 gender identity, which are ambiguous by their very nature and
5254 definition, so ambiguous that no member on the other side of
5255 the aisle in this committee can even define the terms or
5256 point to me where they exist in other existing statutes.

5257 So my amendment brings it back to sex, not gender. If
5258 you commit a crime against someone, a hate crime against
5259 someone, because they happen to be male or female, then that
5260 would be under the definition of this bill, should it pass.

5261 But the perception of one's gender is—as the lady from
5262 Wisconsin is saying, the perception is in the mind of the
5263 perpetrator. So that is because apparently that is what
5264 inspires the act or directs the overt criminal act.

5265 And how do we know? We can't know. This is a self-
5266 alleged condition. It follows back into the—it brings us
5267 back to fall into the condition of sexual harassment and that

5268 debate that took place in this nation back during then
5269 confirmation of Justice Clarence Thomas, when the sexual
5270 harassment charges that were brought against the alleged
5271 perpetrators were not defined by their acts in the final
5272 analysis, but defined by the perception of the victim as to
5273 whether they were being sexually harassed or not.

5274 Well, this is a circumstance where how can you know
5275 someone's gender if that is a perception of what their sex
5276 actually is? How can you know someone's gender identify if
5277 it is a perception of what they perceive they are?

5278 We are holding accountable a potential perpetrator to
5279 know what goes on in the minds of the victim if we are going
5280 to leave this language and these definitions in the bill.

5281 So the least we could do is go back to the clear
5282 standard of a definition of what is sex and remove gender
5283 identity, because that is utterly ambiguous, and if gender
5284 really means sex, let's say so.

5285 That is what is known, that is science, and they don't
5286 have to get into the debate as to whether or not something
5287 was going on in the mind of the victim.

5288 It is already bad enough—

5289 Chairman Conyers. Would the gentleman yield?

5290 Mr. King. If I could just conclude, then I would be
5291 happy to yield.

5292 It is already bad enough we have to get into what goes

5293 on in the mind of the perpetrator, but let's not be putting
5294 the minds of the perpetrator and the victim before the
5295 debate, before the court, and have to define what goes on in
5296 both of their heads in order to determine if this hate crime
5297 legislation actually is the crime.

5298 I would be happy to yield.

5299 Chairman Conyers. Steve King, I get the impression that
5300 what you are doing is trying to improve the bill by being
5301 more specific about the definitions.

5302 Mr. King. Absolutely, Mr. Chairman.

5303 Chairman Conyers. Does it go against—does it in any way
5304 weaken or contradict the objective of this particular hate
5305 crimes bill?

5306 Mr. King. Mr. Chairman, I don't know, because it is so
5307 ambiguous. I think we are always better off to be specific.
5308 Removing the language "gender identity," maybe there is a
5309 definition there that I don't know.

5310 But I think we are always better off with law if it is
5311 as specific as possible.

5312 Chairman Conyers. Well, I don't know either, but I
5313 think any attempts toward making the language more clear,
5314 making the bill more understanding is a positive attribute.

5315 Do you return your time?

5316 Mr. King. Mr. Chairman, I would yield back.

5317 Chairman Conyers. All right.

5318 I yield to the gentlelady from Wisconsin, Tammy Baldwin.

5319 Ms. Baldwin. Thank you, Mr. Chairman.

5320 I move to strike the last word and claim time in

5321 opposition, strong opposition to this amendment.

5322 First of all, with regard to the use of the word

5323 "gender" rather than "sex," I would regard—and I know, in the

5324 drafting, they were regarded as interchangeable synonyms.

5325 And what we have done is moved away in recent

5326 legislation from the term "sex" to the more, I think,

5327 accepted modern term "gender."

5328 If you want a reference point, I think the first

5329 substitution came around the time we first considered the

5330 Violence Against Women Act and, in the Violence Against Women

5331 Act, the term "gender" is used and preferred over the word

5332 "sex."

5333 I actually wasn't around the first time the Violence

5334 Against Women Act was debated in this committee. It would be

5335 interesting to look back to the legislative record on that

5336 and figure out why that was.

5337 But I want to convey to the gentleman that there is no

5338 intent to change the body of law that exists over previous

5339 interpretations of the word "sex" by using the word "gender"

5340 instead. So view it as interchangeable.

