fundamental to our society and demands this safeguard. This is the core and fabric of our society.

I hope in the next few days, weeks, and months we have a civilized debate. This is not about being anti-homosexual. Not at all. I think everyone believes gays and lesbians should have the ability to lead their lives as they choose, as should all consenting adults. But we don't want to tear down traditional marriage and the American family. We need to protect traditional marriage. We should not allow some States to impose their definition of marriage on other States. States must have the right to accept or reject anything that has not been demonstrated the will of the people through their representatives.

I appreciate being given the time to speak on this issue. It is an important issue for our country, and I hope we will carefully consider the ramifications if we do not take action to protect traditional marriage and the American family.

I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:40 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

The PRESIDING OFFICER. The Senator from Nevada.

FEDERAL MARRIAGE AMENDMENT—MOTION TO PROCEED—Resumed

Mr. REID. Mr. President, I have spoken to the manager of the bill for the majority and I want to say a few brief words now and then I will yield 30 minutes to the Senator from Wisconsin. Following that, Republicans will speak for whatever time they desire and the Democrats will then follow with remarks by Senator DURBIN for up to 30 minutes.

I simply ask unanimous consent that following my brief remarks, Senator FEINGOLD be recognized for up to 30 minutes; following his remarks the time revert to whatever the majority feels appropriate; following their remarks, that Senator DURBIN will be recognized for up to 30 minutes; then trying to balance out this time, following the reversion back to Republicans, Senator LAUTENBERG will be recognized for up to 15 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. REID. Mr. President, the Reno Gazette-Journal, a newspaper that has been in existence for many years, a Gannett newspaper in Reno, NV, which is certainly not a bed of liberalism, published a very short editorial today. It says:

> The plan to redefine marriage in a constitutional amendment could not be a better election year wedge. The fact that Lynne Cheney, champion of conservative causes, parted company with her husband, Vice President Dick Cheney, on same-sex marriage is illustrative of just how divisive it's become.
>
> Typically, vice presidents support their presidents and political wives back their husbands, regardless of personal feelings. This time, the human aspect of the debate was too much for a political wife to overcome.
>
> As the mother of a lesbian, Lynne Cheney, of necessity, would be finely attuned to all the arguments. And no one should expect a parent to disregard an offspring for a political agenda. Anyway, it is debatable that an amendment would help a traditional conception of marriage. And, some Senators indicate they are less than willing to try.
>
> The administration is wading into deep waters, fracturing families, and merging the church and the state. That's not the way the system is supposed to work. It would be best for government to leave this issue alone.

I am not an avid reader of the Washington Times. In fact, I didn't read it today. But it was brought to my attention and I did read the Washington Times:

> GOP split on marriage proposals.
>
> Senate Republican leaders, who had been seeking a clear vote on a constitutional amendment on same-sex ''marriage,'' yesterday found themselves outmaneuvered by Democrats and divided over which of two proposals to pursue.
>
> President Bush and Senate Republican leaders support the Federal Marriage Amendment, which defines marriage as the union of a man and a woman and restricts the court's ability to rule on the issue. But some Republicans want to vote on an alternative, simpler version—leaving Republican leaders scrambling. . . .

Let's understand where we are on this issue. Senator DASCHLE, in good faith, Friday, came to the floor and said we need to get to the business at hand. There is an important marriage amendment pending about which people on both sides of the aisle have strong feelings. Therefore, it would be better that we vote on the amendment, the one that has been on the Senate floor. We were told at that time by the majority leader that sounded like a pretty good idea, that he would have to check with his caucus.

Surprisingly, Friday we were unable to get that unanimous consent agreement entered. Monday we come back—no deal. In the morning, we were told they want to vote on two constitutional amendments regarding marriage. In the afternoon, we were told they want to vote on three constitutional amendments on marriage.

It is a simple choice. We are willing to vote on the legislation before this body, S.J. Res. 40. Why don't we do that? The reason we are not going to do it is because the majority has decided they want the issue. They do not care how the votes fall; they want the issue. That is wrong. Everyone should understand this is a march to nowhere, and the majority knows that.

I don't know what is happening around here. Class action is an issue for which there were enough Members here—Democrats and Republicans—to pass it. The majority would not even allow a vote—not a single vote—on that issue. They want the issue.

They want to bash Democrats as being opposed to any reform of the tort system.

On medical malpractice, on asbestos, on class action they want the issue. They don't want to resolve the issue. One would think the people in the State of Ohio, in the State of Texas, in the State of Nevada, in the State of Wisconsin, in the State of Illinois, and in every other State would know how Senators feel on the amendment before this body.

They are not going to get that chance because we are going to be forced into a procedural vote. That is wrong.

We are willing to vote on S.J. Res. 40. We have said that. We keep saying that, but, no, the issue is more important than the merits of this matter, which is too bad.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, the Constitution of the United States is a historic guarantee of individual freedom. It has served as a beacon of hope, an example to people around the world who yearn to be free and to live their lives without government interference with their most basic human decisions.

I took an oath when I joined this body to support and defend the Constitution. I am saddened, therefore, to be standing on the floor today debating a constitutional amendment that is inconsistent with our Nation's history of expanding freedom and liberty. It is all the more unfortunate because it has become all too clear that having this debate at this time is aimed at scoring points in an election year. Even a leading proponent of this amendment admits that we are engaged in a political exercise, pure and simple.

Paul Weyrich, president of the Free Congress Foundation, recently stated:

> The President has bet the farm on Iraq.

So the proper solution, according to Mr. Weyrich, is to ''change the subject'' from Iraq to the Federal marriage amendment.

Mr. Weyrich also recently stated:

> If [President Bush] wishes to be reelected then he had better be up front on this issue, because if the election is solely on Iraq, we're talking about President Kerry.

I am loathe to come to that kind of conclusion. But I believe it to be the truth.

There we have it. This proposed constitutional amendment is a poorly disguised diversionary tactic that is essentially a political stunt.

Will this proposed constitutional amendment create jobs for mothers and fathers, husbands and wives, and stop the flow of American jobs overseas?

Will this proposed constitutional amendment secure a good education for our children? Will this proposed constitutional amendment improve the

lives of American families on any of these issues? Obviously not.

Instead of Congress and the President getting to work on issues that would help American families, we are spending time—in fact a lot of time—on the Senate floor on a poorly thought out, divisive, and politically motivated constitutional amendment that everyone knows has no chance of success in this Chamber. What is even more troubling is that this effort risks stoking fear and encouraging bigotry toward one group of Americans.

So here we are, debating a constitutional amendment in search of a justification. This debate is not really about supporting marriage. We all agree that good and strong marriages should be supported and celebrated. The debate on this floor today is about whether we should amend the U.S. Constitution to define marriage. The answer to that question has to be no. We do not need Congress to legislate for all States, for all time, on a matter that has been traditionally handled by the States and religious institutions since the founding of our Nation. For that reason alone, this amendment should be defeated.

At the outset, let me state in the strongest terms I can that I object to the Senate discussing and debating this proposed constitutional amendment without it first going through the Senate Judiciary Committee. We are here today debating a proposed amendment to our Nation's governing charter. In fact, this is the very first time this particular amendment has even been brought before the Senate, and neither the Judiciary Committee nor the Constitution Subcommittee has debated and marked up this proposal.

One might ask why the supporters of this proposed amendment feel the need to rush to the floor and bypass the committee process. I suspect it is because they fear they do not have enough votes on the committee to approve the amendment and report it to the floor. It may also be that the time it would have taken to examine the amendment and debate it in committee would have interfered with the predetermined political schedule for considering it on the Senate floor. Or perhaps that committee consideration would expose the weaknesses in the amendment and reduce support in the Senate. But in any event, the decision to bypass the committee process is highly unusual and very much to be regretted.

Senate leadership has not previously made a habit of bypassing the committee process when it considers a constitutional amendment. In fact, in this session of Congress alone, the Constitution Subcommittee has held markups on three proposed constitutional amendments: the victims' rights amendment, the continuity of government amendment, and, most recently, the flag amendment. The Judiciary Committee should be allowed to serve its proper role in marking up proposed constitutional amendments before they are brought to the Senate floor.

Respecting the committee process for any piece of legislation is important. But it is absolutely necessary for proposed amendments to the Nation's Constitution. Amending the Constitution should not be taken lightly. A rush to debate and pass this amendment—particularly since it raises so many questions—is not in the best interests of this body or of this country.

I might add that in the past quarter century, only two constitutional amendments were considered by the full Senate without committee consideration. One of these amendments, involving campaign finance restrictions, was discharged from committee by unanimous consent so it could be debated at the same time as campaign finance reform legislation. The other amendment to be brought directly to the Senate floor was an amendment to abolish the Electoral College and provide for the direct election of the President. What happened on the Senate floor to that amendment is very instructive.

In 1979, the current chairman of the Judiciary Committee, the Senator from Utah, was serving in the position that I hold today, the ranking member of the Constitution Subcommittee. He strongly objected to allowing a constitutional amendment to be brought to the Senate floor without first going through the Constitution Subcommittee and the Judiciary Committee.

Senator HATCH stated the following during the debate in 1979:

> As the ranking minority member of the Committee on the Judiciary, Subcommittee on the Constitution, I feel very strongly that there are ways to propose constitutional amendments and there are ways not to propose constitutional amendments. In this particular case, I think this is not the way to propose a constitutional amendment, and especially one that has the potential of altering the basic democratic federalism of the American political structure.

He went on to say:

> To bypass the committee is, I think, to denigrate the committee process, especially when an amendment to the Constitution of the United States of America, the most important document in the history of the Nation, is involved.

I could not agree more with the words of a then somewhat junior Senator who is now the distinguished chairman of the Judiciary Committee. His view then is exactly my view now, and I think the whole Senate should take his position very seriously.

His position was supported by another distinguished Republican member of the Judiciary Committee, Senator Alan Simpson of Wyoming, who said the following:

> We are talking about amending the fundamental law of the land—the law that controls the creation and enforcement of all other laws, the law that embodies the procedural consensus and most basic values of all Americans, that gives our nation much of its unity and our government its legitimacy. We should consider proposals to amend the Constitution more carefully than any other measure that comes before us.

Senator Simpson continued:

> I think the American people would strongly disapprove of what is being attempted here. This kind of procedure should not be used for a constitutional amendment. It is bound to adversely affect—to some degree the legitimacy of the process. I know it will affect us all greatly if this amendment is passed without adequate consideration by the present Senate.

And he added the following, and having served with Senator Simpson, I can imagine the gentle irony in his voice:

> Perhaps I will eventually learn that Senators do not have time to make considered decisions even on amendments to the Constitution. . . . However, I am not at that point yet. I trust it will never be bad form in the U.S. Senate to demand respect for the legislative process.

Finally, let me quote the then-ranking member of the Judiciary Committee, Senator Strom Thurmond, who served in this body for nearly a half century and as Chairman of the Judiciary Committee for 6 years. Senator Thurmond strongly supported his colleague, the Senator from Utah. He said:

> The best place to study these issues is before the full Judiciary Committee of the U.S. Senate. I see no reason why this committee should be short circuited by this bill not being referred here. If a bill of this nature is not going to be referred to a committee to consider it, I do not know why we need Committees in the U.S. Senate.

Senator Thurmond concluded:

> The Judiciary Committee is the proper machinery for referral of this resolution. It is set up under our rules for considering a measure of this kind. It should be utilized and should not be sidestepped as is attempted to do here with this procedure.

This debate, which took place just over 25 years ago, had a good outcome. The Senate voted to send the constitutional amendment back to the Judiciary Committee. Those Senators who urged the Senate not to bypass the committee process prevailed.

Now, a quarter of a century later, we are in a similar situation. All of the Democrats on the Judiciary Committee sent a letter to the Committee Chairman a few weeks ago, urging him to follow regular order on this amendment and let the full Committee and Subcommittee on the Constitution debate and mark up this constitutional amendment. I ask that our letter be printed in the RECORD.

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

JUNE 25, 2004.

Honorable ORRIN G. HATCH,
Chairman, Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Last week, the Republican leadership announced that it will bring the Federal Marriage Amendment (''FMA'') to the floor of the Senate during the week of July 12. Press reports indicate that this particular date was chosen because some want to have a vote on this amendment prior to the Democratic convention at the end of the month. We urge you to prevail upon your colleagues in the leadership to

allow the Judiciary Committee and the Subcommittee on the Constitution, Civil Rights, and Property Rights to debate and mark up the amendment prior to its being taken up on the floor. The Judiciary Committee has a long and productive tradition of considering amendments to the Constitution. We believe that breaking with that tradition in this instance would be a serious mistake.

The FMA has never before been considered by the Senate. It is a controversial measure sure to inspire heated debate on the floor and in the country. So far, four hearings have been held on this topic in both the Senate and the House. Religious leaders, legal scholars, legislators, psychologists and other health professionals, and advocates for children and families are divided on the need to amend the Constitution in this way. It seems clear to us that there is no consensus in the Senate, or in the country, that this amendment is needed or appropriate.

Furthermore, while the language of the FMA has recently been modified, there is still significant doubt as to its intent and effect. In these circumstances, we believe it is premature to consider the amendment at all, but at the very least, consideration by the Judiciary Committee may clarify and even narrow the issues for the floor.

As you know, it is highly unusual for a constitutional amendment to come to the Senate floor without committee action. In the last decade, constitutional amendments relating to a balanced budget, term limits, flag desecration, and victims rights have all gone through the Judiciary Committee prior to receiving floor consideration. The only amendment that received a floor vote without first being marked up in committee was Sen. Hollings' campaign finance constitutional amendment. That measure was discharged from committee by unanimous consent so it could be debated on the floor during debate on campaign finance reform legislation.

You will undoubtedly recall that during the 96th Congress, a constitutional amendment providing for the direct election of the President and Vice-President was brought directly to the Senate floor. You argued strenuously at that time for ''regular order'': ''As the ranking minority member of the Committee on the Judiciary, Subcommittee on the Constitution, I feel very strongly that there are ways to propose constitutional amendments and there are ways not to propose constitutional amendments. . . . I think this is the way not to propose a constitutional amendment. . . . To bypass the committee is, I think, to denigrate the committee process, especially when an amendment to the Constitution of the United States of America, the most important document in the history of the Nation, is involved.'' Cong. Rec. 5003–5004 (Mar. 14, 1979). Your arguments prevailed and the Senate agreed to recommit the amendment to the Judiciary Committee.

Mr. Chairman, you were right in 1979 that the proper course to follow when an amendment to the Constitution of the United States is proposed is to allow the Judiciary Committee to consider it and report it to the floor before the full Senate is asked to debate it. That is the course that should be followed here. We hope you will continue to protect the jurisdiction of the Committee in discussions with those who want to rush the Senate into a premature vote for political reasons.

Thank you for your consideration.

Sincerely,

Patrick Leahy, Herb Kohl, Charles E. Schumer, Edward M. Kennedy, Dianne Feinstein, Richard J. Durbin, Joseph R. Biden, Jr., Russell D. Feingold, John Edwards.

Mr. FEINGOLD. Unfortunately, our pleas have fallen on deaf ears. The Judiciary Committee, which in the last decade has considered and reported to the floor constitutional amendments dealing with a balanced budget, term limits, flag desecration, and victims' rights has been bypassed for this Federal marriage amendment. I have not heard a compelling argument explaining why the committee process should be ignored in this case.

In fact, I have not heard even a remotely persuasive argument of any kind why the committee process should be bypassed.

The committee process is even more important for this amendment than for some of the amendments we have considered recently. This amendment is being considered for the first time in the Senate. Changes have been made to the language of the amendment within the past few months. Just yesterday, we heard that further changes are being contemplated by some supporters of the amendment. There is significant doubt about how this amendment will be interpreted and what effect it will have on a whole variety of state and local laws and ordinances. It is exactly in this situation that the committee process can be very helpful. Issues can be explored in depth and modifications can be offered to clarify the meaning and effect of the amendment. It is not clear what would happen in our committee if we were given the opportunity to mark up this amendment. But I know we would have a much better idea of what the amendment does and doesn't do than we have today.

The Framers of the Constitution deliberately put into place a difficult process for amending the Constitution to prevent the Constitution from being used as a tool for enacting policies better left to the legislative process. A proposed amendment must pass both houses of Congress by a two-thirds majority, not a simple majority. After a proposed amendment has passed both Houses, it must be ratified by three-fourths of the states.

Citizens for the Constitution, a bipartisan blue-ribbon committee of former public officials, journalists, professors, and others, has suggested a set of guidelines for evaluating proposed amendments to the Constitution. The members of this committee are people who do not necessarily agree with each other on the substantive merits of proposed amendments, but they do agree that a deliberative, respectful process should be followed.

Citizens for the Constitution reports that in the history of our nation, more than 11,000 proposed constitutional amendments have been introduced in Congress, but only 33 have received the needed congressional supermajorities and only 27 of those have been ratified by three-fourths of the States. The bar for amending our Constitution is very high indeed.

One guideline from Citizens for the Constitution, is particularly relevant to our discussion today. The guidelines ask, ''has there been a full and fair debate on the merits of the proposed amendment?'' In this case, the answer is no. There has not been a full debate. We have had four hearings in the Judiciary Committee but there are still unanswered questions about this amendment. This is especially troubling because the sponsors of the amendment have changed its text during the course of our hearings and even stated conflicting interpretations of their amendment. The committee process could help us sort these issues out and narrow them for the floor. But the committee process has been abandoned for this amendment. That is a real shame.

The current procedural situation highlights the problem with bypassing the Judiciary Committee. The Senator from Colorado introduced the first version of the Federal marriage amendment in November of last year. A revised version was then introduced the morning of a hearing in the Judiciary Committee in March of this year.

Now, after bypassing the committee to bring the amendment to the floor of the Senate, we hear that supporters want a vote on yet another version of the amendment. We had four hearings in the Judiciary Committee on the issue of same sex marriage, but none of them concerned this new text that the leadership now wants to bring to a vote. That is why we needed a subcommittee and committee markup on this amendment. So alternative language could be considered and debated. That didn't happen here and that is why there is ''disarray'' among supporters of the amendment as one press report put it this morning. So instead of an up or down vote on the amendment before us, we will most likely have a procedural vote tomorrow. And the reason for that, make no mistake, is that this amendment simply was not ready for floor consideration. It wasn't ready. It should have gone through the Judiciary Committee.

Aside from my objection to the failure to follow the proper process and allow committee consideration of this amendment, as was so eloquently argued 25 years ago by the Senator from Utah, Senator Simpson and Senator Thurmond, I also object to this amendment on the merits.

There is no doubt that the proposed federal marriage amendment would alter the basic principles of federalism that have served our nation well for over 200 years. Our Constitution granted limited, enumerated powers to the Federal Government, while reserving the remaining issues of government, including family law, to State governments. Marriage has traditionally been regulated by the States. As Professor Dale Carpenter told the Constitution Subcommittee last September, ''never before have we adopted a constitutional amendment to limit the States' ability to control their own family law.''

Yet, that is exactly what this proposed amendment would do. It would

limit the ability of states to make their own judgments as to how best to define and recognize marriage or any legally sanctioned unions.

Surely both Republicans and Democrats can agree that marriage is best left to the States and religious institutions.

One of our distinguished former colleagues, Republican Senator Alan Simpson, opposes an amendment to the Constitution on marriage. In an op-ed in the Washington Post last September, he stated:

> In our system of government, laws affecting family life are under the jurisdiction of the states, not the federal government. This is as it should be. . . . [Our Founders] saw that contentious social issues would be best handled in the legislatures of the states, where debates could be held closest to home. That's why we should let the states decide how best to define and recognize any legally sanctioned unions—marriage or otherwise.

Columnist William Safire has also urged his conservative colleagues to refrain from amending the Constitution in this way. Commentator George Will takes the same position.

I recognize that the current debate on same-sex marriage was hastened by a decision of the highest court in Massachusetts issued last fall. That decision, the Goodridge decision, said that the state must issue marriage licenses to same-sex couples. But the court did not say that other States must do so. And it did not say that churches, synagogues, mosques, or other religious institutions must recognize same-sex unions. Even Governor Romney, who testified before the committee at our last hearing, admitted that the court's decision in no way requires religious institutions to recognize same-sex unions. No religious institution is required to recognize same-sex unions in Massachusetts or elsewhere. That was true before the Goodridge decision, and it remains true today.

I might add, that this Federal amendment would appear to interfere with the will of the people of Massachusetts who have already taken steps to respond to their court's decision. It would very likely nullify the state constitutional amendment that is currently pending in Massachusetts.

Now, the supporters of the Federal marriage amendment would have Americans believe that if same-sex couples are allowed to marry in Massachusetts, we will soon see courts in other states requiring those States to recognize same-sex marriages, too. But this is a purely hypothetical concern, hardly a sound basis for amending our Nation's governing charter.

As Professor Lea Brilmayer testified at a Constitution Subcommittee hearing, no court has required a State to recognize a same-sex marriage performed in another State. And as Professor Carpenter testified, ''the Full Faith and Credit Clause has never been understood to mean that every state must recognize every marriage performed in every other state. Each state may refuse to recognize a marriage performed in another state if that marriage would violate the public policy of that state.''

In fact, Congress and most States have already taken steps to reaffirm this principle. And these actions so far stand unchallenged. In 1996, Congress passed the Defense of Marriage Act, a bill I did not support, but it is now the law. DOMA is effectively a reaffirmation of the Full Faith and Credit Clause as applied to marriage. It states that no State shall be forced to recognize a same-sex marriage authorized by another state.

