years in working in the political effort in Idaho and here in Washington. I had the privilege of hiring Greg to be a field director for me in my first congressional campaign. He came to Washington with me and served in a variety of capacities, ultimately becoming my chief of staff while I served in the House, left to go to Idaho to rebuild an organization called the Idaho Association of Commerce and Industry into a major force as a spokesman for business and industry in the State of Idaho. When I was elected to the Senate in 1990, I asked Greg to return with me to put my Senate staff together and he has served as my chief of staff since that time.

I am extremely excited for Greg and his family, and for Idaho, that the majority leader has chosen him to become the Sergeant of Arms here in the Senate, a very large responsibility. I am extremely proud that Greg now has the opportunity to serve in that capacity, not only for the Senate but for our country and for the State of Idaho.

I, on behalf of Idaho, can speak with a great deal of pride in saying we know Idaho is extremely proud today to have Greg Casey as the new Sergeant at Arms here in the U.S. Senate. Greg, congratulations. We will look forward to working with you, and also we will seek your counsel from time to time as it comes to the administration of my office and my offices in the State of Idaho.

Again, thank you, Mr. Majority Leader, for yielding. Let me now yield to my colleague, Senator DIRK KEMPTHORNE, who also has had a close working relationship with Greg Casey over many years.

Mr. KEMPTHORNE. Mr. President, I join in commending the majority leader for his decision in naming Greg Casey as our new Sergeant at Arms. It is an outstanding decision, and again I think it reflects well on the majority leader and the sort of individuals that he is surrounding himself with to carry out these very, very, critical issues and functions relating to this institution.

I have known Greg Casey for many, many years. We attended the University of Idaho together in the mid-1970's. In fact, it was at the University of Idaho that I had the honor to serve as student body president. I must acknowledge that Senator CRAIG also had the distinction of serving as student body president at the University of Idaho. It was in that capacity that I named Greg Casey to fill a vacancy that was on the student senate.

One of the things that I have always admired about Greg Casey is his devotion to what has to be done, his devotion at that time to the university, to the State, and as I have seen him in this atmosphere, his absolute devotion to this country.

We have named a patriot, now, to be the Sergeant at Arms of this institution. He is an individual who brings great enthusiasm to anything he does, a great energy level. He is an individual who brings innovation to everything he touches. I know whenever his tenure as Sergeant at Arms is complete he will be regarded as truly one of the best Sergeants at Arms that the U.S. Senate in its history ever had.

He also has the ability to stick to it. I think this is probably something that the majority leader, Senator LOTT, has recognized, and that is if you want a job done, have Greg Casey given the assignment because he will get it done, no matter what it takes, but he will do it with a style and with a dignity, and with a tenacity that you never have to doubt whether it will be done.

I also want to acknowledge that we talk about having good people around you. Well, Greg Casey has good people around him. In the late 1980's, he introduced me to a young lady that truly is a remarkable woman, Julia Laky, who then in 1990 became Mrs. Greg Casey. In the life that we have shared together, I had the honor as serving as best man at his wedding. Again, they are the sort of people that you are proud to say are our friends, we like them, the values that they have in their home are the values that America believes in. And I remember that, following the wedding, I guess it falls on the best man to make a toast. So I made the toast that their home would be blessed with more than just the two of them, and up there joining their family is Gregory Scott Casey, Jr. He is a fifth generation Idahoan. His dad is a fourth generation Idahoan.

I would like to say this to little Greg: Your dad is a great man, and he is someone that we all look up to. I know that just as little Gregory Scott Casey is in wonderful hands with his dad, Greg, and his mom, Julia, this Senate is in good hands with this new Sergeant at Arms, Greg Casey. So I am proud to call him a friend. He is someone that is going to serve us well. Again, I commend the majority leader for his decision in making this happen.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho, Mr. CRAIG, is recognized.

Mr. CRAIG. Mr. President, certainly Senator KEMPTHORNE and I, by our comments, can display only great pride in the fact that the majority leader has chosen Greg Casey to be our new Sergeant at Arms. We reflect that pride for our State of Idaho.

I say to Greg, his wife Julia, and Gregory, Jr., congratulations, we look forward to a good number of years working with you during your service in the U.S. Senate. I congratulate the majority leader for a wise choice.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. DASCHLE. Mr. President, let me join with my colleagues in our congratulations to Gregory Casey for his appointment and our best wishes to him and his family in these very important new circumstances he faces. There are a number of people that have already spoken to his intelligence, ability, and his contribution to the Senate. I have had the opportunity to work with him as a member of the Ethics Committee and have watched with great admiration as he has taken on each of his difficult tasks in working with the Senators from Idaho.

So I know I speak for all of my colleagues on this side in wishing him our sincere congratulations. Isaac Bassett, who worked in this great Chamber for 64 years, up until 1894, left a diary of many thousands of pages. When he was appointed to his last position, he came to the floor and said there is no higher calling than that of public service in the U.S. Senate. I think Greg Casey appreciates that, understands that, and in the tradition of Isaac Bassett, and many of us who have had the great fortune to follow him, we look forward to working with him in a new role.

I yield the floor.

Mr. KENNEDY. Mr. President, I just want to say how impressed I am with the excellent comments and statements that have been made by my colleagues about someone that Members of the Senate have known over a long period of time. I have had the privilege of knowing Mr. Casey. But having the name Casey, if you track back over a long period, there must have been a Democrat in there somewhere. [Laughter.]

I know I can speak, as well, along with the minority leader and assure my colleagues that we will be fairly treated as well.

Congratulations, Mr. Casey.

Mr. LOTT. Mr. President, I believe we are ready now to go to the Defense of Marriage Act. Perhaps we will lay that bill down.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, leadership time is reserved.

DEFENSE OF MARRIAGE ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of H.R. 3396, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3396) to define and protect the institution of marriage.

The Senate proceeded to consider the bill.

Mr. LOTT. Mr. President, I yield myself 10 minutes off of the time allocated to the Defense of Marriage Act.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. LOTT. Mr. President, I will not take much of the Senate's time to express my strong support for the Defense of Marriage Act this morning. It has already been discussed in earlier debate, and I am sure it is going to be supported eloquently by speeches later on today from Senator NICKLES of

Oklahoma and others on both sides of the aisle.

I expect the outcome in the Senate will be lopsided when the vote is taken, as it was in the House, which passed the Defense of Marriage Act, as it is popularly called, by a vote of 342 to 67.

Judging from the calls and letters and comments I received when I was home during the August district work period—from all across the country, though—it is clear to me that this bill enjoys tremendous support among the American people.

President Clinton has promised to sign it into law. His Department of Justice has affirmed its position that H.R. 3396 ''would be sustained as constitutional if challenged in courts.''

This is not prejudiced legislation. It is not mean-spirited or exclusionary. It is a preemptive measure to make sure that a handful of judges, in a single State, cannot impose an agenda upon the entire Nation.

The Defense of Marriage Act is not an attack upon anyone. It is, rather, a response to an attack upon the institution of marriage itself.

This matter has received so much attention in the national press, that everyone should know by now what the problem is and why we need to pass DOMA, as it is usually referred to.

The problem is the serious possibility—some say even the strong likelihood—that the State court system of Hawaii would recognize as a legal union, equivalent or identical to marriage, a living arrangement of two persons of the same sex.

If such a decision affected only Hawaii, we could leave it to the residents of Hawaii to either live with the consequences or exercise their political rights to change things. But a court decision would not be limited to just one State. It would raise threatening possibilities in other States because of article IV, section 1 of the Constitution.

The article requires States to give ''full faith and credit'' to ''the public acts, records, and judicial proceedings of every other State.''

Would that mean a same-sex union would be entitled to equal recognition in South Dakota, Massachusetts, or my State of Mississippi? Both proponents and opponents of same-sex unions believe it would.

I believe we should not wait around to find out. What the Hawaiian court decides could also affect the operations of the Federal Government. It could have an impact upon programs like Medicare, Medicaid, veterans' pensions, and the Civil Service Retirement System.

If you redefine marriage, you should redefine eligibility for benefits under those and other programs. Imagine the financial and social consequences of taking such a step.

Inaction on the part of Congress would be equivalent to approval of what the Hawaiian courts may do. We can't afford such action.

No one should doubt that Congress does have the authority to act.

The same article of the Constitution that calls for ''full faith and credit'' for State court decisions also gives Congress the power to decide how that provision will be implemented. It says:

> And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

''And the effect thereof.'' Those words make clear what the Framers of the Constitution intended.

None of them, I don't think, could have foreseen the day when an American court would sanction same-sex marriages or unions, but they wisely provided for the possibility that some State court might do something like that someday. I don't know how to describe that kind of action. But it is a situation we are faced with now, and that is why we have this defense of marriage bill that we are debating this morning and will vote on probably around 2:30 or 2:45.

To force upon our communities the legal recognition of same-sex marriage would be social engineering beyond anything in the American experience.

When DOMA was discussed in committee, some objected that it violated States rights. Never mind that those who raised the objection never seemed to have any qualms about trampling those rights in the past in many instances.

DOMA actually reinforces States rights. It prevents one State from imposing upon all the others its own particular interpretation of the law.

The Defense of Marriage Act will ensure that each State can reach its own decision about this extremely controversial matter: The legal status of same-sex unions.

The Defense of Marriage Act, likewise, ensures that for the purposes of Federal programs, marriages will be defined by Federal law.

It is Congress' responsibility to say plainly what marriage is going to mean—what the spousal relationship is going to mean—in national programs that serve elderly, retirees, and the poor.

Our failure to do so would open up those programs to all sorts of confusion and claims and court actions.

This is more than a theoretical possibility. In 1970, a Federal court denied a same-sex couple legal recognition for veterans' benefits only because their State's law limited marriage to persons of opposite sex. I hate to think what would happen now if that case were brought in a State where these unions had the force of law.

Fortunately, it is not going to come to that. I hope we can get this bill passed overwhelmingly, in a bipartisan way, send it down to the White House, and have it signed into law very soon. We should not have ambiguity in this area. We should not have confusion. We should not leave it to court actions and challenges. This is a very important action. I think it will pass after a relatively short time and with surprisingly little opposition. But it is a serious matter. I think the American people are somewhat stunned that we would even have to pass such a law, but we do, and we are doing our job when we pass this legislation. It will be a small but a vital victory for the American family and for common sense.

I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER (Mrs. FRAHM). The Senator from Massachusetts.

Mr. KENNEDY. As I understand it, the 3-hour time limit began when the legislation was laid before the Senate. Am I correct?

The PRESIDING OFFICER. The time needs to conclude by 12:30, so it would take unanimous consent to have the full 3 hours.

Mr. KENNEDY. If I could have the attention of the majority leader, would it be appropriate to have the 3 hours start at the time when the bill was actually laid down rather than at 9:30?

Mr. LOTT. We started, what was it, about 20 minutes until 10? Actually, I would prefer we do that to make sure we have the full 3 hours.

Mr. KENNEDY. I make that request then.

The PRESIDING OFFICER. Without objection, the recess will be delayed.

Mr. KENNEDY. I thank the Chair.

Madam President, I oppose the so-called Defense of Marriage Act, and I regret that the Senate is allocating scarce time at the end of this Congress to consider this unconstitutional, unnecessary, and divisive legislation.

There is, however, a silver lining to the Republican leadership's decision to schedule this debate. It gave many of us the opening we needed to raise a serious civil rights concern—the festering problem of unacceptable discrimination against gays and lesbians in the workplace. We debated that issue at length on Friday, and we will vote on it later this afternoon. I am very hopeful that a ban on job discrimination will pass the Senate. If it does, we will have the Defense of Marriage Act to thank for that achievement.

Nevertheless, I continue to be opposed to the Defense of Marriage Act for a variety of reasons.

We all know what is going on here. I regard this bill as a mean-spirited form of Republican legislative gay-bashing cynically calculated to try to inflame the public 8 weeks before the November 5 election.

I do not mean to say that opponents of same-sex marriage are intolerant, or bigots. Marriage is an ancient institution with religious underpinnings, and I understand that some people have deeply held religious or moral beliefs that lead them to oppose same-sex marriage.

But do they seriously believe this bill deserves this high priority? After all, the Hawaii court case that started all this won't be final for another 2 years, according to Hawaiian authorities, and the outcome of the case is far from certain. Even if the Hawaii courts eventually approve same-sex marriage, other

States have ample authority under under current law to reject that decision in their own courts.

In fact, States and local governments across the country are already dealing with this issue in their own ways. Some have enacted domestic partnership laws. In others, mayors and Governors have issued executive orders for public employers. They don't need help from Congress to address the subject. And Federal law, which has never recognized same-sex marriages, hardly needs clarification at this suspicious moment.

This contrived debate has been gratuitously brought before Congress 1 month before adjournment. It has been placed on a suspiciously fast track to enactment despite the press of other business. The obvious explanation is a crass desire for partisan gain at the expense of tolerance and mutual understanding.

This bill is designed to divide Americans, to drive a wedge between one group of citizens and the rest of the country, solely for partisan advantage. It is a cynical election year gimmick, and it deserves to be rejected by all who deplore the intolerance and incivility that have come to dominate our national debate.

Over the past few months, we have come together as a nation to oppose in the strongest possible terms the church arson epidemic. We heard leaders across the political, racial, and religious spectrum discuss the need to rededicate ourselves to the fundamental values of tolerance and mutual respect that are the backbone of any free society. I just wish the Republican leadership in Congress would practice what they preached in San Diego.

In any event, whether Senators are for or against same-sex marriage, there are ample reasons to vote against this bill, because it represents an unconstitutional exercise of congressional power. This bill attempts to use the full faith and credit clause—article IV, section 1—of the Constitution to give the States greater authority to refuse to recognize gay marriages if such marriages are made legal in other States. But the purpose and history of the full faith and credit clause make clear that the Framers of the Constitution never intended to give Congress this power.

The full faith and credit clause was included in the Constitution as a means of binding the original separate States into a United States of America. The Framers feared that local rivalries could cause States to reject each other's laws, and that a dangerously chaotic situation could result. The full faith and credit clause requires the States to respect each other's laws; it facilitates interstate commerce and strengthens our Federal system.

The Constitution gives Congress no power to add or subtract from the full faith and credit clause. The States that ratified the Constitution would never have granted such sweeping authority to Congress, and no Congress in 200 years has exercised such power.

It is true that the full faith and credit clause gives Congress the authority to prescribe the effect of one State's laws in other States. But this does not give Congress the power to say that any such laws shall have no effect.

In fact, for that reason, leading scholars have labeled this bill flatly unconstitutional. Prof. Laurence Tribe of Harvard Law School writes that:

> The full faith and Credit Clause cannot be read as a fount of authority for Congress to set asunder the states that this clause so solemnly brought together. Such a reading would mean, for example, that Congress could decree that any state was free to disregard any Hawaii marriage, any California divorce, any Kansas default judgment—or any of a potentially endless list of official acts that a Congressional majority might wish to denigrate. This would convert the Constitution's most vital unifying clause into a license for balkanization and disunity.

Conservative constitutional scholar Cass Sunstein of the University of Chicago reached a similar conclusion in testimony before the Judiciary Committee on July 11. Sunstein pointed out that if Congress possessed authority to negate the effect of State court judgments:

> . . . a good deal of the entire federal system could be undone. Under the proponents' interpretation, Congress could simply say that any law Congress dislikes is of 'no effect' in other states . . . This would be an extraordinary power in light of the needs of a commercial republic. Nothing in the background of the full faith and credit clause suggests that this was anyone's understanding of the clause.

In his testimony, Professor Sunstein emphasized that the Supreme Court's recent opinion in Romer versus Evans, striking down an anti-gay referendum in Colorado, also casts doubt on the validity of this bill. Like the Colorado referendum struck down in Romer, this bill is ''unprecedented * * * an oddity in our constitutional tradition drawn explicitly in terms of sexual orientation. Insofar as it draws the particular line that it does, it risks running afoul of Romer's prohibition on laws based on animus against homosexuals.''

Scholarly opinion is clear: The bill before us is plainly unconstitutional. But even if it were constitutional, the bill should be rejected because it is unnecessary and ill-advised.

Proponents of the bill claim to be motivated by the possibility that the Hawaii courts will validate same-sex marriage, forcing the other 49 States to recognize Hawaii marriages. But if Hawaii courts recognize same-sex marriages some day—and that is a big ''if''—the other States already have ample authority to defend their own marriage policies without meddling from Congress.

Dean Herma Hill Kay of the Boalt Hall School of Law is a nationally recognized expert on domestic relations law. She writes:

> The usual conflict of laws doctrine governing the recognition of a marriage performed in another state is that the state where recognition is sought need not recognize a marriage that would violate its public policy. A state with a clear prohibition against same-sex marriage could, if it chose to do so . . . refuse recognition.

Fifteen States have already made that judgment and decision. In other words, States already have the power that this bill pretends to give them. This is a matter for each state, not a matter for Congress. If Oklahoma refuses to recognize a Hawaii marriage because it violates Oklahoma public policy, that is Oklahoma's business. Congress can not give Oklahoma any more power than it already has. That is why the bill is not merely unconstitutional. It is, as Professor Sunstein calls it, a ''constitutionally ill-advised intrusion'' by Congress into an issue handled at the state level for the past 200 years.

For over two centuries, Congress has respected the right of States to establish their own laws of marriage, divorce, child custody, and other issues in domestic relations. It is ironic that our Republican friends who like to preach State rights are so quick to override State rights in this case.

The precedent created by this bill should alarm anyone who cares about Federal-State relations generally. If Congress invokes the full faith and credit clause to deny effect to unpopular State court judgments, why will it stop at gay marriages? Will Congress try to deny effect to unpopular commercial judgments? Will Congress try to deny effect to state court decisions protecting civil rights, divorce, child custody, or a wide range of different other issues?

As Professor Sunstein testified:

> This is not about same-sex marriage and homosexuality. This is about punitive damages, default judgments, product liability, everything else under the sun. From the constitutional point of view, this is not fundamentally a same-sex marriage act. This is federal permission to some States to ignore what other states have mandated. That is a very large step.

It is indeed. I would add only that it is a very large backward step. I urge the Senate not to take it, and to vote against this irresponsible and unconstitutional bill.

Madam President, I see the Senator from Minnesota rising. How much time would he require?

Mr. WELLSTONE. Madam President, 5 minutes?

Mr. KENNEDY. I yield 5 minutes.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Madam President, I thank my colleague from Massachusetts and I say to my colleague from Oklahoma, I hope I have not gone before him and that this would be OK right now.

Madam President, I wanted to speak to, or build on, the remarks of my colleague from Massachusetts, Senator KENNEDY, about the ENDA bill, the Employment Nondiscrimination Act. I listened to some of the debate. Actually, when I was back home in Minnesota, I saw some of what went on, on the floor on Friday. We had no votes, and on Friday evening I caught some of

it. I do not think I want to repeat the different arguments that were made. I would rather talk about this piece of legislation as it connects to people's lives.

I want to talk about a very close family friend. This friend of ours, over the years, really has had to live in a state of terror, though it has gotten somewhat better now. Several times, Madam President, he has had to go from one job to another, not because of the content of his character, not because of his ability, not because of his contributions to his employer or to his fellow workers or fellow employees, but because of his sexual orientation.

I really do think that the Employment Nondiscrimination Act is a matter of simple justice. I really hope that the U.S. Senate will vote for this piece of legislation. I am very proud to be an original cosponsor, because I believe if we vote for this piece of legislation, we really will have taken an enormous step forward toward ending discrimination in our country. It is just not right that a man or a woman, because of sexual orientation, should be in a situation where he or she could lose a job or not be able to obtain employment because of their sexual orientation. This is a basic civil rights issue.

There is no provision in this piece of legislation that calls for favorable treatment. There are no quotas. This piece of legislation just says we must extend basic civil rights protection against discrimination in employment to all citizens—to all citizens—in our country and we must end this discrimination based on sexual orientation.

I also want to mention, because I am very proud of my State, that in Minnesota, in 1992, we adopted very similar provisions to this piece of legislation in the Human Rights Act. We became the eighth State to guarantee protection against this type of discrimination. I would like to say, from the point of view of the business community, of the religious community, of communities within our larger Minnesota community, I think now there is very strong support for ending this discrimination.