5341 I want to then get to your second question and my reason

5342 for very strong opposition to this amendment is the

5343 elimination of protections for persons based on their gender
5344 identity.

5345 This bill has passed the House repeatedly with
5346 protections for persons on the basis of gender identity in
5347 previous sessions and I think it is just crucial that we keep
5348 those provisions in the bill.

5349 Now, you said you are looking for a reference in current
5350 federal law, a definition. I regret that there isn't one,
5351 but it is because we have never chosen to protect people who
5352 are transgender in our country's history, and today is the
5353 first day we should do that.

5354 There are many states who have hate crimes laws that
5355 protect people on the basis of gender identity, both in
5356 employment and in hate crimes laws, so criminal code and
5357 state employment law code.

5358 So there are courts that have interpreted this language.
5359 There is a body of law, and I think that that will be a
5360 reference point as this passes and federal prosecutors, in
5361 rare instances, become involved.

5362 But what I would tell you, I was going to mention this
5363 in response to a comment in the debate on the last amendment,
5364 right now, we collect hate crimes statistics on a variety of
5365 categories, including sexual orientation, where there is an
5366 alarming number of hate crimes waged at people on the basis
5367 of their perceived or real sexual orientation.

5368 So we have measured that, even though we don't have
5369 coverage in the hate crimes law. We do not count right now—
5370 we don't collect statistics at the federal level on crimes
5371 initiated against people on the basis of their gender
5372 identity.

5373 So we have to rely on organizations and people who have
5374 endeavored to collect that information and some of the
5375 nonprofits that have point to a staggering amount of violence
5376 experienced by people who identify as transgender.

5377 One in three, I think, self report having experienced
5378 significant violence in their lives. That is just a
5379 staggering statistics for a group of people.

5380 And so I understand that you want to be able to look in
5381 federal law and see a definition that has been tested, but we
5382 are doing something of the first time, but it is a very
5383 important thing for us to do.

5384 So I just urge my colleagues to vote against your
5385 amendment and hopefully have given you some reassurance with
5386 regard to the earlier question of the use of the word "sex"
5387 or "gender."

5388 And I would yield back the balance of my time.

5389 Mr. King. Would the gentlelady yield, please, just very
5390 briefly?

5391 Ms. Baldwin. Sure.

5392 Mr. King. I would just ask, if this bill doesn't pass

5393 out of this committee today or if it is on its way to the
5394 floor, if you would be willing to work with a specific
5395 definition of "gender identity" so that we don't end up with
5396 ambiguities in the law.

5397 Ms. Baldwin. I will certainly discuss it with the
5398 gentleman. I know that we have worked a lot, also, with that
5399 language with regard to the Employment Nondiscrimination Act.

5400 Criminal law is a little bit different from employment
5401 law, and so that is why you have the definition in this bill
5402 as it is. That is what has been typically dealt with in
5403 criminal law and the Justice Department feels, I think, very
5404 comfortable, if we pass the bill as is, to be able to use it
5405 for prosecutions.

5406 Mr. Weiner. Would the gentlelady yield?

5407 Ms. Baldwin. I would be happy to yield.

5408 Mr. Weiner. I think that we might be able to work out
5409 something. I agree with what Ms. Baldwin is saying.

5410 But do you agree that transgender people should be
5411 protected under hate crimes legislation?

5412 Mr. King. It goes to a philosophical disagreement, but
5413 what I do think, in response to the gentleman from New York,
5414 is that I think we should define that then. If it is
5415 transgender, we should define that and use it in the bill
5416 rather than "gender identity," because that is a very
5417 ambiguous phrase.

5418 Mr. Weiner. If the gentlelady would continue to yield.

5419 But I asked a specific question that would help us

5420 understand the foundation we are working under.

5421 Do you think that transgender people should be protected

5422 from hate crimes under the law?

5423 Mr. King. I disagree with the hate crimes concept

5424 completely, and so the answer to that would be no on that

5425 basis.

5426 Mr. Weiner. So you are asking the gentlelady to help

5427 you form a definition to more perfectly craft a bill that you

5428 oppose under any circumstance.