In addition, 38 States have passed what have come to be called ''State DOMAs,'' declaring as a matter of public policy that they will not recognize same-sex marriages.

There has not yet been a successful challenge to the Federal or State DOMAs. Of course, it is possible that the law could change. A case could be brought challenging the Federal DOMA or a State DOMA, and the Supreme Court could strike it down. But do we really want to amend the Constitution just in case the Supreme Court in the future reaches a particular result? We should all pause and think about the ramifications of our action before we launch a preemptive strike against the governing document of this Nation.

Former Representative Bob Barr, the author of the Federal DOMA, strongly opposes amending the Constitution. He believes that amending the Constitution with publicly contested social policies would ''cheapen the sacrosanct nature of that document.''

He also warned:

> We meddle with the Constitution to our own peril. If we begin to treat the Constitution as our personal sandbox, in which to build and destroy castles as we please, we risk diluting the grandeur of having a Constitution in the first place.

My colleagues, those are the words of the author of the Federal DOMA statute. That is what he said about the wisdom of trying to amend the Constitution in this manner.

Concerns have also been raised that the Federal marriage amendment could prevent the people of a State from choosing to recognize civil unions or grant domestic partnership benefits at the State level. The proposed amendment could be construed to challenge already existing civil union and domestic partnership laws or to bar future attempts to enact such laws. Representative Barr also warned that the proposed marriage amendment could apply to not only States, but private sectors as well. Certainly, our hearings in the Judiciary Committee did not lay these concerns to rest. If anything, they made them stronger.

We should not seek to amend the Constitution in a way that would reduce its grandeur. Under our longstanding system of federalism, we should leave the regulation of marriage to the States and religious institutions and get to work on the real issues that Americans are facing and deserve our attention and action.

As I stand here, there are Americans across our country out of work, languishing in failing schools, struggling to pay the month's bills, or worrying about their lack of health insurance. Instead of spending our limited time this session on a proposal that is destined to fail and will only divide Americans from each other, we should be addressing the issues that will make our Nation more secure and the future of our families brighter.

I urge my colleagues to oppose this ill-advised and divisive constitutional amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I think under the previous consent order we would now go to 30 minutes on this side and then over to the Senator from Illinois for the next 30 minutes. We may, in fact, depending on who shows up, try to divide our 30 minutes among several Senators. I ask unanimous consent that we be allowed to do so in case there is any doubt.

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

Mr. CORNYN. Mr. President, I am delighted that we are finally beginning to have a real debate on the floor of the Senate on the importance of preserving traditional marriage. Up until this point, I am sorry to say, we really hadn't had much of a debate because our attempts to raise this issue, starting on Friday, had been met mainly with silence from the other side. But we have had a number of Senators—Senators BOXER, REID, now FEINGOLD—who have spoken and stated their objections. I would like to respond briefly. I believe then that Mr. INHOFE, the Senator from Oklahoma, will be here. I will certainly turn to him.

First of all, we are told by the distinguished Democratic whip that Republicans have raised a political issue. I would suggest to you that when judges in Massachusetts and elsewhere threaten to mandate same-sex marriage on the people of this country without the opportunity for the people of this country or their elected representatives to cast a vote or to have a voice in that decision, that is not a vote in favor of democratic government, one preserved by our Constitution that recognizes the sovereignty of a free people, not of a few life-tenured judges or perhaps judges who none of us have had a chance to vote on or to express any disapproval of in terms of judges from Massachusetts who have radically redefined the institution of marriage in that State.

Contrary to the hopeful expressions by some of my colleagues and perhaps others in the media, this is not an issue that can just be confined to one State, the State of Massachusetts, because, in fact, same-sex couples have gone to that State and have taken advantage of this new law and then moved back to their States of residence, 46 different States. And then, of course, we understand the process. And then a number

of those have, in turn, filed lawsuits in their home States seeking to force legal recognition on their same-sex marriage that was conducted in Massachusetts in their home State.

This is not an isolated event. This is part of a long-term litigation strategy. Indeed, we know that even as long ago as when the Defense of Marriage Act was passed by this body overwhelmingly—I believe it was 85 Senators who voted in favor of it on a bipartisan basis—there were some Senators back then who, of course, didn't vote for it, such as the Senator from Wisconsin, as is certainly his privilege. But we know that others did not vote for it at the time, including Senator KERRY, who said at the time:

> DOMA is unconstitutional, unnecessary, and unprecedented. This is an unconstitutional, unprecedented, unnecessary, and meanspirited bill.

At the same time, of course, 85 of his colleagues in this body on a bipartisan basis sought to express their confidence in the importance of preserving traditional marriage back then. Then, of course, there were other Senators who made the same expression.

Legal scholars have for some time now, including Laurence Tribe from Harvard Law School, Cass Sunstein, and others, expressed their opinion as a legal matter that the Defense of Marriage Act is unconstitutional, and then we have, most recently, the most recent edition of the Harvard Law Review, which is entitled ''Litigating The Defense of Marriage Act, The Next Battleground For Same-Sex Marriage.'' This literally sets out a roadmap for any lawyer who wants to challenge the preservation of traditional marriage in their State or, indeed, in any State in the United States by seeking a judicial declaration in a court that the Federal Constitution mandates same-sex marriage.

So this is not some political issue that we or the leadership on this side of the aisle dreamed up. This is a debate that has been raging for some time now, at least since 1996, when Senator KERRY, Senator KENNEDY, and others expressed on the public record that they believed the Defense of Marriage Act was unconstitutional at the time. They were parroting the statements of legal scholars and others to the same effect.

So this is, in my view, a question of whether we the people have a say. As Abraham Lincoln said, we are a government of the people, by the people, and for the people. But what our opponents on the other side of the aisle and on this issue would say is, look, we have four judges in Massachusetts who have laid down the law in Massachusetts, and there is really nothing you can do about it. The fact is, it has now been exported to 46 other States, and there are approximately 10 lawsuits presently pending to seek to force the recognition of those same-sex marriages in those States, and this is part of a national litigation strategy.

I say to those who think we ought to sit on the sidelines and remain spectators and remain silent, we are not going to remain silent, we are not going to stand still, nor did the Framers of our Constitution contemplate the people standing still when, by virtue of the passage of time and experience, or in this case when judges seek to amend the Constitution under the guise of interpretation, none of the Framers, no part of the Constitution contemplates that the people of this country should just remain silent.

If we want a government of the people, by the people, and for the people, this is an important debate. I want to say something before I defer to the Senator from Oklahoma, who wants to speak, just by way of response—and I will reserve the rest of my remarks for the remaining time we have allotted in this 30-minute timeslot.

The Senator from Nevada, the distinguished Democratic whip, has chastised this side of the aisle, the Republican majority leader, for refusing to accept their offer for an up-or-down vote on the Allard amendment. What he didn't tell you is they stipulated that it must be without any amendments being offered on the floor. In other words, their offer attempted to stifle debate and stifle the right of Senators to offer amendments. They know, as we all know, there are other amendments that have been discussed over the last year or so. I think if we want to have a full, fair, and honest debate, since there are concerns there wasn't adequate deliberation in the Judiciary Committee, this is the place to have it. We ought not to try to stifle debate or the right of any Senator to offer an appropriate amendment.

At this point, I will reserve the remainder of our allotted time and ask that the Senator from Oklahoma be recognized.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. I thank the Senator from Texas.

Mr. President, I have been watching, with a great deal of interest, the debate that has been taking place. I took some time last night to get what I believe to be very salient quotes. One is by an Irish poet, William Yeats:

> I think a man and a woman should choose each other for life, for the simple reason that a long life with all its accidents is barely enough time for a man and a woman to understand each other and . . . to understand is to love.

I think there are several of us in this room, including the Presiding Officer, who understand very well what Dr. Yeats is talking about.

The next one comes out of the Talmud, the Jewish oral interpretation of the Torah:

> A wife is the joy of a man's heart.

Mark Twain said:

> After all these years, I see that I was mistaken about Eve in the beginning; it is better to live outside the Garden with her than inside it without her.

Homer, the Greek philosopher, said:

> There is nothing nobler or more admirable than when two people who see eye-to-eye keep house as man and wife, confounding their enemies and delighting their friends.

William Penn said:

> Between a man and his wife nothing ought to rule but love.

Andrew Jackson said:

> Heaven will be no heaven to me if I do not meet my wife there.

Those things sound good and poetic. I happen to have been married for 45 years. My wife and I have 20 kids and grandkids and it started just with us. We think about the tradition in this country and how it has been this way as long as we can remember.

I have heard people say on this floor, when talking about this issue, that this perhaps should be a State issue. As a general rule, you will not find anybody who is a stronger supporter of State rights than I am. But this is a national issue. The definition of marriage is and has been a national issue.

In the late 19th century, Congress would not admit Utah into the Union unless it abolished polygamy and committed to the common national definition of marriage as one man and one woman.

In 1996, Congress passed a Defense of Marriage Act into law, which defines marriage as one man and one woman for the purposes of all Federal law.

Another, and perhaps more compelling, argument that this should be handled on a Federal level is that people constantly travel and relocate across State lines throughout the Nation. Same-sex couples are already traveling across country to get married. As a result of this mobility, same-sex couples with marriage certificates will become entangled in the legal systems of other States in which they live. They will do business, buy and sell property, write wills, commit and suffer torts, go to the hospital, get divorced, and have custody battles over their children.

A State-by-State approach to gay marriage will be a logistical and legal mess that will force the courts to intervene and require all States to recognize same-sex marriages. This is the only possible outcome.

This issue needs to be addressed now. The definition of marriage must be addressed, and it must be addressed now. Activist lawyers and judges are working quickly through the courts to force same-sex marriage on our country.

In June of 2003, the U.S. Supreme Court signaled its possible support for same-sex marriage when it struck down a sodomy ban in Texas. That was Lawrence v. Texas. I am sure the junior Senator from Texas is very familiar with that.

Earlier this year, the Massachusetts Supreme Court ruled that same-sex couples could marry, and that ruling went into effect on May 17. The State's high court's ruling clearly ignored tradition—even its own State legislature.

In response to the courts ruling, the Massachusetts Senate drafted a ''civil

union'' bill specifically designed to satisfy the court's edict while preserving traditional marriage.

Despite the fact that all legal rights and benefits were provided in the civil unions legislation, the court rejected this alternative legislation, insisting on redefining marriage.

In his dissenting statement, Massachusetts Supreme Court Justice Sosman said:

> It is surely pertinent . . . to recognize that this proffered change affects not just a load-bearing wall of our social structure but the very cornerstone of that structure.
>
> The majority stripped the elected representatives of their right to evaluate ''the consequences of that alteration, to make sure that it can be done safely, without either temporary or lasting damage to the structural integrity of the entire edifice.''

Even Massachusetts Gov. Mitt Romney, in his testimony on June 22, 2004, before the Senate Judiciary Committee, stated:

> Marriage is not an evolving paradigm, as the court said, but it is a fundamental and universal social institution that bears a real and substantial relation to the public health, safety, morals, and general welfare of all the people of Massachusetts.
>
> We need an amendment that restores and protects our societal definition of marriage, [and] blocks judges from changing that definition . . . at this point, the only way to re-establish the status quo . . . is to preserve the definition of marriage in the federal Constitution before courts redefine it out of existence.

Not only has the Massachusetts court ruling affected that State, it has and will continue to open the floodgate of similar decisions by other State courts across the country.

Lawsuits are already pending in 11 States to ask the courts to declare that traditional marriage laws are unconstitutional. Same-sex couples from at least 46 States have received marriage licenses in Massachusetts, California, and Oregon and have returned to their home States. Many of these couples will now sue to overturn their home State's marriage laws. There is already a lawsuit in Seattle to force the State to recognize same-sex marriage in Oregon.

Unfortunately, the Federal Defense of Marriage Act, DOMA, does not protect States from lawsuits such as these. State and Federal courts are poised to strike DOMA down under the equal protection and due process clauses in the Constitution. This would essentially force recognition of same-sex marriages.

Why protecting traditional marriage matters: Marriage is about much more than romantic love. I know from my experience. My wife Kay and I have been married for 45 years. We understand these things. For the purpose of society and our legal system, marriage is the ideal environment for raising children and thriving communities.

Our laws protect marriage between a man and a woman, not because of love or romance, but because marriage provides a good, strong, stable environment for raising children and is good for society as a whole. The evidence of the benefits to children being raised by a mother and father is overwhelming.

In societies where marriage has been redefined, potential parents become less likely to marry and out-of-wedlock births increase. This is because marriage loses its unique status in society as the institution where childbearing and parenting is centered. It becomes little more than an optional arrangement, not the presumptive locus of family life.

According to a February article in the Weekly Standard by Stanley Kurtz:

> A majority of children in Sweden and Norway are born out of wedlock.

A majority, that is more than half of the children are born out of wedlock.

He goes on to say:

> Sixty percent of first-born children in Denmark have unmarried parents—not coincidentally, these countries have had something close to full gay marriage for a decade or more.
>
> In 1989, Denmark had legalized de facto gay marriage, and Norway and Sweden followed in 1993 and 1994, respectively.

Additionally, according to Barbara Dafoe Whitehead, codirector of the National Marriage Project at Rutgers, State University of New Jersey, in her testimony before the Senate Health, Education, Labor and Pensions Committee on April 28 of this year, marriage has many benefits. She is speaking clinically when she gives these evaluations.

It can be a source of ''economic, educational, and social advantage for most children. Children from intact families are far less likely to be poor or to experience persistent economic insecurity. Estimates suggest that children experience a 70-percent drop in their household income in the immediate aftermath of divorce and, unless there is a remarriage, the income is still 40–45 percent lower 6 years later than for children from intact families.''

Ms. Whitehead goes on to say:

> Children from intact married parent families are more likely to stay in [and do better in] school.

In fact, according to Patrick Fagan, a fellow at the Heritage Foundation, in his testimony before the Senate Subcommittee on Science, Technology, and Space on May 13 of this year:

> U.S. children from intact families that worship God frequently have an average GPA of 2.94 while children from fragmented families that worship little or not at all have an average GPA of—

Some 30 percent or less.

Ms. Whitehead also says:

> Marriage provides economies of scale, encourages specialization and cooperation, provides access to work-related benefits such as retirement savings, pensions, and life insurance, promotes saving, and generates help and support from kin and community.
>
> On the verge of retirement, one study found married couples' net worth is more than twice that in other households.
>
> A study of retirement data from 1992 by Purdue University sociologists found that individuals who are not continuously married have significantly lower wealth than those who remain married throughout the life course.

That is significant because we have been talking about the emotional side. We have been talking about the things that I think are no-brainers, that most of the American people, in spite of the arguments to the contrary, talk about. But there are economic reasons. There are reasons of prosperity and happiness that are being dealt with in this resolution.

I have quotes from a number of Senators and conservatives. They have done such a good job, those who are in this Chamber. In listening, I have found a few points they said that are worth repeating.

My colleague, Senator ALLARD from Colorado, believes our Founding Fathers never envisioned that we would be changing the very structure of marriage, that we would be changing this core structure of society. We are in danger of losing a several-thousand-year-old tradition, one that has been vital to the survival of civilization itself.

This small group of activists and judicial elite, as my colleague from Kansas, Senator BROWNBACK, said, ''do not have a right to redefine marriage and impose a radical social experiment on our entire society.''

''This is not a battle over civil rights, it is a battle over whether marriage will be emptied of its meaning in contradiction to the will of the people and their duly elected representatives.''

This is an ''assault on the American family,'' as my colleague, Senator CORNYN, the junior Senator from Texas, said.

And my colleague from Alabama, Senator SESSIONS, said:

> If there are not families to raise . . . children, who will raise them? Who will do that responsibility? It will fall on the State.

This, to me, is one of the most troubling outcomes of the whole gay marriage issue. As my colleague from California, Senator BOXER, said, we have ''misplaced priorities'' in addressing this issue right now. I say to my colleague, I do not think our priorities are misplaced when we are looking at creating a whole new class of children from these gay marriages who could end up completely dependent on the State, on the taxpayers—the American people.

I do not think our priorities are misplaced when we are concerned about following in the footsteps of countries where out-of-wedlock births have skyrocketed. And I do not think our priorities are misled when some activist, rogue judges and others are undermining the legislative process in taking away the voice of our elected officials.

Additionally, several prominent, respected conservative voices in our country have spoken out against the idea of gay marriage and in support of the traditional definition.

According to ''Focus on the Family,'' headed by Dr. James Dobson—I was just on his program a little while ago:

Family is the fundamental building block of all human civilizations.

Marriage is the glue that holds it together. The health of our culture, its citizens, and their children is intimately linked to the health and well-being of marriage.

Chuck Colson, a man who most people in this body know quite well, was the founder of Prison Fellowship. He has this to say about the prospect of gay marriage:

The redefiners of marriage are working tirelessly. Their agenda is to tear down traditional marriage and make it meaningless by removing its distinctives.

He goes on to say:

Marriage, as an institution between a man and a woman, is basically for procreation.

Homosexual marriage, therefore, is an oxymoron. There is no such thing. It is something else.

It is two people coming together for recreation, not for procreation. Procreation can only happen between a man and a woman.

Every society has recognized this, going back to the beginning of recorded history. Societies recognize that it is in their self-interest to preserve this institution and to give it a distinct status under the law.

Marriage is the institution that civilizes and propagates the human race. It is where children are raised and learn the ways of right and wrong. Their consciences are formed in the family.

Finally, the Reverend Billy Graham's son, Franklin Graham, was in my hometown of Tulsa a couple of weeks ago. He said:

There is a real movement for same-sex marriage. We could lose marriage in this country the way that we know it.

That is really what this is all about. We can dance around it and try to cater to certain groups, but I find something that has served me well for a number of years when something like this comes up, and that is to go back to the law, go back to the Scriptures. In Genesis 2:18, 21–24, God said:

It is not good that man should be alone; I will make him a helper comparable to him . . . and the Lord God caused a deep sleep to fall on Adam, and he slept; and He took one of his ribs, and closed up the flesh in its place. Then the rib which the Lord God had taken from man He made into a woman, and He brought her to the man. And Adam said, ''This is now bone of my bones and flesh of my flesh. She shall be called woman, because she was taken out of man.'' Therefore a man shall leave his father and mother and be joined to his wife, and they shall become one flesh.

In Matthew 19:4–6, Jesus said:

Have you not read that He who made them at the beginning made them male and female, and for this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh? So then, they are no longer two but one flesh . . .

The reason I read these two Scriptures is because they were quoted at a very significant event that took place 45 years ago. It was when my wife and I were married.

I yield the floor.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Nevada.

Mr. ENSIGN. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. There is 2 minutes remaining.

Mr. ENZI. I ask unanimous consent that I be given an additional 3 minutes for a total of 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Nevada is recognized for 5 minutes.

Mr. ENSIGN. Mr. President, I rise today to speak on a topic that is very important. That is the preservation of the most important structure in our society. I rise to speak on the topic of marriage and the need for the Federal Marriage Amendment. But before I do, I want to thank my good friend from Oregon, Senator GORDON SMITH, for the speech he gave on this very topic last Friday. His speech was eloquent and his thoughts profound. For those who did not have the opportunity to see or hear the speech, I strongly encourage them to read it. I also want to thank the floor manager of this resolution, Senator CORNYN from the State of Texas, for his thoughtful commentary and his leadership on this issue. And so I thank both Senators.

I have given a considerable amount of thought on the topic of the Federal Marriage Amendment over the last weeks and months. My thoughts have focused on what the meaning and purpose of marriage is. All words have meaning. The word marriage has meaning deep rooted in our culture. There are certain words that have such an important meaning that they invoke strong emotions within each of us. For me, marriage is one such word. The word marriage represents an institution with historically universal understanding. Its meaning is one that has been constant throughout time and across all cultures. I can think of no other word, and no other institution, that enjoys such a special status with such an important meaning.

For me personally, I understand the importance that the presence of both a father and mother has in the life of a child. I understand this because, for a time, I was raised by a single mom. I do not, in any way, want to suggest that single parents are not doing their best to raise their children. As a single mom, my own mother did her very best to take care of me, my brother and my sister.

Single parents are doing right by their children. Single parents, like my mom, deserve to be praised. But those circumstances are not the ideal in which to raise children. Marriage is that ideal.

When I was nine, my mom met and married the man who is my dad. With their marriage, there was finally someone in our home who was a strong male role model for me and my brother. I finally had a positive example of what it meant to be a father and a husband. Someone I could look up to and someone I could emulate. My dad's presence in our house made an immediate impact on me in a way that my mother alone simply could not. His presence also impacted me in ways that has helped me love and care for my own wife and my own children.

The presence of a mother and father in the life of a child is crucial. Mothers and fathers bring their own special qualities to their own relationship and to the approach they take to raise their children. It has been said that a boy will look to his mother as the type of woman he wants to marry and his father as the model for how to treat her. For that reason, and so many more children need both a father and mother. That is the universally recognized ideal on which marriage is based.

