

would help the Federal prosecutors. But in this particular bill that has been introduced by my distinguished friend from Massachusetts, the death penalty is taken out of the hands of Federal prosecutors.

So all we are doing in this intellectual, political exercise, in many respects, is tying the hands of Federal prosecutors, while immensely expanding the Federal jurisdiction over virtually all crimes that are called "hate" crimes—in complete disregard for the fact that 95 percent of all prosecutions are prosecuted at the State and local level, and are prosecuted well.

I know the distinguished Senator from Oregon cited the Bangerter case. The people who attacked Bangerter and hurt him were prosecuted and convicted, as I understand. There are bound to be maybe four or five cases over the last decades that weren't prosecuted. But that doesn't justify giving this wholesale expansion of state authority to the Federal prosecutors.

One of the things I personally chatted about with the current Chief Justice and other Justices on the Court—one of the things I personally discussed with them—is their concern about the continual increase of the number of statutory Federal crimes when there is no evidence that the State and local prosecutors are not doing their job. The amendment I intend to file at a later time, which will be a substitute for the bill of the distinguished Senator from Massachusetts, provides for the tools and the help for those small communities, such as the one in Colorado that distinguished Senator from Oregon referred, to prosecute these crimes.

Although there is no evidence that they can't do it or that they aren't doing it, my amendment makes sure that hate crimes will and can be prosecuted by providing resources.

If my friend from Oregon is truly only concerned with enhancing local law enforcement—this bill, ironically, is called the Local Law Enforcement Enhancement Act. This bill takes away the authority of local law enforcement and puts it in the hands of Federal prosecutors when there is no evidence they need to do that. Nor is there any indication that we should turn over this kind of responsibility to Federal prosecutors, nor that they should have the right to come in and overrule local prosecutors in the process who are doing the job.

If my colleague from Oregon is truly only concerned with enhancement of local law enforcement, I hope he will vote for my substitute which will be offered later in this debate.

That is what my substitute will do—enhance and not supplant local State prosecutors. I will discuss that in detail later, and hopefully we will be able to bring it up and get a time agreement whereby we have a limited number of amendments. And that will certainly be one of them. If we win, we win. If we lose, we lose. But at least we will have

debated it, and we will have had a chance to improve this bill by leaps and bounds.

During our last debate on hate crimes, Senator KENNEDY criticized me for arguing against the federalization of hate crimes when I have supported providing Federal jurisdiction in other, completely unrelated areas, such as computer fraud or class actions. This is the classic apples versus oranges argument.

In those other cases, there has never been any serious question that the proposed Federal jurisdiction would be constitutional. I consider every piece of legislation on its own merits.

The distinguished Senator from Massachusetts, a noted opponent of the death penalty, nonetheless has voted in the past for legislation that provides for the death penalty. My conviction that S. 625 is unconstitutional is in no way inconsistent or contradictory.

Whether or not a State may have a specific law prohibiting hate crimes does not mean that they are failing to vigorously prosecute them. Every hate crime, every bit of criminal conduct that S. 625 proposes to federalize is and always has been a crime in every jurisdiction throughout our Nation, crimes which have been effectively prosecuted by State and local prosecutors.

When we challenged the Clinton administration and the then Deputy Attorney General, Eric Holder, to come up with any examples where local prosecutors were not taking care of these problems, they could not do it.

In fact, prosecutors sometimes do not like to charge a crime as a hate crime—especially when the penalties are no different because they have to prove an extra element: The motive of the defendant to commit the crime based on bias. That is an extra element that would have to be proven, and it makes it tough to get convictions in some of these cases.

It is no answer to say that a State may not have a hate crime or may not be charging enough cases under a specific hate crime law. The real question is, Are States failing to prosecute hate crimes? The answer is a resounding no. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT AGREEMENT—S. RES. 272

Mr. REID. Mr. President, I ask unanimous consent that at 5:45 p.m., today, the Senate proceed to the consideration of S. Res. 272, regarding the delivery of signatures to the Cuban National Assembly; that the substitute amendment be agreed to; and the Senate vote on the resolution, as amended;

that following the vote, the amendment to the preamble be agreed to, the preamble be agreed to, as amended, without further action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, I ask for the yeas and nays on the vote.

The PRESIDING OFFICER. Is there objection to it being in order to request the yeas and nays at this time?

Without objection, it is so ordered.

Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

Mr. REID. Mr. President, I also announce, on behalf of the majority leader, this will be the only vote this evening.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

UNANIMOUS CONSENT REQUEST— S. RES. 282

Mr. FEINGOLD. Madam President, in 3 days' time, the United States will withdraw from the 1972 Anti-Ballistic Missile Treaty. And it appears that we will do so without a significant debate on this issue in the Senate. For 30 years, the ABM Treaty has been the foundation upon which our strategic relationship with Russia has rested. So I am troubled that this historic treaty is about to be dissolved without so much as a hearing or even any debate in this body. I also regret that the President made this important decision without consulting with the Senate. I find this troubling on both constitutional and policy grounds.

Article II, section 2 of the Constitution states that the President "shall have the Power, by and with the Advice and Consent of the Senate, to make Treaties, provided that two thirds of the Senators present concur. * * *" The Constitution is silent on the process by which the United States can withdraw from a treaty, and the record of the Congress and the executive branch is mixed.

But, the intent of the Framers, as explained by Thomas Jefferson, is clear. In section 52 of Jefferson's Manual, he writes, "Treaties are legislative acts. A treaty is the law of the land. It differs from other laws only as it must have the consent of a foreign nation, being but a contract with respect to that nation." And article II, section 3 of the Constitution states that the President shall "take Care that the laws be faithfully executed. . . ."

Jefferson continues, "Treaties being declared, equally with the laws of the United States, to be the supreme law of the land, it is understood that an act of the legislature alone can declare them infringed and rescinded. This was accordingly the process adopted in the case of France in 1798." It is worth noting that four signers of the Constitution were serving in the Congress when this first treaty termination occurred—by an act of Congress—in 1798,