5429 Not a great working relationship you hope to strike, but

5430 I just wanted to make sure.

5431 Mr. King. It is the best we have.

5432 Ms. Baldwin. Mr. Chairman, I yield back my remaining

5433 time.

5434 Chairman Conyers. The time has expired.

5435 Mr. Scott. Mr. Chairman, I withdraw my point of order.

5436 Chairman Conyers. I thank you. Mr. Scott withdraws his

5437 point of order.

5438 All those in favor of the Steve King amendment indicate

5439 by saying "aye."

5440 [A chorus of ayes.]

5441 Those opposed, say "no."

5442 [A chorus of noes.]

5443 The noes have it.

5444 Mr. King. Mr. Chairman?

5445 Chairman Conyers. Yes?

5446 Mr. King. Could I have a recorded vote, please?

5447 Chairman Conyers. Of course.

5448 The Clerk. Mr. Conyers?

5449 Chairman Conyers. No.

5450 The Clerk. Mr. Conyers votes no.

5451 Mr. Berman?

5452 Mr. Berman. No.

5453 The Clerk. Mr. Berman votes no.

5454 Mr. Boucher?

5455 [No response.]

5456 Mr. Nadler?

5457 Mr. Nadler. No.

5458 The Clerk. Mr. Nadler votes no.

5459 Mr. Scott?

5460 Mr. Scott. No.

5461 The Clerk. Mr. Scott votes no.

5462 Mr. Watt?

5463 [No response.]

5464 Ms. Lofgren?

5465 Ms. Lofgren. No.

5466 The Clerk. Ms. Lofgren votes no.

5467 Ms. Jackson Lee?

5468 [No response.]
5469 Ms. Waters?
5470 [No response.]
5471 Mr. Delahunt?
5472 [No response.]
5473 Mr. Wexler?
5474 [No response.]
5475 Mr. Cohen?
5476 [No response.]
5477 Mr. Johnson?
5478 Mr. Johnson. No.
5479 The Clerk. Mr. Johnson votes no.
5480 Mr. Pierluisi?
5481 Mr. Pierluisi. No.
5482 The Clerk. Mr. Pierluisi votes no.
5483 Mr. Gutierrez?
5484 [No response.]
5485 Mr. Sherman?
5486 Mr. Sherman. No.
5487 The Clerk. Mr. Sherman votes no.
5488 Ms. Baldwin?
5489 Ms. Baldwin. No.
5490 The Clerk. Ms. Baldwin votes no.
5491 Mr. Gonzalez?
5492 [No response.]

5493 Mr. Weiner?
5494 Mr. Weiner. No.
5495 The Clerk. Mr. Weiner votes no.
5496 Mr. Schiff?
5497 [No response.]
5498 Ms. Sanchez?
5499 Ms. Sanchez. No.
5500 The Clerk. Ms. Sanchez votes no.
5501 Ms. Wasserman Schultz?
5502 [No response.]
5503 Mr. Maffei?
5504 Mr. Maffei. No.
5505 The Clerk. Mr. Maffei votes no.
5506 Mr. Smith?
5507 [No response.]
5508 Mr. Goodlatte?
5509 Mr. Goodlatte. Aye.
5510 The Clerk. Mr. Goodlatte votes aye.
5511 Mr. Sensenbrenner?
5512 Mr. Sensenbrenner. Aye.
5513 The Clerk. Mr. Sensenbrenner votes aye.
5514 Mr. Coble?
5515 [No response.]
5516 Mr. Gallegly?
5517 Mr. Gallegly. Aye.

5518 The Clerk. Mr. Gallegly votes aye.
5519 Mr. Lungren?
5520 [No response.]
5521 Mr. Issa?
5522 Mr. Issa. Aye.
5523 The Clerk. Mr. Issa votes aye.
5524 Mr. Forbes?
5525 Mr. Forbes. Aye.
5526 The Clerk. Mr. Forbes votes aye.
5527 Mr. King?
5528 [No response.]
5529 Mr. Franks?
5530 [No response.]
5531 Mr. Gohmert?
5532 Mr. Gohmert. Aye.
5533 The Clerk. Mr. Gohmert votes aye.
5534 Mr. Jordan?
5535 Mr. Jordan. Yes.
5536 The Clerk. Mr. Jordan votes yes.
5537 Mr. Poe?
5538 [No response.]
5539 Mr. Chaffetz?
5540 Mr. Chaffetz. Aye.
5541 The Clerk. Mr. Chaffetz votes aye.
5542 Mr. Rooney?