This piece of legislation that we passed in our State has served our State well. If we pass this in the U.S. Senate and eventually pass this in the U.S. Congress, we will serve our country well. This is the right thing to do, to end discrimination in employment. What should matter is a person's ability. What should matter is the character of a person. What should matter is an employee's contribution to his or her business or place of work. What should not matter is sexual orientation.

We must end this discrimination. I hope my colleagues, Democrats and Republicans alike, will support this bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Madam President, I yield myself such time as necessary.

I am pleased today to bring before the Senate the Defense of Marriage Act, along with Senator BYRD and I think 30 cosponsors. We have introduced a measure which I believe is simple, it is limited in scope, and it is based on common sense. It shares broad bipartisan support, including that of President Clinton.

The bill does but two things: First, the bill restates the current and long-established understanding that marriage means a legal union between one man and one women as husband and wife. The act also defines spouse as a person of the opposite sex who is a husband or a wife. These definitions apply only to Federal law.

Second, the bill says that no State shall be required to give effect to a second State's acts, records, or judgments respecting a relationship between persons of the same sex that is treated as a marriage under the laws of that second State.

There is nothing earth-shattering here. No breaking of new ground. No setting of new precedents. Indeed, there provisions simply reaffirm what is already known, what is already in place.

The definitions of S. 1999 are based on common understanding rooted in our Nation's history, our statutes, and our case law. They merely reaffirm what Americans have meant for 200 years when using the words marriage and spouse. The current U.S. Code does not contain a definition of marriage, presumable because most Americans know what it means and never imagined challenges such as those we are facing today.

As mentioned earlier, the act's definitions apply to Federal law only. The act does not—let me repeat—does not intrude on the ability of the States to define marriage as they choose. To the contrary, this bill protects the right of States to define marriage for themselves. This way, each State will be able to decide for itself the type of marriage it will sanction.

The Defense of Marriage Act invokes Congress' constitutional authority, under article IV, section 1, to prescribe the effect that shall be given to the public acts, records, and judicial proceedings of the various states with regard to the full faith and credit clause.

As my colleagues know, in May 1993 the Hawaii Supreme Court rendered a preliminary ruling in favor of three same-sex couples who applied for marriage licenses. The court said the State's marriage law discriminated against the plaintiffs in violation of the equal-rights provision of the State Constitution. The case was remanded to the lower courts for a trial, to see if the State could show a compelling state interest to justify the marriage law. That trial is starting today in Hawaii.

It has become clear that advocates of same-sex unions intend to win the lawsuit in Hawaii and then invoke the full faith and credit clause to force the other 49 states to accept same-sex unions.

Many States are justifiably concerned that Hawaii's recognition of same-sex unions will compromise their own laws prohibiting such marriages. Legislators in over 30 States have introduced bills to deny recognition to same-sex unions. Fifteen States already have approved such laws, and many other states are now grappling with the issue-including Hawaii, where legislative leaders are fighting to block their own courts from sanctioning such marriages. This bill would address this issue head-on, and it would allow each State to make the final determination for itself.

It seems to me that the strategy of those who are advocating same-sex unions is profoundly undemocratic. I cannot envision a more appropriate time for invoking our constitutional authority to define the nature of States' obligations to one another. As State Representative Terrance Tom from Hawaii testified before a House subcommittee:

> If inaction by the Congress runs the risk that a single judge in Hawaii may redefine the scope of legislation throughout the other 49 States, [then] failure to act is a dereliction of the responsibilities [Congress was] invested with by the voters.

Another reason this bill is needed now concerns Federal benefits. The Federal Government extends benefits, rights, and privileges to persons who are married, and generally it accepts a State's definition of marriage. This bill will help the Federal Government defend the traditional and commonsense definitions of the American people. Otherwise, if Hawaii, or any other State, gives new meaning to the words ''marriage'' and ''spouse,'' reverberations may be felt throughout the Federal Code.

The provisions of Federal law do not, of course, regulate only the activities of the Federal Government. Federal law also regulates private persons. Consider the implication of the Family and Medical Leave Act of 1993.

Shortly before passage of the act in the Senate, I attached an amendment that defines ''spouse'' as ''a husband or wife, as the case may be.'' When the Secretary of Labor published his proposed regulations, a considerable number of comments were received urging that the definition of ''spouse'' be broadened to include domestic partners in committed relationships, including same-sex relationships. However, when the Secretary issued the final rules, he stated that the statutory definition of ''spouse'' and the legislative history of the act precluded such broadening of the definition.

That small amendment, unanimously adopted, spared a lot of costly and unnecessary litigation, and it spared Congress the shock it would have received from the American people if we had allowed the word ''spouse'' to mean something it had never meant before.

As my colleagues know, the White House has said that the President will

sign this bill if ''presented to him as currently written.'' The U.S. Department of Justice says that it expects the bill will ''be sustained as constitutional if challenged in court.''

Enactment of this bill will allow States to give full and fair consideration of how they wish to address the issue of same-sex marriages instead of rushing to legislate because of fear that another State's laws may be imposed upon them. It will also eliminate legal uncertainty concerning Federal benefits and make it clear what is meant when the words ''marriage'' and ''spouse'' are used in the Federal Code.

This effort reaffirms current practice and current policy. The fact that some may even consider this legislation controversial should make the average American stop and take stock of where we are as a country and where we want to go.

This legislation is important. It is about defense of marriage as an institution and as the backbone of the American family. I urge my colleagues to join with myself, Senator BYRD, and the other cosponsors in support of the Defense of Marriage Act.

Madam President, one final comment. Some people have stated incorrectly that this bill would ban same-sex marriages. They are incorrect. This bill does not ban same-sex marriages. It says one State doesn't have to recognize another State should they legalize same-sex marriages. Big difference; a big difference. If one State wishes to legalize same-sex marriages, say, the State of Maryland, Massachusetts or any other State, they can certainly do so, and this legislation would not prohibit it.

What this legislation would do is say they would not have to recognize same-sex marriages if some other State should enact it. I think it is an important distinction.

Also, it says for Federal benefits and Federal benefits purposes, we define marriage as legal union between male and female, and we define spouse as a member of the opposite sex.

It is very simple, very plain common sense. It should become law. I am pleased the House of Representatives passed it by a 5-to-1 margin, bipartisan support in the House of Representatives. I likewise hope later this afternoon our Senate colleagues will pass it with an overwhelming margin as well.

I yield the floor.

Ms. MOSELEY-BRAUN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Madam President, at the outset, I ask everyone listening to this debate to note that the Federal Government has yet to issue a marriage license. That is not within our purview. It is not something the Federal Government does. Yet, in this instance, with the so-called Defense of Marriage Act, we are moving into the marriage business unilaterally in order to prohibit the approval by one State of another State's decision to recognize a particular marital or domestic arrangement.

The Defense of Marriage Act—and I want to quote the act —will amend the U.S. Constitution's full faith and credit clause by authorizing any State choosing to do so to deny all effect to any public act, record, or judicial proceeding by which another State either recognizes such marriages as valid and binding, or treats such marriages as giving rise to any right or claim under the laws.

In other words, this legislation says if one State decides to accept a domestic arrangement that another State does not already have, that other State can prohibit or deny the recognition of such domestic relation arrangement by the State.

Many top scholars believe this provision of the bill is unconstitutional. Our Constitution, the U.S. Constitution, states:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.

The first sentence of that clause of our Constitution is very clear: Every State is required to recognize the official public acts and judicial proceedings of other States. As was stated by the Supreme Court in Williams versus North Carolina, the very purpose of the full faith and credit clause was to alter the status of the several states as independent foreign sovereignties, each free to ignore the obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation.''

Professor Tribe of Harvard, a noted constitutional law scholar, states further, in regard to this issue, that

> Congress possesses no power under any provision of the Constitution to legislate any such categorical exemption from the Full Faith and Credit Clause of article IV. For Congress to enact such an exemption—whether for same-sex marriages or for any other substantially defined category of public acts, records, or proceedings—would entail exercise by Congress of a ''power not delegated to it by the United States Constitution''—a power therefore ''reserved to the States'' under the tenth amendment to the Constitution.

He goes on to state that ''the proposed measure''—the domestic relations act, DOMA,

> . . . the proposed measure would create a precedent dangerous to the very idea of a United States of America. For if Congress may exempt same-sex marriage from full faith and credit, then Congress may also exempt from the mandate of the Full Faith and Credit Clause whatever category of judgments—including not only decrees affecting family structure but also specified types of commercial judgments—a majority of the House and Senate might wish to license States to nullify such contracts as their option. Such purported authority to dismantle the national unifying shield of article IV's Full Faith and Credit Clause, far from protecting States' rights, would destroy one of the Constitution's core guarantees that the United States of America will remain a union of equal sovereigns, that no law, not even one favored by a great majority of the States, can ever reduce any single State's official acts, on any subject, to second-class status; and, most basic of all, that there will be no ad hoc exceptions to the constitutional axiom, reflected in the tenth amendment's unambiguous language, that ours is a national Government whose powers are limited to those enumerated in the Constitution itself.

Professor Tribe essentially makes the point that this is not only not the Federal Government's business, but it is an assault at the very core of the national unity that we have enjoyed.

One of the real strengths of our system is that the Federal Government has limited powers, derived from the people, and those powers not explicitly given the Government are retained by the people and by the States. Our Constitution was and is as much about preventing the erosion of our liberties by Government as it is about setting up and implementing the processes of Government.

This bill, the Defense of Marriage Act, moved through the House of Representatives faster than any part of the contract on America. In fact, based on the level of rhetoric from some Members of Congress, you would think that our principal responsibility lies in the issuing of marriage licenses, and getting involved in domestic relations. That, Madam President, I think, suggests that the real objective of this legislation is not about legislating in the appropriate way for this Congress.

The second provision of the act further demonstrates that the Defense of Marriage Act is all about the politics of fear and division and about inciting people in an area that is admittedly controversial. The act would amend chapter 1 of title I by adding the following language:

> In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ''marriage'' means only a legal union between one man and one woman as husband and wife, and the word ''spouse'' refers only to a person of the opposite sex who is a husband or a wife.

Madam President, you may want to consider, that it was not very many years ago that 16 States in our country prevented marriage between the races, interracial marriage. In fact, in some States it was called miscegenation. It was not until 1967 that the U.S. Supreme Court outlawed State miscegenation statutes. When that case was argued before the Supreme Court, the attorney general of Virginia seriously argued that the Virginia statute passed constitutional muster because both the white partner and the minority partner were subject to the same criminal penalty.

That kind of statutory restriction, Madam President, on people's ability to make a commitment to one another may seem unbelievable today, but it was a reality of life in this country not

too many decades ago. Fortunately, our Supreme Court ultimately saw how inconsistent these statutes were to core American principles and declared them all unconstitutional. Just as importantly, the Supreme Court decision is no longer a matter of intense controversy; most Americans have come to understand just how unfair those State statutes were.

I point out, Madam President, I grew up, I would imagine the Presiding Officer also grew up at a time in our country when these statutes existed, and in fact I had the occasion to have a relative in my family married to a person who was not African American, who was white, and their marriage was illegal in half the States of this country. As a child, that did not make any sense to me. How was it that a State could decide that two people could not decide to make a domestic arrangement that they wanted to make? It did not make any sense to me then. The Supreme Court subsequently acted, and here we are faced with the exact same arguments, the very same arguments being made against domestic relations of another order. When two people decide to come together, it seems to me it should be a matter for them, their conscience, their God, and indeed that it, indeed, is inappropriate for this U.S. Congress to intervene in that decisionmaking.

As Dr. King stated so eloquently years ago, our Declaration of Independence was not just a matter of rhetoric and not an exercise in hypocrisy and not just words trotted out on suitable patriotic occasions, and then ignored while we all go about the business of real life. Dr. King knew that our Declaration of Independence was indeed a ''declaration of intent,'' and that our history has been a history of making progress, albeit sometimes in fits and starts, but making progress toward full implementation of those American values for all of us.

In our system, the Constitution protects our freedoms and prevents Government from taking those freedoms away. At the same time, the genius of the system is that, at its best, it brings us together to expand opportunity and to expand freedom. Gay and lesbian Americans, however, do not yet fully enjoy the equal protection of the laws promised to every American by the 14th amendment. And this legislation, it seems to me, is a step in the absolute opposite direction of extending the equal protection of the laws to Americans without regard to their sexual orientation, just as we moved so fitfully in this country to extend those protections to Americans without regard to their race.

It seems to me, Madam President, that if we examine the history, it will show the fundamental truth of the notion that this Congress should be involved in expanding, and not restricting, individual liberty, that we should not involve the Federal Government in decisions that will restrict liberty, indeed, if anything, we should involve our Government in providing people with opportunities to contribute to the total of our society to the maximum extent of their ability and to be whoever they are within the context of this society.

That, indeed, is what freedom, that, indeed, is what the whole constitutional framework is about in this country, as I understand it, and as many people understand it who hold sacred the promise of freedom and independence that this declaration gives us. Strides have been made, Madam President, to provide gay and lesbian Americans the equal protection of the laws, but DOMA is a retreat from that goal.

Finally, Madam President, I point out to anyone who is listening to the debate, not only the divisive nature of the debate which, of course, becomes pretty apparent, but the fact that it is almost curious that the very people who argue against the Federal Government as an activist Federal Government, the very people who argue in favor of smaller Government, have absolutely no compunction about encouraging the Federal Government to expand its activism, to expand its role, and expand its intrusiveness into our everyday lives when it comes to their own agenda. If the agenda has to do with restricting liberty, it is OK to have an expanded Federal role. When the agenda relates to encouraging expanding opportunity, then that is when they cry foul and argue we should have smaller Government.

Indeed, this legislation represents just the opposite of smaller Government. It represents an intrusion by the Federal Government in areas that we have never trod before. It represents a decimation of a concept of a United States of America by striking at the heart of the full faith and credit clause which binds us together, and it tears us apart as Americans, and it sets up a point of controversy between and among the States that ought not be here.

I hope that every person on this floor and every person who is going to look at and vote on this bill considers for a moment what the judgment of history might be, if 50 years from now their grandchildren look at their debate and look at their words in support of this mean-spirited legislation, and consider the judgment that will be cast upon them then.

I had for a moment thought to bring to this floor some of the floor debate and some of the debate that happened during the civil rights era when the very same arguments that are being made in favor of this legislation were made in favor of keeping African Americans in second class citizenship in this country. Those arguments ultimately failed. And as Dr. King pointed out, he said, ''The arc of history is long, but it bends towards justice.''

I hope that we will not contribute to the retarding of that arc in the direction of justice, that we will all recognize that this is an inappropriate legislative activity by the Federal Government, and that we leave it up to the States in their wisdom to decide what kind of domestic relations arrangements they will or will not allow, and that we allow, in the final analysis, for the opportunity of every American to enjoy the same protections under the law as every other American and that we do not single out gay and lesbian Americans for second class status and as second class citizens by legislation labeled specifically to their domestic relations when we have never legislated in that area before in this body. On that point, Madam President, I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Madam President, I rise in support of the Defense of Marriage Act. My objective this morning is to, No. 1, define what it is that we are here to protect, and No. 2, to define constitutionally what this issue is all about, because I sense that there is a great deal of misunderstanding in the country as to what we are trying to do.

I will talk very briefly about the Hawaii case and why we are here dealing with this issue. I would like to talk about its potential impact on other States, such as my State, Texas and then I would like to talk about a secondary, but nonetheless important, issue: the economic ramifications of what we are doing.

Let me be the first to say that the traditional family has stood for 5,000 years. There is no moment in recorded history when the traditional family was not recognized and sanctioned by a civilized society—it is the oldest institution that exists. The traditional family is found in the oldest writings of mankind, and is an institution which people decided was so important for happiness and progress that it was worth singling out and was worth giving special status above all other contracts in terms of a relationship among people.

So when some question what, 50 years from now, we are going to think about those are defending the traditional family today, I would just remind them that the traditional family has stood as the seminal institution which has formed the foundation for civilized society for some 5,000 years. While I am confident that there will be Senators debating other issues 50 years from now, I am even more confident that if, at that time, our society is one which we treasure and one which we admire and love, then it will be a society which respects and recognizes the special status of the traditional family.

We are here today because the traditional family is important to America. Further, it has always been important to civilization. Our Founders recognize that, and they set out a procedure in the Constitution which is as clear as any procedure could be as to what is Congress' role in this matter.

Let me begin by referring you to article IV, section 1, of the Constitution.

Article IV, section 1 says: ''Full faith and credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.''

In other words, article IV, section 1 of the Constitution requires States to recognize the contracts, the judicial proceedings, and the public records of every other State. Obviously, at the top of this list would be marriages. But it specifically gives Congress the power to prescribe under what circumstances such recognition will occur.

My first point is, those who say Congress has no role in this issue need only read the second sentence of article IV, section 1 of the Constitution to see that Congress has the only role in prescribing the circumstance under which one State must recognize a marriage that occurs in another State. We are here today doing exactly what the Founding Fathers prescribed in the Constitution that we should do.

Now, where did this issue come from? Well, its roots come from the fact that the Hawaiian constitution outlaws discrimination based on sex—basically, they have an equal rights amendment. In 1991, three different groups of people argued that they, in trying to engage in a same-sex marriage, were being discriminated against on the basis of sex, and that this violated the equal rights amendment written into the constitution of Hawaii. Essentially, their argument was that when two women or two men are denied a marriage license, one of them is being discriminated against based on the fact that they are of the same sex as the other person applying for the license. This is the foundation of the current judicial proceedings in Hawaii.

The Supreme Court in Hawaii ruled on this equal rights argument and sent the case back to the lower court, with the instructions that the lower court, in order to deny these three groups of people a marriage license, had to show that the State had an overriding interest in this issue. Now, obviously, we are hopeful such a case can be made and that the ruling will be in favor of preserving the special union between a man and a woman which forms the foundation of our traditional family.

The point is if the Hawaii court rules under the equal rights amendment of the Hawaii constitution—a provision that is not in the U.S. Constitution, though it was long debated as a potential addition—if the court rules in favor of single-sex marriages on the basis of sex discrimination, a failure to pass the Defense of Marriage Act here today will require the State of Texas, the State of Kansas, and every other State in the Union to recognize and give full faith and credit to single-sex marriages which occur in Hawaii.

There are those who say this is not a congressional matter, that it should be left up to the courts, but if this is left up to the courts, under article IV, section 1 of the U.S. Constitution, they will have no choice except to impose same-sex marriages on Texas, so long as they are sanctioned by Hawaii.

The Constitution allows Congress—in fact, gives us the responsibility—to prescribe the manner in which such acts, records, and proceedings shall be proved and the effect thereof. What we are doing today in this bill is saying three things: No. 1, we are saying that there can be no question, as far as Federal law is concerned, that States have the right to ban same-sex marriages.

No. 2, we are saying that marriage is defined as a union between a man and a woman, and, therefore, with regard to the requirements of the full faith and credit clause, no matter what happens in Hawaii or any other State, no other State will be required to recognize a same-sex marriage as a traditional marriage.

Finally, we are saying that the Federal Government, itself, will recognize only marriages that occur between a man and a woman.

Now, let me talk very briefly about the economic ramifications of this. Speaking as a person who used to practice economics, when compared to the power of the family as the foundation of our civilization and our culture, dollars and cents—in this context—are not terribly important. But, as a secondary issue, they are important, and let me explain where.

A failure to pass this bill, if the Hawaii court rules in favor of same-sex marriages, will create, through the full faith and credit provision of the Constitution, a whole group of new beneficiaries—no one knows what the number would be—tens of thousands, hundreds of thousands, potentially more—who will be beneficiaries of newly created survivor benefits under Social Security, Federal retirement plans, and military retirement plans. It will trigger a whole group of new benefits under Federal health plans. And not only will it trigger these benefits for the Federal Government, but under the full faith and credit provision of the Constitution, it will impose—through teacher retirement plans, State retirement plans, State medical plans, and even railroad retirement plans—a whole new set of benefits and expenses which have not been planned or budgeted for under current law.