Marriage recognizes the ideal of a father and mother living together to raise their children. Marriage is the ideal that is the cornerstone on which our society was founded. This Congress, and all previous Congresses, have enacted laws to further that ideal. In fact, in 1996, this Senate passed the Defense of Marriage Act by a vote of 85 to 14. The House of Representatives also passed DOMA overwhelmingly. My own State of Nevada has adopted a DOMA Amendment to our State constitution. As required by our State's constitution, this amendment was adopted two times by the voters of my State. So I would hope that no one in this body would take issue with the statement that marriage between one man and woman is the ideal. Congress overwhelmingly adopted legislation agreeing with that statement only 8 years ago.

For those who say that the Constitution is so sacred that we cannot or should not adopt the Federal Marriage Amendment, I would simply make two points. First, marriage, and the sanctity of that institution, predates the American Constitution. It predates the founding of our Nation and even the landing at Plymouth Rock. Marriage, as a social institution, predates every other institution on which ordered society in America, and the world as a whole, has relied including even the church itself. Second, the Founding Fathers envisioned the possibility that future generations may need to amend the Constitution. In their wisdom they allowed the amendment process to begin either with Congress or with the States. So we are considering this amendment, in the manner contemplated by the Founding Fathers, which is to say consistent with the Constitution itself.

It is with concern that I have read about how a few unelected judges and some locally elected government officials have taken steps to redefine marriage to fit their own agenda. It is not right to mold marriage to fit the desires of a few, against the wishes of so many, and to ignore the important role that marriage has played in our history.

During the course of this debate, I have heard many people suggest that the Federal DOMA law, which I referenced earlier, is not under attack. And that an amendment is premature

so long as DOMA is still law. But because of last year's Supreme Court decision in Lawrence v. Texas, many Constitutional scholars believe that Federal DOMA, and State DOMAs adopted in 41 other States, that defined marriage as between one man and one woman will most certainly be struck down.

Judicial activism is a huge problem in America. The Constitution is a living document in that it can be amended by the process our Founders set up, but not by activist judges. So the question before us today is: Will the Constitution be adopted in the manner proscribed by that document or by unelected judges?

It does not appear that this amendment will pass this year. In fact, it may take years to adopt this amendment. But it is critical to have this debate and vote here in Washington, DC so that the States can continue the debate and so that the people know exactly where each one of us stands on this issue.

In the end, for a healthy society, we need to have a tolerant society but also a society which strives for the ideal. That ideal is for children to be raised by one father and one mother bonded by the institution of marriage.

I yield the floor.

The PRESIDING OFFICER. The time of the Senator from Texas has expired.

The Senator from Illinois is now recognized for 30 minutes.

Mr. DURBIN. Mr. President, for those who are witnessing this debate on the floor of the Senate, it is a historic moment. It is rare the Senate engages in a debate on the question of amending this document, the Constitution of the United States. There are so many things that divide us on the floor of the Senate, between Republicans and Democrats, but there is one thing we are united behind, and that is our oath of office. That oath of office is explicit. This, in part, is what it says. Each of us takes this oath. To the best of our ability we will:

. . . preserve, protect and defend the Constitution of the United States.

Isn't it interesting that when this Constitution was written, our Founding Fathers wanted to make certain that whoever served as President, Vice President, Member of the House or Senate, would not swear their loyalty to the United States of America but would swear their loyalty to this document. You could not become a Member of this body unless you were prepared, under oath, to say you would preserve, protect, and defend the Constitution of the United States.

The Founding Fathers understood the importance of this document they had written. They knew it embodied within its four corners the basic principles of America. It wasn't a dead document. It was a living document which could be changed. But I think the oath of office which each of us takes is a reminder of our solemn responsibility when it comes to this Constitution.

We may propose amendments to laws, make motions on the floor, pass resolutions, make our speeches, but I am one who believes when it comes to this document we have a special responsibility. It is a responsibility which requires respect and humility—humility.

Before this Senator from Illinois will propose a change in one word in this Constitution of the United States of America, I have to be convinced, I have to be absolutely sure it is essential—essential for this union to continue and essential for the rights and liberties of every American citizen.

Oh, we debate bills back and forth. We change sentences, we change punctuation, we make wholesale changes in the law. But the laws come and go, as Members of the House and Senate come and go. This document endures.

Over 11,000 times Members of the Congress have proposed changing this document. Over 11,000 times they have come to the floor of the House or the Senate and said: The Founding Fathers didn't get it right, they didn't consider this possibility. And over 11,000 different times, overwhelmingly, their suggestions have been rejected. Why? Because of the respect and the humility which each of us brings to this debate on a constitutional amendment.

Today, those who are witnessing this debate are witnessing another attempt to amend the Constitution of the United States. How often has it been done? Since Thomas Jefferson's Bill of Rights—which originally proposed, I believe, had 12 amendments; only 10 were originally approved—we have only amended this document 17 times. One time we realized we made a mistake. We passed an amendment prohibiting the sale of liquor in the United States and a few years later we repealed it. But by and large, only 17 times in the course of the history of the United States of America has this Congress said this document is insufficient; this document does not meet the needs of America; this document must be changed.

To those who are following this debate, and to my colleagues, I will tell them the proposed amendment before us today does not meet the test. It does not meet the requirement to say to those who founded this Nation and to all who carried on since that we need to pass this Federal marriage amendment. I believe it is plain wrong. It is wrong in three specifics.

First, we are talking about the institution of marriage. Traditionally, marriage is defined by each and every State. One State establishes a certain age of eligibility. Another State will establish a certain blood test that may need to be taken. Another State will limit whether certain members of families can marry. All of these provisions and limitations on marriage are State and local responsibilities. Not once will you find in this Constitution of the United States the requirement that the Federal Government in Washington establish a standard for marriage in America. So what we are discussing today is a proposed amendment to the Constitution that is clearly outside of the purview and scope of this Constitution which we have sworn to preserve and defend.

Second, there is no court ruling that brings us to this moment in this debate. It is not as if some Federal court or even a State court has said this Constitution requires that people of the same gender be allowed to marry. Not one single court in America has said that. So we come here today, the argument being made that we should preempt the possibility that at some time in the future some court will decide that in fact a marriage between people of the same gender in one State must be upheld in other States. There has never—repeat, never—been a case in any State or Federal court that says that. Yet we come to the floor of the Senate today as if the decision were handed down last week and we must stand up once and for all to preserve the right of marriage to be confined to an institution between a man and a woman. It is traditionally a State decision on what defines marriage. There is no controversy that brings us to the floor today.

What is even worse, we come to this debate with this constitutional amendment which has been proposed, and we come to the floor to debate it without a single markup by the Senate Judiciary Committee to debate the language that is being proposed. Does that show respect for the Constitution? Does that show the appropriate humility which every Member of Congress should have? Of course it does not. Those who wrote this amendment were changing it by day. And now they want to change it again. They tell us the language given to us last week has to be changed again—maybe twice.

Does this strike you as a work in progress? Does this strike you as the kind of language which should be put in this enduring document? Or does it strike you that we are taking a roller to a Rembrandt; that we are suggesting changes in our Constitution which have not met the test, the test that they address an issue of enduring significance and that the language crafted should stand beside our Bill of Rights?

Today they argue: We need to make a few amendments in this language. We have been thinking it over this week.

What is wrong with this picture? Shouldn't we take a step back and ask whether this is necessary? Ask whether, in fact, there is a court decision which requires it? Ask whether the language which we are proposing is language which will endure for generations to come?

If we cannot answer each of those questions in the affirmative, then for goodness sakes why don't we move on? I will tell you why we are not. Because this debate is not about changing the Constitution—no. They say in politics for everything that is done, there is a

good reason and a real reason. The good reason that is being given for this debate is to change the Constitution. That is not the real reason. The real reason is to change the subject of the President's election campaign because the Republican side of the aisle and those who are supporting this administration don't want to debate this Presidential election campaign on the issues most Americans identify as important in their lives. They don't want to debate the President's economic policy and the squeeze it has put on middle-income families. They don't want to debate what is happening in Iraq. They want to change the subject. They want to debate the future of marriage in America. That, to them, is more important and that is why we are here today. That is why there are statewide referenda in many battleground States like Missouri. And that is why we are hellbent to consider this amendment literally days before a certain political party coincidentally has its convention in the State of Massachusetts. That is what this is all about—changing the subject of the Presidential campaign.

Oh, they tell us in the Judiciary Committee: Incidentally, we are going to bring the flag-burning amendment up again, too. We have had this amendment up before us at other times, but they are anxious for us to vote on this again before the election campaign.

Do you know what I think we need? I don't think we need an amendment to the Constitution. I think we need a permanent law of the land that says there will be no constitutional amendment which will be proposed in a Presidential election year. Frankly, that will cause many of my colleagues to suppress the urge to use this Constitution as some sort of a political platform to try to win votes in an election.

When you take a look at this particular amendment, you find, of course, that we are considering and taking up many days of debate rather than considering other issues we ought to be talking about here on the floor of the Senate.

Do you recall the press conference last week when the Secretary of Homeland Security, Tom Ridge, told America of the danger of al-Qaida, a real danger; that they are plotting massive casualties to be brought on victims in America? We didn't know where or when, but he warned America, along with the Director of the FBI.

Then you probably read yesterday speculation about whether we might have to postpone a Presidential election because of terrorism. And you think to yourself: For heaven's sake, I guess America is still in danger; and sadly we are. Then you might think to yourself: I certainly hope the men and women serving in the Senate are doing everything they can to make our Nation safer. That is a natural reaction, one which you might expect.

All you have to do is look at the calendar of business of the Senate on the desk of every Senator and turn to the back page. You will find the status of appropriations bills that have not been considered by the Senate. Among the first two bills on the list is the Homeland Security appropriations bill—sitting on the calendar of the Senate for almost a month.

We are warned by this administration that our security is in question, that America may be in danger, and we are told by the Republican leadership on the Senate floor that we don't have time to appropriate the money to make America safer. Instead, we are going to debate a constitutional amendment over an issue that has not even reached the point in any court in the land to require a constitutional amendment.

That is just one of many issues that we could be considering.

What have we done to try to reduce the squeeze on middle-income families from increased costs for health care, increased costs for prescription drugs, increased costs for gasoline, increased costs for college education? The answer is nothing. We are too busy debating a constitutional amendment about an issue that does not exist. It says something about the priorities of the leadership.

We have not passed a budget resolution this year. We have 12 appropriations bills, including the Department of Homeland Security, that have not been enacted. This is all about changing the subject.

Paul Weyrich, CEO and chairman of the Free Congress Foundation, was very direct and blunt. He recommended that the President "change the subject" from Iraq to the Federal marriage amendment. It won't work because we pick up the newspaper every morning and we are reminded of the brave men and women in uniform who are literally risking their lives in Iraq. We cannot, we should not, and we will not forget them. And our attention will not be diverted from the danger to their lives and the prayers and hopes of their families. Yet that is the political agenda. That is what is before us.

We have bypassed the Judiciary Committee. The suggestion has been that we take this amendment which has been proposed, change it one, two, three, or four times, and vote on it. But the changes may include adding other amendments to it. Is that possible? Could we put in more than one constitutional amendment? Of course. So we have turned into not a Senate but a constitutional convention. Is that what we are supposed to be doing, rather than appropriating money for homeland security, rather than addressing the timely issues that America's families are facing? I hope not.

We have had one hearing on the text of a proposed amendment, and it was less than 24 hours after a new version had been written. This constitutional amendment is changing on a regular basis.

I might say that Senator CORNYN of Texas, on Friday, came and spoke on the Senate floor. He said those who oppose this constitutional amendment, as I do, "have chosen to boycott good faith desire to have an honest discussion about the issue." That was his quote. Senator ALLARD and others have said similar things.

For the record, the Judiciary Committee, the committee of jurisdiction, has held four hearings on this issue. Senators FEINGOLD, KENNEDY, and I attended all four of those hearings. There was no boycott involved. We attended those hearings and asked questions about this issue. But there was never a markup. It was brought to the Senate floor with changes that are being made as we speak.

In the past, Senator HATCH, now chairman of the Senate Judiciary Committee, rejected this. He said you can't bring a constitutional amendment to the floor without at least going through the Judiciary Committee and looking at the language and seeing if there are better words. Here is what Senator HATCH said in 1979:

> To bypass the committee is, I think, to denigrate the committee process, especially when an amendment to the Constitution of the United States of America, the most important document in the history of the Nation, is involved.

That is what Senator HATCH said 25 years ago. But that is not the process he has followed as chairman of the committee today. He has taken a much different path.

This would be, incidentally, only the second time in history in which we would have enacted an amendment to the Constitution of the United States which would restrict the rights of American citizens.

Historically, our amendment process has been to expand the rights and liberties of Americans, African Americans, women, and others to give them voice in the democratic process. This would be the second time in history in which we would restrict the rights of Americans. The other time, as I mentioned earlier, we said with the prohibition amendment that we would restrict the right to sell liquor and alcoholic beverages in America. That is the one other time we did it. We did it because of a temperance crusade brought on by some religious groups and others, and then realized a few years later that it was wrong. This would be only the second time in history when we would use the amendment process to restrict the rights of American citizens.

We have no controversy at hand. The proposed amendment would be unique in that no constitutional amendment has been ratified in response to a State court ruling. There are four constitutional amendments that overrule Supreme Court decisions, but no constitutional amendment has ever been ratified in response to a nonexistent Supreme Court ruling. That is the case here.

As I listened to those on the other side arguing earlier, I couldn't believe some of the things they said. The Senator from Texas said when judges in

Massachusetts mandate same-sex marriage on our Nation, they export that marriage to other States. That is not a fact. There is nothing that has happened in the State of Massachusetts which has changed the marriage laws in Illinois, in Wyoming, in Nevada, in Texas. Nothing they have done changes the standard for marriage in my State.

He went on to say that it is a question of whether the people shall have a voice in this process. I certainly believe the people of America should have a voice in the promulgation of law. But in this situation, the people of Massachusetts have a voice and have a process and have before them a constitutional amendment which will eliminate same-sex marriage but protect the rights of civil union. The people of Massachusetts will ultimately vote on that question as will their legislators.

If you want to give the people of Massachusetts a voice in the process, they already have it. They are exercising it. There is no need for a constitutional amendment to either embellish it or reduce it in any way.

Then, the Senator from Texas said we on the Democratic side were trying to stifle debate on this constitutional amendment by not allowing the Republicans to amend it two, three, four times, or more. We are not trying to stifle the debate. That is what this is all about. This exchange is about debate. But how can you debate a moving target? How can you debate a proposal to the Constitution of the United States which may change 15 minutes from now, an hour from now, tomorrow, or Thursday? Shouldn't the Republican majority that brings this to the floor meet their solemn obligation to put language before us befitting the Constitution and not make this a construction project, a work in progress? That is what they want to do.

The Senator from Nevada on the Republican side said earlier that judicial activists are taking away the power of the legislative branch. That is not a fact. What happened in Massachusetts happened under the Massachusetts Constitution, which is being amended by their legislature as required and submitted to the people of Massachusetts. If the people are to have the final voice on this issue in Massachusetts, that is exactly what is going to happen.

The text of this proposed constitutional amendment, incidentally, is contradictory and unclear. There are some who oppose same-sex marriage but believe that civil unions should be allowed, as they are in many States, and as recognized by many private companies. But the language of this proposed Federal amendment, as it stands today—it may change—says:

> Neither this Constitution nor the Constitution of any State shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than a union of a man and a woman.

The operative words that should have been debated in the committee, and should be debated here are ''the legal incidents thereof.''

What does it mean? Let me give a practical example. In the District of Columbia, they have enacted a law that if you have a partner you are living with of the same gender, you can declare that for purposes of being covered by your partner's health insurance. If one person in that household, two men or two women, is working, and one is not, the person working can claim the partner living at home as covered by the same health insurance policy just as it applies to men and women in marriage.

What is wrong with that? What is so scandalous about that, that people desperate for health insurance coverage would have someone they love and share a home with be covered by health insurance?

Yet this constitutional amendment would put that and other legal incidents of marriage, such as civil unions, in jeopardy.

Let me note what has been said by Vice President CHENEY. He was involved in a debate with Senator LIEBERMAN 4 years ago in the Vice Presidential race, and this issue came up. Let me read what Vice President CHENEY said when it came to the issue of defining marriage:

> It's really no one else's business in terms of trying to regulate or prohibit behavior in that regard. . . . I think different states are likely to come to different conclusions and that's appropriate. I don't think there should necessarily be a federal policy in this area.

That is what Vice President CHENEY said. I think he is right.

Let me read what Vice President CHENEY's wife said. I am sure it took courage for her to say it, but she did just this week. Lynne Cheney, the wife of Vice President CHENEY:

> People should be free to enter into their relationships that they choose. When it comes to conferring legal status on relationships, that is a matter left to the states.

I am sure that did not make the Vice President or his wife popular in the White House, maybe not among their Republican colleagues, but they are right. This is a decision which clearly should be left to the States.

Today at lunch, the Senate Historian told us a story of Aaron Burr, a man who had served as Vice President and a man who left the Senate under extraordinary circumstances on March 1, 1805. This is what Aaron Burr said as he left the Senate about this Senate:

> . . . is a sanctuary; a citadel of law, of order, and of liberty; and it is here—it is here, in this exalted refuge; here, if anywhere, will resistance be made to the storms of political phrenzy and the silent arts of corruption; and if the Constitution be destined ever to perish by the sacrilegious hands of the demagogue or the usurper, which God avert, its expiring agonies will be witnessed on this floor.

You don't hear many speeches like that on the floor of the Senate anymore, but Aaron Burr was correct. This is where the debate has to take place. This is where this debate on this constitutional amendment has to end. This is where Members of the Senate who have sworn to uphold, protect, and defend this Constitution of the United States will remind our colleagues to take a step back and show the respect and humility which this document deserves. To let this constitutional amendment process be taken captive by those who are trying to win votes in November is wrong. Whether it is done by Republicans or Democrats, it is just wrong. I think the American people understand that.

There are strong feelings about a man and a woman that are shared by me and by others, but we also have strong feelings about this document, a document which I have taken an oath under God to uphold and defend. And I will do that by opposing this amendment.

Mr. REID. Will the Senator yield?

Mr. DURBIN. I am happy to yield.

Mr. REID. Is the Senator aware, through the Chair I direct this question, in the State of Nevada, on two separate occasions, there was a vote by the people of the State of Nevada on whether they should include in the Nevada State Constitution a prohibition for gay marriage; is the Senator aware that took place?

Mr. DURBIN. I was not aware.

Mr. REID. I say to my friend, it has taken place. It was long and arduous. It took a period of years to accomplish.

Would the Senator agree that the State of Nevada had the right to do that; whether they agree with the conclusion or not, didn't they have the right to do that?

Mr. DURBIN. Certainly.

I say to the Senator, that is the argument that has been made on the other side, that the people should be allowed to speak on the issue, and if that is the case, in Nevada, Illinois, or wherever it might be, then honoring that decision would seem to be consistent with the establishment of all America.

Mr. REID. Through the Chair, I further question my friend, is the Senator aware in that debate over a period of years that lots and lots of money was spent in ads for and against the amendment, door-to-door activities took place, many more grassroots activities, editorials in newspapers, all in the State of Nevada? Whether you were for or against the ban on same-sex marriages, these activities took place in the State of Nevada; and now in the State of Nevada, in its constitution, there is a prohibition.

The people of the State of Nevada had a right to do that; didn't they?

Mr. DURBIN. I believe they do. I think the Senator is correct.

Mr. REID. Is the Senator also aware that we have been told the reason we are not going to vote on this amendment, Resolution 40 now before the Senate, is that Senator GORDON SMITH has another amendment he wants to offer and he does want a vote? Has the Senator been told that is the fact?

Mr. DURBIN. Yes, I have.

Mr. REID. Through the Chair, I direct this to the Senator from Illinois. From today's Congressional Daily, p.m. edition, it says: Senator GORDON SMITH, Republican from Oregon, today denied that he has insisted the Senate vote on his alternative constitutional amendment banning gay marriage, telling reporters he favors Minority Leader DASCHLE's proposal to vote up or down on the underlying amendment sponsored by WAYNE ALLARD, Republican from Colorado.

Is the Senator from Illinois aware that Senator DASCHLE has requested on more than one occasion that we have an up-or-down vote on the resolution that is now before this Senate, that we have all been studying and doing our best to understand, that we should vote up or down on this? Does the Senator agree that is what we should do?

Mr. DURBIN. Yes, I do. Let's bring this to a vote. The sooner, the better.

Mr. REID. The Senator is aware, however, is he not, as stated by the majority, this is a work in progress? They, obviously, are not sure what they want to vote on. Or is it just a political issue and they want to vote on nothing, they want to have another class action where they had victory in their grasp but they did not want to work on the substance; they wanted to maintain a political issue that Democrats were obstructing, which we were not? Is the Senator aware, it could be the same situation?

Mr. DURBIN. I say there is a striking similarity. It appears they want to vote more than they want an amendment. Let's be honest about what it is about. They want to put some Senators on the spot. Trust me, the ads will be running, if they have not started already, in States across the Nation. If you oppose this constitutional amendment, they will say you are against traditional marriage. Virtually every one of our colleagues on both sides of the aisle, for that matter, support traditional marriage between a man and a woman.

I have been married 37 years, and I think the Senator from Nevada may have been married longer. I respect this institution and have committed my life to it with my wife. I think we all understand that. But understand, as well, a ''no'' vote on this amendment will be used for political purposes to change the subject of the election campaign.