5543 [No response.]

5544 Mr. Harper?

5545 Mr. Harper. Aye.

5546 The Clerk. Mr. Harper votes aye.

5547 Chairman Conyers. Are there other members that choose

5548 to cast a ballot?

5549 Mr. Cohen?

5550 Mr. Cohen. No.

5551 The Clerk. Mr. Cohen votes no.

5552 Chairman Conyers. Ms. Waters?

5553 Ms. Waters. No.

5554 The Clerk. Ms. Waters votes no.

5555 Chairman Conyers. The clerk will report.

5556 Mr. Wexler?

5557 Mr. Wexler. No.

5558 The Clerk. Mr. Wexler votes no.

5559 Chairman Conyers. Mr. King, how is he recorded?

5560 The Clerk. Mr. King is not recorded.

5561 Mr. King. Aye.

5562 The Clerk. Mr. King votes aye.

5563 Chairman Conyers. Mr. Mel Watt?

5564 Mr. Watt. No.

5565 The Clerk. Mr. Watt votes no.

5566 Chairman Conyers. The clerk will report, please.

5567 The Clerk. Mr. Chairman, 10 members voted aye, 16

5568 members voted nay.

5569 Chairman Conyers. The amendment is unsuccessful.

5570 The chair recognizes Steve King for his final amendment.

5571 Mr. King. Mr. Chairman, from my inventory, I would

5572 offer Amendment No. 4.

5573 Chairman Conyers. The clerk will report Amendment 4.

5574 The Clerk. Amendment to H.R. 1913, offered by Mr. King.

5575 Chairman Conyers. Without objection, the amendment will

5576 be considered as read.

5577 Steve King is recognized.

5578 Mr. King. Thank you, Mr. Chairman.

5579 This amendment, Mr. Chairman, adds the general category

5580 of any person with an immutable characteristic.

5581 We have had these discussions about immutable

5582 characteristics here. Maybe I am the one that has raised the

5583 issue exclusively, but I have a significant history with

5584 identifying immutable characteristics, and I believe that

5585 they should be protected.

5586 The rationale in favor of this amendment is simple.

5587 Anyone who is a victim of a crime because of an immutable

5588 characteristic should be protected under the hate crimes law.

5589 Why is one characteristic more important than another if

5590 the victim is targeted for his or her immutable

5591 characteristic?

5592 Also, we should guard against any person being attacked

5593 based on an immutable characteristic, since it could
5594 terrorize the community, as is part of the base bill, and
5595 that would be the community of others who share the same
5596 immutable characteristic.

5597 Some people that carry some of these immutable
5598 characteristics, it is alleged within the bill, have to move
5599 out of their state to get away from the discrimination.

5600 But immutable characteristic, it is a quality that
5601 people can be a member a group, but the definition is, again,
5602 often distorted in the judicial activism community.

5603 And when we have established sets of rights and
5604 protections, and I referenced earlier Title 7 of the Civil
5605 Rights Act, race, religion, ethnicity, national origin, I
5606 believe would be those characteristics, and religion is
5607 constitutionally protected, Mr. Chairman, but the balance of
5608 those characteristics are immutable.

5609 The deep, long held tradition of law is people who are
5610 protected—and in civil rights—people who are protected by
5611 those immutable characteristics, those are the
5612 characteristics that can be independently verified, such as
5613 sex, and reference the discussion with the gentlelady from
5614 Wisconsin, such as sex or, let me say, any other physical
5615 characteristics that can be independently identified and
5616 cannot be arbitrarily or optionally or willfully changed.

5617 You are what you are. We carry with us immutable

5618 characteristics and when anyone is discriminated against
5619 because of those characteristics that can be independently
5620 verified and cannot be changed by the individual, those
5621 characteristics are immutable.