So here are the issues in very simple fashion: No. 1, is there anything unique about the traditional family? For every moment of recorded history, we have said yes. In every major religion in history, from the early Greek myths of the ''Iliad'' and the ''Odyssey'' to the oldest writings of the Bible to the oldest teachings of civilization, governments have recognized the traditional family as the foundation of prosperity and happiness, and in democratic societies, as the foundation of freedom. Human beings have always given traditional marriage a special sanction. Not that there cannot be contracts among individuals, but there is something unique about the traditional family in terms of what it does for our society and the foundation it provides—this is something that every civilized society in 5,000 years of recorded history has recognized. Are we so wise today that we are ready to reject 5,000 years of recorded history? I do not think so. I think that even the greatest society in the history of the world—which we have here today in the United States of America—that even a society as great as our own trifles with the traditional family at great peril to itself.

I intend to vote for the Defense of Marriage Act today because I want to defend, protect, and even perpetuate this historical recognition of the traditional family as the foundation for society. I believe the Federal Government is given clear a role in this debate by article IV, section 1 of the Constitution, which allows Congress to prescribe the manner in which such acts, records, and proceedings shall be proved and the effect thereof. To fail to exercise our constitutional responsibility would mean that States which would not otherwise choose to recognize same-sex marriages would be forced to do so, if in this case Hawaii grants that recognition.

To say that we should stay out of this issue is to simply endorse same-sex marriages. I believe that we have an obligation to act. I believe this is a very clear, defining issue and I think it is one of those issues where it ought to be very clear where everybody stands. I stand with the traditional family. I do not believe 5,000 years of recorded history have been in error. I believe the traditional family—the union of a man and a woman, upon which our entire civilization is based—is unique, and I believe it is the foundation of our prosperity, our freedom, and our happiness. I want to defend this and I am confident that we will do so on this very day.

I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts [Mr. KERRY] is recognized.

Mr. KERRY. Madam President, I will not need much more than 10 minutes or so.

Mr. KENNEDY. I think if you can do it in 10 minutes, that would be all right.

I yield 10 minutes to the Senator from Massachusetts.

Mr. KERRY. Madam President, I listened to my colleague, the Senator from Texas—and we will hear from others on this floor—talk about the need to defend marriages and to affirm a traditional marriage and to assert that this vote is somehow a vote that will define who is for traditional marriage and who is not.

Well, I don't agree with that definition of what this vote is about, and I do not want my feelings about, or opinions about, marriage or traditional marriage to be somehow tailored by political definitions. I am not for same-

sex marriage. I have said that publicly. I would not vote for same-sex marriage.

I do not believe that this vote is specifically about defending marriage in America. I am going to vote against this bill. I will vote against this bill, though I am not for same-sex marriage, because I believe that this debate is fundamentally ugly, and it is fundamentally political, and it is fundamentally flawed.

The Defense of Marriage Act declares today on the floor of the Senate what most Americans think is pretty obvious. It declares what no State has adopted to the contrary, and won't, I imagine, for some time. In fact, the trend among States is to the contrary, no State withstanding that trend. Therefore, I suppose we really should not be surprised that the U.S. Senate is spending its time in an exercise of this kind, which ought to properly feed the cynicism that already attaches to so much of what we do in Washington.

The truth that we know, which today's exercise ignores, is that marriages fall apart in the United States, not because men and women are under siege by a mass movement of men marrying men or women marrying women. Marriages fall apart because men and women don't stay married. The real threat comes from the attitudes of many men and women married to each other and from the relationships of people in the opposite sex, not the same sex. Yet, this legislation is directed at something that has not happened and which needs no Federal intervention.

Obviously, the results of this bill will not be to preserve anything, but will serve to attack a group of people out of various motives and rationales, and certainly out of a lack of understanding and a lack of tolerance, and will only serve the purposes of the political season.

If this were truly a defense of marriage act, it would expand the learning experience for would-be husbands and wives. It would provide for counseling for all troubled marriages, not just for those who can afford it. It would provide treatment on demand for those with alcohol and substance abuse, or with the pernicious and endless invasions of their own abuse as children that they never break away from. It would expand the Violence Against Women Act. It would guarantee day care for every family that struggles and needs it. It would expand the curriculum in schools to expose high school students to a greater set of practical life choices. It would guarantee that our children would be able to read when they leave high school. It would expand the opportunity for adoptions. It would expand the protection of abused children. It would help children do things after school other than to go out and perhaps have unwanted teenage pregnancies. It would help augment Boys Clubs and Girls Clubs, YMCA's and YWCA's, school-to-work, and other alternatives so young people can grow into healthy, productive adults and have healthy adult relationships. But we all know the truth. The truth is that mistakes will be made and marriages will fail. But these are ways that we could truly defend marriage in America.

Mr. President, this bill is not necessary. No State has adopted same-sex marriage. We have a judicial question before the court in Hawaii, and it is astonishing to me that the very people who make the loudest and most continuous arguments about Federal mandates and Federal intrusion and leaving the States to their own devices and let the States work their will, before any State in the country has made a choice to do otherwise those very people are leading the charge to have the Federal Government not just intervene, but intervene with a power grab that reaches, unconstitutionally, to do things that you cannot do by statute.

I oppose this legislation because not only is it meant to divide Americans, but it is fundamentally unconstitutional, regardless of what your views are.

DOMA is unconstitutional. There is no single Member of the U.S. Senate who believes that it is within the Senate's power to strip away the word or spirit of a constitutional clause by simple statute.

DOMA would, de facto, add a section to our Constitution's full faith and credit clause, article IV, section 1, to allow the States not to recognize the legal marriage in another State. That is in direct conflict with the very specific understandings interpreted by the Supreme Court of the clause itself.

The clause states—simple words—''Full faith and credit shall be given''—not ''may be given,'' ''shall be given''—''in each State to the public Acts, Records and judicial Proceedings of every other State.'' It says:

> And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

It doesn't say no effect. It doesn't say can nullify. It doesn't say can obviate or avoid. It says it has to show how you merely procedurally prove that the act spoken of has taken place, and if it has taken place, then what is the full effect of that act in giving full faith and credit to that State.

I think any schoolchild could understand that allowing States to not accept the public act of another is the exact opposite of what the Founding Fathers laid forth in the clause itself. Let me repeat:

> Full faith and credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.

Now, if we intend to change it—and that is a different vote than having the constitutional process properly adhered to. But it seems to me that what Congress is doing is allowing a State to ignore another State's acts, and every law that Congress has ever passed has invoked the full faith and credit of another State's legislation.

All of these laws share a basic common denominator. They all implement the full faith and credit mandate. They do not restrict it. Not once has it been restricted in that way. For example, the Parental Kidnapping Prevention Act of 1990 provided the States have to enforce child custody determinations made by other States. The Full Faith and Credit for Child Support Orders of 1994 provided that States have to enforce child support determinations made by other States. It did not say you could not do it. It did not say you could avoid it. It did not diminish it. It said you have to enforce it. The Safe Homes for Women Act of 1994 required States to recognize protective orders issued in other States with regard to domestic violence.

Those laws are the products of constitutional exercises of the appropriate congressional law in implementing the full faith and credit clause. The bill before us, a statute, is the exact opposite. It is an extreme unconstitutional attempt to restrict and undermine the basic fundamental approach which helps create the concept of a unified and single nation. Madam President, this bill is not just unconstitutional. It is not just unprecedented.

It is also unnecessary.

Right now, as we speak, there is no rash outbreak among the States to recognize same-sex marriage.

In fact, States—one after another—are moving in the opposite direction. For example, the State of Michigan passed a law which defines marriage as the union between a man and a woman and declares Michigan will not recognize a same-sex marriage conducted in another State.

This bill is a solution in search of a problem.

Madam President, even if the Hawaiian Supreme Court decides to recognize same-sex marriage, Michigan and a dozen other States have spoken against it. Resolving this tension rests squarely with the judicial branch, not the Congress. This is a power grab into States' rights of monumental proportions.

Madam President, it is ironic that many of the arguments for this power grab are echoes of the discussion of interracial marriage a generation ago.

Nearly 30 years ago, this country and this body heard similar arguments against striking State laws criminalizing interracial marriage. And, the issue was resolved by the Supreme Court in the case Loving versus Virginia.

Until the Loving case was decided, many southern States had laws banning interracial marriage. When the Supreme Court ruled that this ban was unconstitutional, one Congressman from Louisiana felt compelled to come to the floor of the Senate and rail against the decision in addition to the nomination of Thurgood Marshall. He said, ''this shows how far we are removed from the ideas of our Founding

Fathers. The Justices of the Court interpret laws not on the basis of two centuries of wisdom, but rather in line with current social fads and their own personal theories on how to create the perfect society.''

But that Congressman was wrong 30 years ago. And, thankfully the Court exhibited wisdom in overturning the ban. What if they had not? Pointedly and poignantly, Leon Higginbotham, Chief Justice Emeritus of the Third U.S. Court of Appeals, answers the question for us. He states that ''if the Virginia courts had been sustained by the United States Supreme Court, Clarence Thomas could have been in the penitentiary today rather than serving as an Associate Justice of the Supreme Court.''

Madam President, as late as 1981, in the midst of a discrimination case, a U.S. Senator threw his support behind a university which banned interracial dating and marriage. Defending a ban on interracial marriage in the 1980s.

Madam President, DOMA is unconstitutional, unprecedented and unnecessary. Again, I return to the original questions: What is its legislative purpose? What is its motivation? What does passage of this bill mean for the country?

It is hard to believe that this bill is anything other than a thinly veiled attempt to score political debating points by scapegoating gay and lesbian Americans. That is politics at its worst, Mr. President. It is a perfect exemplar of the polarizing issues E.J. Dionne describes in his book, ''Why Americans Hate Politics.''

In the past few years, legislative attacks on gay people have increased in frequency and scope. Trying to keep gay men and lesbians out of the armed services. Trying to keep AIDS educational materials free of any mention of homosexuality. Trying to take away the children of gay parents.

Certainly the struggle for civil rights is a long one and individual prejudices are difficult to overcome. The great civil rights teacher Martin Luther King observed:

> It is pretty difficult to like some people. Like is sentimental and it is pretty difficult to like someone bombing your home; it is pretty difficult to like somebody threatening your children; it is difficult to like congressmen who spend all of their time trying to defeat civil rights. But Jesus says love them, and love is greater than like.

Madam President, that is the ultimate irony. For a bill which purports to defend and regulate marriage, there has been so little talk of love here in this Chamber.

Madam President, as we quickly approach the end of the millennium, the problems facing average Americans and the pressures experienced by the American family are overwhelming—personal debt and bankruptcies are at an all-time high, divorce rates are skyrocketing, schools are crumbling, education costs are astronomical and health care costs continue to rise.

It is clear the Congress should be alleviating the pressures of the American family. That would be the best defense of marriage. If we want to defend marriage, we should be working to change the ugly reality of spousal abuse. We should be redoubling our efforts to eradicate alcohol, drug and other forms of substance abuse. We should acknowledge the pernicious ramifications of abandonment.

And we should commit our collective resources to creating educational opportunities for Americans, to securing health care and to easing the economic burden too many people feel today. We should bring Americans together with common purpose and empower individuals and communities to ease the pressure of today's increasingly complicated everyday life.

This bill does not bring people together. In fact, it does the exact opposite. It divides Americans. It is a stark reminder that all citizens who play by the rules, who pay their taxes and who contribute to the economic, social and political vibrancy of this great melting pot do not have equal rights.

I would have thought that the other side would have learned by now that there is a nasty boomerang effect to the politics of division. It rends the social and political fabric. It divides the country.

I have some experience with divided countries. I fought in one. I have looked into the eyes of hatred, bigotry, ignorance, of raw unbridled passion for conflict. Look to Northern Ireland, look to Bosnia, look to the Middle East—and see the end-product of the politics of division.

Let us stop this division. Let us balance the budget. Let us provide health security and retirement security. Let us protect our environment.

And, most of all, Madam President, let us give everyone a chance for an education. Education is the key to overcoming ignorance, to keeping families together, to providing a glimpse of the American dream. Bolstering education would do more to defend marriage than anything in this bill.

This is an unconstitutional, unprecedented, unnecessary and mean-spirited bill. I urge my colleagues to oppose it.

I yield the floor.

The PRESIDING OFFICER. The Senator has used the 10 minutes allowed.

Who yields time?

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER (Mr. CAMPBELL). The Senator from West Virginia.

Mr. BYRD. Do I have control of 45 minutes?

The PRESIDING OFFICER. Yes, the Senator does.

Mr. BYRD. I thank the Chair.

Mr. President, I am pleased to join my colleague, the senior Senator from Oklahoma, in cosponsoring the Defense of Marriage Act. Although I am glad to work with Senator NICKLES in this effort, I must admit that, in all of my nearly 44 years in the Congress, I never envisioned that I would see a measure such as the Defense of Marriage Act.

It is incomprehensible to me that federal legislation would be needed to provide a definition of two terms that for thousands of years have been perfectly clear and unquestioned. That we have arrived at a point where the Congress of the United States must actually reaffirm in the statute books something as simple as the definition of ''marriage'' and ''spouse,'' is almost beyond my grasp. But as the current state of legal affairs has shown, this bill is a necessary endeavor.

Mr. President, there are some who say that the Senate is not dealing with a relevant matter here, that the time has not yet arrived for the Senate to debate this subject. I say the time is now, and this is a relevant matter. Action by the Senate and debate by the Senate are not something that should be delayed and put off until another day.

Let me read from ''The Case For Same-Sex Marriage,'' by William N. Eskridge, Jr.

Now, the author of this treatise supports same-sex marriage. Let me read extracts from the treatise which clearly indicate that this is a matter that is relevant. It is relevant now. Reading from page 46:

> Many of the gay marriages have been performed by religious groups formed specifically for the gay, lesbian and bisexual faithful.
>
> The situation is more complicated among mainstream religious denominations. A few are openly supportive of gay marriages or unions. Following a vote on the matter in 1984, the Unitarian Universalist Association now affirms the growing practice of some of its ministers of conducting services of union of gay and lesbian couples and urges member societies to support their ministers in this practice. The Society of Friends leaves all issues to congregational decision and thousands of same-sex marriages have been sanctified in Quaker ceremonies since the 1970's. Other denominations are still studying the issue.
>
> The validity of same-sex marriage has been debated at the national level by the Presbyterian, Episcopal, Lutheran and Methodist churches.

So why not debate it here, Mr. President.

> A committee of Episcopal bishops proposed in 1994 that homosexual relationships need and should receive the pastoral care of the church, but the church diluted and downgraded the report. After intense debate also in 1994, the General Assembly of the Presbyterian Church USA adopted a resolution that its ministers are not permitted to bless same-sex unions. The Lutheran Church in 1993 debated but did not adopt a report advocating the blessing and legal recognition of same-sex unions. The Methodists followed a similar path in 1992.
>
> The pattern in these denominations has been the following: an individual church will bless a same-sex union or marriage and the ministers and theologians then call for a study of the issue. A report is written that is open to the idea. The report ignites a firestorm of protests from traditionalists in the denomination. The issue is suppressed or rejected at the denominational level. Local churches and theologians again press the issue some years later and the cycle begins again. My guess—

This is the author's guess. It is not my guess. This is a guess by the author.

My guess is that one or more of the foregoing denominations will tilt towards same-sex unions or marriages in the next 5 to 10 years. Even the religions that are most prominently opposed to gay marriages have clergy who perform gay marriage ceremonies. The Roman Catholic Church firmly opposes gay marriage but its celebrated priest, John J. McNeill says that he and many other Catholic clergy have performed same-sex commitment services. Although Father McNeill's position is marginalized within the Catholic Church, it reflects the views of many devout Catholics. Support for same-sex marriage is probably most scarce among Baptists in the South.

The author says this:

You can be assured that same-sex marriage is an issue that has arrived worldwide and that efforts to head it off will only be successful in the short term.

So, Mr. President, to those who say that it is not yet time to debate this issue, let them read from the book, ''The Case for Same-Sex Marriage'' and hear what an advocate of same-sex marriage says.

You can be assured that same-sex marriage is an issue that has arrived, worldwide, and that efforts to head it off will only be successful in the short term.

The author closes the chapter as follows:

The argument of this book is that Western culture generally, and the United States in particular, ought to and must recognize same-sex marriages.

Therefore, Mr. President, the time is now, the place is here, to debate this issue. It confronts us now. It comes ever nearer.

There are those who say, ''Why does the Senate not debate and act upon relevant matters?'' This is relevant. And it is relevant today.

In very simple and easy to read language, this bill says that a marriage is the legal union between one man and one woman as husband and wife, and that a spouse is a husband or wife of the opposite sex. There is not, of course, anything earth-shaking in that declaration. We are not breaking any new ground here. We are not setting any new precedent. We are not overturning the status quo in any way, shape or form. On the contrary, all this bill does is reaffirm for purposes of Federal law what is already understood by everyone.

Mr. President, throughout the annals of human experience, in dozens of civilizations and cultures of varying value systems, humanity has discovered that the permanent relationship between men and women is a keystone to the stability, strength, and health of human society—a relationship worthy of legal recognition and judicial protection. The purpose of this kind of union between human beings of opposite gender is primarily for the establishment of a home atmosphere in which a man and a woman pledge themselves exclusively to one another and who bring into being children for the fulfilment of their love for one another and for the greater good of the human community at large.

Obviously, human beings enter into a variety of relationships. Business partnerships, friendships, alliances for mutual benefits, and team memberships all depend upon emotional unions of one degree or another. For that reason, a number of these relationships have found standing under the laws of innumerable nations.

However, in no case, has anyone suggested that these relationships deserve the special recognition or the designation commonly understood as ''marriage.'' The suggestion that relationships between members of the same gender should ever be accorded the status or the designation of marriage flies in the face of the thousands of years of experience about the societal stability that traditional marriage has afforded human civilization. To insist that male-male or female-female relationships must have the same status as the marriage relationship is more than unwise, it is patently absurd.

Out of such relationships children do not result. Of course, children do not always result from marriages as we have traditionally known them. But out of same-sex relationships no children can result. Out of such relationships emotional bonding oftentimes does not take place, and many such relationships do not result in the establishment of ''families'' as society universally interprets that term. Indeed, as history teaches us too often in the past, when cultures waxed casual about the uniqueness and sanctity of the marriage commitment between men and women, those cultures have been shown to be in decline. This was particularly true in the ancient world in Greece and, more particularly, in Rome. In both Greece and Rome, same-sex relationships were not uncommon, particularly among the upper classes. Plato and Aristotle referred to the existence of such relationships in their writings, as did Plutarch, the Greek biographer.

Homer, the Greek epic poet, in the ''Iliad,'' wrote of the love relationship that existed between Achilles and Patroclus. Homer relates that after Patroclus was slain by Hector, Patroclus appeared to Achilles in a dream saying, ''Do not lay my bones apart from yours, Achilles. Let one urn cover my bones with yours, that golden, two-handled urn that your mother so graciously gave you.''

As to the Romans, Cicero mentioned casually that a former consul, who was Catiline's lover, approached him on Catiline's behalf. This was undoubtedly during the time of the ''Catiline Conspiracy,'' which took place in the years 63 and 62 A.D.

Suetonius, the Roman biographer, relates that Julius Caesar prostituted his body to be abused by King Nicomedes of Bithynia, and that Curio the Elder, in an oration, called Caesar ''a woman for all men and a man for all women.''

While same-sex relations were not unknown, therefore, to the ancients, same-sex marriages were a different matter. But they did sometimes involve utilization of the forms and the customs of heterosexual marriage. For example, the Emperor Nero, who reigned between 54 and 68 A.D., took the marriage vows with a young man named Sporus, in a very public ceremony, with a gown and a veil and with all of the solemnities of matrimony, after which Nero took this Sporus with him, carried on a litter, all decked out with ornaments and jewels and the finery normally worn by empresses, and traveled to the resort towns in Greece and Italy, Nero, ''many a time, sweetly kissing him.''

Juvenal, the Roman satirical poet, wrote concerning a same-sex wedding, by way of a dialog:

''I have a ceremony to attend tomorrow morning.''

''What sort of ceremony?''

''Nothing special, just a gentleman friend of mine who is marrying another man and a small group has been invited.''

Subsequently in the dialog, ''Gracchus has given a dowry of 400 sesterces, signed the marriage tablets, said the blessing, held a great banquet, and the new bride now reclines on his husband's lap.''