I say to the Senator from Nevada, as my time is closing, there is one point I would like to make. Things have changed in my life experience, and in many others', over the time I have been in the Congress and even before. There was a time when, if there were gay members of a family, people just did not talk about it. No reference was made to it; very little was said about it. It was the aunt or uncle who never got married and no one has talked about it.

That is changing in families across America. People have had the courage to come forward and say: I have a different sexual orientation. For some reason, God has made me with a different nature. I think more and more families are accepting of that fact, as they should be. I don't know what God's plan was in bringing a man or woman to this Earth with a different sexual orientation, but in many cases they have.

All we have said, those Members on our side, is though we may not support gay marriage or marriage of the same sex, we ask for tolerance and understanding.

The phone calls I have been receiving in my office have been phone calls generated by people who sincerely support this amendment and many who have some different agenda. It is, unfortunately, a very strident and hateful agenda. I hope that whatever the outcome of this amendment, we will say to the American people: Be tolerant; be understanding. Some people are different but they are our family. They are our neighbors. They are our fellow Americans.

This proposed constitutional amendment is divisive and unnecessary, and contains many ambiguities and unresolved issues that have not been examined or considered by the Senate Judiciary Committee.

We have less than 30 legislative days left this year. There already are more pressing issues than we could possibly address in that short time, without spending this week on a proposed constitutional amendment that even its supporters acknowledge does not have the votes to succeed.

In light of Secretary Ridge's announcement last week, we should be focusing our attention on homeland security, including port and rail security.

We must address the everyday needs and concerns of American citizens, especially those being squeezed in the middle class.

Since President George W. Bush has come to office, average weekly earnings have risen only 1 percent, while gas prices have risen 25 percent; college tuition has risen 28 percent; and family health care premiums have skyrocketed by 36 percent.

Unfortunately, this Senate has ignored these concerns and has done nothing to increase wages. For example, we have not increased the minimum wage in almost 7 years, and the benefit of that increase has been completely erased by inflation.

Even worse, unless Congress acts to restrict the President's proposed overtime regulations before our August recess, those regulations will slash the paychecks for thousands of Americans currently receiving overtime compensation by 25 percent.

Finally, we still have not passed a budget resolution this year and have 12 appropriations bills that must be enacted.

So why are we debating this constitutional amendment instead of addressing these more pressing issues?

I suggest that there is an effort here to try to divert American families from their real concerns.

In fact, this is a strategy that was advocated by Paul Weyrich, CEO and chairman of the Free Congress Foundation, who recommended that the President ''change the subject'' from Iraq to the Federal Marriage Amendment.

We must not allow for such politicization of our Constitution—our Nation's most sacred document. That is why I believe we must ban the proposal of constitutional amendments in a Presidential election year—certainly within 6 months of an election.

By considering this issue outside of Presidential election years, we may be better able to consider the implications of this proposal without added political pressures. This may be one reason why only 3 of the 27 amendments to our Constitution have been passed by Congress in Presidential election years.

Of course, I do not mean to imply that those who support this amendment have only political motives. Some of my colleagues on the other side of the aisle sincerely believe that no issue is more important than this one.

However, the Judiciary Committee simply has not given this proposed constitutional amendment the thorough and measured consideration worthy of a possible change to our constitution—certainly not if one believes this is the most important issue facing our society today.

During the 108th Congress, the Senate Judiciary Committee has held hearings on four proposed constitutional amendments: victims rights, flag desecration, the continuity of Congress, and this one.

Three of those proposed amendments have been debated and marked up by the Constitution Subcommittee, following the long-standing tradition of our committee. The amendment today is the only one that bypassed this traditional consideration.

It is ironic that the victims' rights and flag desecration amendments have followed the committee's traditional process, even though both have been considered by the Senate in the past, while this proposed amendment—which has never been considered by the Senate before—bypassed the full committee and subcommittee markups and barely even had a hearing.

Although the Judiciary Committee and Constitution Subcommittee have held four hearings on the issue of same-sex marriage, only one hearing was on the text of a proposed constitutional amendment—and that hearing was held less than 24 hours after this new version of the proposed amendment was introduced.

Furthermore, unlike our committee's hearings on the victims' rights amendment and flag discretion amendment, the only hearing on the text of this proposed amendment did not have a representative from the Department of

Justice to share the administration's views.

On the issue of hearings, before I go further, I would like to respond to Senator CORNYN, who on Friday said that in committee hearings on this issue, Senators who oppose this constitutional amendment ''have chosen to boycott a good-faith desire to have an honest discussion about this issue.'' Senator ALLARD and others have made similar comments.

For the record, the Judiciary Committee—as the committee of jurisdiction—has held four hearings on this issue. Senators FEINGOLD, KENNEDY, and I attended all four, and at each one, Democratic Senators outnumbered Republican Senators.

This is hardly evidence of a refusal to engage in an honest discussion. In fact, just the opposite is true: We are asking for a full and thorough debate—but in the committee of jurisdiction, where such consideration is not only appropriate, but necessary, before we debate this proposal on the Senate floor.

This request is the same as the one made by Senator HATCH in 1979, when a constitutional amendment regarding the direct election of the President and Vice President bypassed the Judiciary Committee and was debated on the floor.

In that debate, Senator HATCH, then ranking member of the Constitution Subcommittee, said:

> To bypass the committee is, I think, to denigrate the committee process, especially when an amendment to the Constitution of the United States of America, the most important document in the history of the Nation, is involved.

Senator HATCH's argument prevailed, and the proposed constitutional amendment was referred to the Judiciary Committee by unanimous consent.

Unfortunately, Senator HATCH has taken a different path with this proposed constitutional amendment, which is only the second constitutional amendment in more than a decade to be debated on the Senate floor after being placed directly on the Calendar without committee referral or report.

I believe anything less than full consideration and debate by the Judiciary Committee not only would denigrate the committee process, but also would be a disservice to those who sincerely believe this is the most important issue facing our country. Without such examination, many issues in the proposal before us today will remain unresolved and unclear.

The most important issue we must resolve is whether a constitutional amendment regarding marriage is necessary.

I am aware that Article V of the Constitution provides for amendments, and I agree that the Constitution is a living document.

However, as James Madison wrote in The Federalist No. 49, the Constitution should be amended only on ''great and extraordinary occasions.''

Our Nation has heeded that advice, and although there have been more than 11,000 proposed constitutional amendments since 1789, we have amended our Constitution only 27 times, including the adoption of the Bill of Rights in 1791.

We must continue to approach constitutional amendments with great humility and respect. To do otherwise would be to take a roller to a Rembrandt.

The last time Congress submitted a constitutional amendment that was ratified by the States was more than 30 years ago, when the voting age was lowered to 18. That amendment was appropriate because it followed the principle of six other constitutional amendments that expanded voting rights.

By contrast, the proposed amendment we are considering today would be the first constitutional amendment to restrict the rights of individuals since the 18th Amendment regarding Prohibition was ratified in 1919. Fourteen years later, that amendment was repealed.

This proposed amendment also would be unique in that no constitutional amendment has been ratified in response to a State court ruling.

Furthermore, although there are four constitutional amendments that overruled Supreme Court decisions, no constitutional amendment has been ratified in response to a non-existent Supreme Court ruling. In other words, this proposal is a solution in search of a problem.

In 1996—another Presidential election year—Congress passed the Defense of Marriage Act, under which no State can force another State to recognize the marriages of same-sex couples. In other words, each State has its own power to define marriage.

In the 8 years since DOMA was passed, it has never been successfully challenged. Although many have speculated that it may be unconstitutional, not a single Federal judge in this country has indicated that DOMA is unconstitutional or unlawful in any way, shape, or form. DOMA is still good law.

Our country now has a preemptive foreign policy. I do not think we should have a preemptive Constitution. This proposed amendment would preempt the possibility that the Defense of Marriage Act will be found unconstitutional. That is premature and therefore inappropriate for an amendment to our Constitution.

The concerns I have raised thus far are reason enough to oppose this constitutional amendment. However, I have not even discussed the text of the proposal itself.

This constitutional amendment States the following:

> Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman.

These two sentences are contradictory. The first sentence states that marriage must be between a man and a woman. But the second sentence suggests that marriage other than between a man and a woman would be permissible as long as that recognition occurred through a statute, rather than constitutional means.

Which is it? Does this proposed constitutional amendment permit States to enact laws that would allow marriage to consist of the union of same-sex couples? If so, the first sentence must be modified. If not, the language in the second sentence must be more explicit to reflect the fact that this constitutional amendment would take away the right of States to define marriage within their borders.

Furthermore, the overall intent and scope of the first sentence also are unclear. At first, this language seems straightforward enough. However, there are at least two ambiguities regarding this sentence.

First, Representative MARILYN MUSGRAVE, the House sponsor of this proposed constitutional amendment has stated the following:

> In summary, the first sentence of the FMA is designed to ensure that no governmental entity . . . at any level of government . . . shall have power to alter the definition of marriage so that it is other than a union of one man and one woman.

However, as Representative Bob Barr noted in his testimony before the Judiciary Committee, the scope of this first sentence is not limited to government actors. According to Representative Barr, this sentence ''appears to bind everyone in the United States to one definition of marriage.''

As a result, religions that marry couples of the same sex in religious ceremonies may be barred from doing so. This blurs the line between church and State and threatens the Free Exercise Clause of the First Amendment.

While I take the sponsor at her word that this is not her intention, the language again is ambiguous and must be clarified.

Secondly, it is uncertain whether arrangements such as civil unions and domestic partnerships could exist at all under this first sentence of the Federal Marriage Amendment.

Although Senator ALLARD and Representative MUSGRAVE have stated that this sentence should not apply to civil unions or domestic partnerships, lawsuits have been brought in California and Pennsylvania that challenge domestic partnership laws based on the States' definition of marriage as being between a man and woman.

Dennis Archer, president of the American Bar Association, agrees that there is ambiguity and sent a letter to the Senate which States the following:

> Despite the claims of the resolution's authors, it is unclear whether a State would be prohibited from passing laws permitting civil unions or domestic partnerships and providing State-conferred benefits to the couples involved.

Based on these lawsuits and the ABA's opinion, the language of this

amendment must be more explicit regarding whether civil unions and domestic partnerships could exist.

The second sentence also is full of ambiguity and undefined terms.

For example, what does the term ''legal incidents thereof'' entail?

I asked Professor Phyllis Bossin, who is Chair of the American Bar Association Family Law Section and who testified before the Judiciary Committee on behalf of the American Bar Association, what this phrase meant.

She said there were hundreds of such rights and responsibilities and provided a list of dozens of them, including the following: the right to visit in a hospital; the ability to authorize medical treatment; family health insurance; the ability to consent to organ donation; eligibility for life or disability insurance; interstate succession, which is when a spouse dies without a will; the right to adopt; domestic violence laws; the right to seek compensation for wrongful death; and the ability to file joint petitions to immigrate.

I ask unanimous consent that Professor Bossin's list of selected legal incidents of marriage be submitted for the RECORD.

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

RESPONSE OF PHYLLIS G. BOSSIN ON BEHALF OF THE AMERICAN BAR ASSOCIATION TO QUESTIONS FROM SENATOR RICHARD J. DURBIN

A PROPOSED CONSTITUTIONAL AMENDMENT TO PRESERVE TRADITIONAL MARRIAGE, MARCH 23, 2004

(1) The Federal Marriage Amendment (S.J. Res. 30) states the following: ''Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman.''

(a) What does the phrase ''legal incidents'' of marriage mean?

Answer: ''Legal incidents of marriage'' are those rights that exist as a matter of law by virtue of the marital relationship itself. Among the hundreds of such rights and responsibilities, some are:

(1) Family law: (a) Distribution of property upon divorce (particularly marital or community property); (b) Right to seek spousal support (alimony, maintenance); (c) Right to seek custody, visitation, parenting time; (d) Automatic presumption of parentage for children born during marriage; (e) Right to adopt; (f) Application of common law marriage (in states that recognize common law marriage; (g) Right to enter into prenuptial agreements; (h) Right to change name at time of marriage; (i) Domestic violence laws (including restraining orders and right to occupy home); (j) Duty to support spouse during marriage; (k) Liability for family expense; (l) Automatic coverage of spouse under most auto policies; (m) Right to seek divorce; (n) Right to annulment; and (o) Right to seek/receive child support.

(2) Taxation: (a) Right to file jointly; (b) Tax rates; (c) Exemptions; and (d) Transfer of property between partners without tax consequences (gift or estate tax).

(3) Health Care Law: (a) Surrogate decision making (authorizing treatment or withdrawal of treatment); (b) Access to medical records; (c) Right to visit in hospital; (d) Consent to organ donation; (e) Consent to autopsy; (f) Right to make funeral arrangements or dispose of remains; and (g) Family health insurance, including rights under COBRA.

(4) Probate: (a) Intestate succession (rights to property when one spouse dies without a will); (b) Protection from being disinherited (right to challenge will or elect to take against the will); and (c) Preferential status to be named guardian or executor/administrator.

(5) Torts: (a) Right to seek compensation for wrongful death and emotional distress; and (b) Right to seek compensation for loss of consortium.

(6) Government Benefits and Programs: (a) Survivor benefits (Social Security); (b) Military benefits (survivor, housing, health care, PX); (c) Eligibility (and consideration of family income) for welfare benefits; (d) Disqualification from programs because of status of family member; and (e) Disclosure requirements for public officials (and their family members).

(7) Private Sector benefits: Labor Law: (a) Family Health insurance, including rights under COBRA; (b) Eligibility for life insurance (such as group coverage for spouses); (c) Eligibility for disability insurance; (d) Right to take sick leave to care for seriously ill spouse; (e) Qualified Domestic Relations Orders (to divide pension benefits upon divorce between spouses); (f) Ability to roll over spouse's 401(K) or other retirement accounts and tax deferral on income distributed by deceased spouse; (g) Discrimination based on marital status; and (h) Eligibility for family memberships and discounts.

(8) Real Estate: (a) Eligibility for tenancy by the entirety (traditionally only available to husbands and wives, a form of tenancy in which the joint ownership and right of survivorship generally cannot be eliminated as a result of one spouse transferring his or her interest to the other); (b) Need for spouse's approval for real estate transaction; (c) Dower rights; (d) Homestead rights; and (e) Rent control protections, where applicable.

(9) Bankruptcy: (a) Joint filing.

(10) Immigration: (a) Joint petitions to immigrate; and (b) Preferred status for spouses or family members (immigrating separately).

(11) Criminal Law: (a) Privilege not to testify.

(12) Miscellaneous: (a) Benefits and rules pertaining to family farm; (b) Right to request and obtain absentee ballot; (c) Consideration of family income for purpose of student aid eligibility; (d) Access to campus housing for married students; and (e) Economic disclosure requirements of public officials (and spouse and family members).

Mr. DURBIN. Under the Federal Marriage Amendment, none of these legal incidents could be provided by Federal or State courts. For example, Professor Bossin cited a California trial court ruling that the State constitution requires a partner in a same-sex union be allowed to sue for the wrongful death of her partner. This proposed constitutional amendment would preclude such a finding by a court.

This amendment also would have prohibited Vermont from establishing civil unions, because a court had ruled that the law to create such relationships was constitutionally required.

These examples go far beyond the scope of ''marriage,'' but they do not tell even half of the story: Under the Federal Marriage Amendment, all State and Federal laws that provide any of these ''legal incidents of marriage'' could be struck down.

Senator ALLARD and others who support this amendment argue that it would allow State legislatures to provide the legal incidents of marriage through legislation, and that this amendment only constrains courts. However, a more critical analysis—which, again, should have been done at the committee level—demonstrates that this simply is not the case. For example, Professor Bossin has stated that the right to adopt is a legal incident of marriage. What if the Pennsylvania State legislature enacts a law to allow same-sex couples to adopt, and someone challenges the constitutionality of that law?

Under the second sentence of the proposed Federal Marriage Amendment, neither the State constitution nor Federal constitution shall be construed to require that the right to adopt—as a legal incident of marriage—be conferred upon a same-sex couple. Therefore, the court would have no grounds on which to uphold the constitutionality of this law, and the law would be struck down.

The possibility that even laws conferring the legal incidents of marriage could be invalidated raises serious questions about the intent and practical effects of the Federal Marriage Amendment.

This proposed constitutional amendment also undermines the democratic process regarding State constitutional amendments. In Massachusetts, the proposed State constitutional amendment that may be on the ballot in 2006 would define marriage as the union of one man and one woman, while simultaneously establishing civil unions for same-sex couples with ''entirely the same benefits, protections, rights, privileges, and obligations that are afforded to persons [who are] married.''

However, under the plain reading of this proposed Federal constitutional amendment, the Massachusetts State constitution cannot be construed to require the legal incidents of marriage to be conferred to same-sex couples. In other words, even if the people of Massachusetts voted to ratify this State constitutional amendment, the second part of that amendment—the part that establishes civil unions—would be void because of the Federal Marriage Amendment.

Furthermore, because of the first sentence of the Federal Marriage Amendment, under no circumstance could the people or the State legislature define marriage as other than between a man and a woman. How, then, does the Federal Marriage Amendment achieve its goal of advancing the spirit and principles of democracy.

Finally, I believe that words should not be added or deleted from our Constitution or from proposed constitutional amendments in a careless manner. Therefore, I would like to know why the original version of this proposal was modified by removing the reference to ''groups.'' The first version of the Federal Marriage Amend-

ment, S.J. Res. 26, stated that marital status or the legal incidents thereof would not be conferred upon ''unmarried couples or groups.''

The current version states that marriage or the legal incidents thereof shall not be conferred upon ''any union other than the union of a man and a woman.'' It appears to me this change was made because we are still struggling in some parts of our Nation with the idea of polygamy. Professor Bossin agrees that the current version of the proposed constitutional amendment does not explicitly prohibit polygamy, because polygamists enter into the union of a man and a woman—they simply do it multiple times.

Was it in fact the intent of the sponsors to leave the door open for polygamy? If so, why should polygamous groups be treated differently from same-sex couples? If not, why was the reference to ''groups'' deleted from the original version?

In addition to expressing my serious procedural and substantive concerns, I would like to address some of the arguments in support of this proposed constitutional amendment.

First, I have heard many Senators argue that this constitutional amendment is necessary to provide the American people with a voice and to protect marriage from so-called activist judges. As I already have noted, this proposed constitutional amendment actually undermines democracy by removing the power of the people and their elected representatives to define marriage in their States, to provide for civil unions in their State constitutions, or even to enact legislation to provide the legal incidents of marriage.

I also disagree that democracy is pitted against so-called judicial activism. As University of Colorado constitutional law professor Richard Collins said, judicial activism is ''more of an insult than a philosophy.''

To argue that judicial activism is contrary to democracy is to suggest that a case like Brown v. Board of Education did not promote democracy in America. That was clearly an activist court, which took control of an issue that Congress and the President refused to address: discrimination in our public schools.

In Brown v. Board of Education, an activist Supreme Court said we are going to give equal opportunity to education across America. Doesn't that further democracy? When we celebrated the 50th anniversary of this decision earlier this year, did anyone argue that it didn't?

The same would be said of Griswold v. Connecticut, in which the Supreme Court said that families had the right to decide their own family planning and that the State of Connecticut could not dictate to them what family planning was allowed. It was a matter of privacy in family decisions. Was this an activist court in derogation of democracy that extended to these families and individuals their right to privacy?

In Loving v. Virginia, the Supreme Court said that a ban on interracial marriage was improper. Even though at the time, only 20 percent of the American people approved of such marriages, was that decision contrary to democracy or did it promote democracy?

Time and time again, judicial activism has promoted democracy. Of course, we must take care that the courts do not go too far. But to suggest that a constitutional amendment is necessary in this case simply because it was a court ruling—incidentally, by a court that consists of six Republican appointees and only one Democratic appointee—is controverted by the obvious legal precedent.

I also have heard many Senators argue that this constitutional amendment is necessary to safeguard the best environment for raising children. I agree that children raised by two parents are, in general, better off than children raised by a single parent. Many studies demonstrate this. But studies also demonstrate something else.

In 2002, the American Academy of Pediatrics—the largest pediatric organization in America—issued a report that Stated the following:

> [T]he weight of evidence gathered during several decades using diverse samples and methodologies is persuasive in demonstrating that there is no systematic difference between gay and nongay parents in emotional health, parenting skills, and attitudes toward parenting. No data have pointed to any risk to children as a result of growing up in a family with one or more gay parents.

Dr. Ellen Perrin, a professor of pediatrics at Tufts-New England Medical Center, who is considered to be the Nation's foremost expert on children raised by same-sex couples, has studied same-sex couples and concluded the following:

> What we know for sure is that children thrive better in families that include two loving, responsible, and committed parents. We also know that conscientious and nurturing adults, whether they are men or women, heterosexual or homosexual, can be excellent parents. We have a lot of research as well as clinical experience that provide evidence for this fact.

This evidence is based on our Nation's experience with gay adoption. Every State except Florida allows gay people to adopt.

Some States, including my home State of Illinois, allow same-sex couples to jointly petition for adoption. Many others allow for second parent adoptions, a legal procedure which allows a same-sex co-parent to adopt his or her partner's child. These States have recognized that same-sex couples can step into the lives of adopted children and provide loving and supportive families.

Under this proposed constitutional amendment, it would no longer be possible for State courts to interpret their constitutions to allow same-sex couples to adopt. Same-sex couples only would be allowed to adopt if explicitly permitted by State law—and as I have noted earlier, that State law could be challenged as unconstitutional and likely would be struck down.