5622 And when we cross a line where we are protecting people
5623 because of their self-alleged membership in a group, because
5624 of what they say goes on in their head, not what they do as
5625 far as an overt act on the part of the victim or the
5626 perpetrator, and our dialogue on the previous—

5627 Chairman Conyers. Would the gentleman yield?

5628 Mr. King. I would yield, Mr. Chairman.

5629 Chairman Conyers. Is hair coloring an immutable
5630 characteristic?

5631 Mr. King. Mr. Chairman, natural hair color would be an
5632 immutable characteristic.

5633 Reclaiming my time. I appreciate that insight.

5634 Mr. Goodlatte. The gentleman from Texas wants to know
5635 if hair itself is an immutable characteristic.

5636 Mr. King. I would point out, in the spirit of this
5637 discussion, that I am advised, and others may know this to be
5638 fact, that there exists an ordinance in San Francisco where
5639 it is unlawful to discriminate against the short, the fat,
5640 the tall or the skinny, and I can only imagine how that
5641 happens.

5642 Someone who was round or short was discriminated against

5643 and when they brought the request for the ordinance before
5644 the city council, someone who was long and slender objected
5645 that they weren't protected, too.

5646 Chairman Conyers. Mr. Author of the amendment, would
5647 you yield?

5648 Mr. King. I would yield, Mr. Chairman.

5649 Chairman Conyers. Is lack of hair an immutable
5650 characteristic?

5651 Mr. King. Short of surgical procedures or a toupee, Mr.
5652 Chairman, it would be an immutable characteristic.

5653 Try as I might, I can't grow anymore hair, Mr. Chairman,
5654 though sometimes I never—in any case, we have this whose list
5655 of immutable characteristics that people can't help.

5656 They can't change who they are. You can't be taller or
5657 you can't be shorter. You may be more slender or less
5658 slender. Those would not be necessarily immutable
5659 characteristics.

5660 But when we cross the line into self-alleged thoughts,
5661 feelings or behaviors, and then we have crossed the line
5662 legally, by which there is no coming back again, and that is
5663 one of the biggest reasons that I oppose this hate crimes
5664 legislation at its core, because we are going into the arena
5665 of self-alleged thoughts, self-alleged behaviors.

5666 And, in fact, we have had now the discussion that not
5667 only does the hate crimes legislation that is before us

5668 include the thoughts that go on in the mind of the
5669 perpetrator, but in order to determine if someone fits within
5670 a category that would be a victims class by this bill, we
5671 have to determine what goes on in their head, because we
5672 can't even say that they are a member of a specific sex.

5673 That is a little too specific and I would submit that
5674 the word "gender" has been insidiously slipped into our
5675 language and "gender identity" insidiously slipped into our
5676 language so we can do these very things.

5677 Otherwise, we would have just stuck with "sex" instead
5678 of "gender." That is an ambiguous term, by definition, but
5679 something that is not ambiguous is immutable characteristics
5680 and if people are targeted because of them, they should be
5681 protected in the same spirit as the hate crimes legislation
5682 that is before us, Mr. Chairman.

5683 So for the third time in the 111th Congress, I urge
5684 adoption of my amendment, and I yield back the balance of my
5685 time.

5686 Chairman Conyers. Before your time has expired.

5687 Mr. King. Indeed.

5688 Chairman Conyers. This is the third time, the record
5689 will show, in the 111th Congress this has happened.

5690 The chair recognizes the gentleman from New York, Mr.
5691 Nadler.

5692 Mr. Nadler. Mr. Chairman, I withdraw the point of

5693 order.

5694 Chairman Conyers. And the point of order is withdrawn.

5695 Mr. Nadler. And I rise in opposition to the amendment.

5696 Chairman Conyers. The gentleman is recognized.

5697 Mr. Nadler. Thank you.

5698 The point of the bill, of course, is to expand the hate

5699 crimes protection to identifiable groups with respect to whom

5700 experience has shown that they are the targets of hate crimes

5701 and that we want to deal with that problem.

5702 All immutable characteristics status is possessing any

5703 immutable characteristic. Everybody possesses immutable

5704 characteristics.

5705 Everybody has a height, everybody has a weight,

5706 everybody has a natural hair color, a natural eye color.

5707 So this would expand it to the entire universe, number

5708 one. Unless you read it to be limited to people who were

5709 attacked because of their immutable characteristics, such as

5710 their hair color, their eye color, I am not aware of mobs

5711 running through our streets attacking people with blue eyes

5712 or, for that matter, people with brown eyes.