Juvenal looked upon such marriages disapprovingly, and as an example that should not be followed.

Mr. President, the marriage bond as recognized in the Judeo-Christian tradition, as well as in the legal codes of the world's most advanced societies, is the cornerstone on which the society itself depends for its moral and spiritual regeneration as that culture is handed down, father to son and mother to daughter.

Indeed, thousands of years of Judeo-Christian teachings leave absolutely no doubt as to the sanctity, purpose, and reason for the union of man and woman. One has only to turn to the Old Testament and read the word of God to understand how eternal is the true definition of marriage.

Mr. President, I am rapidly approaching my 79th birthday, and I hold in my hands a Bible, the Bible that was in my home when I was a child. This is the Bible that was read to me by my foster father. It is a Bible, the cover of which having been torn and worn, has been replaced. But this is the Bible, the King James Bible. And here is what it says in the first chapter of Genesis, 27th and 28th verses:

So God created man in his own image, in the image of God created he him; male and female created he them.

And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth . . .

And when God used the word ''multiply,'' he wasn't talking about multiplying your stocks, bonds, your bank accounts or your cattle on a thousand hills or your race horses or your acreages of land. He was talking about procreation, multiplying, populating the Earth.

And after the flood, when the only humans who were left on the globe were Noah and his wife and his sons and their wives, the Bible says in chapter 9 of Genesis:

And God blessed Noah and his sons, and said unto them, Be fruitful, and multiply, and replenish the earth.

Christians also look at the Gospel of Saint Mark, chapter 10, which states:

But from the beginning of the creation God made them male and female.

For this cause shall a man leave his father and mother, and cleave to his wife;

And they twain shall be one flesh: so then they are no more twain, but one flesh.

What therefore God hath joined together, let not man put asunder.

Woe betide that society, Mr. President, that fails to honor that heritage and begins to blur that tradition which was laid down by the Creator in the beginning.

Moreover, the drive being spearheaded by a small segment of today's culture reflects a demand for ''political correctness'' gone berserk. I think of Muzzey, who wrote the American history text that I studied in 1927, 1928, 1929, who said in the very first sentence, ''America is the child of Europe.'' Now, Muzzey would have been hooted out of town for being ''politically incorrect'' in having said that. But that was nothing as compared with this.

This reflects a demand for political correctness that has gone berserk. We live in an era in which tolerance has progressed beyond a mere call for acceptance and crossed over to become a demand for the rest of us to give up beliefs that we revere and hold most dear in order to prove our collective purity. At some point, a line must be drawn by rational men and women who are willing to say, ''Enough!''

Certainly in today's far too permissive world, traditional marriage as an institution is struggling. Divorce is far too frequent, as are male and female relationships which do not end in marriage. Certainly we do not want to launch a further assault on the institution of marriage by blurring its definition in this unwise way.

The drive for the acceptance of same-sex or same-gender ''marriage'' should serve for us as an indication that we have drawn too close to the edge and that we as a people are on the verge of trying so hard to please a few that we destroy the values and the spiritual beliefs of the many. Moreover, to seek the codification of same-sex marriage into our national or State legal codes is to make a mockery of those codes themselves. Many legal scholars believe that only after a majority of society comes to a consensus on the legality or illegality of one issue or another should that issue be written down in our legal institutions. The drive for same-sex marriage is, in effect, an effort to make a sneak attack on society by encoding this aberrant behavior in legal form before society itself has decided it should be legal—a proposition which is far in the distance, if ever to be realized.

Mr. President, I have heard arguments to the effect that the bill may be unconstitutional. I totally disagree with that.

Insofar as the proposal would relate to State recognition of same-sex marriages contracted in other States, Congress is empowered by the full faith and credit clause, article IV, section 1 of the Constitution, to enact ''general Laws prescrib[ing] the Manner'' in which such Acts of other States ''shall be proved, and the Effect thereof.''

Congress has from the beginning placed on the books implementing legislation, and it has in recent years enacted more limited statutes relating to child support and custody.

Opponents of the present bill argue that while Congress has authority to pass laws that enable acts, judgments and the like to be given effect in other States, it has no constitutional power to pass a law permitting States to deny full faith and credit to another State's laws and judgment. There is no judicial precedent one way or another on this issue, but it is not at all clear why a general empowering of Congress to ''prescribe * * * the effect'' of public acts does not give it discretion to define the ''effect'' so that a particular public act is not due full faith and credit. The plain reading of the clause would seem to encompass both expansion and contraction.

However, the argument con and the response assumes that the full faith and credit clause would obligate States to recognize same-sex marriages contracted in States in which they are authorized. This conclusion is far from evident. It is clear that the clause mandates recognition by other States of the judgments of the courts with jurisdiction in another State. But controversy has always attended consideration of the question of what the clause obligates States to do with respect to the ''public acts'' of other States. The judicial decisions are mixed, but ''public acts'' have never been accorded the same recognition as judicial judgments. States have generally been recognized to have the discretion to refuse cognizance of ''public acts'' that are contrary to their own public policy. Thus, in prescribing the ''effect'' on States of State laws that permit or authorize same-sex marriages, Congress may be deemed to be exercising authority under the full faith and credit clause to settle an issue not definitive within the clause itself.

The actual policy of the States in recognizing marriages contracted in other States to persons who would not be permitted to marry in the State in which the issue arises is mixed. The general tendency, based on comity rather than on compulsion under the full faith and credit clause, is to recognize marriages contracted in other States even though they could not have been celebrated in the recognizing State. The trend in such promulgations as the Restatement (Second) of Conflicts of Laws and the Uniform Marriage and Divorce Act was to recognize marriages everywhere if they were legal where contracted. But a ''public policy'' exception has been asserted, and, recently, as the Hawaii litigation has proceeded, several States have enacted laws declaring recognition of same-sex marriages to be contrary to the public policy of those States.

Thus, it cannot be said that Congress would be contracting a right heretofore clearly prescribed by the full faith and credit clause.

There are constitutional constraints upon Federal legislation. The relevant one to be considered is the equal protection clause and the effect of the Supreme Court's decision in Romer versus Evans. Struck down under the equal protection clause was a referendum-adopted provision of the Colorado constitution, which repealed local ordinances that provided civil rights protections for gay persons and which prohibited all legislative, executive or judicial action at any level of State or local government if that action was designed to protect homosexuals. The Court held that under the equal protection clause, legislation adverse to homosexuals was to be scrutinized under a ''rational basis'' standard of review. The classification failed to pass this review, because it imposed a special disability on homosexuals not visited on any other class of people and it could not be justified by any of the arguments made by the State.

The impact of the case, and in other areas of governmental action adversely affecting gays, cannot be clearly discerned. Despite the Court's use of the rational basis standard, the opinion appears to view with skepticism the differential treatment of homosexuals as a class. At the least, we can say that the case requires the DOMA, if it becomes law, to be evaluated under the equal protection clause. That evaluation need not be fatal to the law. The proposal does adversely classify homosexuals as a class in defining what status, under the full faith and credit clause, States must accord.

The law would not preclude any State from recognizing such marriages. The Colorado amendment fell, not solely because of its differential classification but because the Court concluded, first, that the law was intended to affect adversely homosexuals as a class, and, second, that no rational basis could be asserted for the adverse treatment.

The proposal has been presented as one that would protect federalism interests and State sovereignty in the area of domestic relations, historically a subject of almost exclusive State concern. It is presented as a measure that permits, but does not require, States to deny recognition to same-sex marriages contracted in other States,

affording States with strong public policy concerns the discretion to effectuate that policy. Thus, while the proposal adversely affects homosexuals as a class, it can be argued that it is grounded not in hostility to homosexuals, not in a legislative decision to target homosexuals because of their homosexuality, but to afford the States the discretion to act as their public policy on same-sex marriages dictates.

So, Mr. President, I am not here today to blast anyone. I am not here today to lash out at anybody. I am not here today to attack anybody. I am here saying that we need to recognize this age-old institution of marriage for what it is, what it always has been under the Judeo-Christian concepts of human experience—the marriage union of male and female.

On a more pragmatic level although no less important, this bill also addresses concerns with respect to the matter of Federal benefits. As I am sure my colleagues are aware, although many other Americans may not be, the Federal Government extends certain benefits and privileges to persons who are married, but in almost all cases those benefits are given on the basis of a State's definition of ''marriage.'' In almost all cases at the Federal level, there is simply no definition of the terms ''marriage'' or ''spouse.''

Indeed, the word ''marriage'' appears in more than 800 sections of the Federal statutes and regulations, while the word ''spouse'' appears more than 3,100 times. And, as I have said, in all but a minute number of those instances—namely, the Family and Medical Leave Act—those terms are simply not defined. Until now, of course, there has never been a need to define them. Until now. That is why to debate this issue is relevant.

As I say, in debating the issue, I am not here to bash anyone. I am not here to bash anyone's personal beliefs. But if the State of Hawaii, or any other State, for that matter, redefines those terms, then what will happen at the Federal level? Who knows, for example, what the Social Security Administration is supposed to do when a so-called ''spouse'' of a same-sex marriage walks in and attempts to collect survivors benefits under the Social Security program? What is the Social Security clerk to say? Without a Federal definition—and that is what we are attempting to accomplish here—without a Federal definition of something that has been previously undefined, every department and every agency of the Federal Government that administers public benefit programs would be left in the lurch. We shall have sown the dragon's teeth!

Moreover, I urge my colleagues to think of the potential cost involved here. How much is it going to cost the Federal Government if the definition of ''spouse'' is changed? It is not a matter of irrelevancy at all. It is not a matter of attacking anyone's personal beliefs or personal activity. That is not my purpose here. What is the added cost in Medicare and Medicaid benefits if a new meaning is suddenly given to these terms? I know I do not have any reliable estimates of what such a change would mean, but then, I do not know of anyone who does. That is the point—nobody knows for sure. I do not think, though, that it is inconceivable that the costs associated with such a change could amount to hundreds of millions of dollars, if not billions—if not billions—of Federal taxpayer dollars.

Mr. President, for these reasons and others named by the opponents of same-sex or gender marriage, I hope that our colleagues here in the Senate will demonstrate their thorough opposition to efforts to subvert the traditional definition of ''marriage'' by going on record today against this very unnecessary idea.

Let us make clear that in our generation, at least, we understand the meaning and purpose of marriage and that we affirm our trust in the divine approbation—you do not have to be a preacher to say this; I am not a prophet or the son of a prophet; I am not a preacher or the son of a preacher; one does not have to be a prophet or a preacher—to affirm our trust in the divine approbation of union between a man and a woman, between a male and female for all time.

Mr. President, 41 years ago I was traveling with a House subcommittee of the Committee on Foreign Affairs. I visited the city of Baghdad, the city of the Arabian Nights, where Ali Baba followed the 40 thieves through the streets, and from which Sinbad the Sailor departed on his journey to the magnetic mountain.

I asked an old Arab guide to take me down to the old Biblical city of Babylon, where one of the famous seven wonders of the world, the hanging gardens, was created. As I reached the old city of Babylon I stood on the banks of the Euphrates River, that old river that is first mentioned in the Book of Genesis, which like a thread runs through the entire Bible, the Old Testament and the New, and is mentioned again in the Book of Revelation.

I stood on the site, or at least I was told I was standing on the site of where Belshazzar, the son of Nebuchadnezzar, held a great feast for 1,000 of his lords. Belshazzar took the cups that had been stolen from the temple by Nebuchadnezzar. He and his wife and concubines and his colleagues drank from those vessels, and Belshazzar saw the hand of a man writing on the plaster of the wall, over near the candlestick, and the hand wrote ''me'ne, me'ne, te'kel, uphar'sin'' and the countenance of Belshazzar changed, his knees buckled, and his legs trembled beneath him. He called in his astrologers and soothsayers and magicians and said, ''Tell me what that writing means,'' but they were mystified. They could not interpret the writing. Then the queen told Belshazzar that there was a man in the kingdom who could interpret that writing. So, Daniel was brought before the king and told by the king that he, Daniel, would be clothed in scarlet with a golden chain around his neck, and that he would become a third partner in the kingdom if he could interpret that writing. Daniel interpreted the writing:

> God hath numbered thy kingdom and finished it. Thou art weighed in the balances and art found wanting. Thy kingdom is divided and given to the Medes and Persians.

That night Belshazzar was slain by Darius the Median, and his kingdom was divided.

Mr. President, America is being weighed in the balances. If same-sex marriage is accepted, the announcement will be official, America will have said that children do not need a mother and a father, two mothers or two fathers will be just as good.

This would be a catastrophe. Much of America has lost its moorings. Norms no longer exist. We have lost our way with a speed that is awesome. What took thousands of years to build is being dismantled in a generation.

I say to my colleagues, let us take our stand. The time is now. The subject is relevant. Let us defend the oldest institution, the institution of marriage between male and female, as set forth in the Holy Bible. Else we, too, will be weighed in the balances and found wanting.

I thank all Senators and I yield the floor.

Mr. NICKLES. Mr. President, I wish to thank Senator BYRD for that statement and also for cosponsoring this legislation, and for the outstanding research that he did, putting it in a historical perspective, as well. I think his statement was very well made and I very much appreciate his assistance in passing this legislation today.

Mr. KENNEDY. I yield 10 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California [Mrs. BOXER] has 10 minutes.

Mrs. BOXER. Thank you, Mr. President. Mr. President, yesterday I spoke about my views on discrimination in the workplace and on this Defense of Marriage Act. Today I summarize those remarks, as we head toward a vote on both of these bills.

First, I want to say I am proud of many of the companies in this country who have endorsed ENDA, which would stop workplace discrimination against gays and lesbians, and I urge my colleagues to join such blue chip companies as AT&T, Eastman Kodak, Genentech, Silicon Graphics, and Xerox, in supporting ENDA.

Now, there is a much longer list that I put into the RECORD yesterday, Mr. President, and I noted that many of those companies are based in California and they practice a policy of not discriminating. After all, what we are talking about here is individual performance, and one's sexual orientation should have nothing to do with that. If someone is qualified and does a good job, they should not be discriminated

against for any reason, including sexual orientation. I know that most of us in this body in our own offices practice nondiscrimination, so it seems to me quite an easy thing to do. I am very hopeful we can pass ENDA.

On the Defense of Marriage Act, I want to point out once again that this act, in my opinion, has nothing to do with defending marriage. As one who has been married for many years to the same person, I can truly say if we want to defend marriage, we should be discussing ways that truly help lift the strains and stresses on marriage. We all know what those are. We all know the financial strains and stresses on marriage.

As a matter of fact, when I heard that we were going to be discussing a bill called the Defense of Marriage Act, I was looking forward to seeing what it was because I honestly thought because it is called the Defense of Marriage Act that it would be doing something to help us defend marriage in this country. One in two marriages does end in divorce in this country, and in many cases they are tragic endings—tragic for the partners, tragic for the children, tragic for the extended families—and there are things that we could do, such things as paycheck security, Mr. President. Such things as pension security. Such things that the Senator from Connecticut brought to us in terms of the Parental Leave Act, which the President supports.

We ought to be looking at ways to give that additional 24 hours to working families so they can spend more time if their child needs them at a school appointment or some special doctor's appoint. These are the kinds of things we ought to be looking at. These are the kind of things that would defend marriage, defend families. I do not think this Defense of Marriage Act is about any of that.

I do think, however, it is about something else. I believe it is about hurting a whole group of people for absolutely no reason whatsoever. Not one group in this country that fights for fairness for gays and lesbians has asked us to legalize gay marriage here in the U.S. Senate. Not one Member of the House or Senate is proposing a bill that would legalize gay marriage or give benefits to domestic partners. Not one State in the Union has recognized gay marriage at all. As a matter of fact, many have absolutely said ''no'' to gay marriage.

So here we have a situation where we are watching a preemptive strike on a proposal that doesn't exist. Yes, there is a court that is looking at the subject in Hawaii, but that decision is many years away, according to legal scholars.

I ask unanimous consent to have printed in the RECORD pages 44 and 45 of the hearing on the Judiciary, where you have legal scholars telling us, in fact, that States will not have to recognize other States' gay marriages, if they so choose.

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

EXCERPT FROM THE SENATE JUDICIARY COMMITTEE HEARING ON THE DEFENSE OF MARRIAGE ACT, JULY 11, 1996

I am pleased to have the opportunity to speak to you today on S. 1740, the proposed Defense of Marriage Act. I will not address the issues of policy that are raised by S. 1740. Instead I will be speaking only to the constitutional issues, which are novel, complex, and somewhat technical.[1] Because of the novelty and complexity of the issues, any judgments on the constitutional issues must be at least a bit tentative.

To summarize my view: S. 1740 is unprecedented in our nation's history; it is probably either pointless or unconstitutional; and while the constitutional issues are far from simple, it is safe to say that S. 1740 is a constitutionally ill-advised intrusion into a problem handled at the state level.

S. 1740 responds to an old problem, not a new one, and that problem—diverse state laws about marriage has been settled for a long time without national intervention. Thus there is a reasonable view that S. 1740 is pointless; it adds nothing to current law. If S. 1740 is not pointless—if states must give full faith and credit to the relevant marriages—S. 1740 may well be unconstitutional. In the nation's history, Congress has never declared that marriages in one state may not be recognized in another; it has not done this for polygamous marriages, marriages among minors, incestuous marriages, or bigamous marriages. It is unclear if Congress has the authority to enact such a bill under the commerce clause, the full faith and credit clause, or any other source of national authority. In addition, S. 1740 raises serious issues under the equal protection component of the due process clause in the aftermath of the Supreme Court's recent decision in *Romer* v. *Evans.*

I. BACKGROUND: FEDERALISM AND RECOGNITION OF OUT-OF-STATE MARRIAGES

The impetus for S. 1740 is easy to understand. If one state—Hawaii—recognizes same-sex marriage, is there not a danger that other states, whatever their views, will be forced to accept same-sex marriages as well? Perhaps people will fly to Hawaii, get married there, and effectively ''bind'' the rest of the union to Hawaii's rules, forcing all states to recognize marriages that violate their policies and judgments. A national solution seems necessary if one state's unusual rules threaten to unsettle the practices of forty-nine other states.

This scenario is, however, unlikely, for the full faith and credit clause has never been understood to bind the states in this way. For over two hundred years, states have worked out issues of this kind on their own. It is entirely to be expected that in a union of fifty diverse states, different states will have different rules governing marriage. American law has carefully worked out practical strategies for ensuring sensible results in these circumstances, as each state consults its own ''public policy,'' and its own connection to the people involved, in deciding what to do with a marriage entered into elsewhere. In short: States have not been bound to recognize marriages if (a) they have a significant relation with the relevant people and (b) the marriage at issue violates a strongly held local policy.

Thus, for example, the first Restatement of Conflicts says that a marriage is usually valid everywhere if it was valid in the state in which the marriage occurred. But section 132 lists a number of exceptions, in which the law of ''the domicile of either party'' will govern: polygamous marriages, incestuous marriage, marriage of persons of different races, and marriage of a domiciliary which a state at the domicile makes void even though celebrated in another state. The Second Restatement of Conflicts, via section 283, taken a somewhat different approach. It says that the validity of a marriage will be determined by the state that ''has the most significant relationship to the spouses and the marriage.'' It also provides that a marriage is valid everywhere if valid where contracted unless it violates the ''strong public policy'' of another state which had the most significant relationship to the spouses and the marriage at the time of the marriage. Thus a state might refuse to recognize incestuous marriages, polygamous marriages, or marriage of minors below a certain age.

The two Restatements show that it is a longstanding practice for interested states to deny validity to marriages that violate their own public policy. Many cases have reflected a general view of this kind. See, e.g., *In re Vetas's Estate,* 170 P.2d 183 (1946); *Maurer* v. *Maurer,* 60 A.2d 440 (1948); *Bucea* v. *State,* 43 N.J. Super 815 (1957); *In re Takahashi's Estate,* 113 Mont. 490 (1942); *In re Duncan's Death,* 83 Idaho 254 (1961); *In re Mortenson's Estate,* 83 Ariz. 87 (1957). There is no Supreme Court ruling to the effect that this view violates the full faith and credit clause.