Would that safeguard the best environment for these children? If this Senate is interested in the best environment for our children, we should fully fund No Child Left Behind, to provide all children with an educational opportunity and to fulfill the promise of Brown v. Board of Education.

We also should make college tuition more affordable, and we should provide families with affordable health care.

To conclude, I believe the definition of ''traditional marriage'' is an evolving one. One hundred and fifty years ago, ''traditional marriage'' in America did not include the ability of African American slaves to marry.

One hundred years ago, ''traditional marriage'' in some Western States did not include the ability of Asian Americans to marry. Just 40 years ago, ''traditional marriage'' in many States did not include the ability of African Americans to marry whites.

I understand that many supporters of this proposed amendment believe that the situation we face today is a fundamentally different one—that we must amend our Constitution to support the sanctity of marriage.

However, the sanctity of marriage is about the religious context of marriage, not the legality of it. We must be careful to separate the two.

Nothing in the Massachusetts Supreme Court ruling requires a church to conduct or to consecrate a same-sex union. On the other hand, if this proposed constitutional amendment were ratified, certain religious beliefs regarding the sanctity of marriage would be enshrined in our Constitution. This would go beyond the question of legality into sanctity, and I believe that we must maintain the bright line between the two that our Framers intended.

As one of my colleagues has said, ''I support the sanctity of marriage, but I also support the sanctity of the Constitution.'' Therefore, I urge my colleagues to reject this motion to proceed to a constitutional amendment that even the Republican leadership concedes is not ready for prime time.

Why else would they object to our unanimous consent request to have a vote on this resolution, without amendments?

The Republican leadership instead would prefer that we make it up as we go along, with one, if not two, amendments here on the Senate floor—amendments that could have been offered in a Constitution Subcommittee markup or in a full committee markup, had those not both been bypassed.

We are being asked to tinker with the words of our Nation's Constitution on the Senate floor, without even the benefit of committee analysis on the impact of these amendments. Unfortunately, this is not the first time we have considered a constitutional

amendment on the Senate floor that was a work in progress, with the sponsors trying to make changes in the midst of a floor debate.

During the 106th Congress, sponsors of the victims' rights amendment tried to make modifications to that proposal during the floor debate, and ultimately, the motion to proceed to that constitutional amendment was withdrawn. I believe that is the course we should follow here today. We either should vote on this resolution without amendments or withdraw this motion to proceed. If this motion is not withdrawn, I urge my colleagues to vote against it.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, to try and work out some housekeeping aspects of what we are doing today, under the order that was entered last evening, we are to be here until 8 o'clock with the time evenly divided. I ask the Chair how much time remains for the minority and the majority.

The PRESIDING OFFICER. The minority has 109 minutes, and the majority has 141 minutes.

Mr. REID. The minority has 109 minutes?

The PRESIDING OFFICER. Yes.

Mr. REID. I say to my friend, the distinguished Senator from Texas, I would appreciate his making contact with the majority leader at the nearest possible time. We have people who have requested time on our side of about 140 minutes. That doesn't work under the 109 minutes. So it would be my thinking that maybe we may need a little more time tomorrow to continue. I know we have cloture to take place tomorrow. The majority leader wanted ample time to debate. The Senator from Pennsylvania was on the floor yesterday and was concerned that there was not enough talk on our side of the aisle. I think we have taken care of that today. But if maybe he could check with his leadership to find out if we could stop at a reasonable hour tonight and then maybe have a couple of hours in the morning evenly divided prior to the vote on cloture. Right now we are going to have trouble cramming all of our time in with what we have left.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I will be glad to do as the Democratic whip requests and check with the majority leader about the time arrangements.

Mr. REID. If I may ask one other question of the Chair, I was off the floor when Senator SCHUMER asked consent that he and Senator FEINSTEIN be recognized before 5 o'clock. For how much time?

The PRESIDING OFFICER. For 15 minutes total.

Mr. REID. So that is also something we have to deal with.

The PRESIDING OFFICER. Under the previous order, the Senator from Texas is recognized for 30 minutes.

Mr. CORNYN. Mr. President, I am elated that we are beginning to see engagement on this important issue by our colleagues on the other side of the aisle. I am always impressed with how articulate and forceful an advocate our colleagues on the other side are, particularly the two Senators who have spoken so far this afternoon, Senator FEINGOLD and Senator DURBIN, with whom I have the privilege of serving on the Senate Judiciary Committee. There are some important answers to the questions he raised. There are good answers that resolve each and every objection that has been raised to the amendment.

First of all, I would like to respond to the rhetorical question both Senator FEINGOLD and earlier Senator BOXER asked. They said: Why can't we let people live their own lives?

This amendment is not about making it impossible for people to live their own lives. Indeed, I agree we should let people live their own lives. Of course, we don't believe at the same time that they should be able to radically redefine the institution of marriage in the process.

From the very beginning of this debate—and I am grateful this has been a civil, respectful debate—we have made it absolutely clear the American people believe in at least two fundamental propositions when it comes to this issue. First and foremost, they believe in the essential dignity and worth of every human being. But at the same time—and this is not a mutually exclusive concept—they believe in the importance of traditional marriage as the most fundamental building block of a stable society and in the best interest of children. I and others on this side are here talking in support of this amendment and encouraging this debate because we believe very strongly that the positive case for traditional marriage must be made and we should not remain mere spectators on the sideline as judges in Massachusetts or anywhere else seek to amend the Constitution without the American people having a voice in the basic laws that govern our institutions or our lives. That is what this debate is all about.

I found it interesting. Again, I have to hand it to the Senator from Illinois. He is a skillful advocate. He must have been one heck of a lawyer practicing in private practice. I bet he won more than his fair share of his cases. But he speaks of our oath to support the Constitution. Certainly, I believe we all have taken an important oath to support the Constitution of laws of the United States. But I would like to direct my colleague's attention to provisions of the Constitution he may have overlooked in that broad generalization he made earlier about supporting the Constitution.

Indeed, one portion of the Constitution provides that "all legislative powers herein granted shall be vested in a Congress of the United States . . ." That is Article I, section 1. That is part of the Constitution we swore to uphold. And indeed, under that same Constitution, courts are given only judicial powers, not legislative powers. What we find ourselves having to do in this debate is talk about the abuse of that judicial power, to in essence become a superlegislature and dictate a radical redefinition of the most fundamental institution in our society, the American family. But when courts get it wrong—and indeed, this is part of the genius of our Founding Fathers—the Founding Fathers knew that experience, the passage of time, or perhaps even a runaway judiciary might make it necessary for us to invoke another important part of the Constitution that we are here invoking today. That is Article V of the Constitution.

Indeed, to the best of my count, there have been at least six times when the Congress has amended the Constitution in order to overrule an erroneous constitutional interpretation by the Federal courts. So we make no apologies whatsoever in invoking the entire Constitution and the entire process. We make no apology at not sitting back and letting judges dictate what the rules are that govern our society, our families, and future generations.

Senator FEINGOLD and Senator DURBIN were concerned about the fact that this amendment did not go through the Senate Judiciary Committee. Actually, I was a little bit confused about Senator DURBIN's position. On the one hand, he said it did not go through the committee. On the other hand, he did concede the fact that there were four hearings of the Senate Judiciary Committee on this issue, starting last September, and the most recent of which was on June 22, 2004, when Governor Romney of Massachusetts appeared before our committee to talk about what he, as the Governor of that State, is doing to try to get a constitutional amendment to overrule the Massachusetts Supreme Court.

So we have had four hearings of the Senate Judiciary Committee. I know there have been at least two other committees of the Senate to consider this issue. It is important to put the concerns that were expressed by Senator FEINGOLD and Senator DURBIN in that context.

As far as the language we are debating is concerned, the so-called Allard amendment, that was introduced shortly before, I believe the day before the March 23 hearing we had this year on the Federal marriage amendment. Indeed, he had filed his original amendment—and this clarification was merely that—in November of 2003. So no Member of the Senate should be able to claim, in all fairness, of being surprised by this or being blindsided. Indeed, this is an issue that has been much discussed since actually before but at least since the time in November of 2003, when the Massachusetts Supreme Court first handed down its edict rewriting the Massachusetts Constitution to provide a mandate for same-sex marriage.

Now, there has been some concern expressed—and I will point out that the so-called Smith amendment, to which the Senator from Nevada alluded, is the first sentence of the Allard amendment. So it is impossible for me to understand how they can claim to be surprised by an amendment that is just the first sentence of the two-sentence Allard amendment. Insofar as Senator SMITH's position, whether he intends to offer it—and I cannot vouch for what Congress Daily says, but it seems to be pretty reliable—there is a lot of concern—and I am one on this side—that we stifle debate by not permitting a discussion of alternative amendments, especially one that makes up the first sentence of this two-sentence amendment on which we are having the motion to proceed.

So there is no surprise. There is no trickery, no attempt to blindside our colleagues on the other side of the aisle. This is about having a full, fair, and open debate. I think that is what we are doing.

I believe the Senator from Illinois expressed some concerns about the fact that no Federal court has yet mandated same-sex marriage under an interpretation of the U.S. Constitution, and that is true. The fact also is that there are at least four lawsuits currently pending attempting to do exactly that. Indeed, these are the latest lawsuits in a long line of legal opinions rendered by legal scholars, from Laurence Tribe and others, statements by Senator JOHN KERRY and Senator TED KENNEDY as recently as 1996 that the Defense of Marriage Act is unconstitutional.

This language, which I will read from an excerpt out of the Goodridge opinion in Massachusetts—and this is really, to me, very disconcerting. The Massachusetts Supreme Court said:

> But neither may the Government, under the guise of protecting ''traditional'' values, even if they be the traditional values of the majority, enshrine in law an invidious discrimination that our Constitution, ''as a charter of governance for every person properly within its reach,'' forbids.

In that excerpt, they have in effect defined traditional marriage as invidious discrimination. They went on to say:

> For no rational reason, the marriage laws of the Commonwealth discriminate against a defined class; no amount of tinkering with language will eradicate that stain.

Here again, they are saying that traditional marriage is a stain on the Constitution, on the laws of the Commonwealth of Massachusetts, and no rational basis for those laws exists. This is language that I think the people across America would find very shocking. The fact is, they probably have not had the time or the means to try to find this language themselves. That is another reason it is important to have this debate. The Goodridge court goes on to say:

> If, as the separate opinion suggests, the Legislature were to jettison the term ''marriage'' altogether, it might well be rational and permissible. What is not permissible is to retain the word for some and not for others, with all the distinctions thereby engendered.

Translated into English, what the court said is you cannot preserve traditional marriage for some adult couples but not for same-sex couples. But what you could do, in Massachusetts and elsewhere, is eliminate the term ''marriage'' altogether. Shocking. Shocking.

Now, for those who think that we have somehow on this side of the aisle dreamed up this crisis, this threat, this assault to the American family and traditional marriage, let me read just another paragraph. This, again, is the Goodridge decision out of the Massachusetts Supreme Court, mandating same-sex marriage—four judges:

> The separate opinion maintains that, because same-sex civil marriage is not recognized under Federal law and the law of many States, there is a rational basis for the Commonwealth to distinguish same-sex from opposite-sex spouses. . . . We are well aware that current Federal law prohibits recognition by the Federal Government of the validity of same-sex marriages legally entered into in any State, and that it permits other States to refuse to recognize the validity of such marriages. The argument in the separate opinion that, apart from the legal process, society will still accord a lesser status to those marriages is irrelevant. Courts define what is constitutionally permissible, and the Massachusetts constitution does not permit this type of labeling. That there may remain personal residual prejudice against same-sex couples is a proposition all too familiar to other disadvantaged groups. That such prejudice exists is not a reason to insist on less than the Constitution requires.

That is a direct critique and criticism of the Federal Defense of Marriage Act passed in 1996 by a vote of 85 Senators in this body on a bipartisan basis. If that isn't a direct signal that the next law under attack is the Federal Defense of Marriage Act, I don't know what is. In fact, we know that at least four cases are presently pending seeking to accomplish just that.

Now, there have been those who have expressed concerns, saying why in the world would we want to pass a constitutional amendment until a Federal court actually strikes down traditional marriage, even though the Supreme Court has, in Lawrence v. Texas, provided the rationale to do so, and that rationale has been adopted by the Massachusetts Supreme Court, interpreting their Constitution; why in the world do we want to amend the U.S. Constitution at this time?

I might interject that I bet old John Adams, who was the principal author in 1780 of that Massachusetts Constitution, never dreamed that four judges on the Massachusetts Supreme Court would so contort the meaning of that document as to create a right to same-sex marriage. That is one reason they didn't talk about it explicitly, either in the State constitution or in the Federal Constitution.

But in terms of why we shouldn't wait to address this matter, I point out that Massachusetts is a good example of why. If we wait until it is too late, it may well take years for the American people, through the amendment process, to correct that error. In the meantime, we know that same-sex marriages will occur as they currently occur in Massachusetts, and those people will not just stay in one State but will move to other parts of the country to seek to have those marriages validated under the laws of their own State. But we do have an example of when States have chosen, based on a preliminary ruling suggesting same-sex marriage, to amend their constitution. So it is not unprecedented by any means.

As a matter of fact, in 1993 and 1996, Hawaii and Alaska courts issued preliminary rulings suggesting that same-sex marriage may be constitutionally required, and it was in 1998 that Hawaii and Alaska preemptively amended their constitutions before the highest court in those States went as far as the Massachusetts Supreme Court did in the Goodridge case. Indeed, in 2000, Nebraska and Nevada preemptively amended their State constitutions before suits were even filed.

I might add, there have been suits filed in Nevada seeking to force recognition of polygamist marriages under the rationale in Lawrence v. Texas and Goodridge, and, indeed, in Nebraska, there has been a Federal constitutional challenge to that State Constitution defense of marriage provision under this rationale of the Lawrence case seeking to have the Federal Government tell Nebraska it cannot recognize traditional marriage.

I want to move to the Allard amendment, which is two sentences. The first sentence basically says marriage is between a man and a woman. The second sentence seeks to preserve the right of the States to deal with the question of civil unions and to reserve that right to them as opposed to having a court mandate it.

I was a little baffled as to why the Senator from Illinois expressed some puzzlement at the meaning of that second sentence when, indeed, during one of the hearings we had in the Senate Judiciary Committee, he asked Professor Cass Sustein of the University of Chicago Law School:

> Under this language, please explain whether a State legislature could pass a law to establish civil unions.

Professor Sustein responded:

> I believe it could because no State constitution would be affected.

We have heard a number of objections raised that this is a State issue. We have seen charts being trotted out containing the quotations of various public figures. At one time, the Vice President, in a different context, said this should be a matter reserved to the States. And there was a quote from the Vice President's wife, Lynne Cheney, expressing her views, and I certainly respect both of them and their right to express their views. But the fact is this cannot be contained to one State.

It is interesting to hear folks on the other side of the aisle make States rights arguments to folks on this side of the aisle. The shoe is usually on the other foot because they are usually the ones seeking to have the Federal Government tell all the States what they should be doing rather than let each State—what Louis Brandeis once called the laboratories of democracy—work out these various policies.

The truth is, we are not only talking about whether a State should embrace a property tax or a sales tax or perhaps adopt an income tax. In my State, we do not have an income tax, and we are proud of it. We do not want an income tax in the State of Texas. Each State has a right to choose its own policies that way.

I firmly adhere to that and believe the States rights argument is absolutely true. But to suggest we can somehow, as a practical matter, contain this revolution, this radical social experiment mandated by the Massachusetts Supreme Court, in one State denies reality. The fact is people have, indeed, married, they have moved to 46 States and now we have at least 10, maybe more, lawsuits as part of a national litigation strategy to force other States to recognize the validity of that marriage. You would have to be blind to that effort to stand up here and say this is a State matter because it is not.

We know based on the legal arguments of scholars, based on the comments of Senator KERRY back when the Defense of Marriage Act was passed in 1996—something he did not vote for, by the way, and he now says he supports marriage as only between a man and a woman, but then he says he does not support a constitutional amendment either. He was not for the statute, he is not for a constitutional amendment, but he still claims to be in favor of traditional marriage. I don't know if, again, this is one of the nuances, quite frankly, that evades me of his reasoning process, but you simply cannot have it both ways.

Indeed, for reasons we have talked about already at great length, when as a matter of Federal constitutional interpretation by a court, same-sex marriages are required, no State constitution, no State law, nobody has a choice in that matter because our Federal Constitution, indeed, speaks for the entire Nation and not one State.

So no matter how much well-intentioned individuals may wish we can avoid this debate and say this is a local issue, this is a State issue, we do not need to be talking about it, that defies reality.

I know Senator DURBIN had suggested at the close of his comments that this is all an attempt to change the subject; that somehow we do not want to debate what is happening in Iraq, what is happening in the economy. I think the American people certainly know we have debated those issues, and we will continue to debate those issues. Frankly, I am proud of what we have been able to accomplish in Iraq under a joint resolution passed overwhelmingly by this body authorizing the President to remove Saddam Hussein from power in that country, something that had been the policy of this Congress since at least 1998 when the Democrats advocated, and we all agreed—or at least those here at that time—in the Iraq Liberation Act. Regime change was a policy of the American Government under Democrat control, under a Democrat, President Bill Clinton. But it took the present President, George W. Bush, I believe, to follow through after Saddam thumbed his nose at 17 resolutions of the United Nations requiring him to open his nation up to weapons inspectors.

You want to talk about the economy, we are glad to talk about the economy. The economy is roaring back, thanks again to the policies advocated by this side of the aisle and led by President Bush who created more than 1.5 million new jobs this year alone. Indeed, home ownership is at an all-time high. The economy is roaring back, so we are glad to talk about that.

Finally, I have heard Senator DURBIN say it before and it makes you chuckle when you hear it—well, it is kind of funny. He says he believes no constitutional amendment should be debated—I cannot remember if he said ''debated,'' ''filed'' or ''passed''—during an election year. We did not choose the timing of the Massachusetts Supreme Court's decision. I suggest what we are arguing for is a debate about the most fundamental institution in our society, and that is not a frivolous matter. That is an important matter.

Indeed, there are some, including this Senator, who believe it is the most important matter. Of course, those who have made the States rights arguments, all they need to do is read that Constitution once again, that Senator DURBIN spoke eloquently about, to recognize not only does it include a constitutional amendment process, but after two-thirds of the Senate and after two-thirds of the House have passed the resolution, three-quarters of the States have to ratify the amendment. So those who want to stand in this Chamber and say, We believe in States rights, we believe this ought to be handled by the States, the States retain a voice, a critical voice, a crucial, an essential voice in this process through the ratification process.

I believe this is an important issue. It cannot be solved at the local level. It is a national issue requiring a national response. It is not premature because to act only after a Federal court mandates same-sex marriage on a national basis under the guise of interpreting the U.S. Constitution, it will take too long for the people to speak and to overturn that decision and we will see something akin to what we see now happening in Massachusetts, despite the fact the people of Massachusetts have, through their representatives, at least initially, chosen to try to overrule that decision by a constitutional amendment.

The problem is that constitutional amendment cannot be effective until 2006. So what happens in the interim? What happens in the interim is what we see happening today, because of a dictate from the bench by four judges which now we see has a national impact.

I reserve the remainder of our time and yield the floor.

The PRESIDING OFFICER (Mr. CHAFEE). The Democratic whip.

Mr. REID. Under an order previously entered, Senator LAUTENBERG is to be recognized for 15 minutes. I ask unanimous consent that Senator MIKULSKI—she has been waiting patiently. She had some information that she was supposed to have come 40 minutes ago so she is waiting—have 10 minutes immediately following Senator LAUTENBERG. We have been going back and forth, but some of the speeches have been much longer than the others.

Mr. CORNYN. We have been going back and forth, and I certainly want to accommodate every Senator but I also know the Senator from Pennsylvania has been here as well.

Mr. REID. If I could ask through the Chair, how long does the Senator from Pennsylvania wish to speak?

Mr. SANTORUM. If Senator LAUTENBERG is speaking 15 minutes, I will speak for 10 or 15 minutes, if we want to go back and forth.

Mr. REID. Maybe we can try this: Following the statement of the Senator from New Jersey, the Senator from Pennsylvania would be recognized for 15 minutes and then Senator MIKULSKI for 10 minutes. We already have an order in effect that Schumer and Feinstein are to be recognized for 15 minutes total. So they would use their time immediately after Senator MIKULSKI completes her statement. I ask unanimous consent that be the case.

Mr. CORNYN. I have no problem with that as long as we continue to try to observe the back and forth so each side has an opportunity to speak.

Mr. REID. We would not go back and forth from MIKULSKI to FEINSTEIN because there is already an order entered regarding FEINSTEIN and SCHUMER, but they only total 15 minutes.

Mr. CORNYN. With that exception, I have no objection.

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

The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I rise in opposition to this proposed amendment to the Constitution as, by the way, has Vice President CHENEY and Mrs. Cheney. They are opposed. They are not taken by surprise on a moral issue. These are sophisticated people who understand government and who have a role to play. They are opposed to this amendment, and I think there is very good reason for that.

As Senators, many of us are from different backgrounds but we do all share a solemn oath to uphold the spirit and

the letter of the American Constitution. I would like to uphold the value and the commitment that the Constitution makes to all of us to protect our rights.