5713 Frankly, this amendment is designed simply to ridicule

5714 the bill, because it is not dealing with the real problem,

5715 and either has no impact, not dealing with the real problem

5716 or expands the bill to deal with everybody, which means it

5717 deals with nobody.

5718 The bill has a serious purpose to deal with the problem
5719 of groups that are really attacked because—people who are
5720 attacked because of their membership in a group—

5721 Chairman Conyers. Would the gentleman yield?

5722 Mr. Nadler. I will yield to the chairman.

5723 Chairman Conyers. Could this bill be fairly, but
5724 accurately—this amendment be described fairly, but accurately
5725 as a frivolous amendment?

5726 Mr. Nadler. I think it would be described, along with a
5727 number of the other amendments, as a frivolous amendment.

5728 Mr. King. Would the gentleman yield?

5729 Mr. Nadler. Well, they are calling us to a vote now. I
5730 would simply say it is a frivolous amendment. It is designed
5731 to ridicule the bill. It doesn't add protection to anybody
5732 who needs protecting.

5733 Therefore, I oppose the amendment. I urge people to
5734 vote against it, and I yield back the balance of my time.

5735 Chairman Conyers. The chair has to end all debate on
5736 this and vote the amendment.

5737 All those in favor of the amendment—

5738 Mr. Goodlatte. This amendment is deserving of more
5739 discussion and we have 15 minutes before the vote takes
5740 place.

5741 Chairman Conyers. Well, if the ranking member insists
5742 on being recognized, I would yield and recognize him at this

5743 time.

5744 Mr. Goodlatte. Well, thank you. I would definitely
5745 like to respond to the charge that it is a frivolous
5746 amendment.

5747 First of all, the gentleman notes that everyone has
5748 immutable characteristics. Well, what an enlightening thing
5749 that is. We all know we have immutable characteristics and
5750 certain of those characteristics are targeted by other people
5751 for acts of hatred at times.

5752 So why would we say that we wouldn't want to protect
5753 anybody who has some feature that they can't control that is
5754 immutable and be protected against someone else perpetrating
5755 a hate crime against them?

5756 I can't imagine why anybody would object to that, but I
5757 especially can't imagine why they would call that frivolous.
5758 Are they characterizing the bill, the underlying bill itself
5759 as frivolous when they do that?

5760 Why not protect anybody who has an immutable
5761 characteristic? The amendment raises a very important point.
5762 If the purpose of the legislation is to deter crime motivated
5763 by bias or hatred because of the victim's characteristics,
5764 why should we limit the crimes eligible for these new federal
5765 penalties?

5766 Chairman Conyers. Would the gentleman yield?

5767 Mr. Goodlatte. I would be delighted to yield in just a

5768 moment, Mr. Chairman.

5769 Certainly, all people who are victimized because of a
5770 trait or immutable characteristic are deserving of these
5771 heightened federal penalties.

5772 Many individuals are born every year with birth defects.
5773 Some of these may be significant enough to be classified as a
5774 disability. But just as many likely are not and I imagine
5775 many Americans born with a birth defect would dispute their
5776 classification as disabled and many birth characteristics
5777 would not even be viewed as a defect, but may engender an act
5778 of hatred on the part of someone else.

5779 Yet, if one of these individuals is assaulted because of
5780 their birth defect, this crime would be nothing more than a
5781 misdemeanor assault in many states rather than a federal the
5782 crime.

5783 It seems in Congress the proponent's motive for enacting
5784 this bill and certainly it is not a frivolous amendment.

5785 I would urge my colleagues to adopt it.

5786 Chairman Conyers. Would the gentleman yield for a non-
5787 frivolous question?

5788 Mr. Goodlatte. I would be delighted to yield, Mr.
5789 Chairman.

5790 Chairman Conyers. Is there on record since 1968, since
5791 we have had hate crimes legislation in the United States,
5792 ever a hate crime that was based on an immutable trait or

5793 characteristic?

5794 Mr. Goodlatte. Absolutely, Mr. Chairman. In fact, I
5795 think some of the advocates of this legislation would argue
5796 that the characteristics that are being protected by this
5797 legislation are immutable.