All this suggests that S. 1740 would respond to an old and familiar problem that has heretofore been settled through long-settled principles at the state level and without federal intervention. If some states do recognize same-sex marriage, the problem would be handled in the same way that countless similar problems have been handled, via ''public policy'' judgments by states having significant relationships with the parties. Different ''public policies'' will produce different results. This is consistent with longstanding practices and with the essential constitutional logic of the federal system. The greater irony is that the Hawaii legislature has recently made clear that a marriage is available only between a man and a woman, and hence there is no current problem that S. 1740 would address. I conclude that S. 1740 is constitutionally ill-advised because it intrudes, without current cause, into a traditional domain of the states.

If this traditional view is correct, S. 1740 is also pointless; it gives states no authority that they lack. But a lurking question remains: Why, exactly, does the full faith and credit clause not require states to recognize marriages celebrated elsewhere? The Supreme Court has not offered an explanation. Perhaps the answer lies in the fact that a marriage is in the nature of a contract, and hence it is not a ''public Act, Record, [or] judicial Proceeding'' within the meaning of the Clause. Perhaps the answer lies in the longstanding view that a state with a clear connection with the parties and strong local policies need not defer to another state's law. In either case there is no reason to enact S. 1740. But if the full faith and credit clause is interpreted to require states to respect certain marriages, and if S. 1740 negates that requirement, S. 1740 raises serious constitutional doubts.

II. CONGRESSIONAL AUTHORITY

Whether S. 1740 would be struck down as unconstitutional raised novel and complex issues. My conclusion is that no simple view

[1] I focus throughout on section 2. I do not believe that section 3 would be found unconstitutional, though it would be possible to raise questions under the equal protection clause, see *Romer* v. *Evans,* infra; see also W. Eskridge, ''The Case for Same-Sex Marriage,'' (1996); Kuppelman, ''Why Discrimination Against Lesbians and Gay Men Is Sex Discrimination,'' 69 NYU L. Rev. 197 (1994).

is plausible, and that in view of the fact that this sort of issue has always been handled at the state level, S. 1740 makes little constitutional sense.

(a) Full faith and credit

The purpose of the full faith and credit clause was unifying—the clause was designed to help create a ''United States'' in which states would not compete against one another through a system in which judgments could be made part of interstate rivalry. The clause's historic function is to ensure that states will treat one another as equals rather than as competitors. In this way, the full faith and credit clause is akin to the commerce clause, operating against protectionism, in which one state uses its power over its persons and territories to punish outsiders. See Jackson, Full Faith and Credit—The Lawyer's Clause of the Constitution, 45 Column L. Rev. 1 (1945).

For reasons just stated, the full faith and credit clause has not been understood to mean that each state must recognize marriages celebrated in other states. But does the full faith and credit clause authorize S. 1740 if it is understood to give states permission to ignore judgments by which they would otherwise be bound? This is not clear. An affirmative answer might be supported by the following language: ''And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the effect thereof.'' Perhaps Congress can say that some Acts, Records and Proceedings are of ''no effect.'' Perhaps Congress' power over ''the effect thereof'' means that Congress can decide which Acts, Records and Proceedings have ''effect.'' The question, then, is whether Congress may not only prescribe the manner of proof and also implement the clause by requiring ''effect'' upon certain proofs (what we might call the accepted ''affirmative'' power), but also say that certain Acts, Records, and Proceedings may be without effect when, in the absence of legislation, they would have effect (what we might call the ''negative'' power). Does the negative power exist, and how might it be limited? (Even if it does, Congress would have no power here if a marriage is not an Act, Record, or judicial Proceeding. I put that point to one side.)

This is a complex and difficult question, and no Supreme Court decision gives a clear ruling. A detailed historical study of the grant of power to Congress seems to suggest that the grant was designed to ensure that Congress could implement the full faith and credit clause by expanding the reach of state rules and judgments. That is because the clause has above all a unifying power. See Cook, The Powers of Congress Under the Full Faith and Credit Clause, 28 Yale LJ 421 (1919). In this view, the clause may well authorize Congress (for example) to make state judgments directly enforceable in other states, compel states to recognize rights created . . .

Mrs. BOXER. So one has to ask oneself, why are we doing this? I think the Washington Post today had an excellent editorial in which they say, ''Why is the Senate taking up this matter now?'' They also point out how this issue is years away—years away.

Well, I think we know why it is happening. It is election-year politics, and as one of the two Senators from California, I am not going to be part of that kind of politics.

As I said before, it is a preemptive strike on a nonexistent proposal. It is as if we decided, as a Nation, to bomb a country because we thought they were going to do something to harm us when, in fact, all they wanted to do is live in peace. Of course, America would never do such a thing. Why would we want to do it to a whole group of people?

I believe we are all Americans, Mr. President. I believe we do much better when we work together on issues, when we don't divide. If you read history books, you will see so many cases in history where a group of people is identified, and they are scapegoated, and they are treated differently, and they become nameless and faceless. It is what I call the politics of division, the politics of fear. I could never be associated with that kind of politics.

Mr. President, when I went into politics 20 years ago, I said to my constituents then—and I continue to tell them—that I would not always take the popular side of an issue. If I felt it was mean-spirited, I would come to the floor of whatever body I was in—and I have been in local government, I have been in the House, and now I am very fortunate to be in the greatest deliberative body in the world, the U.S. Senate—and say I felt the proposal was mean-spirited; it was scapegoating people, and I simply could not be a part of it. I think if I were to do that—and we all know what the polls show on this one—I think it would be an insult to my constituency and to me, and it would demean all of us, because I don't think that is why we get elected here. I think we get elected here sometimes to go against the wind. I think if we don't do that, it diminishes us.

Now, this vote isn't about how I feel on the issue of gay marriage. I think Senator JOHN KERRY said that very clearly. I have always supported the idea of communities deciding these issues without the long arm of the Federal Government. Many communities in my State recognize domestic partnerships for those who choose to make a commitment.

Frankly, I have to say, Mr. President, I haven't had one letter or phone call indicating that Congress should override these community decisions. So it isn't about how Senators feel on the issue of marriage or domestic partnerships. DOMA doesn't have anything to do with that. It certainly doesn't do anything, as I said, to defend marriages.

Now, we have read newspaper reports that the author of this bill on the other side happened to have been married three times. Now, I don't personally believe, if DOMA was the law, it would have had a difference on any of his marriages. Maybe he believes that, but I don't believe that is true. I believe if we were sincere and those of us who have long-term marriages would sit down and frankly discuss the stresses on our marriages and what needs to be done to defend our marriages, I don't believe we would list that our marriages are threatened by some community that is considering making domestic partnerships legal in their community.

So, to me, this is ugly politics. To me, it is about dividing us instead of bringing us together. To me, it is about scapegoating. To me, it is a diversion from what we should be doing. Why don't we use this time to pass President Clinton's college tax breaks, to ease the stress on our families today? Now, that would be defending marriage. That would be defending marriage. So by my ''no'' vote today, I am disassociating myself from the politics of negativity and the politics of scapegoating.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I am not positive if I heard my colleague from California correctly, but if you mentioned the sponsor of the bill has been married three times, I am the sponsor of the bill, and I haven't been married three times.

Mrs. BOXER. I said it was in the House. I meant the sponsor in the House.

Mr. NICKLES. I appreciate the correction, because I wasn't aware of that fact.

Mrs. BOXER. I said the sponsor of the bill in the House, clearly.

Mr. NICKLES. I yield 6 minutes to the Senator from Indiana.

Mr. COATS. Mr. President, I am pleased to rise today on the floor of the Senate, along with many of my colleagues, to support the Defense of Marriage Act. In doing so, I am reiterating my strong, unequivocal support for traditional marriage as a legal union between one man and one woman.

Marriage is the institution in our society that civilizes our society by humanizing our lives. It is the social, legal and spiritual relationship that prepares the next generation for duties and opportunities. An 1884 decision by the Supreme Court called marriage ''the sure foundation of all that is stable and noble in our civilization, the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement.''

I don't think anything has changed that would change that definition given by the Supreme Court more than a hundred years ago.

The definition of marriage is not created by politicians and judges, and it cannot be changed by them. It is rooted in our history, in our laws and our deepest moral and religious convictions, and in our nature as human beings. It is the union of one man and one woman. This fact can be respected, or it can be resented, but it cannot be altered.

I suggest that our society has a compelling interest in respecting that definition. The breakdown of traditional marriage is our central social crisis, the cause of so much anguish and suffering, particularly for our children.

Our urgent responsibility is to nurture and strengthen the institution of marriage, not undermine it with trendy moral relativism.

The institution of marriage is our most valuable cultural inheritance. It is our duty—perhaps our first duty—to pass it intact to the future.

Government cannot be neutral in this debate over marriage. It has sound reasons to prefer the traditional family in its policies. A social thinker, Michael Novak, has written:

> A people whose marriages and families are weak have no solid institutions . . . family life is the seedbed of economic skills, money habits, attitudes toward work and the arts of independence . . . parent-child roles are the absolutely critical center of social force.

So when we prefer traditional marriage and family in our law, it is not intolerance. Tolerance does not require us to say that all lifestyles are morally equal. It doesn't require us to weaken our social ideals. It does not require a reconstruction of our most basic institutions. And it should not require special recognition for those who have rejected that standard.

It is amazing to me—and I join Senator BYRD and others in this—and disturbing that this debate should even be necessary. I think it is a sign of our times and an indication of a deep moral confusion in our Nation. But events have made the definition of traditional marriage essential because the preservation of marriage has become an issue of self-preservation for our society.

We have a straightforward bill before us. We define ''marriage'' and ''spouse'' for the purposes of Federal law, and we ensure that no State will be required to give effect to a law of another State with respect to same-sex marriage. It is the reserve and the simplicity of the bill that I think ought to be commended. It does not overreach. It does not bring to bear the full range of authorities that Congress could invoke. Rather, it simply restates well-known and well-understood definitions and only legislates concerning a constitutional provision, the full faith and credit clause, which was to become the means by which same-sex marriages are promulgated throughout the States.

I'd like to discuss the two facets of the bill in greater detail. The definitions included in this bill for the words marriage and spouse are based on our common historical understanding of the institution of marriage, and simply state that marriage is the legal union between one man and one woman as husband and wife.

This definition is not surprising. But as Hadley Arkes wisely commented: ''in the curious inversion that seems characteristic mainly of our own time, the act of restating, the act of confirming the tradition, is itself taken as an 'irregular' or radical move. That we should summon the nerve simply to restate the traditional understanding is taken as nothing less than an act of aggression.'' But no act of aggression is being undertaken. Rather, the definition included in this bill merely restates the understanding of marriage shared by Americans, and by peoples and cultures all over the world.

The Defense of Marriage Act also legislates concerning the full faith and credit clause of the Constitution. Through this bill, Congress avails itself of the power reserved for Congress in the Constitution and ensures that no State be required to give legal authority to a relationship between two people of the same sex which is treated as a marriage under the laws of another State.

Let me be very clear. This bill does not outlaw same-sex marriages: it merely ensures that if one State makes same-sex marriages legal, no other State will be automatically required through the full faith and credit clause to uphold that marriage in their own State.

That is our prerogative. That is what we seek to do today, and that is what I believe we should do.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. COATS. I ask if I could have one more minute.

Mr. NICKLES. I yield the Senator an additional minute.

The PRESIDING OFFICER. The Senator is recognized for 1 minute.

Mr. COATS. As I said earlier, it is disturbing that the debate is necessary at all. I am thankful for the opportunity to discuss the importance of traditional marriage. For too long too many people have just assumed that marriage will survive whether or not it is encouraged, nurtured, or promoted.

The sad news is that the evidence is in. Marriage, like any other institution such as communities, churches, and schools, can suffer, and is, without the critical support of Federal, State, and local governments, communities, religions, and societal norms.

We need to begin a process of reminding ourselves what marriage is. We must tell our children what it means to be married. We must encourage young men and women to get married. We must help married couples to stay together when times are difficult. There is no longer any doubt that the slow demise of marriage in our country has been terribly harmful to children. It is time that we remind this country and ourselves how critically important heterosexual marriage is to a healthy society.

The Defense of Marriage Act is a wake-up call for our society. This bill gives us clear guidance as to the definition of marriage. It tells the States, clearly, that they are responsible for the marriages within their State. This bill ensures that States maintain the freedom to establish their own definitions and policies relating to marriage.

I encourage all of my colleagues to use this debate and the ensuing vote to make their support and belief of traditional marriage absolutely plain. Without a doubt, this vote is of the utmost importance to our children and to the very future of this country.

I thank the Senator from Oklahoma for the time.

Mr. NICKLES. Mr. President, I compliment the Senator from Indiana for his excellent speech, and I will yield the Senator from South Carolina 3 minutes.

Mr. THURMOND. I thank the Senator.

Mr. KENNEDY. Mr. President, if the Senator will yield for a question, are we going to have the opportunity of going back and forth? Perhaps after this we would have that chance to do it.

I appreciate it.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina [Mr. THURMOND] is recognized for 3 minutes.

Mr. THURMOND. Mr. President, I rise today as an original cosponsor and in support of the Defense of Marriage Act.

This needed legislation is a straightforward approach to protect the rights of the individual States to determine policy decisions appropriately within their borders. Simply stated, this bill provides that no State be required to recognize a same-sex marriage that may have been given effect in another State. Additionally, this bill reaffirms the 200-year-old Federal policy in this country concerning the use of the words ''marriage'' and ''spouse''—a marriage is the legal union of a man and a woman as husband and wife, and a spouse is a husband or wife of the opposite sex.

Mr. President, I can say without reservation that the fine people in my home State of South Carolina should not face the possibility of being forced to legally recognize same-sex marriages. This bill is needed to protect the right of every State to make their own determinations concerning the definition of a legal marriage.

Article IV, section 1 of the Constitution provides that full faith and credit be given in each State to the public acts, records, and judicial proceedings of every other State. Additionally, the Congress is granted the power to prescribe the manner in which State acts are given effect in other States. The Defense of Marriage Act is wholly consistent with the Constitution and protects the sovereignty of the States to make their own decisions concerning same-sex marriages.

Mr. President, I am amazed that we have reached the point in this country where the Congress must adopt this type of legislation to protect the sanctity of marriage. Because it is needed, I support the Defense of Marriage Act which reaffirms the notion of marriage as it has been recognized throughout 5000 years of civilization—marriage as a legal union between one man and one woman, as husband and wife.

Ms. MIKULSKI. Mr. President, I will vote for the Defense of Marriage Act. What this bill does is really quite simple.

It puts in the Federal law books what has always been the definition of a marriage—the legal union between one man and one woman. The bill also allows each State to determine for itself what is considered a marriage under that State's laws, and not to be bound by the decisions made by other States.

However, I would like to make some comments which I believe are important. First of all, I have been very concerned by the overheated rhetoric that has characterized the congressional and national debate on this issue. It has been divisive and much of it has been nasty and demeaning.

The last thing Americans need right now is another wedge issue. The last thing Americans need is an issue that turns us against one another, and that exacerbates bigotry and hate. It is time to stop the politics of hate. It might make for an exciting sound bite or a boost in the polls here and there, but it demeans us as a people. We are a better people than that.

We should recognize the politics behind this debate. It is an effort to make Members of Congress take an uncomfortable vote. It is an effort to put the President and Democrats on the spot, and at odds with a group of voters who have traditionally supported the President and the Democratic Party. I regret that. We owe it to the American people not to play politics with an issue as important as marriage.

My second point is this, and let me be very clear. I am against discrimination. My support for the Defense of Marriage Act does not lessen in any way my commitment to fighting for fair treatment for gays and lesbians in the workplace.

Later today we will have an opportunity to vote on legislation introduced by Senator KENNEDY, the Employment Nondiscrimination Act. This bill would end job discrimination based on sexual orientation. I am proud to be a cosponsor of this legislation and will proudly vote for it today. It is long overdue.

Mr. President, since I first came to the Congress I have made it a priority to fight to eliminate discrimination, whether it is discrimination on the basis of race, gender, disability or sexual orientation. Each of us deserves to be judged on the basis of our unique skills and talents and nothing else. Discrimination is wrong, plain and simple.

The Employment Nondiscrimination Act would extend Federal employment protections based on race, religion, gender, national origin, disability, and age to sexual orientation. In over 40 States, discrimination in employment based on sexual orientation is legal. Hardworking individuals can be fired from their jobs simply because of their sexual orientation.

And, as the law currently stands they have no legal recourse for discrimination based on sexual orientation. This amendment would extend the protections in title VII of the Civil Rights of 1964 and the Americans With Disabilities Act of 1990 to sexual orientation.

The Employment Nondiscrimination Act exempts from its coverage small business employing fewer than 15 people, private membership clubs, religious organizations, and education institutions controlled by religious organizations, as well as the Armed Forces.

Individuals should not be fired or denied a job simply based on their sexual orientation. Unfortunately, this kind of discrimination is rampant in both the public and private sectors. The extension of employment protections to sexual orientation is long overdue.

This is not about providing preferential treatment for any class of citizens. In fact, the Employment Nondiscrimination Act specifically prohibits preferential treatment.

The Defense of Marriage Act is about reaffirming the basic American tenet of marriage. The Employment Nondiscrimation Act is also about a basic American tenet—fairness. It is about fairness in hiring and fairness in treatment for people in their workplace.

I expect the Senate today will overwhelmingly approve the Defense of Marriage Act. And I support that. I hope that we will also pass—by an equally large margin—the Employment Nondiscrimination Act.

Mr. HATFIELD. Mr. President, today the Senate has before it an issue that has generated a great deal of debate across this Nation. I will support this legislation because I believe the question of State recognition of same-sex marriages must be resolved by each State individually, and not by one State on behalf of all others.

While the focus of this debate is whether members of the same sex may marry, the root of the matter is the full faith and credit clause of the Constitution, article IV, section 1. This clause provides that the States must recognize legislative acts, public records and judicial decisions of other states:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Marriages are commonly given full faith and credit by other States. At this time, no State allows same-sex marriages, and a number have specifically outlawed them. Hawaii now appears to be on the verge of such recognition. If Hawaii becomes the first to allow same-sex marriages, other States would be required to recognize and give full faith and credit to those marriages.

The Defense of Marriage Act has been introduced in response to this possibility. The bill would restrict the effect of any state law that allows same-sex marriages to that state only. By making an exception to the full faith and credit clause, this legislation would allow each State to decide this divisive issue on its own.

The issue appears to be: Which side of the argument should have the burden of proof? If Congress does not act, the burden would be on those in opposition to same-sex marriages to affirmatively block them on a State-by-State basis. If Congress passes this legislation, those in support same-sex marriages would have to win recognition of such marriages on a State-by-State basis.

I believe each State should determine this volatile issue on its own, after a thorough debate. Therefore, I will cast my vote in favor of H.R. 3396.

Mr. MURKOWSKI. Mr. President, I rise in support of the Defense of Marriage Act.

Throughout the history of our Nation, family law has always been the province of the States and not the Federal Government. For we are a nation founded upon the principals of States' rights and limited Federal intrusion. And that is why this legislation is appropriate. The Defense of Marriage Act will ensure that each State shall be free to do what it believes is fitting and proper in regard to domestic law, including the recognition of same-sex marriages.

By defining the term marriage, Congress is protecting the individual sovereignty of each State. No State will now be required to recognize a same-sex marriage—and no State will be prevented from recognizing a same-sex marriage. Passing the Defense of Marriage Act is the surest method of preserving the will and prerogative of each and every State.

Additionally, the ramifications of the absence of a definition of marriage in Federal law are becoming apparent. The court case in Hawaii has merely brought some of those ramifications to our attention.

The Defense of Marriage Act does not prevent same-sex marriages at the State level; it merely defines marriages for Federal purposes, thereby establishing legal certainty and uniformity in federal benefits, rights and privileges for married persons.

I also rise to comment on the Employment Nondiscrimination Act. There are obvious and serious problems in employment discrimination and on its face, this bill may appear to resolve some of those problems. However, I believe that this bill will only heighten employment problems and discrimination based on sexual orientation.

The Employment Nondiscrimination Act will directly threaten an individual's right of privacy, a right specifically protected in the Alaska State Constitution. This bill will make sexuality an issue in the workplace because it will enable employers to ask employees questions regarding their sexual orientation. Indeed, the bill will require employers to keep records as to the sexual orientation of each and every employee in the same manner that employers are required to maintain records on other protected classes

under title VII of the United States Code. The Employment Nondiscrimination Act represents Federal intrusion in an area that most believe warrants the highest level of privacy.