I have to raise a question, and that is, what is it that makes this the most important business we have in this body right now? Is this the only thing that we want to talk about for the American people to hear from the Senate? Or would a subject such as the killings that are taking place in Iraq, such as it was announced that three more were killed yesterday, be more important, and that we are stretching to have enough reserves to fight the battle and protect our troops in the best way possible but we need to have enough of them? Do the American people care about that?

Are the American people saying the issue that interests us most is whether a homosexual couple can marry, even though it is taken care of in many States and will continue to be? Are we saying, no, the war is not that important, we are going to lay it aside while notices go out to families, very often by a knock on the door that is an ominous calling that says your son, your daughter has been killed, your son, your daughter, has been seriously wounded?

No, we do not want to discuss that. We have to discuss gay marriage, and see whether we can change the Constitution, the Constitution which was designed to expand rights at any time that we saw a default in our system, whether it had to do with giving the vote to women or the vote to 18-year-olds or other expansions of rights.

No, we want to do the moral thing. We want to decide who is in charge of the morality of this country. The people are in charge of the morality of this country, not the people who are making speeches today.

When I think about what affects the American people, how about the people who work 35 or 40 years in a company and see their pensions disappear in front of their eyes because of the deceptive leadership of companies or falsification of records? No, no, the American people do not want to worry about that. They want to talk about this amendment. That is what they care about.

My phone is—no, it is not crowded. In fact, I do not get many calls at all about the morality of the constitutional amendment that has been proposed and, by the way, creates a constitutional convention so we can throw anything that we want on top of this.

No, the American people are not concerned about whether they can pay their bills or whether drug prices are going through the roof that they cannot afford or whether we can give an education to the children who want to learn in Head Start but do not know how. No, those are not the issues we want to talk about. We want to talk about whether a gay couple can engage in a relationship or a marriage.

Let the States of New Jersey, Massachusetts, and the other States that choose to give that right to give those citizens the same standing that other citizens within those States have. No, we do not want to discuss that. We want to discuss this issue. We want to discuss what is morally correct. What is morally correct is what the people want, and we ought to let them hear on this floor that we understand the issues that concern them.

I get calls from families who have people overseas, whether in Reserve units or regular enlistments, and they ask, what can we do to hasten my son's return? I want to see his face.

Go to Walter Reed hospital, as I and many others have done. I went there a couple of weeks ago after we buried a young soldier from New Jersey in Arlington Cemetery. Senator CORZINE and I, my colleague in the Senate, decided we should not only pay our respects to the dead but also our respects to the wounded, and we went to Walter Reed Hospital. In one of those rooms there was a young man sitting with his wife and he was staring blankly at the floor. It was not his lack of interest. It was his lack of sight. He could not see anything.

He said: I will not be able to see my 28-month-old daughter but I still want to hold her. I still miss her. I still love her.

We do not want to discuss those things. We want to discuss what is moral and change the Constitution to impose our value of morality on all of America. It is wrong. The proposed constitutional amendment before us would etch the markings of intolerance, discrimination, and bigotry into a document that is based on the enduring truth that everyone is created equal.

The constitutional amendment that is being offered today would do much more than ban same-sex marriages. It would also ban civil unions, saying they cannot really live together and share the values of our society, or domestic partnership laws, even if those relationships are specifically recognized by their fellow residents in their States by their State legislatures and signed by the Governor.

If enacted, I believe this amendment would create a permanent class of second-class citizens with fewer rights than the rest of the population.

In fairness and in good conscience, I will not support this mean-spirited proposal. Our Constitution is about expanding individual rights, not taking them away. The last thing the Constitution should do is mandate conditions for some people and another set of rights for a different group.

What is especially strange in this debate is we have the Republican majority looking to take away a State's right to determine the rules for marriage within its borders. I always thought the Republicans were States righters. I thought they always wanted to give power back to the States. That is what I thought they wanted to do.

In my home State of New Jersey, our State legislature, the duly elected representatives of the people of New Jersey, drafted, debated, and enacted a domestic partnership law. We ought to respect the State law, not stamp it out.

The State of New Jersey decided to establish a domestic partnership law. The Federal Government has no business telling us we cannot do it. It doesn't violate current Federal law and we should let that stand. States should continue to have the ability to decide whether same-sex couples should have the inheritance rights or pension rights or whatever other legal rights should be respected in a domestic partnership.

Domestic relations law, the law that governs family issues, has always been the domain of the State, not Federal law. The ability to decide matters of marriage has been with the States since the founding of the Republic. But now, those who typically advocate a smaller Federal Government—shrink government down to size, get rid of those people who are making their livings there, forget whether they contribute to the general well-being, we want to shrink Federal Government—now they are seeking to amend the Constitution to take power away from the States and put it in the hands of the Government so we can have people running around, morality police, making sure this couple isn't engaged in a relationship that would be prohibited by Federal law.

Once the Federal Government starts regulating marriage, you have to ask yourself what is next? Ten years from now what is going to stop Congress from prohibiting people getting married unless they pledge to have children? What is to stop this body from outlawing divorce or second marriages?

You have to ask yourself what is it that is driving this agenda? Why, in this election year, are we debating an amendment to the Constitution designed to restrict the rights of gay Americans? It is clearly not a legitimate legislative debate, as there are not near enough votes to pass this amendment. But that doesn't stop them from wanting to use the time to confuse the American public about what is important, what is important to the public which is worried about their jobs and the war and their kids. No. We want to discuss gay marriage.

I have come to an unfortunate conclusion about why we are doing this amendment. This is gay bashing, plain and simple. That is what this is about. This amendment is picking on productive members of our society, people who pay taxes, want to raise their families and contribute to their communities, as everyone else does. They want to be like everyone else in their conformity to law. This amendment attempts to divide America and it is shameful. It should not be that way.

When we see things that are shameful we should not be too spineless to respond. Look back on world history. There are notorious examples of those

who seek political advantage by picking on segments of society. It is a sad day when we see this dynamic happening here in the United States.

I urge my colleagues, reject this divisive amendment. Let's get on with the regular business that affects people's everyday lives. We can talk about this after the first of the year. It is not that urgent.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. If you support a mother and father for every child, you are a hater. If you believe men and women for 5,000 years have bonded together in marriage, you are a gay basher. Marriage is hate. Marriage is a stain. Marriage is an evil thing.

That is what we hear. People who stand for traditional marriage are haters, they are bashers, they are mean spirited, they are intolerant. They are all these awful things. That would be the only reason we would come here is because we hate. It is because we are intolerant. It is because we want to hold people down, restrict their rights. That would be the only reason anyone could possibly come forward and argue that children need moms and dads.

Or is it the only reason? Isn't there a whole body of evidence out there, of 5,000 years of civilization, that shows as plain as this piece of paper I am holding up that children need mothers and fathers? That the basic unit of any successful society is moms and dads coming together to raise children?

Imagine what our Founders would say today, in a Constitutional Convention—which, by the way I suggest to the Senator from New Jersey this bill does not call for—that anyone who would come forward and suggest that holding marriage should be between a man and a woman is doing something that is hateful, something that is against the basic principles of equality within our Constitution.

The Senator from New Jersey said there is no room for debate on morality here on the floor of the Senate. It is up to the people to make this decision. I wish it were up to the people to make this decision. The Senator from New Jersey knows the people are not going to be able to make this decision. In fact, the people are being frozen out of this decision. They are being frozen out by State courts—I would argue, soon to be Federal courts. These are people who are not elected, people who are not accountable, people who are not democratic, but they are elitists dictating what they believe their world view should be for America.

The only way for the people to decide, I suggest to the Senator from New Jersey, is exactly the process we have before us. It is the only way for the people to decide. Leave it to the people. It is a great mantra. Leave it to the States. What those who suggest that we leave it to the States are suggesting is to leave it to the State courts. That has always been the secret weapon of those who want to change our culture and change our laws without going through the process most of us think we have to go through to do that.

See, most people who are listening to my voice right now think that to change a law in America you actually have to get popular support for it, that you have to go before your legislature and petition your government. But, no, the Senator from New Jersey figured out a long time ago, as have many others who agree with his position, that the way you accomplish these social transformations that fight against this evil, hateful culture that believes in moms and dads and children being raised in stable families—the way you do that is you get people on these courts who can then dictate to the rest of us how we now shall live.

You have that supported and orchestrated through a variety of different ways, from colleges and universities to the media. Anyone who speaks out against this political thought is a hater. Anyone who speaks out for traditional truth, for truth that has been established in Biblical times, through natural law and a whole host of other cultures, in fact every civilization in the history of man—if you stand for that truth that was accepted by all for centuries, for millennia, you are a hater. You are someone who wants to oppress people.

I am willing to come here and debate the substance of what we are doing. It is an important debate: What will happen to marriage if we do nothing? That is an important debate. We should have that debate. But I am not suggesting the Senator from New Jersey or anybody else who comes here to defend a change in traditional marriage is doing so because they hate mothers and fathers, because they hate traditional marriage. I do not ascribe evil thoughts to them, nor should they to us.

There is the incredible intolerance of those who argue for tolerance.

You see, tolerance means you must agree with me and how I feel about an issue, and if you do not, you are intolerant. Someone who supports traditional values is by definition intolerant because they do not want me to be able to do whatever I want to do.

I never thought that was the definition of tolerance. I didn't think tolerance meant any individual should be able to do everything they want irrespective of the consequence to anybody else. I will check the definition. I don't think that is what tolerance means.

When we change the definition of something so central to the culture of any society—and that is what marriage is and what family is—it has profound consequences on children and thereby on the next generation.

I am not just making this up. It is real. It is so real it has been a given forever. I imagine this has been a given forever. All of a sudden, now something that is a given, that is a truth of every major religion I am aware of, from natural law to philosophy, all of this given truth is now seen as pure animus, hatred. But it is not.

This constitutional amendment is based on a sincere caring for children, for family, for the future of this country.

The Senator from New Jersey suggested that conservatives should be for States rights and that we want to shrink government. Let me assure you, if we do not stop the change of the definition of traditional marriage, if we let marriage be just a social convention without meaning or without significance, we will shrink government because we have seen where marriage becomes out of favor—whether it is the Netherlands or Scandinavia, which I will talk about in a moment, or whether it is subcultures within this country in which marriage is seen as an out-of-date convention. In those cultures, children suffer. In those cultures, people do not get married. In those cultures, children are born out of wedlock and do not see their fathers and in many cases their mothers. Society dies.

You can say I am a hater, but I will argue that I am a lover. I am a lover of traditional family and children who deserve the right to have a mother and a father. Don't we want that? Is there anyone in the U.S. Senate who will stand up and argue that children don't have a right to a mom and a dad; that our society shouldn't be saying to all people that moms and dads are the best, an ideal, and what we should strive for? When we say that marriage is not that, then we say that children don't deserve that. Let me assure you they will not get that.

I will give you a couple of examples. The most dramatic is in the Netherlands. Senators CORNYN and BROWNBACK and others have talked about it. But this is a country where marriage was a very stable aspect of their culture. They had the highest marriage rate and the lowest divorce rate in Europe. They had the lowest out-of-wedlock birth rate in Europe—until what? Until a social movement began to change the definition of marriage. You can say a lot of other things happened in Europe during that time, true. But the Netherlands has always been, interestingly enough, the country that was able to dam the tide, stem the tide and preserve the traditional family until they began the process of changing the definition of marriage to expand it.

Look at what happened over that period of time: A straight and rapid descent in the number of people getting married and, not surprisingly, a rapid assent in the children being born out of wedlock.

Is this what is best for children? Is this an argument of a hater? Is this an argument of someone who is intolerant or is this an argument of someone who believes that children deserve what is the ideal for our society?

What has happened in those countries that have allowed people of the same sex to get married? Sweden allowed same-sex unions. There are 8 million people in Sweden. How many same-sex unions? There were 749. Is it worth it that now 60 percent of first-born children born in Sweden are born out of wedlock? Is this worth it, 749?

By the way, the breakup rate of those marriages is two to three times what it is in traditional marriage. Is it worth it?

I ask kids today what marriage is about. For the longest time, when I asked them what marriage is about, they always answered it is about the love of two people. Look at what Hollywood said about marriage. If you look at what leaders in this country say about marriage, maybe that is what we think it is. You look at the pop stars and celebrities, and that is certainly what it is today. It certainly isn't about families and kids.

What are we telling our children? Is marriage just about affirming the love of two people? I can assure you that is the motive behind it. It is about affirmation of lifestyle, it is about affirmation of desires. Marriage and family is more than that. Principally, marriage and family has been held up not as an affirmation to make you feel good about who you are or who you love, but it is about the selfless giving for the purpose of continuing. It is about selflessness, not selfishness. It is not about me all the time. This is a society that is so wrapped up in ''me.'' Make me feel good, make me affirmed—me, me, me. What about kids? What about the future? The greatest generation of America was the greatest generation of America. Why? Because they were giving of themselves for something beyond themselves.

The greatest generation that started the baby boom was a generation that understood what family was all about.

A young man walked up to me a year and a half ago in Wichita, KS, and handed me this bracelet, and I have worn it every day since. He said this bracelet describes what family is. That is what it is—f-a-m-i-l-y. It says it means family. Forget about me; I love you.

Is that the kind of family we are debating today?

There is a reason we are here. It is not because we hate anybody. It is not because we don't respect anybody. It is not because we don't dignify their worth and value as a person. It is because there is a group of people who are trying to change the definition that is central to the future of this country.

That is why we are here. We didn't pick this fight. We didn't start this battle. They went to the courts, not to the people. They went to the few elitists, and on of the most elitist liberal places in the world, Boston, MA, and said, you, the elite of the east coast, Northeastern United States of America, you take your isolated values and then sweep them across this country. They didn't go to Omaha, NE. They didn't go to Peoria, IL. They go to San Francisco, to Seattle, to Boston, and to New York, and they impose the values across America.

That is not democracy. That is not allowing the people of Baltimore, the people of Reno, the people of San Antonio, the people of Providence, the people of Pittsburgh to speak.

We have a right to speak. The only way we can do that is through the process we have before us, article V of the Constitution, which says we have a right to amend the Constitution when things go too far. And things are going too far. I ask my colleagues to give the people a chance to speak.

I yield the floor.

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. The next Democrat speakers in order following the statements of Senators SCHUMER and FEINSTEIN would be Senator KENNEDY for 15 minutes, followed by Senator DAYTON for 20 minutes. I ask consent that be in order on this side of the aisle.

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

The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I wish to speak on the Federal marriage amendment and also on the motion to proceed.

Today I rise to talk about the Federal marriage amendment. I first will talk about timing and then about content. First, I will talk about timing. Marriage is not under a threat. It is not in any clear, imminent danger of being destroyed. What is in clear and imminent danger and what we have heard is under threat of possible attack is the homeland.

There are other issues families are facing that are eroding their very stability such as their economic situation and the cost of health care. If we really want to stand up and protect America and protect families, we would be focusing on these and other issues. This discussion is ill-conceived, ill-timed, and unnecessary.

Last week, Homeland Secretary Tom Ridge announced that al-Qaida is planning a large-scale attack on the United States of America. What should we be doing? We should be working on homeland security. We have a homeland security appropriations bill pending, waiting to come before the Senate. That is what we should be talking about today, not this amendment.

This is why I will vote against the motion to proceed as a protest that we are not meeting the compelling needs of the Nation. We need to show a deterrent strategy, to send a message to the terrorists: Do not even think you can affect our elections because we would be united across the aisle to stand up and vote for legislation to protect the homeland. To protect our ports, our cities, our transportation, our schools, and, yes, those moms and dads and children we have been hearing about all day long. Instead, we are debating the motion to proceed to a constitutional amendment. America is united in the war against terrorism. We should not be divided in a cultural war.

Let's talk about another war, the war in Iraq. Right now, we have men and women returning with broken bodies, some who have lost their limbs. One cannot go to ward 57 at Walter Reed, the way I have, and see the young men and women who have lost an arm, lost a leg, lost hope, wondering if anybody is ever going to love them again, if they are ever going to be able to work again, and not want to do everything possible to help these young Americans.

That is why I am working now on a bipartisan basis with my colleague, Senator KIT BOND, on the VA/HUD appropriations bill so we can help our veterans, so we can have a prosthetic initiative to give them a ''smart'' arm with the best technology, to give them a smart leg so they can run the race for life and maybe give them back a life. That is what we should be focusing on, working on a bipartisan basis, solving the problems that confront the Nation.

This amendment is not about policy; it is about politics. It is not about strengthening families; it is about helping the other party get elected. If we were serious about helping families, we would be focusing on jobs, on health care, on the rising costs of college tuition. This proposed amendment does not help families. Why? It does not create one new job or keep one in this country. It does not pay for one bottle of prescription drugs that seniors so desperately need. This amendment does not send one child to college. No, this amendment does not help a family pay for health care for a sick child. What it does do is divide. Americans are tired of divisive debates. This amendment is just simply a distraction.

On the timing, I wish we would put it aside and address our Nation's real needs.

I also want to talk about the content should we move to proceed. I will vote against this amendment because it is unneeded and unnecessary. Congress in 1996 spoke on this issue. They passed something called the Defense of Marriage Act. What this legislation did was define marriage as between a man and a woman. It also allows each State to determine for itself what it considers marriage under its own State law, leaving the concept of federalism intact.

Maryland, my own home State, also has a law on the books that defines marriage as between a man and a woman. So when you look at Maryland law and you look at Federal law, this constitutional amendment is unneeded.

We talk about what the courts are doing. Well, I don't quite see that as the same level of threat as terrorism, or the loss of a job on a slow boat to China or a fast track to Mexico.

Some of my constituents are worried that churches will be forced to perform gay marriages. Under separation of

church and State, no law—not a Federal law, not a State law—can force a church, temple, mosque, or any religious institution to marry a same-sex couple. That will be up to their religious determination. Why? Because, again, under separation of church and State, we cannot dictate to a church what to do. Because of this constitutional commitment there can be no Federal law, for example, even under equal protection that could force the Catholic Church to ordain women. Our First Amendment provides this protection to religious institutions.

And so I reiterate that this amendment is unnecessary.

I also oppose this amendment because I take amending the Constitution very seriously. In our entire history, over 200 years, we have only amended the Constitution 17 times since the Bill of Rights. We have amended that Constitution to extend rights, not to restrict them. We amended the Constitution to end slavery. We amended the Constitution to give women the right to vote. We amended the Constitution to give equal protection in law to all citizens. We amended the Constitution to give citizens over age 18 the right to vote. We have never used the Constitution as a weapon or as a social policy tool against a minority of the population.

I am concerned that this amendment would condone discrimination. We should not embark on that path today. It is wrong. It undermines the integrity of the Constitution.

When the roll is called on the motion to proceed, I will oppose that motion. There are far more pressing needs for American families and those children we love.

When we amend the Constitution, it should be to expand hope and opportunity, not to shrink it.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I believe Senator SCHUMER and I have 15 minutes between us by unanimous consent agreement, and I ask that I be alerted when 8 minutes has passed.

EXPIRATION OF ASSAULT WEAPONS BAN

Ten years ago, I introduced an amendment to the crime bill which banned the manufacture and sale of semiautomatic military-style assault weapons. Senator SCHUMER, then a Member of the House, a member of the Judiciary Committee, introduced the same amendment in the Judiciary Committee. We were both successful. It passed the Senate, passed the House, was signed into law by President Clinton.

Over the past 10 years, gun traces to semiautomatic military-style assault weapons have decreased by two-thirds. The ban has worked. But 2 months from today, the Federal ban will expire.

Once again, new guns such as the Tec-DC9 will flood our streets. If you don't know what a Tec-DC9 is, I am going to show you. This is Gian Luigi Ferri, who walked into 101 California Street and killed six people, wounding eight. And this is the Tec-DC–9 he was carrying with a 30-round clip. He had 250 rounds in additional clips with him. He is dead here, shot on the floor, but not until after he had either killed or wounded 14 people. The ban will expire despite overwhelming public support to renew it.

Seventy-one percent of all Americans support renewing the ban. So do 64 percent of people in homes with a gun. The ban is going to expire despite overwhelming support from law enforcement and civic organizations. As you can see, nearly every major law enforcement and civic organization in our country supports renewal: the Fraternal Order of Police, the Chiefs of Police, the United States Conference of Mayors, National Association of Counties, and on and on.

The ban will expire despite the stated public support of President George W. Bush and Attorney General John Ashcroft. As you can see from this letter, the administration has reiterated its official support for renewing the ban time and time again. From the Department of Justice:

> As the President has stated on several occasions, he supports the reauthorization of the current ban . . .

And the ban will expire despite the support of a majority of Senators, 52. Despite all of this, it looks more and more likely that the National Rifle Association will win. The ban will expire, and the American people will once again be made less safe.

Although President Bush has said he supports the ban, the White House has refused to lift a finger to help us pass the renewal. They are instead playing political hot potato with the Republican leaders in Congress.

The Hill newspaper, on May 12, said that ''an aide to [the Speaker] has said privately that if the President pushes for it, the ban will probably be reauthorized. But if he doesn't, the chances . . . are remote.''

The Boston Globe reports that a White House spokesman said ''Bush still supports the ban but is waiting for the House to act.''

So the House will act only if the President asks them, and the President will act only if the House passes it. It is a classic catch-22.