5798 So the answer to your question is very definitely yes
5799 and I think if we sat here long enough, we could think of
5800 scores of immutable characteristics that have been targeted
5801 by people for acts of hatred.

5802 There are some that will be defined as disabilities,
5803 which are included in the legislation, but others that people
5804 simply don't like for other reasons.

5805 Mr. Weiner. Would the gentleman yield?

5806 Mr. Goodlatte. I would be happy to yield.

5807 Mr. Weiner. Just very briefly, because we have a vote
5808 coming up.

5809 I think what the gentleman from New York was implying is
5810 that in the heights of the civil rights movement in this
5811 country, to have said that the civil rights movement was
5812 about whether or not someone had brown eyes or green eyes,
5813 didn't minimize and diminish the debate we were having in the
5814 country at that time.

5815 It is similar to what is going on here. We are trying
5816 to address a very real concern of a population of people who
5817 are victims and to say, "Well, let's just talk about everyone

5818 in the world and every crime in the world," that is not what
5819 we are aspiring to do here with this legislation.

5820 Mr. Goodlatte. Reclaiming my time. The gentleman
5821 shouldn't forget that there has to be a showing of bias or
5822 hatred included in that, as well. It is not just that
5823 somebody did something for any old reason. It has to be
5824 including an act of hatred because of that immutable
5825 characteristic.

5826 Mr. Weiner. If the gentleman would continue to yield.
5827 The gentleman asked why it was that Mr. Nadler suggested that
5828 this was trying to trivialize and minimize the bill.

5829 Well, frankly, to some degree, the gentleman has been
5830 doing that all afternoon. He clearly says he doesn't see any
5831 need for special protections for people who have been victims
5832 of hate crime, and then he offers this amendment.

5833 I think the lady protests too much to say, "Oh, I am
5834 shocked at the accusation that they are trying to water down
5835 the bill to make it meaningless." That has been the intent
5836 of many of these amendments.

5837 Mr. Goodlatte. Why would you object to covering more
5838 people? I think that this is simply a matter of—

5839 Mr. Gohmert. Would the gentleman yield?

5840 Mr. Goodlatte. I would be happy to yield.

5841 Mr. Gohmert. We have been going for a long time and one
5842 thing appears very obvious from here, and that is that there

5843 have been some very clear acts of discrimination, hatred,
5844 that have been brought up against groups that have not been
5845 allowed to be included in this hate crimes bill.

5846 It seems like the more we go, you demand examples, we
5847 give examples, well, we still don't want to include them, it
5848 just keeps coming back to this appears to be a move by the
5849 homosexual or a homosexual agenda to get into law something
5850 that is going to be rammed down the throats of Americans,
5851 because we are not going to let any other groups that—

5852 Chairman Conyers. Ladies and gentlemen, the time—

5853 Mr. Gohmert. —it is all about them.

5854 Chairman Conyers. The time has expired. We have four
5855 votes pending. We can have a voice vote on this matter now
5856 and recess until 10:00 a.m. or we can recess until 10:00 a.m.
5857 and not vote at all.

5858 All those in favor of the amendment, say "aye."

5859 [A chorus of ayes.]

5860 All those opposed, say "no."

5861 [A chorus of noes.]

5862 The noes have it.

5863 Mr. King. Mr. Chairman?

5864 Chairman Conyers. Wait a minute. We agreed that if we
5865 had a voice vote, we would recess until 10:00 a.m.

5866 Mr. King. Parliamentary inquiry, Mr. Chairman.

5867 Chairman Conyers. Yes, the gentleman is recognized.

5868 Mr. King. I heard no request for unanimous consent and
5869 so I would be happy to defer this vote until tomorrow morning
5870 and suggest that to the chairman, given the time.

5871 Chairman Conyers. Well, I always follow Steve King's
5872 admonitions.

5873 Mr. Goodlatte. Mr. Chairman, I was just going to say
5874 that we would agree that we don't have to have any further
5875 debate, just begin the markup with a recorded vote on this
5876 amendment.

5877 Chairman Conyers. I thank you very much.

5878 The committee stands in recess.

5879 [Whereupon, at 3:23 p.m., the committee was recessed
5880 until 10:00 a.m. Thursday.]