I urge my colleagues to support the Defense of Marriage Act and to oppose the Employment Nondiscrimination Act.

Mr. KEMPTHORNE. Mr. President, I rise today to express my strong support for the Defense of Marriage Act [DOMA]. The bill we consider today is an important step in defending States rights—as we have worked so hard to do throughout the 104th Congress—and in officially declaring the intent of Congress with regard to the issue of marriage.

Earlier this year, the State of Idaho took action on the issue of same-sex marriages. The State legislature, by a combined vote of 87 to 10, joined 13 other States in passing legislation which clearly declares that Idaho will not recognize same-sex marriages conducted in other States. Idaho has long prohibited same-sex marriages and should be allowed to ensure that, should such unions be approved elsewhere in the United States, Idaho's longstanding policy will not be changed. As the Idaho State Senate president pro tem stated when the bill was being considered, ''[W]e should not change policy which has been there for 100 years because some other State changes policy.'' I could not agree more. The people of Idaho should not be forced to accept same-sex marriages, in violation of the longstanding policy of the State, merely because some other State decides to do so.

DOMA, therefore, merely serves to confirm that Idaho may do what it has already done. Acting under the guidance of the ''Effects Clause'' of the Constitution, section 2 of DOMA clarifies that a State has the right to deny other States' marriages which violate the public policy of that State. Opponents of this legislation have claimed that this portion of DOMA is unnecessary, and indeed, they may be correct. The courts have already upheld cases in which polygamous or incestuous marriages were not acknowledged by States outside of the one in which the marriage was performed. The courts may very well find the same thing with same-sex marriages. If so, section 2 is at worst redundant. If not, then it is imperative for Congress to use its constitutional authority to ensure that States are not required to recognize a marriage which is in violation of the policies of that State.

Section 3 of the bill establishes the Federal definition of the terms ''marriage'' and ''spouse.'' There is nothing shocking here. Combined, these terms appear in nearly 4,000 places in Federal statutes and regulations, yet they have not been defined because State laws on marriage are so similar as to make such a definition unnecessary. DOMA takes the step to clarify the intent of these words, so the Federal meaning of these terms will not be changed even if a State should decide to radically alter its definition of ''marriage'' or ''spouse.''

Under the bill, marriage is defined as ''a legal union between one man and one woman as husband and wife,'' and spouse is defined as ''a person of the opposite sex who is a husband or wife.'' Looking at the definition of marriage and spouse in the States, this is clearly how these terms are intended to be defined. DOMA in no way prevents any State from using its own definition of these terms, but it does ensure that for Federal purposes, the definition will remain constant.

Mr. President, as part of the welfare reform bill which this Chamber overwhelmingly supported, we stressed the importance of marriage. The first two findings in the bill said, ''Marriage is the foundation of a successful society,'' and ''Marriage is an essential institution of a successful society which promotes the interests of children.'' What we are doing today is saying that we want to protect that institution. We want to maintain marriage as it has existed from the foundation of the United States, and, in fact, as it exists throughout the world today. Establishing a Federal definition of marriage and ensuring that States are not required to accept marriages which violate their public policies are modest, yet very important, parts of that process.

Mr. BURNS. Mr. President, as a cosponsor of the legislation now before us, H.R. 3396, the Defense of Marriage Act, I rise today to express my strong support of this bill. This straightforward legislation does just two things: First, provides that no State shall be required—I repeat, no State shall be required—to give effect to a law of any other State with respect to a same-sex marriage. Second, the Defense of Marriage Act defines the word ''marriage'' and ''spouse'' for purposes of Federal law. Though this bill is short in length—just 2½ pages in fact—it is long in substance.

As most of you are aware, the issue of same-sex marriages and consequently the introduction of the Defense of Marriage Act has come to the political forefront in part because of a 1993 Hawaii State Supreme Court decision. In the case of Baehr versus Lewin, the Hawaii State Supreme Court rules that the Hawaiian Constitution discriminates against the civil rights of same-sex couples by declaring that a legal marriage can only exist between individuals of the opposite sex.

In response to this decision,the Hawaii State Legislature has since indicated that the question of same-sex marriages is one of public policy and that the court therefore had no jurisdiction to decide the matter. The legislature has further held that the institution of marriage is inexorably linked with procreation and therefore may be validly limited to male/female couples.

Though Hawaii's Legislature has made it unmistakably clear that marriage is limited only to a man and a woman, the same-sex marriage issue still thrives in the Hawaii courts, and a lower court is scheduled to begin considering the issue this month. Should this court rule in favor of legalizing same-sex marriages, the repercussions of such a decision would have quite a legal effect.

Mr. President, because article IV, section I of the U.S. Constitution, requires that every State honor the ''public Acts, Records, and judicial Proceedings'' of every other State, the Hawaii court decision could potentially create a situation in which the remaining 49 States, including Montana, would have to recognize same-sex marriages if couples from or married in Hawaii move to another State. In addition, because there is currently no definition of marriage on the books, the Federal Government would be forced to recognize same-sex marriages for Federal benefit purposes. Since the word ''marriage'' appears in more than 800 sections of Federal statutes and regulations, and the word ''spouse'' appears more than 3,100 times, Federal benefits, such as Veterans, Health and Social Security, would all be subject to revision. Given the budget difficulties we are currently facing, it would be an understatement to say that this could have an enormous financial impact on our country. That troubles me deeply.

I know that there are people who are concerned that this bill will diminish the power of States to determine their own laws with respect to marriage. Now, let me say that anyone who knows me well, understands that I have always supported giving power back to the States. And I would have serious reservations about supporting this legislation if it mandated to the State of Hawaii, the State of Montana, or any other State for that matter what marriages they can legally recognize. As written, this bill in no way does that.

By adding a second sentence to article IV, section I of the Constitution that reads, ''And the Congress may be general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be approved and the Effect thereof,'' the Framers of the Constitution had the foresight to give Congress the discretion to create exceptions to the mandate contained in the ''Full Faith and Credit Clause.'' Therefore, the Defense of Marriage Act, as provided for by this exception, permits us to tackle the issue of same-sex marriages head on and, I am pleased to note, allows States to make the final determination concerning same-sex marriages without other States' law interfering. Let me say that another way. This bill will not outlaw same-sex marriages, it simply exempts a State from legally recognizing a marriage that does not fit its own definition of marriage. Under this bill, States will still be free to recognize gay marriages if they so choose. Under this bill, States will still be free to recognize

gay marriages if they so choose. That is the way it should be, individual States deciding what is best for themselves.

Beside protecting the right of States to set their own policies on same-sex marriages, the Defense of Marriage Act puts Congress on record as defining the word marriage as ''the legal union between one man and one woman as husband and wife,'' and the word spouse as ''a person of the opposite sex who is a husband or wife.'' This is not groundbreaking language. It merely restates the current understanding. This language reaffirms what Congress, the executive agencies, and most Americans have meant for 200 years when using the words marriage and spouse—that a marriage is the legal union of a male and female of certain age in a holy estate of matrimony.

Mr. President, numerous polls show that the majority of American people, no matter their religious belief, clearly support protecting the sanctity of marriage. As a Nation we understand that the institution of marriage sets a necessary and high standard. Though most of us agree that everyone should have the right to privacy, most Americans believe the institution of marriage should be cherished and respected and so do I.

Although I know that this bill will not solve the problems that take place within individual marriages—particularly in light of statistics showing that one out of every two marriages in this country now ends in divorce—this legislation reaffirms that marriage between one man and one woman is still the single most important social institution. Marriage and the traditional values it represents is the heart of family life and has been shown to promote a healthy and stable society. Principles we sorely need to uphold in our country today.

Mr. President, at a time when it is becoming the exception, we have an opportunity today to reaffirm our commitment to the traditional two parent family. And I want to take a moment to thank all of those on both sides of the aisle who have worked so hard to bring this legislation to this point. I particularly want to commend Senator NICKLES for leading the way on this issue. On that note, because of Senator NICKLES efforts, and with the overwhelming support this bill received in the House earlier this summer, it looks as though we are going to see our way clear and pass this bill through Congress.

In closing, Mr. President, a number of my colleagues have delivered sound and eloquent arguments both in support of and in opposition to this bill today. I truly believe they do so with the most honorable of intentions. Let me remind my colleagues on both sides of this issue, however, that we are not the only voices speaking today. I have received literally thousands of letters and phone calls asking me to uphold the institution of marriage by voting for this legislation. I am sure many of my colleagues here in the Senate have as well. I trust you will listen to those voices.

Though I am fully aware that a vote for the Defense of Marriage Act will provide a reason for some to label me as intolerant, a bigot or uncompassionate—which I might add is not true—I am going to vote to send this bill to the President. I strongly urge my colleagues in the Senate to do the same. Thank you Mr. President.

I yield the floor.

Mr. FAIRCLOTH. Mr. President, I strongly support passage of the Defense of Marriage Act. It defies common sense to think that it would even be necessary to spell out the definition of ''marriage'' in Federal law. Yet it has become necessary, because what used to be a matter of self-evident truth has now become a topic of debate. The Defense of Marriage Act would make that definition clear, and it would protect States from being forced to recognize same sex unions recognized as marriages in other States.

Now, I don't claim to be an expert on what marriage is. But I think I can fairly confidently say what it should not be. First, it should not be simply a convenient arrangement that can be entered into or dissolved for frivolous reasons. Marriage forms families, and families form societies. Strong families form strong societies. Fractured families form fractured societies. So all of us have an interest in seeing that strong families are formed in the first place.

Same-sex unions do not make strong families. Supporters of same-sex marriage assume that they do. But that assumption has never been tested by any civilized society. No society has ever granted same-sex unions the same kind of official recognition granted to marriages, and for good reason.

In addition, marriage most certainly should not be just another means of securing government benefits. Yet this is one of the arguments that proponents of same-sex marriage use to justify this unprecedented social experiment. They claim that laws restricting marriage to persons of the opposite sex are discriminatory in part because, after all, same-sex partners are not entitled to health and other benefits extended to dependent spouses. I can think of few worse reasons for getting married. And I can think of few worse times to talk about creating yet another entitlement to government benefits.

Mr. President, some 15 States—including my State of North Carolina—have passed similar legislation clarifying the definition of marriage. Governors of several States have signed executive orders. And legislation is pending in some 20 other States. Even in the State of Hawaii—where a pending court case is helping drive this debate—the legislature has declared that marriage is defined as a legal union between one man and one woman.

Whatever happens in Hawaii, other States should not be forced to recognize same-sex relationships as marriages. This legislation would protect States rights to set standards in this area.

It is high time Congress spoke on this issue. I intend to vote for passage of the Defense Marriage Act, and I strongly urge my colleagues to do the same.

Thank you, Mr. President.

Mrs. FEINSTEIN. Mr. President, I rise to address the legislation under consideration, the Defense of Marriage Act.

Proponents claim Congress needs to act swiftly to thwart an impending ''threat against the family.''

Let's put this in perspective.

Nearly 4,000 people have been killed in Los Angeles County alone in the last 5 years from gang-related violence. Criminal gangs are operating in more than 93 percent of American cities today. Children are being recruited to their death by gangs who prey on juveniles to do their bidding.

This is a threat against American families.

More than 10,000 people were hospitalized from methamphetamine abuse in California in 1994. Methamphetamine-addicted babies now outnumber crack babies in some hospitals.

And more than 1,000 toxic meth labs in California alone remain a public health threat because local jurisdictions don't have enough money to clean them up.

This is a threat against American families.

Right now, as we speak, some 15-year-old girl is dropping out of high school somewhere because she is pregnant, unmarried and unable to finish school. Teenage pregnancy is still at epidemic proportions in this country.

This is a threat against American families.

If we had our priorities straight, we'd be voting on legislation addressing these issues today instead of this bill.

Having said that, let me address the merits of the legislation before us.

I personally believe that the legal institution of marriage is the union between a man and a woman. But, as a matter of public policy, I oppose this legislation for two reasons: One, I believe it oversteps the role of Congress—setting a very bad precedent and perhaps even being unconstitutional; And Two, I believe it is unnecessary.

OVERSTEPS THE ROLE OF CONGRESS AND SETS A BAD PRECEDENT AND MAY BE UNCONSTITUTIONAL

I understand that the issue of same-sex marriage is one that generates strong feelings, and that an overwhelming majority of Americans are opposed to its legalization. That's why no State has, to date, ever sanctioned such unions.

But, even though some people hold deep moral convictions in opposition to the idea of same-sex marriage, and however substantial the majority opinion might be on this issue, Federal legislation is not the answer. In this case,

this bill will do nothing to settle the question of whether same-sex marriages ought to be recognized.

It will only add fuel to an already divisive and mean-spirited debate—a debate conspicuously timed to coincide with the upcoming elections. It will only perpetuate more litigation and more controversy. It will only generate more division. And, worst of all, it sets this Nation on the slippery slope of transferring broad authority for legislating in the area of family law from the States to the Federal Government.

To my knowledge, never in the history of this Nation—for over 200 years—has Congress usurped States' authority to define marriage or delineate the circumstances under which a marriage can be performed.

If Congress can simply usurp States' authority to determine what the definition of marriage is, what is next? Divorce? Will we tell States they are not required to recognize divorce judgements they disagree with?

Should the Federal Government have the power to decide it won't recognize a second or third marriage?

How about age? Will the Federal Government determine at what age a person is permitted to marry?

Whether one accepts the idea of same-sex marriages or not is not the central issue here. The legislation before us will not prevent States from recognizing same-sex marriages. The issue before us is whether we want to inject the Federal Government into an area that has, for 200 years, been the exclusive purview of the States.

Proponents argue that Congress' authority to legislate in this area comes from the Constitution's full faith and credit clause. However, this is a pretty exotic interpretation of Congress' authority under that clause. Congress, in it's 200-year history has never once used the full faith and credit clause to nullify rather than implement the effect of a public act or judgment by a State.

In fact, this bill would turn the full faith and credit clause on its head. If Congress enacts this bill, the consequences could reach into many other areas of law and interstate commerce.

University of Chicago Law Professor Cass Sunstein said it best in testimony before the Senate Judiciary Committee:

> Under the proponents' interpretation, Congress could simply say that any law that Congress dislikes is of no effect in other States. There are interest groups all over the Nation who would be extremely thrilled to see the possibility that Congress can nullify the extraterritorial application of one State's judgments that it dislikes. Californian divorces, Idaho punitive damage judgments, Illinois products liability judgments—all of them would henceforth be up for grabs.

There is also the question of whether or not Congress has the authority to single out one class of people to impose such a broad disability on. It raises the question of whether this law would stand up to constitutional scrutiny under the equal protection clause.

LEGISLATION IS UNNECESSARY STATES ALREADY HAVE THE POWER NOT TO RECOGNIZE OUT OF STATE MARRIAGES

Even if Congress has the constitutional authority to grant itself this broad new power, there is nothing in our Nation's history to suggest that this law is necessary.

Whether or not to recognize an out-of-State marriage is not a new issue. It is quite old. And one which States have dealt with quite frequently without Federal legislation. There are volumes of cases involving incest, polygamy, adultery, minors and more, where the States have grappled with these issues successfully without the Federal Government.

According to conflict-of-laws doctrine, States may already refuse to recognize out-of-State marriages when the marriage violates that State's public policy. For example, expressions of public policy may be found in State statutes, State case law, or pronouncements by State attorneys general.

Section 283 of the Restatement of Conflicts of Law states:

> A marriage which satisfies the requirements of the state where the marriage was contracted will everywhere be recognized as valid, unless it violates the strong public policy of another state which had the most significant relationship to the spouses and the marriage at the time of the marriage.

A host of State court decisions dating back to the 1880's demonstrate States ability to invalidate out-of-State marriages on public policy grounds.

For example, many States differ in what age they allow a person to enter into a marriage contract. Some States allow people to marry as young as 14. Other States do not permit such marriages or require parental consent.

State courts have made determinations on what marriages they will recognize based on their own public policies regarding age and other issues:

In Wilkins versus Zelichowski, a New Jersey court use public policy grounds to annul a marriage performed in Indiana involving a female under the age of 18.

In Catalano versus Catalano, a Connecticut court invalidated a marriage between an uncle and his niece declaring that ''[a] state has the authority to declare what marriages of its citizens shall be recognized as valid, regardless of the fact that the marriages may have been entered into in foreign jurisdictions where they were valid.''

In Mortenson versus Mortenson, an Arizona court applied the public policy exception to void a marriage performed in New Mexico between two first cousins.

STATES ARE ALREADY LEGISLATING IN THIS AREA

States are no less capable of dealing with the issue of same-sex marriages than they have been with other marriage issues. In fact, 15 States already have passed legislation either banning same-sex marriages or prohibiting the recognition of out-of-State same-sex marriages. Many others have or are currently considering similar legislation.

Many States already have statutes or case law reflecting State policy toward same-sex marriage. California law, for example, limits marriage to a ''civil contract between a man and a woman,'' and has considered State legislation against recognition of out-of-State same-sex marriages.

The bottom line is, States have the authority to do what this legislation would do without Federal intervention, and should be left alone to deal with these issues according to their own laws and constitutional parameters.

I would be the first to say, that, if one State decides to recognize same-sex marriages, and if any other State is forced to recognize same-sex marriages against their own public policy as a result, then Federal legislation would be a reasonable course of action.

But, at the very least, Congress should wait until the Hawaii case works its way through the courts—which by all estimates could be several years away from final resolution—before entering into this fray and further complicating the legal issues involved.

For a Congress whose mantra has been returning power to the States, this legislation, it would seem, is a serious retreat from that idea, giving broad new power to the Federal Government in an area historically left under State control. I hope my colleagues will consider this and vote no on this bill.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. ASHCROFT). Who yields time?

Mr. KENNEDY. Mr. President, I yield 7 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. I thank the Senator. Let me say in regard to the Defense of Marriage Act, I agree with my colleagues who have risen and raised questions as to the motivations of why this legislation is before us. It is clearly, in my view, premature.

I hope, because this so-called Defense of Marriage Act is going to pass, that for those who claim they truly want to protect domestic relationships, partnerships that are not the traditional marriage relationships, we will consider that so that the protections in hospital rooms and other places where domestic partnerships are denied today is something all of us will determine we are going to resolve.

I do want to use this time, because I think we are on the brink, Mr. President, of adopting historic legislation in the midst of all of this, to speak in behalf of the Employment Nondiscrimination Act. I commend my colleagues, Senator KENNEDY of Massachusetts, my colleague from Connecticut, Senator LIEBERMAN, and Senator JEFFORDS from Vermont for their leadership on this issue. I am urging my colleagues to support the Employment Nondiscrimination Act.

The history of our country thus far has been a history of the gradual extension, refinement and perfection of the guarantees of human freedom. By removing the denials of freedom experienced by some Americans, we are strengthening and giving greater validity to the freedom of all Americans.

Mr. President, those words were spoken by another Senator from Connecticut 32 years ago during the consideration of the landmark 1964 Civil Rights Act. Those words were spoken by my father in this Chamber. I believe those words are as germane today as they were when they were uttered 32 years ago. Over our entire history, this Congress and this Nation embarked on a quiet but monumental revolution, and that was to realize the full aspirations of our Founders that all men and women are truly created equal.

Throughout our history, Americans have strived to extend those rights to all Americans regardless of their skin color, religion, gender, disability, or political belief. But today, one group of Americans continues to be left unprotected in the workplace. That is gay and lesbian Americans. The Employment Nondiscrimination Act would go a long way toward extending greater equality to these Americans and ensuring them that they will be judged more by the strength of their labors than by their sexual orientation.

Much has changed in the 30 years since my father and others fought to enact civil rights legislation. At the time it was a controversial notion. It inflamed great passions. It tied up this body for weeks on end, the very notion that we would not be allowed to discriminate against people based on the color of their skin.