One month ago, June 14, three former Presidents wrote to President Bush. Presidents Ford, Carter, and Clinton took the extraordinary step of writing a joint letter to President Bush asking him to work to renew the ban and offering their assistance to do so. Let me read just part of it:

> We are pleased that you support reauthorization of the . . . Assault Weapons Act, which is scheduled to expire in September. Each of us, along with President Reagan, worked hard in support of this vital law, and it would be a grave mistake if it were allowed to sunset.

It goes on and expresses what this law means. I could not agree more. We cannot go back to those days. We know these guns are used by gangs, by criminals, by grievance killers, by troubled children to kill their schoolmates. We also know from al-Qaida training manuals that al-Qaida has recommended that its members travel to the United States to buy assault weapons at gun shows. Why? Because it is so easy to do so.

As the threat of terrorism around the world increases, how can we let the ban expire and make it that much easier for terrorists to arm themselves with military-style weaponry? And make no mistake, gun manufacturers and sellers are keeping a close watch.

In mid-April, Italian customs seized more than 8,000 AK–47 assault rifles on their way from the Romanian Port of Constanta to New York and then to Georgia. These guns had a value of more than $7 million.

Of course, shipping assembled AK–47s would be illegal under the ban and under a 1989 Executive order of the first President Bush that banned certain guns from importation. But according to ATF, importing these guns so they can be disassembled, sold for parts, and then reassembled would not be illegal, and now purchasers will be allowed to reassemble these guns into their banned form. This shipment was not an isolated example.

Here is an advertisement from Armalite, a company that makes post-ban rifles. As we can see from this advertisement, they are offering a coupon for a free flash suppressor for anyone who buys one of these guns so that on September 14, once the ban is expired, the gun can be modified to its pre-ban configuration. What do you need a flash suppressor for? If you have a flash suppressor on a gun and a 30-round clip in it and you are shooting at night at the police or at neighbors, you can't see where the gun flashes. The flash is suppressed. So if you are a criminal, you may need one. If you are a legitimate citizen, you don't.

This is the kind of thing we can expect, just 2 months from now: Companies gearing up to once again produce the deadly assault weapons, the high-capacity clips which are now banned, clips, drums, or strips of more than 10 bullets, and dangerous accessories we worked so hard to stop 10 years ago.

I hope that, before September 13, the President and the Congress can find the courage to stand up to the NRA, to listen to law enforcement all across the Nation who know that to ban these guns makes sense and saves lives.

Listen to the studies that show that crime with assault weapons of all kinds has decreased as much as 66 percent. The bottom line is that everyone knows this ban should remain law, but time is running out. We have 14 legislative days. Will the House of Representatives step up to the plate and find an opportunity to give the House an opportunity to vote to renew the military-style assault weapons legislation?

I ask unanimous consent to print the following editorials in the RECORD.

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

[From the Seattle Times, May 4, 2004]

EXTEND THE BAN ON ASSAULT WEAPONS

The clock is running out on a 10-year-old federal ban on certain types of semiautomatic assault weapons. Without bold action by President Bush, the common-sense law likely will expire in September.

Bush has said he will sign a bill to extend the ban if Congress approves one. But that's unlikely without his strong backing, and he knows it.

A strong majority of Americans support the ban on the manufacture, transfer and possession of 19 types of assault weapons, such as the AK–47, the Uzi and the TEC–9. So do the National League of Cities, the U.S. Conference of Mayors, the National Educational Association, the American Bar Association and many other organizations. They support it because it makes sense.

Seattle Police Chief Gil Kerlikowske is one of hundreds of law-enforcement leaders who back the ban. He says such weapons serve no legitimate purpose for people who aren't police.

He's right. These weapons aren't necessary for hunting or self-defense. They are for drug dealers, gang leaders and other criminals. They don't belong on America's streets.

In addition to banning 19 specific semiautomatic assault weapons, the 1994 legislation identifies specific characteristics that categorize a weapon as an ''assault weapon.'' It also bans ammunition clips or magazines that hold more than 10 rounds. At the same time, it exempt hundreds of other weapons designed for legitimate uses.

The ban isn't perfect. Manufacturers can too easily get around the law by altering their weapons. Still, the fight to keep the ban in place is worth it. And it will be a fight.

The National Rifle Association is actively opposing extension of the ban. Republican Majority Leader Tom DeLay said there are not sufficient votes to reauthorize the law. A bill that would have protected gun manufacturers from lawsuits died in March when senators tried to include in the bill the extension of the assault-weapons ban.

If the ban expires Sept. 13, the country could once again manufacture and import these military-style weapons. We don't need them.

President Bush has said he supports the ban. It's time for him to start acting like it.

[From the San Francisco Chronicle, April 22, 2004]

RENEW THE WEAPONS BAN

The debate over the nation's assault weapons ban will be repeated this spring, with Sen. Dianne Feinstein arguing the need for extending her groundbreaking legislation. Lest she need any more ammunition, tragic news has provided it—the recent cold-blooded slaying of San Francisco police office Isaac Espinoza at the hands of a killer wielding an AK–47 assault rifle.

That there is still strong opposition to extending the weapons ban in spite of its obvious merits speaks to the power of the nation's gun lobby, which has fought every effort for sensible gun control. Earlier this year, Senate Republicans killed their own bill aimed at granting gun dealers and manufacturers immunity from lawsuits filed by shooting victims rather than agree to extend Feinstein's legislation.

But none of the rhetoric from the National Rifle Association can stand up to the facts. The percentage of assault weapons used in crimes since the original ban passed has been reduced by two-thirds. There is simply no justification for making military-style assault weapons available to the general public.

While the NRA seems to gloss over the worst incidents involving assault weapons, such as the horrific 1999 Columbine High School shootings, Bay Area residents cannot. Feinstein's bill grew out of the 1993 massacre of eight people at 101 California Street in San Francisco by a gunman armed with two semiautomatic rifles. The shooting death of officer Espinoza, allegedly at the hands of 21-year-old assailant, serves as a chilling reminder of the availability and danger of assault weapons.

The need for the ban is painfully obvious. Reasonable gun control is in everybody's interest, even those citizens who make up the NRA.

[From the Miami Herald, May 6, 2004]

ASSAULT-WEAPONS BAN IS ITSELF UNDER ASSAULT

If Congress allows the federal ban on assault weapons to expire, the law's public-safety successes will disappear with it. Lawmakers should not let that happen. The ban is saving lives.

The law prohibits manufacture and importation of 19 types of rapid-fire assault weapons and scores of copy-cats with similar characteristics. In the 10 years since the ban was enacted, its benefits have been undeniable: A U.S. Justice Department analysis shows that banned assault weapons used in crimes dropped by almost 66 percent between 1995 and 2001; they dropped 20 percent in the law's first year, to 3,268 in 1995 from 4,077 in 1994. Murders of police officers by assault weapons dropped to zero in late 1995 and 1996 from 16 percent in 1994 and early 1995.

For these reasons, police chiefs spoke as one last week in press conferences across the country. They want U.S. lawmakers to reauthorize the assault-weapons ban before it expires in September. So do government officials and, several studies show, the majority of Americans.

President Bush supports the ban, but he hasn't been vocal about it. Under pressure from the National Rifle Association to change his position, Bush appears reluctant to repudiate openly a group that supported his candidacy in 2000. But the data should given him ample reason to lead the push for the law's extension. Simply put, we all are safer because of the ban on assault weapons.

The ban will sunset on Sept. 13 unless Congress approves new legislation keeping it on the books and Bush signs it into law. Bipartisan legislation would extend the ban for a decade. But reauthorization faces the same heated firefight that the original proposal faced 10 years ago.

In 1994, the ban almost sank a multifaceted crime and safety bill. In addition to the ban on assault weapons, the bill contained other sensible measures: It added 100,000 police officers and funded programs to steer youths away from crime.

The NRA fought hard to persuade lawmakers to reject the ban. It argued that the ban trampled gun buyers' constitutional rights. Its heavy-handed tactics backfired. Several gun-owning lawmakers from both sides of the aisle resigned NRA memberships, and a congressional majority voted to approve the ban.

Lawmakers should stand firm again, rejecting a replay of the NRA's electon-year fear-mongering. The law doesn't stifle gun ownership; it makes killing machines harder to obtain. The ban does not affect weapons owned before it went into effect. In 1995, two Columbine High School students got their hands on assault weapons. We know the carnage they left behind.

Assault weapons have no place in civil society. Congress should reauthorize the law that bans them.

[From the Hartford (CT) Courant, June 11, 2004]

RENEW ASSAULT WEAPONS BAN

Time is running out on efforts to extend the federal assault weapons ban, which is scheduled to expire Sept. 13.

There's no good reason why civilians should be allowed to own these rapid firing, military-style weapons, which are favored by criminals. The weapons have no legitimate use for self-defense or hunting.

Unfortunately, Republican congressional leaders are ready to do the bidding of the National Rifle Association, which has fought the ban since it became law a decade ago. President Bush favors an extension of the ban, but unless he pressures Congress to act, it's likely that nothing will happen.

That would be tragic. Once again, the nation's cities would be flooded with an array of high-powered weapons on streets and in homes. Police officials across the nation have pleaded with Congress to extend the ban.

Connecticut U.S. Reps. Christopher Shays, Rosa DeLauro and John Larson are among more than 100 House co-sponsors of the proposed extension. Sen. Christopher J. Dodd recently added his name as a Senate co-sponsor. The remaining members of Connecticut's delegation, Reps. Nancy Johnson and Rob Simmons and Sen. Joseph I. Lieberman, should joint them.

The proposed extension also would tighten current law to close a loophole that has allowed manufacturers to sell the weapons simply by making cosmetic changes in the banned models.

Passage of the 1994 ban was an important step toward reducing mayhem with powerful guns. Let's not take a step backward.

[From the New York Times, June 21, 2004]

GUNS AND THE GIPPER

On last reflection on the death of Ronald Reagan:

In the debate over who can lay claim to the Reagan legacy, one aspect of the late president's record has gotten little attention.

That was Mr. Reagan's willingness to stand up to the National Rifle Association and support the cause of gun control when he thought it was right.

A decade ago, when the proposal to create a federal ban on military-style assault weapons was teetering between Congressional passage and defeat, Mr. Reagan personally lobbied Republican House members to take what he called the ''absolutely necessary'' step of outlawing the bullet-spraying semiautomatic guns favored by criminals. His effort proved crucial, as the legislation passed the House by just a two-vote margin.

True, it was only after Mr. Reagan left office that he woke up to the need for sensible national laws like the assault weapons ban and background checks for gun buyers. As president, he signed legislation weakening federal gun laws. Right now, President Bush has the chance to go the Gipper one better by waging a principled fight to renew the 10-year-old assault weapons ban, which is due to expire in September. The president is on record as favoring the ban's continuation. But he steadfastly refuses to do anything to rally lawmakers to renew and strengthen its proven, life-saving provisions. Mr. Bush may please anti-gun-control extremists by presiding over the extinction of the assault weapons ban. We doubt it would have pleased Mr. Reagan.

[From the St. Louis (MO) Post-Dispatch, June 25, 2004]

A LANDMARK SETTLEMENT

GUN CONTROL

A court in West Virginia has approved a settlement requiring a gun dealer to pay $1 million in damages to two New Jersey police officers seriously wounded by a robber who bought a gun through a straw party in West Virginia. This agreement marks the first time a dealer will pay damages for supplying a firearm to the illegal gun market. The lawsuit accused the dealer, Will Jewelry & Loan of Charleston, W.Va., of negligence and creating a public nuisance by selling a dozen handguns to a straw buyer. The straw buyer bought the weapons for convicted felon James Gray.

Dennis Henigan, an official at the Brady Center to Prevent Gun Violence in Washington, noted that the injured officers would have collected nothing had the U.S. Senate approved legislation in March to shield gun makers and dealers from civil lawsuits. For a time, it seemed that the National Rifle Association would pressure Congress to pass this bill. That was before Democrats succeeded in adding two amendments. One would have banned assault weapons, and the other would have required background checks at private gun shows. Furious Senate Republicans pulled the immunity bill and vowed to stall the two amendments by not allowing the House to consider them this year.

President George W. Bush can make a difference in this election year by keeping his promise to extend the 1994 ban on military-style assault weapons. The existing ban expires in September. Mr. Bush didn't mention the issue when he invited sporting groups to his ranch in Crawford, Texas, in the spring. Nor did Vice President Dick Cheney mention it when he held an antique rifle at April's NRA convention and accused Democratic presidential candidate Sen. John Kerry of being an enemy of gun makers and users.

The president appears to want to have it both ways. He says he favors instituting background checks and extending the weapons ban, yet he had urged the Senate not to add either rider to the gun immunity bill. Granted, some of the banned weapons, including the one Mr. Cheney held at the NRA convention, are prized by collectors. And gun enthusiasts point out that many of the banned weapons are no more dangerous than guns in general but have a bad reputation because of movies that glorify gun violence.

Trouble is, this violence spills over into real life. The memory of Columbine is still sharp for many Americans, although the carnage happened five years ago. Images of snipers picking off innocent people in the Washington, DC, area won't soon be forgotten. And the reckless use of handguns and rifles to maim and murder is a daily occurrence in our country.

Mr. Bush should give his unequivocal support to extending the ban on military-style weapons that are used mainly to kill people.

[From the Baltimore Sun, July 5, 2004]

THE LINE OF FIRE

They buried Carlos Owen, Harley Chisholm III, and Charles Bennett last month. The three Birmingham, Ala., police officers were serving an arrest warrant in one of the city's blighted neighborhoods when they were shot and killed. And the incident has left people in that conservative, gun-owning part of the country wondering whether maybe some weapons shouldn't be so widely available.

The gun that killed the officers was an SKS, a rifle similar to the notorious Russian AK–47. It's a military-style assault weapon and, according to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives, a rifle often used against law enforcement officers. It fires a 7.62 mm round at 2,300 feet per second, a velocity that's capable of penetrating police body armor. Earlier this year, two other Alabama police officers were killed in the line of duty. An SKS was used in both shootings.

Why is this cop-killing gun allowed in circulation in this country? It's not outlawed by the 10-year-old federal assault weapons ban. The AK–47 was, but the makers of the SKS found a way around the ban by making some minor modifications. Yet their gun still has some of the most troubling qualities of an assault weapon—an ability to accept a high-capacity magazine and, even as a semi-automatic, spray a large number of large bullets powerfully and accurately.

That, and the fact that it's cheap and lethal-looking, has made the SKS a popular gun among criminals. An SKS can be purchased for as little as $200. A used magazine capable of holding 40 rounds might cost an extra $5. It's not a particularly useful gun for hunting. It's not even that popular with the general law-abiding public. All models of assault weapons represent less than 5 percent of the guns in circulation.

Yet here we are just a few months shy of the day the federal assault weapons ban is set to expire and there's little hope it will be renewed. It should be renewed—and expanded to cover guns such as the SKS. President Bush said four years ago that he supported an extension of the assault weapons ban. A majority of the Senate supports it, too. Right-wing House Republicans don't. President Bush could probably overcome that opposition, but he won't even talk about the issue. Clearly, he'd rather the whole thing went away quietly.

Of course it won't go away for the families of those murdered Birmingham police officers. While a renewal wouldn't take the existing SKS rifles off the street, letting the ban expire in September would open the door to even deadlier models. What message would that decision send to future cop-killers? A lot of Americans, gun owners and police officers included, have been left to ponder: What compelling reason is there to allow bad guys to own assault weapons? And how can the president of the United States continue to claim to support a ban but not lift a finger for the cause?

[From the Oregonian, July 5, 2004]

BACK TO ASSAULT WEAPONS

Summary: Without pressure from President Bush and action by Congress, the 1994 ban on military-style guns will expire.

When a man used an assault rifle to shoot three people at a California community center in 1999, then-presidential candidate George W. Bush declared, ''It makes no sense for assault weapons to be around our society.''

It still doesn't. President Bush promised during his first campaign to uphold a ban on assault weapons, but he isn't lifting a finger now to prevent the popular law from expiring. The assault weapons ban approved in 1994 by Congress and signed by President Clinton was written to sunset after 10 years. Time's up at midnight on Sept. 13.

The White House claims Bush supports extending the ban and would sign a bill renewing the law if Congress sends him one. But earlier this year, Bush helped defeat a gun bill that included the ban on assault weapons. The president also has done nothing to encourage Congress to act on the issue in the dwindling days of this session.

That's a dangerous mistake. Bush was absolutely right when he told voters that assault weapons have no place in American society. These military-style weapons, with rapid-fire capabilities and large-capacity magazines capable of holding dozens of rounds of ammunition, are not hunting or sporting weapons. They are designed for just one thing: shooting people.

Polls show that Americans strongly favor renewing the ban on these weapons. In late 2003 an NBC/Wall Street Journal poll found that 78 percent of adults nationwide expressed support for renewing the federal ban. A University of Pennsylvania National Annenberg Election Survey found in April 2004 that even 64 percent of the people in households with guns favor the law.

Every major law enforcement organization in the nation backs the ban on assault weapons, including the Fraternal Order of Police, the National Sheriffs' Association and the International Association of Chiefs of Police. Every police agency understands the dangers of these weapons in the hands of drug traffickers, gangs and terrorists.

Yet House Speaker Dennis Hastert, R-Ill., and other GOP leaders seem determined to prevent the renewal of the assault weapons ban from even coming to a vote. We strongly urge members of the Oregon congressional delegation to join the bill to reauthorize the ban and to pressure the leadership to bring the matter up for a vote before the law sunsets in September.

While several studies show a marked decline since 1994 in assault weapons traced to crime, we'll concede that the federal ban has not been a fully effective defense against these guns. The law grandfathered existing assault weapons in 1994, and manufacturers have exploited loopholes in the law by producing copycat weapons with only cosmetic differences.

A responsible Congress, and one not in the thrall of the National Rifle Association, would tighten the law, fix the loopholes and make the ban on these weapons permanent. If that's too much to ask, we'd settle for the president to keep his word on this issue and demand that Congress renew the existing ban on assault weapons.

[From the San Jose (CA) Mercury News, July 5, 2004]

BUSH IS DOING NOTHING TO HELP EXTEND BAN ON ASSAULT WEAPONS

The federal law outlawing some of the most dangerous military-style guns will expire Sept. 13, leaving the nation more vulnerable to horrific crimes.

The Republican leadership in the House has bottled up the bill extending the 10-year-old assault-weapons ban. But President Bush will bear part of the blame if nothing is done.

The president has recently repeated his promise, first made when running for president in 2000, to sign an extension. But, unlike his push for the war in Iraq and a tax cut, he has not lifted a finger to see that the bill reaches his desk, and the gun lobby has vowed to keep it from getting there. Bush wants to have it both ways.

The ban has been only modestly successful in curbing the sale of rapid-fire semi-automatic weapons. Gun manufacturers have devised ways around it; copycat models and high-capacity magazines, imported from abroad, proliferate.

But the answer is to tighten and to expand the law, along the lines of California's smartly effective 5-year-old assault-weapons ban, and not to return to the days when a wannabe drug dealer or cop killer could buy an Uzi at a local gun shop.

Law enforcement groups are urging that the ban be continued. It would be a travesty if officers once again find themselves outgunned on the streets they are sworn to protect.

Mrs. FEINSTEIN. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. I thank the Chair.

I thank my colleague from California for her leadership and her eloquence on this issue. She has done a wonderful job, and I hope that her pleas to the White House and to the House are heeded.

We stand on the floor today debating an amendment to the Constitution for which there is already a statute that does the same thing. We are ignoring basic needs. Instead of debating this amendment, why aren't we debating homeland security? Last Friday there was a warning issued to all of us, a severe warning, yet the Homeland Security bill, despite the warning that was issued to us on Friday, languishes.

We are here today to bring up another important issue—people's lives and these kinds of weapons, which thankfully have been banned on our streets for the last 10 years and, woefully, may be back on our streets 2 months from today if we do nothing.

That is the bottom line. The assault weapons ban has been an amazing success. It is supported by the American people overwhelmingly. Yesterday a poll showed that 79 percent support renewal. Today a new poll showed that in the swing States, Midwestern and Southern States, where there are large numbers of gun owners, overwhelming majorities support the ban. Gun owners support the ban. Law enforcement supports the ban. The list that my colleague from California showed is lengthy and comprehensive.

So why wouldn't something that has saved lives, that has been so successful, that has helped bring down the crime rate not be brought up on the floor of the House and is in danger of lapsing? One simple word: Politics. Politics of a small few who seem to call the dance when it comes to dealing with issues like this Street Sweeper.

Point one is that these weapons are not made for hunting. They are not made for self-defense. They were designed by armies to kill a lot of people quickly. They are never used by good people, who certainly have a right to bear arms. In fact, recently al-Qaida told its membership in a training manual found by the U.S. military that terrorists should use America's weak gun laws to get serious weapons and to try to get assault weapons. Terrorists want these weapons, drug dealers want these weapons, criminals want these weapons. Police men and women do not want these weapons, hunters do not want these weapons, small store owners who carry a small sidearm for self-defense don't want these weapons.

