

As Secretary Powell and the U.S. State Department prepare to re-enter the difficult world of Israeli-Palestinian negotiations, we can make a few observations about the recent brutality and violence by the PA.

First, the attack puts the lie to the claim that Palestinian violence is directed against so-called Israeli "occupation."

Second, we can question the effectiveness of peace negotiations with a group that embraces terrorism—and which belies the U.S. policy, that is, policy for the United States, that we do not negotiate with terrorists, while the Palestinian Authority was removed from the annual U.S. list of terrorists, it continues to commit acts of terrorism and we have helped to reinvent the PA as a "negotiating partner" for the Israelis. This looks hypocritical, dishonest and unrealistic.

Secretary Powell and the Department of State have an enormous undertaking in trying to find common ground between Israelis and Palestinians. The conflict appears intractable, and peace, despite decades of efforts, remains elusive. Yet we can only keep trying—trying to stop the bloodshed that seems synonymous with the Middle East and trying to seek stability in such an important and strategic part of the world.

THE SUPREME COURT'S DECISION IN ALEXANDER v. SANDOVAL

Mr. LEAHY. Mr. President, there are a great many important policy issues that divide Democrats and Republicans. When we find certain common sense principles that we agree on, however, we should seize the opportunity and act on them.

I believe that we have such an opportunity today. On April 24, 2001, the Supreme Court issued its latest in the never-ending sequence of 5-to-4 "State's rights" decisions, *Alexander v. Sandoval*. I rise to urge my colleagues to reaffirm our shared values by passing legislation to reverse the Court's decision in this case. By doing so, we can reinstate what was always Congress's intent, and reaffirm our nation's commitment to civil rights for all Americans. Let me explain.

Let's start with the principle of cooperative federalism. Every year, we in Congress send billions of Federal taxpayer dollars to the States to help fund education systems, health care, motor vehicle departments, law enforcement and other government services that every American is entitled to enjoy, no matter which State he or she lives in. That is the essence of federalism: helping to fund the States to perform government functions that are best performed at the local level. It is not Republican, and it is not Democratic; it is common sense.

The Federal Government and Federal taxpayers count on the States to use those Federal funds in a lawful manner, and most everyone would agree

that the States should be accountable for doing so. President Bush has made accountability the central guiding principle of his education proposals. We have some immensely important differences of view on how to achieve accountability. But we should not lose sight of what unites us.

Republicans believe in accountability, and so do Democrats. We here in Washington owe the American people a duty, when we send their tax dollars to State and local authorities, to ensure that the people get a chance to hold those authorities accountable for using their money for the public good, for the benefit of all the people, and in accordance with the law of the land. That is not politics; it is common sense.

What has all this got to do with the Supreme Court? Well, 37-years ago, Congress enacted perhaps the most important piece of legislation of the post-war era, the Civil Rights Act of 1964. Title VI of the Civil Rights Act is an accountability provision pure and simple. It prohibits discrimination on the basis of race, color, or national origin, in any program or activity that receives Federal funds.

The Congress that passed the Civil Rights Act was committed to full and strong enforcement of civil rights. It recognized that discrimination comes in many forms. Governmental practices may be intentionally discriminatory or, more commonly, they may be discriminatory in their effect, because they have a disparate or discriminatory impact on minorities. To catch this more subtle but no less harmful form of discrimination, Congress authorized the Federal agencies that were responsible for awarding federal grants and administering federal contracts to adopt regulations prohibiting Federal grantees and contractees from adopting policies that have the effect of discriminating.

There has never been any serious question about Congress's intent in this matter. Before *Sandoval*, the Federal Courts of Appeals had uniformly affirmed the right of private individuals to bring civil suits to enforce the disparate-impact regulations promulgated under Title VI. The Supreme Court itself, in a 1979 case called *Cannon v. University of Chicago*, had concluded that Title VI authorized an implied right of action for victims of race, color, or national origin discrimination. And as Justice Stevens noted in his dissenting opinion in *Sandoval*, the plaintiff in *Cannon* had stated a disparate-impact claim, not a claim of intentional discrimination.

I will not attempt in these brief remarks to go over all the reasons why *Sandoval* was incorrectly decided as a matter of Supreme Court precedent. Justice Stevens does an excellent job in his dissent of demonstrating how the activist conservatives on the Court rejected decades of settled laws.

I will say this: The holding in *Sandoval* makes no sense as a matter

of national policy. The lower courts in *Sandoval* found that the defendant, the Alabama Department of Public Safety, was engaged in a discriminatory practice in violation of Federal regulations. The Supreme Court did not challenge that finding, and also accepted that the regulations at issue were valid. Yet the Court's conservative majority held that the victims of the discrimination had no right to sue to enforce the Federal regulations. You do not have to be liberal, and you do not have to be conservative, to be troubled by the notion that a State can engage in unlawful discrimination and yet not be accountable in any court.

The good news is that the *Sandoval* holding is based on statutory interpretation and not constitutional law. The Congress is therefore free to overturn it, and we should do so at the very first opportunity. By doing so, we will fully preserve what I have called cooperative federalism. We will continue to provide funding assistance to the States. At the same time, we will prove that we are serious about the right of the American people to hold their government accountable in the most basic sense, accountable for obeying the law. And we will prove that we are as serious about the civil rights of minorities as the groundbreaking Congress that passed the Civil Rights Act of 1964.

Fixing what the Court has broken should be a bipartisan undertaking. This is not about being a Republican or a Democrat; it is about reaffirming the will of the people as expressed by the Congress, reaffirming that the American people are entitled to have a government that is accountable, and reaffirming that in America, discrimination is not acceptable, whether it is done openly and crassly, or more invisibly and subtly. The unfair effects are the same and deserve redress.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY last month. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a heinous crime that occurred April 25, 2000 in Germantown, MD. According to the victim, she and her partner and their 11-year-old daughter have been the victims of repeated anti-gay slurs. The victims have had rocks and other items thrown at their home because they are gay and some neighbors "wanted us out of the neighborhood." The incident in question occurred after a verbal altercation between the victim's child and the perpetrator's child, culminating in the victim's attack by the perpetrator. When police arrived on the scene, the victim was lying on the ground; her hand was bleeding; she had been kicked