Today, I would suggest that if we were considering the 1964 Civil Rights Act, a resolution would be carried on a voice vote unanimously without any debate and any division. That was not the case 32 years ago. But for the reasons that I believe have more to do with intolerance and ignorance and moral courage, this country continues to allow gay and lesbian Americans to be judged not by their abilities or even the content of their character but by the prejudice of others. The amendment we are considering today is a commonsense response to this outrage. I hope we all want to say to gay Americans that when you are on the job in this country, you will be judged in the same manner that any American will be judged. The American people know this is the right thing to do. In fact, 84 percent of Americans believe that employers should not be allowed to discriminate based on sexual orientation.

Prominent business leaders, from Xerox, Microsoft, and RJR Nabisco, support this legislation. In fact, more than 650 private businesses include sexual orientation in their antidiscrimination policies. Political leaders past and present are also behind this effort.

From our former colleague, the Senator from Arizona, Senator Goldwater, to civil rights leader Coretta Scott King, the Governor of New Jersey, Christine Todd Whitman, and more than 30 Senate Democrats and Republicans—they all urge the adoption of this amendment. In fact, ironically, 66 of us in this body—66 of us, and 238 House Members, already have nondiscrimination policies for their employees. If just 66 in this body would ask the country to do what they do in their own offices, then we can adopt this legislation.

In my home State of Connecticut we have such protection for gay and lesbian workers. Has our business community suffered untoward consequences? Has the moral character of our State been dramatically harmed? Has Connecticut been overwhelmed by an onslaught of litigation? Have quotas been established for hiring gay workers? All of these issues have been raised in this body over the last several days, and to every one of them the answer in Connecticut has been ''no.'' And in every other State where this has been adopted, the answer has been ''no.'' In fact, Connecticut's antidiscrimination law is considered a success in providing recourse for those Americans affected by antigay bias, in giving them the guarantee they will be judged by the abilities of their labor and not their lifestyles.

In my view, this debate is behind the curve of where the American people are on this issue. The business community and the vast majority of American people recognize that gay Americans deserve and should be treated equally in the workplace. I believe this Congress must follow their lead. It is never a happy event when an American loses his or her job. It is particularly difficult when it is because of events out of one's control, such as downsizing, layoffs, companies moving offshore. We all understand the pain that people go through when they lose their jobs because of those circumstances.

But I can imagine few things worse than for one to lose a job because of the intolerance of others, and that is what exists today in the workplace. Rightly, we have acted to combat these wrongs when they are committed against people because of race, gender, age, and disability. I believe we must take this opportunity to extend that protection further to gay and lesbian Americans.

I urge all of my colleagues to join us in supporting this bill and providing to gay Americans the protections against job discrimination they so desperately need and deserve.

I thank my colleague from Massachusetts.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, how much time remains?

The PRESIDING OFFICER. There remain 7 minutes and 11 seconds.

Mr. NICKLES. I yield the Senator from Kansas 5 minutes.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mrs. KASSEBAUM. Mr. President, I would like to speak for just a few moments on the Defense of Marriage Act. I will speak in support of it. But it is an issue relating to marriage that I think is one that is an example of where divorce and related domestic matters have traditionally been subject to State law. I believe they should remain so.

Same-sex marriage is a concept with which few Americans are comfortable, and I do not believe that the judgment of one court in a single State should hold sway over the rest of the Nation. States should have the ability to disregard same-sex marriages if they so choose, and this legislation would permit them to do that.

Many aspects of this debate are troubling, as it touches not only on questions of law and the Constitution, but also on deeply held personal views about values, cultural traditions, and religion. As legislators, we are not always adept at debating matters such as this, and we find ourselves on far less comfortable ground in debating Federal legislative approaches to highly personal matters. We are more adept at debating matters of law and policy. But here I think we are on uncertain territory, and we have had already differing views expressed during the course of this debate.

Unfortunately, such debate sometimes occurs in an atmosphere of rigidity and intolerance. They are not dialogs aimed at reaching any sort of understanding but, rather, become shouting matches, which can happen in the public arena in our own States, not aimed at reaching any sort of understanding, in which each side becomes securely stationed behind its line in the sand. The terms of engagement are set by extremists at both ends. I have been picketed by both sides, out in my own State, in Kansas.

The debate over this legislation has been no exception. Nothing will make the issues any easier, but no purpose is served by abandoning civility and a respect for differing viewpoints in the process. Nor should we forget that at the heart of the debate over homosexuality are individual Americans. An abstract subject takes on different dimensions when given the face of a friend, a family member, a coworker. The things we all hold dear—family, friendships, a job, a home—present a unique set of challenges for the gay community. It should come as little surprise that, like anyone else, gay men and women would like to live their lives without being defined only by their sexual orientation.

Shortly after the August recess, I visited with a young man from Kansas who made a strong plea in opposition to the Defense of Marriage Act, arguing that fear was the driving force behind the measure. Although I was not persuaded to change my position on the legislation, I was deeply moved by his very genuine desire to move the debate beyond stereotypes and unchallenged assumptions.

Congress is not the ideal forum for the resolution of these issues, nor will

any piece of legislation settle them. However, the tone we set in our deliberations is one which will be echoed around kitchen tables and worksites throughout the Nation. Let that tone be one which honors our democratic traditions of reasoned debate, responsible decisionmaking, and respect for all individuals.

I yield the floor.

Mr. KENNEDY. I yield 7 minutes to the Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, the legislation before this body obviously touches upon a deeply personal and emotional area. The institution of marriage is a vital foundation of any ordered society including this one. However, I think it is important amid a great deal of talk about the need to defend marriage, that we look at the context in which this legislation is brought before this body.

As a member of the Senate Judiciary Committee, I recently had an opportunity to attend a hearing on this legislation and review the arguments made by both sides. Based upon that record, it was obvious that both sides feel very strongly about the positions they hold. However, having reviewed the arguments, I have reached the conclusion that this legislation is neither necessary nor appropriate for the Federal Government to enact at this time.

First, it is not clear that this is even an appropriate area for Federal legislation. Historically, family law matters, including marriage, divorce, and child custody laws, have always been within the jurisdiction of State governments, not the Federal Government. Throughout my tenure in this body, I have opposed legislation which needlessly extends Federal jurisdiction into issues that have traditionally been the domain of the State and local governments. For this reason, I opposed crime legislation that expanded Federal law enforcement into areas traditionally handled by the State and local law enforcement. Similarly, I opposed efforts to federally mandate helmets for motorcycle riders, because I believed that States should retain that authority. This legislation is yet another example of a continuing trend of the Federal Government needlessly injecting itself into areas of the law which have been historically left to the States.

Second, and perhaps more telling, the alleged urgency of this Federal intervention is wholly unwarranted. The simple and undeniable fact is that no State currently recognizes same-sex marriage, nor does it even remotely appear that any State legislature may be contemplating doing so. While some of my colleagues voice a concern over a court case in the State of Hawaii, resolution of that trial will not determine this matter with any finality. There will be a series of appeals, no doubt. Even if the Hawaiian State courts find the Hawaiian constitution compels recognition of same-sex marriage, final resolution of this issue is at least a couple of years away. Somehow, this is still deemed a priority in the waning days of the 104th Congress. It is ironic that this Congress would set aside time needed for addressing issues such as the Chemical Weapons Treaty and funding for Head Start, to address a perceived problem which does not exist today and will not exist, if ever, for at least 2 years.

And this is from the same Congress that, for the second year in a row, will likely fail in its fundamental responsibility to pass all of the appropriations bills necessary to keep the Government operating. The same Congress that stalled passage of health insurance reform for nearly 9 months and took nearly as long to give the working families of this Nation a much-deserved and overdue raise in the minimum wage has somehow made this issue a priority.

Mr. President, even at some point in the future the Hawaiian State courts reach the conclusion that same-sex unions must be recognized under their constitution, there is a great deal of uncertainty as to what effect, if any, that decision might have on other States.

Legal opinions vary on this, but there is plenty of legal opinion that the States simply would not be compelled to give recognition to these marriages from other States. A number of legal scholars believe that States already have the authority, under traditional conflict of laws doctrines, to refuse to recognize marriages which are contrary to their own laws or public policy. If this is the case, States do not need the Federal Government granting them permission to exercise a right which they already hold. Until that view is resolved differently, it seems to me we should defer to the power of the States to address this issue on their own.

Some scholars believe that States would be compelled to recognize these unions by the full faith and credit clause of the U.S. Constitution, irrespective of this statutory effort to say otherwise. And still others oppose this bill because it, seemingly for the first time, assumes that Congress has the power to determine the applicability and scope of the full faith and credit clause, a position which would signal a significant change in the traditional application of this provision.

The degree of uncertainty surrounding the constitutional implications of this legislation is striking. That uncertainty, coupled with the fact same-sex marriage is not legal anywhere in this country, suggests to me we should move with caution. It is far more prudent, in my opinion, given the personal and divisive nature of this issue, to wait until a real, not a speculative, conflict arises between the States.

So, in my opinion, this legislation is unwarranted. Congress and the American people face many pressing challenges, challenges we all heard so much about at the recent conventions, challenges ranging from the need to reduce the Federal deficit to increasing educational opportunities and job security for all Americans and preventing the spread of drugs and crime in our country. Real problems which affect the lives of millions of Americans today.

(Mrs. KASSEBAUM assumed the chair.)

Mr. FEINGOLD. Madam President, I cannot think of a lower priority for the Federal Government than to spend this time interfering with the private laws of law-abiding citizens. Before we endeavor to address problems which do not even exist, we should dedicate ourselves to solving those that do. The people of this Nation expect and deserve nothing less, and, therefore, Madam President, I will oppose this legislation.

EMPLOYMENT NONDISCRIMINATION ACT

Let me say with regard to the ENDA bill, that is a piece of legislation I will support and cosponsor. It does, in fact, deal with a real problem in this country, unlike the DOMA legislation, and I hope that we have a strong positive vote of putting the Senate in favor of ending discrimination in that area.

Mr. President, I rise today to offer my strong support for the Employment Nondiscrimination Act. I want to commend my colleague from Vermont, Senator JEFFORDS, and my colleague from Connecticut, Senator LIEBERMAN, as well as my colleague from Massachusetts, Senator KENNEDY, for their dedication to bringing this important piece of legislation before this body and to the attention of the American people. I am a cosponsor of this legislation and believe it should be adopted for very simple, but important and fundamental reasons.

Mr. President, there can be no doubt that the history of this Nation is marked by our continuing efforts to stop discrimination—be it in the workplace, in our schools, or in our places of public accommodation. It is also equally true that this Nation's history is marked by the simple notion that if one works hard and keeps their nose to the grindstone, then they too may share in the American dream. Yet, in this country today, these simple but important foundations of our culture are denied to gay and lesbian Americans for no other reason than that they are in fact, gay or lesbian.

Mr. President, this legislation would attempt to stop that practice and prohibit employment discrimination against individuals because of their sexual orientation. To date only nine States, including my home State of Wisconsin, have passed comprehensive legislation to ban employment discrimination based on sexual orientation. In the 41 remaining States, however, it is permissible to discriminate against a worker based upon that workers sexual orientation irrespective of their qualifications, dedication to their job, or work performance.

What this legislation would do is to simply ensure that basic American

right to fair and just treatment in the employment arena cannot be denied based solely upon a person's sexual orientation. It provides, in essence, the right for gay and lesbian workers to be treated like everyone else—to be judged on the merits of one's contributions, not their sexual preference.

Mr. President, it is essential to note that this bill confers no special or preferential rights upon gays and lesbians. It exempts small businesses, the military, and religious organizations and explicitly prohibits preferential treatment, including quotas. The focus of this effort is directed at stopping employment discrimination which exists today. The discrimination targeted by this measure is real. It is not speculative or merely a possibility at some point in the future—it is, in fact, occurring today. If this Nation is to reach its full potential in these ever changing economic times, then we must acknowledge and welcome the contribution of all hard-working Americans in the workplace. The Employment Nondiscrimination Act does just that. It is a sound, and in my view, necessary step to helping ensure the opportunity for millions of Americans to earn a living free of the fear of discrimination. It has the support of Members of both political parties, church and civic leaders, the President, as well as major corporations—corporations which know first hand the value of a discrimination free workplace. We should learn from their experiences.

The notion that someone could be fired solely because they are gay or lesbian should be offensive to each of us. Just a few weeks ago, for 8 days of political conventions, both major political parties spent countless hours in a battle to seem more inclusive, more tolerant, more fair than the other. This legislation offers Members of both parties a legitimate opportunity to move from rhetoric into action and provide gay and lesbian Americans the opportunity to work and earn a living free of the fear of losing their jobs solely because of their sexual orientation.

The very premise of job discrimination contradicts traditional American values and we must do all we can to stop it. We should adopt this legislation.

I thank the Chair.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Madam President, how much time remains on both sides?

The PRESIDING OFFICER. There are 3 minutes for the Senator from Oklahoma and 29 for the Senator from Massachusetts.

Mr. NICKLES. Madam President, I ask unanimous consent for an additional 2 minutes and recognize the Senator from Missouri for 5 minutes.

Mr. KENNEDY. I object, unless we have 4 minutes equally divided.

Mr. NICKLES. I ask unanimous consent both sides have an additional 2 minutes.

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

Mr. NICKLES. I yield 5 minutes to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. Madam President, I thank the Senator from Oklahoma.

I am grateful for this opportunity to rise in support of this legislation, known as the Defense of Marriage Act. I believe it is important for us to outline exactly what this bill would do and what it would not do, because in much of the discussion, it is portrayed as a measure which would overrule State laws and somehow snatch from States the capacity for defining what a marriage is within the State.

The truth of the matter is, this would not change the capacity of States to define for their own purposes the nature of marriage in any State in America. It would define, for purposes of the Federal Government, what constitutes a marriage. And that is very important, because unless we have a Federal definition of what marriage is, a variety of States around the country could define marriage differently—they have not to date—and if they were to define marriage differently, people in different States would have different eligibility to receive Federal benefits, which would be inappropriate.

It has been said that it is not important to do this because there have not been any States making these changes. I think it is pretty clear that it is important to do this because States are on the brink of making such changes, one State's law having been stricken by its highest court on the basis that it was unduly discriminatory.

Let me just indicate that as long ago as in the 1970's, a male demanded increased educational benefits from the U.S. Government when he claimed that another male individual was his dependent spouse. The Veterans' Administration turned him down, and the Veterans' Administration was sued. The outcome turned on a Federal statute that made eligibility for the benefits contingent on his State's definition of ''spouse'' and ''marriage.''

If the definition is different in one State for Federal benefits than it is in another State, we will find that States will be able to accord benefits to citizens in a way which is irrational and inconsistent, giving citizens of one State higher benefits or different benefits than citizens of another State.

It is time for the Federal Government to define what a marriage is for purposes of Federal benefits which, obviously, come at the expense of the taxpayers of this country. It is not unreasonable at all, for purposes of Federal benefits, whether it is Social Security, education benefits, or veterans benefits of one kind or another, for this Congress to say these are the conditions under which those benefits flow. They should be uniform for people no matter where they come from in this country. People in one State should not have a higher claim on Federal benefits than people in another State.

For that reason, it is entirely appropriate for us, as a Congress, to say that we want a Federal benefits structure that follows a uniform definition of ''marriage,'' and for purposes of the Federal benefits program, we have this definition, and that is what this law provides.

Second, this law then says that a State will not be required to recognize another State's definition of marriage if that includes individuals of the same sex. Now, every State has benefits that flow to those who are married. It comes from the fact that there are real societal and social benefits to marriages. Marriages bring children into the world. That is the next generation.

Unfortunately, it is the young people who defend the country when we are assaulted from abroad. And if you don't have children who grow up to be in the work force, who pays for the retirement of those who have already retired? We have set up our society on the basis of children who come into the world, and we honor the institution that brings children into the world and gives them values, by according special standing to marriage. That is not only done at the Federal level, which we already have addressed, it is done in every State in America.

A State ought to be able to say you are going to get these benefits if you are in this category, if you meet this definition of marriage. But if we use the term marriage in one State and then we allow another State to define it as something entirely different than what the first State which was developing the benefit structure intended, we have really allowed one State to define for other States what will be the qualifying characteristics for their laws and their benefits.

It is clear to me that a State should have the right to say that these are the characteristics of the relationship which will result in our State according you either the deduction or the special benefit, whether it relates to taxes or education or inheritance or the like. States should have the right to do that on their own terms.

So this proposal simply defines, in a uniform way for Federal benefits, the nature of what a marriage is, and it says that no State shall be able to impose its definition of marriage on other States.

I thank the Chair.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. KENNEDY. Madam President, as I understand it, now there are 31 minutes remaining for our side?

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. Madam President, I yield 20 minutes to the Senator from Virginia, 6 minutes to the Senator from Nebraska, and 5 minutes to the Senator from Oregon.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. ROBB. Mr. President, as one who represents a traditionally conservative State, it's not easy to take on this issue. In fact, many of my friends and supporters have urged me to sit this one out because of the potential political fallout, but I can't do that. I feel very strongly that this legislation is fundamentally wrong—and feeling as I do I would not be true to my conscience or my oath of office if I failed to speak out against it. I believe we have an obligation to confront the very real implications of the so-called Defense of Marriage Act.

Despite it's name, the Defense of Marriage Act does not defend marriage against some imminent, crippling threat. Maintaining the freedom of States to define a civil union or a legal right to benefits cannot—and will not—harm the strength and power of marriage. Neither can it diminish the love between a husband and a wife, nor the devotion they feel toward their children.

Whether the Government should give official sanction to same-sex relationships does raise some extremely difficult issues, Mr. President—issues of morality, of religion, of child-bearing, of marriage and of the intimacies of life. But this legislation is not really about these difficult questions of domestic relations. As a constitutional matter, it is about placing the Federal Government in the midst of an issue firmly and historically within the jurisdiction of our States. And as a political matter, it is about denying a class of people benefits that no single State has yet conferred.

This bill also raises fundamental questions about the nature of our Federal system of Government, including the powers of the States under our Constitution and the scope of the full faith and credit clause. I believe the full faith and credit clause does not enable one State to legislate for another, and so the States don't need the protection of a Federal statute in this case. I also believe that it's inappropriate for the Federal Government to get involved in defining marriage—something States have done for themselves throughout our history.

These are important issues, Mr. President, and they deserve a full discussion, but they are not the issues that make this debate so difficult—or so important.

For beneath the high-minded discussions of constitutional principles and States rights lurks the true issue which confounds and divides us: the issue of how we feel about intimate conduct we neither understand nor feel comfortable discussing.

Mr. President, scientists have not yet discovered what causes homosexuals to be attracted to members of their own sex. For the vast majority of us who don't hear that particular drummer it's difficult to fully comprehend such an attraction.

But homosexuality has existed throughout human history. And even though medical research hasn't succeeded in telling us why a small but significant number of our fellow human beings have a different sexual orientation, the clear weight of serious scholarship has concluded that people do not choose to be homosexual, any more than they choose their gender or their race. Or any more than we choose to be heterosexual. And given the prejudice too often directed toward gay people and the pressure they feel to hide the truth—their very identities—from family, friends and employers, it's hard to imagine why anyone would actually choose to bear such a heavy burden unnecessarily.

The fact of the matter is that we can't change who we are, or how God made us and that realization is increasingly accepted by succeeding generations. It has been my experience that more and more high school and college students today accept individual classmates as straight or gay without emotion or stigma. They accept what they cannot change as a fact of life. Which brings to mind one of my favorite prayers:

God, grant me the serenity to accept the things I cannot change
The courage to change the things I can,
And the wisdom to know the difference.

I suspect that for older generations fear has often kept this issue from being discussed openly before now—fear that anyone who expressed an understanding view of the plight of homosexuals was likely to be labeled one. Because of this fear, the battle against discrimination has largely been left to those who were directly affected by it. Mr. President, I believe it is time for those of us who are not homosexual to join the fight. A basic respect for human dignity—which gives us the strength to reject racial, gender and religious intolerance—dictates that in America we also eliminate discrimination against homosexuals. I believe that ending this discrimination is the last frontier in the ultimate fight for civil and human rights.

Most Americans accept the basic tenet that discrimination for any reason is wrong. We grow uncomfortable, however, with some of its implications. The question we face now is whether that discomfort warrants continued discrimination.

Although we have made huge strides in the struggle against discrimination based on gender, race and religion, it is more difficult to see beyond our differences regarding sexual orientation. It's human nature to be uncomfortable with feelings we don't understand or share and to step away from those who are different. But it's also human resolve that allows us to overcome those impulses, to step forward and celebrate those many qualities we share. The fact that our hearts don't all speak in the same way is not cause or justification to discriminate.

There are not many in this Chamber who truly seek to discriminate. Some here support the Defense of Marriage Act because many of the good people they represent believe that homosexuality is morally wrong, and therefore same-sex unions should not be permitted by the Government. A number of our colleagues have told me privately that they are not comfortable supporting this legislation, but the political consequences are too great to oppose it.

Others admit that they intend to discriminate, but they believe that discrimination here is justified. They justify their prejudice against homosexuals by arguing that homosexuality is morally wrong—thereby assuming it is not a trait but a choice, and a choice to be condemned.

But history has shown that current moral and social views may ultimately prove to be a weak foundation on which to rest institutionalized discrimination.

Until 1967, 16 States, including my own State of Virginia, had laws banning couples from different races to marry. When the law was challenged, Virginia argued that interracial marriages were simply immoral. The trial court upheld Virginia's law and asserted that ''Almighty God created the races white, black, yellow, malay, and red, and he placed them on separate continents. The fact that he separated the races shows that He did not intend for the races to mix.'' *Loving* v. *Virginia*, 388 U.S. 1 (1967). The Supreme Court struck down these archaic laws, holding that ''the freedom of choice to marry'' had ''long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.''

Today we know that the moral discomfort—even revulsion—that citizens then felt about legalizing interracial marriages did not give them the right to discriminate 30 years ago. Just as discomfort over sexual orientation does not give us the right to discriminate against a class of Americans today.

Ultimately, Mr. President, immorality flows from immoral choices. But if homosexuality is an inalienable characteristic, which cannot be altered by counseling or willpower, then moral objections to gay marriages do not appear to differ significantly from moral objections to interracial marriages.

Mr. President, at its core marriage is a legal institution officially sanctioned by society through its Government. This poses the dilemma of whether a society should recognize a union which the majority either can't relate to or believes is contrary to established moral tenets or religious principles. We find ourselves again at the intersection of morality and Government, a place where some of our most divisive and complicated social issues have torn at us throughout our history as a Nation. Prayer in school, abortion, the death penalty, assisted suicide—these most troubling issues of our day force us to confront the difficulty of legislating where social mores and individual liberties collide.

I believe social mores can and should guide our Government. But sometimes we need to choose between conflicting moral judgments. For example, some believe very deeply that no matter how heinous a crime a person commits, the death penalty is immoral because no human should take the life of another. But while we respect those views, we have legally restored the death penalty. Many believe homosexuality is immoral, but many also believe that discriminating against people for attributes they cannot control is immoral. When moral objections are used to justify blatant discrimination, however, we need to tread carefully.

In this case, we should tread more carefully still, because marriage is also a religious institution. Religious ceremonies evoke powerful images: a couple committing themselves to each other before God and family, a union blessed and supported by religious teachings, a ceremony based on scripture and biblical studies. But we have to remember today that government has a role only in the civil institution, separate and distinct from marriage as a religious ceremony.

The truth is, this bill will not affect, one way or another, how individual religions deal with same-sex marriages. Government sanction of gay marriages does not alter the religious institution, and as author Andrew Sullivan has argued, ''Particular religious arguments against same-sex marriages are rightly debated within the churches and faiths themselves.'' Religions that prohibit gay marriages will continue to do so, just as some refuse to permit marriages between individuals of different faiths. Such couples simply have to forgo the religious blessing of the marriage, and be content with only civil recognition of their union.

Marriage, as a civil institution, recognizes the union of two individuals who are so committed to each other that they seek to have their civic rights and responsibilities formally merged into one. And, Mr. President, when that civil institution is separated from a religious ceremony, and that civil institution is recognized by a sovereign State, then denying Federal recognition of that union amounts to nothing short of indefensible discrimination.

Unfortunately, Mr. President, discrimination is not new in this country. Countless courageous Americans have risked their careers and even their lives to defy discrimination. We forget today how difficult these acts were in their own time. We forget how different our world would be if these pioneers had taken the easy path. One thing we do know, Mr. President, is that time has been the enemy of discrimination in America. It has allowed our views on race and gender and religion to evolve dramatically, inevitably, in the American tradition of progress and inclusion.

We're not there yet, Mr. President. In matters of race, gender, and religion, we've passed the laws, implemented the court decisions, signed the executive orders. And every day we work to battle the underlying prejudice that no law or judicial remedy or executive act can completely erase. But we've made the greatest strides forward when individuals, faced with their moment in history, were not afraid to act. And time has allowed us to see more clearly the humanity that binds us, rather than the religious, gender, racial, and other differences that distinguish us. But I fear, Mr. President, that if we don't stand here against this bill, we will stand on the wrong side of history, not unlike the majority of the Supreme Court who upheld the ''separate but equal'' doctrine in Plessy versus Ferguson. And with the benefit of time, the verdict of history is not likely to be as forgiving as we might believe it to be today.

Mr. President, I believe we ought to continue to let the States decide if and how they want to confront the issue of a civil union between members of the same sex. They decide it in all other instances. In fact, they have managed it without congressional interference for 200 years. As the supreme court of Hawaii has recently noted, in the very case which has led to the introduction of the Defense of Marriage Act, ''the power to regulate marriage is a sovereign function reserved exclusively to the respective States.''

Most of us are uncomfortable discussing in public the intimacies of life. And most of us are equally uncomfortable with those who flaunt their eccentricities and their nonconformity, whether gay or straight.

But in the end, we cannot allow our discomfort to be used to justify discrimination. We are not entitled to that indulgence. We cannot afford it. But doing the right thing is not always easy and I know this is not an easy vote even for those who may agree with my argument.

It is, in a very real sense, a test of character and I hope as many colleagues as possible will take time to reflect before casting their vote. If enough of us have the courage to vote against the Defense of Marriage Act, I believe we can convince the President to do what I know in his heart of hearts he knows he should do to this discriminatory legislation. A nation as great as ours should not be enacting the Defense of Marriage Act.

Ultimately, Mr. President, I would say to our fellow Senators: you don't have to be an advocate of same-sex marriages to vote against the Defense of Marriage Act. You only have to be an opponent of discrimination.

Mr. President, I'll conclude today with the words of a courageous American whom I seldom quote but to whom I'm eternally indebted. President Lyndon Johnson often said, ''It's not hard to do what's right, it's hard to know what's right.'' We know it is right to abolish discrimination. And if we reflect on what this bill is—an attempt to discriminate—rather than on what it is packaged to be—a defense of marriage—we will come down on the right side of history.

With that, Madam President, I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 6 minutes.

Mr. KENNEDY. Could the Senator yield for a unanimous-consent request?

Mr. KERREY. I yield.

Mr. THURMOND. Madam President, I ask unanimous consent that prior to the two consecutive votes scheduled at 2:15, there be 2 minutes of debate equally divided in the usual form.

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

Mr. KERREY. Madam President, the Defense of Marriage Act [DOMA] is proposed and sold as a simple measure, limited in scope, and based on common sense. It is none of these things. DOMA certainly cannot be called a simple measure when it proposes to have the Federal Government intervene in matters previously reserved to the States. Conservative advocates of States rights should not brush aside this interference merely because they find a purpose which holds special appeal to them. And with this law the Federal Government will have taken the first—and if history is a good guide, probably not the last—step into the States' business of marriage and family law.

DOMA certainly cannot be called limited in scope except for those of us who will be unaffected by this abridgement of rights. The small class of citizens affected do not believe this law is limited in scope. Of course the fact that only a relatively few homosexual couples will be affected begs the question: Why should we heterosexuals worry? We have more important business to tend to. Why should we put ourselves at risk for a small minority of men and women who are willing to make a lifetime commitment to another human being but, whose love of someone of the same sex violates others' personal beliefs? Two reasons. First, these couples are not hurting us with their actions; in fact they may be helping us by showing us that love can conquer hatred. Second, we may be next. That's how the rights of the majority are threatened: One minority group at a time.

As to the third representation made by supporters, DOMA does not appear to me to be based on common sense. Common sense tells me: Do not pass a law that is not needed. And DOMA is not needed. States can already refuse to recognize marriages that violate their strong public policies. For example, if Nebraska's Legislature chooses to not recognize a marriage contract between under-age couples, it can do so. The courts have upheld that right. The court would also uphold Nebraska's right to not recognize a same-sex marriage in another State although no State currently allows such marriages.

In fact, same-sex marriage laws are not sweeping their way through State

legislatures. Local politicians are just as nervous or frightened of this issue as we are. Rather than getting ahead of an issue that is heading our way, we are losing our way to save our political heads.

So why worry about DOMA? I worry because despite references to the contrary we are doing much more than passing a law that is not needed. We are establishing, in the Federal code, a prohibition against a narrow class of people; a Federal law will preempt State law and discriminate against these individuals by saying they cannot do what all other Americans can legally do. And, we are establishing a means to carry out other Federal remedies to State-level family law problems. I would vote against DOMA if it only did the first of these things. However, it is the second which should strike fear into the heart of heterosexual Americans who wonder if this could affect them some day. The answer is it can and probably will. Even if it is not your loved one who is unable to visit you on your deathbed because laws forbid non-family members from entering your room, this bill could someday touch your life.

For example, once this bill has passed and been signed into law, advocates of Federal involvement in personal decisions may propose adding other language. They may say: Let's examine the heterosexual activity which common sense and empirical evidence tells us is a threat to the institution of marriage: divorce. Divorce—not same-sex marriage—is the No. 1 enemy of marriage. And, with a Federal definition of marriage in chapter 1 of title 1 of the United States Code, future Congresses would have a Federal vehicle to attack divorce. DOMA's language, which provides that '''marriage' means only a legal union between one man and one woman as husband and wife,'' could easily be amended to prevent States from recognizing divorce decrees which occurred in the 1st year of marriage, 2nd year, or the 10th year. Beyond divorce, we could add custody language or other Federal requirements on married couples. Supporters of DOMA say they are not creating a Federal certificate of marriage. True enough today. However, they are creating an easy way for us to reach that goal.

Supporters of DOMA say a Federal definition of marriage is needed because Federal benefits are at risk. This is making a mountain out of a mole hill. Even if the same percentage of homosexual Americans were married as heterosexual Americans, 40 percent, the threat to the Treasury would be modest. Approximately 5 percent of the population is gay or lesbian. Therefore, we are only talking about 2 percent of the population that could possibly benefit if same sex marriages were recognized. Further, Congress can choose to exclude same-sex partners from any Federal benefit it chooses, as we did with the family and medical leave legislation.

Proponents also say, the current United States Code does not contain a definition of marriage, presumably because Americans have known what it means. Not true. Federal definitions of marriage, divorce, child custody, and other family matters have been omitted because Americans have known what it means when the Federal Government starts to legislate in new areas. Americans know that once we start, we cannot stop.

Heterosexual Americans who wonder why they should be concerned with a law that restricts the freedom of a minority class should be advised: The bell that tolls for them could soon toll for thee.

Heterosexual Americans should know: Marriage is not under attack from rising numbers of homosexual Americans who are making commitments to each other. Marriage is under attack when a person is too busy, too preoccupied, and too concerned about taking care of No. 1 to take care of No. 2 or 3 or 4. Marriage is under attack in that moment when a man or woman is tempted to forget their commitment to love ''until death do us part.''

My mother and father's generation did not forget. My generation unfortunately did. My children's generation, thank God, appears to be remembering again. And in this remembering lies the hope for marriage and other sacred traditions so important to our Nation. Not a Federal statute.

The PRESIDING OFFICER. The Senator from Oregon is recognized for 5 minutes.

Mr. WYDEN. Thank you, Madam President. Madam President, at the heart of this debate is a judgment each Senator must make about what the Federal Government ought to stick its nose into.

This has been a Congress dedicated to the proposition of reducing the role of the Federal Government in the lives of our citizens. This Congress has sought to turn away the Federal desire to intrude and leave important decisions to private individuals and, if necessary, local and State government.

Marriage has historically been a private matter between two people. It has long been a matter that has been reserved for the States. Now the Congress that has sought to contract Federal power hungers for Federal regulation of the institution of marriage. This Federal expansionism makes no sense to me.

When I talk with gay and lesbian Oregonians, they invariably ask me about the concerns held by the majority of Americans. They ask about jobs and wages and health care and crime. Not once has a gay or lesbian Oregonian come to me and asked that the Federal Government endorse their lifestyle. They simply ask to be left alone. In this regard, they are very similar to what I hear from ranchers and small business owners and fishermen and scores of other of our citizens.

One of the fundamental principles on which our Nation was built is the freedom to enjoy life, liberty, and the pursuit of happiness. The Constitution doesn't give Congress or the States the power to specifically exclude an individual or group of individuals from the enjoyment of life, liberty, or the pursuit of happiness. But this legislation would.

Is the legislation constitutional? Where in the Constitution does it say equal rights for all—except those that the majority disagrees with? This bill is not only of dubious constitutionality, it seems to me to be a repudiation of traditional conservatism. It is conservative, Madam President, to keep private conduct private. It is certainly conservative to promote monogamy. It is conservative to promote personal responsibility and commitment.

This bill isn't conservative; it is Big Brother to the core. My judgment is that this is a subject the Federal Government ought not stick its nose into.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 4 minutes.

Mr. BRADLEY. I ask unanimous consent to continue until my speech is finished.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BRADLEY. Madam President, the first point to make is that this issue should not be coming before us today. No State in the United States has passed a law that recognizes same-sex marriages. To the contrary, 15 States have passed laws prohibiting them. I wish I did not have to deal with this issue. It makes me feel uncomfortable. I feel I'm on ground full of quicksand. But, as a Senator, one is asked to vote to decide, so that is what I am doing today.

My views on gay issues have evolved over the years. I have always been opposed to discrimination on the basis of race, gender, ethnicity. Then I came to see that the same concerns about discrimination have to also apply to sexual orientation, if I were to carry the logic of civil rights to its natural conclusion.

But the countervailing thought in a society as diverse as ours is that opponents of gay rights have rooted their opposition to religion. Many opponents assert that God has not ordained homosexuality. These individuals sometimes use the power of Scripture to perpetuate the idea that homosexuality is a choice, and if you choose it, similar to choosing anything that Scripture prohibits, you are guilty of flaunting your dismissal of God's will and strictures. These individuals also sometimes use Scripture to perpetuate blatant discrimination, hiding behind Scripture to cover up an underlying intolerance.

Madam President, I believe that homosexuality is not a choice. Homosexual behavior, on occasion, might be a choice. But having a homosexual orientation and being a gay is not a choice. I believe that it is more similar

to being born with red hair than it is to choosing to tell a lie. The latter requires a decision; the former just is. You can cover up the former, but underneath the dyes and wigs the hair is still red.

At the same time, I believe there is no denying the fact that large numbers of Americans have deeply held religious beliefs about homosexuality and marriage. Even in questions of discrimination against gays, there is a conflict between religious faith and rights. Madam President, I have resolved that conflict in my own mind by saying that in things secular rights shall prevail, be dominant.

I believe, for example, that there should be no discrimination against gays in housing and employment, and that is why I have been a long supporter of gay rights in these areas, with the proviso that religious institutions that would see these anti-discrimination laws as interfering with their freedom of religion are exempted. ENDA, in my view, does that. It achieves the balance between ending discrimination against gays and respecting freedom of religion. The issue of gay marriage, in my view, does not achieve that balance.

I believe marriage is, first of all, a predominantly religious institution. For example, it is one of the sacraments of the Christian faith, but it is also, in our society, a secular institution. Therefore, it is fraught with a degree of ambiguity. In all cases, it has been a state that exists between a man and a woman. In no country in the world, in no religion that I know of, does the state of marriage exist between two people of the same sex. Therefore, when we contemplate giving state sanction to same-sex marriages, we need to proceed cautiously.

At the same time there are many partners of same-sex relationships who have loving and committed relationships over many years. The question arises, how do we acknowledge the existence of these committed relationships—the partner's desire to be at the bedside of his or her dying partner or to see that a partner receives the benefits that accrue to a survivor of a long and loving relationship?

One might point out that the only way we can do that now is through marriage. There ought to be another way, and I am prepared to look for that other way, but I do not see marriage as flexible enough an institution to accept such redefinition at this time. Too many people in too many places of too many faiths see it as the state that exists between a man and a woman, and they see same-sex marriages as an incomprehensible trespass.

Madam President, that is what this bill is all about. That is what the so-called DOMA legislation is all about. It says marriage should not be redefined to include individuals of the same sex because marriage with all its religious connotations is different from a secular desire to get housing or a good job.

So, Madam President, in trying to balance the religious and historical idea of marriage with the need for extending rights, I say that rights should extend up to but not include recognition of same-sex marriages.

I yield the floor.

RECESS

The PRESIDING OFFICER. The Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, at 12:52 p.m., the Senate recessed until 2:15 p.m.; Whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. COATS].

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1997—CONFERENCE REPORT

The Senate resumed the consideration of the conference report.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, this Defense authorization bill has been done from the very outset in a very bipartisan spirit. Senator NUNN, I am sure, will speak on that side to that effect. We have worked together, Republicans and Democrats, to bring into the Senate a bill that we feel is fair and just. The House has already passed this particular bill. The President has said he will sign this particular bill. I urge all Senators to vote for this bill and show support for our Armed Forces, the men and women who are sacrificing by serving our country and risking their lives to protect the liberty and freedom of this country.

The PRESIDING OFFICER. The Senator from Georgia is recognized for 1 minute.

Mr. NUNN. Mr. President, I share the sentiments of the Senator from South Carolina. This is a good bill for the men and women who serve in our military. This bill is an increase over the President's budget, but it is a decrease in real terms from last year's budget. So the decline in defense spending continues downward, but it is an incremental step upward from the President's budget.

The President said he will sign this. Virtually every provision in the House bill that the administration objected to has been either taken out of this conference report or has been handled in a way satisfactory to the administration. That would include the arms control provisions relating to the ABM Treaty and missile defense. It would also include those members of the military service who have HIV who, under the House bill, would have been automatically expelled from the service. That provision has been dropped.

So I urge those on this side of the aisle to vote for this bill as a strong step forward for our Nation's security.

Mr. GLENN. Mr. President, I rise in opposition to the conference report on the National Defense Authorization Act for Fiscal Year 1997. I oppose the conference report for many of the reasons I opposed the Senate bill. Unfortunately, the conference report is in many respects worse than the Senate bill.

The conference report includes $11.2 billion in unrequested funds, including almost $1 billion in additional funding for ballistic missile defense, hundreds of millions of dollars for unrequested military construction projects, and billions of dollars for weapons programs the Pentagon does not think it needs.

Another troubling aspect of the conference report involves land conveyances. I have been very concerned by the yearly practice in which Members of Congress include special land conveyances in the Defense authorization bill enabling the transfer of Federal property outside of the requirements of the Federal Property Act of 1949. Having been unable to curb outright the practice of making these sweetheart land deals, I have worked to ensure that the properties are screened by the General Services Administration to make sure that there is no other Federal interest in the properties. The conferees found the idea of protecting the Federal taxpayers' assets so distasteful that they refused to require a Federal screening for the land conveyances contained in the House bill. This decision is unacceptable in my view and I did not sign the conference report in large part due to this decision.

In addition, the conferees adopted a provision from the Senate bill which affords special retirement rights to a select group of employees affected by base closure. There has been no demonstrated need for this authority that will cost the American taxpayer millions of dollars in the out years and it is unfair to the hundreds of thousands of other Federal employees who have been affected by ongoing efforts to downsize the Government.

I would also mention my concern with a provision in the conference report that terminates the defense business operations funds [DBOF] in the year 1999. The purported reason for this provision as I understood from its proponents is to instill more discipline in the Defense Department's financial management. I have been concerned about the state of the Government's financial management for years. I have worked to enact legislation creating the inspectors general and the chief financial officers. I have held numerous and long detailed hearings on the condition of DBOF. I agree that the Pentagon has an obligation to the American taxpayer to focus more attention on getting its financial house in order. But, I do not agree that terminating DBOF will accomplish anything other than to create chaos where we should be seeking progress.

In addition, I have concerns about section 1033 of the conference report which significantly expands an existing program within the Department of Defense regarding the transfer of excess