Why do we have to be on the Senate floor pleading with the President and the House for renewal of a law that has been so successful? Again, one word: Politics. A small group of fanatical people somehow have an ideological mission that they must restore these weapons to our streets. They don't represent gun owners. They don't represent the North or the South or the East or the West. They represent their own misguided ideology. But the President, who is on the campaign trail talking about leadership, cowers and shakes before this small group of ideologues. He has said he is for the renewal of the assault weapons ban. But according to the House leadership, he has not mentioned once to them that he would like the bill to be on the floor of the House of Representatives. The Speaker of the House says that we need the President to get this going. The President says the House should do it. It is a classic Abbott and Costello routine, a shell game, a classic duck the consequences, or the worst aspects of politics.

The bottom line is that if George Bush wanted the assault weapons ban to be renewed, it would be. All he would have to do is pick up the phone once and call Speaker HASTERT and say put it on the floor of the House; and on the floor of the House it would pass, just as it passed this body a few months ago when the Senator from California and I offered it. And then the President would sign it.

But the President thinks he can get away with this, that he can get away with this nasty little game; that he will keep happy his hard-core small number of supporters who believe these weapons should be on the streets, and he will not pay the price.

Mr. President, I cannot predict how our politics will work out in the next few months. But it is my guess that if this ban is not renewed, and AK–47s, Street Sweepers, and Uzis are back on our streets, starting 2 months from today, that the President will pay a political price for it. That is no solace to me. That is no solace to my colleague from California. We would much rather have this renewed, as everybody knows it should be.

No hunter, no gun owner has been hurt by the inability to carry an Uzi. Some criminals have been hurt, terrorists have been hurt, but no legitimate citizen who certainly has a right to bear arms. And I support the second amendment, but I don't support the view that it should be seen through a pi hole.

We make one last plea—and we have 13 legislative days left—to the President of these United States to step up to the plate, show real leadership, and ask that the assault weapons ban be put on the floor of the House of Representatives, and that it be renewed because it has been successful and good for just about everybody.

I ask unanimous consent to have several articles printed in the RECORD.

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

[From the New York Times, April 20, 2004]

TARGETING VOTERS IN THE WORST WAY

It is not quite the same as kissing babies, but Vice President Dick Cheney beamed as he handled an antique rifle for his photo-op last weekend at the National Rifle Association convention. Mr. Cheney, the administration's most famous duck hunter, was on a reassurance mission, drawing cheers as he trumpeted President Bush's commitment to hunters' constitutional rights. Mr. Cheney attacked Senator John Kerry, the Democratic challenger, as a firearms wuss, despite Mr. Kerry's beady-eyed display last fall when he blasted pheasants from the Iowa skies in his own vote-hunting foray.

Mr. Cheney's personal visit signaled how much of a fence-mending charade the White House is staging to soothe the politically powerful gun lobby. Some N.R.A. members are still miffed at Mr. Bush's ostensible promise—left over from his 2000 campaign—to sign a renewal of the 10-year-old ban on assault weapons if that vitally needed measure should ever manage to be passed by the Republican-controlled Congress. But, of course, the Capitol's pro-gun leadership has already made sure that the president's promise bobs as lifelessly as an election-year decoy.

Banning assault rifles simply protects society from fast-fire attack weapons designed for waging war, not hunting. But Mr. Bush never once pressed Congress to pass the renewal. Instead, he spent his political capital on the gun lobby's outrageous proposal to grant immunity from damage suits to irresponsible gun manufacturers and dealers.

This is the Bush-Cheney team's true record on gun control. Too few voters are aware that the assault weapons ban will certainly expire in September while the president declines to lift a finger to save it. The law's demise looms as another national gun tragedy, even as politicians in both parties calibrate how much more pandering to gun owners will be needed in the hunt for votes in the swing states.

[From the Post-Standard, June 27, 2004]

CONSIDER THIS

The assault weapons ban might not have become law a decade ago without an assist from what some might consider an unexpected quarter—former president Ronald Reagan.

Already out of office, Reagan nevertheless expended what political capital he had left to lobby fellow Republicans. The measure passed the House by just two votes.

That same assault weapons ban, which has been doing its job keeping lethal weaponry out of the hands of criminals all these years, is set to expire in September. While President Bush says he'll sign a continuation of the ban, he doesn't appear willing to lift a trigger-finger on its behalf. And the assault weapons lobby seems to have Congress in its back pocket. Unless . . .

Well, unless the president is willing to spend a little of his own political capital, do the right thing and push for the ban. It shouldn't be hard. After all, he'd be doing it for ''The Gipper.''

[From the Detroit Free Press, May 7, 2004]

ASSAULT GUNS; MOMS MARCH FOR A NEEDED RENEWAL OF NATIONAL BAN

Thousands will gather on Mother's Day Sunday in Washington, D.C., including at least 500 people from Michigan, to join the Million Mom March and push Congress for a needed renewal of the assault weapons ban. Lawmakers should listen.

Renewing the ban is a modest and commonsense step that is supported by most Americans, while vociferously opposed by the powerful gun lobby.

Shikha Hamilton, president of the Million Mom March in Detroit, says the group wants to hold President George W. Bush to his

promise of support for the ban, which will expire in September unless Congress renews it.

The ban covers 19 kinds of assault weapons and has significantly reduced the frequency with which these guns are used in crimes.

To be sure, it has not solved the problem of gun violence. Manufacturers have gotten around the ban by making minor changes. People can legally, and easily, buy parts that, put together, will turn a legal gun into an illegal one. It's also obvious that all people must be held accountable for how they use guns.

That said, the 1994 ban has slowed the flow of assault weapons onto the street. Letting it expire would undo years of work by groups fighting for sensible gun laws.

Some pro-gun activists will try to depict Million Mom March as an extremist group trying to scrap the Second Amendment. It is not.

A modest federal law to restrict military-style guns whose only purpose is to mow people down ought to make sense to any member of Congress not under the undue influence of the gun lobby.

For more information on the march, go to www.millionmommarch.com

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[From the Atlanta Journal-Constituion, March 5, 2004]

PRY CONGRESS FROM COLD, DEADLY CLUTCH OF THE NRA

Those who say that negotiating with the gun lobby is like making a deal with the devil owe the archfiend an apology.

For months, the National Rifle Association has lobbied hard for passage of a bill that would make the gun industry immune to civil lawsuits. The measure—the NRA's top legislative priority—had already passed the House, and this week was close to passage in the Senate as well, until NRA lobbyists stepped in at the last minute and ordered that the bill be killed.

Why the sudden change of heart? Because Democrats and moderate Republicans had succeeded in attaching two quite sensible, reasonable gun-safety measures to the bill. One amendment extended the 1994 ban on military-style assault weapons that's set to expire in September; the other closed a loophole that permitted people to buy firearms at gun shows without having to undergo instant background checks.

Officially, President Bush backs both measures, although he has done nothing to support them. According to a recent survey by the Consumer Federation of America, the assault rifle ban is also supported by a majority of the nation's gun owners. The assault weapons ban is particularly important to law enforcement officers, who had pleaded with Congress to renew the ban and also close the gun show loophole. According to the Justice Department, the proportion of banned assault weapons traced to crimes had dropped by 65.8 percent since 1995, most likely as a result of that law.

Nonetheless, U.S. Sen. Zell Miller was among six Democrats who voted against renewing the ban on military-style assault weapons. ''First of all, the term 'assault' was dreamed up to give the weapons included a bad name. Who could be for an 'assault weapons'? The definition is really 'semi-automatic,' and about 15 percent of all firearms owned in the U.S. meet the definition,'' said Miller.

Had the gun-immunity bill passed, it would have voided hundreds of pending lawsuits, including those filed by more than 30 cities devastated by gun violence and by dozens of shooting victims and their families. For example, it would have slammed shut the courthouse door to the families of the victims of Beltway snipers John Allen Muhammad and Lee Boyd Malvo. The families are suing Bull's Eye Shooter Supply, the Washington state gun shop where Malvo either bought or stole the semi-automatic rifle used to slaughter 10 people. Between 2000 and 2003, the gun shop somehow ''lost'' 230 other guns from its inventory.

Bull's Eye tried to have the case dismissed, but the courts ruled that the store had some responsibility to ensure its firearms didn't fall into the hands of criminals. The judge relied on the established legal principle that a person who carelessly furnishes a criminal an open opportunity to commit a crime can be held liable.

The NRA and its supporters want to give the gun industry an immunity to being sued that no other American industry enjoys. As they have demonstrated, they want that immunity only on their terms, with no compromise and no tolerance for any effort that might reduce the toll in lost and broken lives attributed to guns. And while that absolutist approach is troubling, the docile willingness of so many in Congress to accommodate that extremism is more troubling still.

[From the Los Angeles Times, May 16, 2004]

NRA'S EYE IS FIXED ON BUSH

Just under four months from today, Americans will be able to walk out of a gun store with an AK–47 rifle, an Uzi or other weapon of mass murder under their arm.

Unless Congress acts—and Republican leaders show no inclination to do so—the 10-year-old federal assault gun ban will expire Sept. 13. A word from President Bush would get a renewal before lawmakers, a majority of whom would probably approve it. But the president is silent.

Most people, including most gun owners, are properly alarmed. A survey released last month by the University of Pennsylvania's Annenberg Public Policy Center found that 71% of those surveyed and 64% of gun owners wanted Congress to extend the ban.

But congressional leaders, too accustomed to taking marching orders from the National Rifle Assn., have stymied the reauthorization bill that Sens. Dianne Feinstein (D–Calif.), John W. Warner (R–Va.) and Charles E. Schumer (D–N.Y.) introduced last year.

The 1994 ban bars the manufacture and importation of 19 specific semiautomatic gun models and other models with similar features. These are not hunting weapons; what they do best is mow down humans, from factory workers to 6-year-olds in a school cafeteria. That's why Los Angeles Police Chief William J. Bratton and his colleagues in other cities steadfastly support renewing the ban. Bans by the states on such weapons, including California's, would stay in effect. But there would be no bar against Californians buying such guns in Nevada or elsewhere.

The NRA disingenuously insists that the federal law is flawed because it prohibits some guns while permitting virtually identical weapons cosmetically tweaked to evade the law's reach. But when Feinstein proposed a more inclusive ban, similar to California's, which defines assault guns by their generic characteristics, the NRA crushed it. It also blocked her effort to close a loophole in the current law that allows importation of high-capacity bullet clips.

However tempting it is to blame Congress for the stalemate over this bill, the leadership failure is really the president's. Bush has said he backs the ban. He also wants the NRA's political endorsement, which the gun group is withholding until after the ban expires. So Bush has put no pressure on Senate Majority Leader Bill Frist (R–Tenn.) or House Speaker J. Dennis Hastert (R–Ill.) to move Feinstein's measure or its House counterpart.

If Bush says the word, Frist and Hastert will put the gun ban extension before their colleagues for a vote. And if Bush means it when he says his top priority is to keep Americans safe, he will do just that.

[From the Los Angeles Times, July 13, 2004]

RELOAD THE ASSAULT GUN BAN

Two months from today, the federal assault weapons ban dissolves like a wisp of gun smoke. Even though he proudly carried the National Rifle Assn.'s seal of approval in 2000, President Bush says he supports renewing the 10-year-old ban, but he has refused to push Congress in that direction. His word to congressional leaders would matter greatly now, just as his continued silence suggests that he values the NRA's support over Americans' safety.

The NRA's strategy is to get its friends in Congress to run out the clock on the assault weapons ban. Toward that end, House leaders have blocked any vote on bills to extend the ban for another decade, and a Senate bill amended with renewal language died in March. Yet congressional leaders are pushing for votes on time-wasting wedge issues such as proposed constitutional amendments banning same-sex marriage and flag desecration.

The 1994 ban bars the manufacture and importation of 19 specific semiautomatic gun models and others with similar features. These aren't hunting weapons, unless you consider a classroom full of 7-year-olds or swing-shift workers at a factory to be prey.

The NRA loudly insists that the law is flawed because it bars some guns while allowing nearly identical weapons that have been cosmetically tweaked. That's absolutely correct. But when Sen. Dianne Feinstein (D–Calif.), who sponsored the 1994 ban, proposed a more inclusive ban, like California's, which defines assault guns by their generic characteristics, the NRA crushed it. It also killed her effort to close a loophole in the current law that allows importation of high-capacity bullet clips. If the federal law does expire, California's assault gun ban would stay in effect. But there would be no bar against Californians buying these weapons of mass destruction in Nevada or elsewhere.

Bush justifies the war in Iraq by insisting that it has made this nation safer. But the president and his congressional allies risk making American cities and towns far more dangerous by their shameful failure to renew the assault gun ban. They have just 61 days left.

[From the Washington Post, May 25, 2003]

WEAPONS FOR TERRORISM

Some of the most efficient firearms sought by terrorists—international as well as domestic—may flood the markets of this country if Congress fails to renew a federal ban on semiautomatic assault-style weapons. The ban is scheduled to expire next year after a decade in force; House Majority Leader Tom DeLay (R–Tex.) announced at one point recently that the House would not even have a vote on the matter. But House Speaker J. Dennis Hastert (R–Ill.) then insisted that no final decision had been made, noting that he first wants to talk to President Bush, who has been on record as supporting the ban. That's the right position, but it will take more than presidential lip service to uphold it in an election year.

The 1994 law made it illegal to manufacture, transfer or possess 19 specific models of semiautomatic weapons. It also banned ammunition magazines that hold more than 10 rounds. If anything, the law needs to be

strengthened. A Congressional Research Service report released last week found that U.S. gun laws in general can be easily exploited by terrorist operatives shopping for weapons in this country. In the case of assault weapons, the gun industry has found clever ways to make cosmetic design changes in their models to get around the federal ban. Even so, according to the Brady Center to Prevent Gun Violence, every major law enforcement organization in the country has supported the ban. These groups point out that these firearms remain the weapons of choice for drug traffickers, gangs and paramilitary groups. As weak as the ban may be, evidence exists that the number of assault weapons traced to crimes dips when such laws are in place. In Maryland, for example, a ban on assault pistols took effect in June 1994. The Brady Center found that the number of these guns recovered by Baltimore police in the first six months of 1995 was down 45 percent from the comparable period the year before.

The ban on assault weapons needs time and broadening to have more effect. Reopening the gates to still more assault weapons makes no sense in civilized society. Congress and the president ought not make it any easier for terrorists, deranged people, drive-by shooters or criminals—foreign or domestic—to kill and maim.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I want to address the motion to proceed to the amendment now pending before the body, the Federal marriage amendment. One of the arguments that I hear again and again—I guess I am so shocked and amazed that somebody would actually make the argument that I perhaps have not done a very good job in responding to it.

For the record, I think it is important to respond to the argument that has been made twice this afternoon on the floor by the Senator from Wisconsin and the Senator from Maryland, that the constitutional amendment process is for expanding and not limiting rights. In other words, they think the only permissible purpose of a constitutional amendment is to expand, not limit individual rights, presumably including the right to same-sex marriage.

These are the same people who accuse supporters of wanting to ''write discrimination into the Constitution.'' I find the argument disturbing and offensive, but I also find it somewhat revealing. I wish that everyone who was engaged in this debate would take counsel in the words the distinguished Senator from Massachusetts, who is in the Chamber, once stated during the course of the debate on the Defense of Marriage Act back in 1996. Even though he did not support the Defense of Marriage Act at that time, he observed that ''there are strongly held religious, ethical, and moral beliefs that are different from mine with regard to the issue of same-sex marriage, which I respect and which are no indication of intolerance.'' I agree with those words.

To those who consider the traditional institution of marriage to be about discrimination, they have already, somehow, made same-sex marriage into a right that is the status quo that those who want to preserve traditional marriage are trying to discriminate against. I don't know whether it is just a technique of argument to try to pin the idea of discrimination or of wanting to limit rights on those who basically want to preserve the status quo as it has existed in our civilization for 5,000 years, and certainly in this country for as long as it has existed or whether they actually have bought into the specious argument that somehow wanting to preserve the institution of traditional marriage for the benefit of the American family and our children is about limiting rights.

It is nothing of the kind. Indeed, both the NAACP and the American Bar Association have testified that they have no position on whether traditional marriage laws should remain on the books.

Now, setting that aside for just a moment, which is rather amazing in and of itself, if marriage were about discrimination, surely both the NAACP and the American Bar Association would oppose it. But it is not, and they did not. To the contrary, religious leaders in every community across America have expressed their support for traditional marriage. They recognize the importance of traditional marriage in their respective communities, including many communities that are all too familiar with the scourge of discrimination.

Indeed, during some of the hearings that we have had on this issue in the Senate Judiciary Committee, we had individuals such as Rev. Ray Hammond of the Bethel African Methodist Episcopal Church in Boston; Rev. Richard Richardson of the St. Paul African Methodist Episcopal Church in Boston; and Pastor Daniel de Leon, Sr., of Alianza de Ministerious Evangelicos Nacionales, otherwise known as AMEN, and Templo Calvario in Santa Ana, CA. Surely, these people, who have fought their entire lives against racial discrimination, and who support traditional marriage, cannot be labeled as bigots or wanting to limit rights or somehow wanting to write discrimination into the Constitution. To the contrary, they understand that it is traditional marriage that represents the status quo.

It was a basic assumption of John Adams when he penned the Massachusetts Constitution but which was rewritten at the hand of four judges on the Massachusetts Supreme Court.

It is those of us who are arguing for this constitutional amendment to preserve the status quo in this country who are doing just that and not attempting to limit rights. Rather, it is telling that those who make accusations are so intolerant of the democratic process contained in article V of the U.S. Constitution that provides a means for the people to express their views and to have a voice, to have a vote on something as important as this.

It is precisely because these activists believe traditional marriage is about discrimination that they believe all traditional marriage laws are unconstitutional and, therefore, must be abolished by the courts. These activists have left the American people with no middle ground. They accuse others of writing discrimination into the Constitution, yet they are the ones writing the American people out of our constitutional democracy.

As I have often said, and I think it is worth saying again, the American people believe in two fundamental propositions, at least, among others: One is the essential dignity and worth of every human being. This is not about wanting to limit rights or wanting to hurt anyone. This is about preserving something that is a positive social good in our society, that has stood the test of time, something that is important to the stability of our civilization, that is important because it is in the best interest of children.

I had the honor for 4 years to serve as attorney general of my State, and Texas is one of the few States where the attorney general has the privilege of enforcing child support obligations. I am very proud of the good work the men and women in my office did to improve our collection efforts by more than 80 percent in 4 years because they were literally able to put food on the table and a shelter over children who did not have that because they were denied the right given to them under our laws to have the financial support to which they are entitled. But it was there I became very aware of the challenges that confront children in a society that cares only about adults and thinks about children only as an afterthought.

We know, as Senator SANTORUM mentioned, the only place where we actually have some experience, some record of what happens when a radical experiment with the definition of marriage and traditional family takes place is we have this correlation with an increase in out-of-wedlock childbirths and more and more children who are at risk of a whole host of social ills.

As somebody who believes the family first and foremost is there to help those children as they grow, to avoid those risks and to grow up and be productive citizens, I do not think we ought to be taking any chances with the most important and fundamental institution we know of in our society that is designed to operate in their best interest, not coincidentally so that the American taxpayers do not have to continue spending their hard-earned money to provide services that might otherwise be provided by the family, or build more prisons or provide more opportunities for drug and alcohol rehabilitation, other risks that, unfortunately, too many of our children fall trap to today.

I found it very compelling that members of the minority community—African-American and Hispanic communities—particularly those who work in

places such as Boston and California and elsewhere, are some of the most passionate about the importance of maintaining the traditional family against this attempt to write them out of our laws and out of our Constitution.

It seems the supporters of traditional marriage are faced with an unhappy task: Either we give up the traditional institution of marriage to those activists who want to rewrite the definition, who see marriage as nothing more than discrimination, or we enshrine traditional marriage with the constitutional protection our children need and deserve.

I believe the traditional institution of marriage is too important to sit on the sidelines or to fail to have this important debate. I believe it is worth defending, and that is why I support this important amendment.

I see the Senator from Massachusetts in the Chamber. I will be glad to yield so he may address the Chamber.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, under the previous agreement, I believe I am allotted 15 minutes; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. I yield myself 12 minutes.

Mr. President, we know there are many urgent challenges our country faces. The war in Iraq has brought sudden new dangers, imposed massive new costs, and is taking more and more American lives each week. At home, unemployment is still a crisis for millions of our citizens. Retirement savings are disappearing, school budgets are in crisis, college tuition is rising, prescription drug costs and other health care expenses are soaring, millions of Americans are uninsured, Federal budget deficits extend as far as the eye can see, we cannot even pass a budget bill, and our good friends, the Senator from California, Mrs. FEINSTEIN, and the Senator from New York, Mr. SCHUMER, spoke to the Senate about the importance of continuing the ban on assault weapons that has made such an extraordinary difference in helping to protect American lives and which is about to expire in the next several days. That is a matter we ought to be considering if we are interested in security and protecting the lives of American citizens, as well as if we are going to protect family values. But, no, that is not the opportunity we have under our Republican leadership.

We just celebrated the 40th anniversary of the great Civil Rights Act of 1964. Yet now, instead of dealing with the real priorities facing the Nation, the Republican leadership, President Bush, wants us to persuade Congress to write bigotry back into the Constitution by denying gays and lesbians the right to marry and receive the same benefits and protections married couples now have.

It could not be clearer that the Republican leadership has brought up this proposal for pure politics, not for its underlying merits. They are hoping to use the issue to drive a wedge between one group of citizens and the rest of the country solely for partisan advantage.

The Republican leadership does not want a vote on the merits. Do you hear me? The Republican leadership does not want a vote on the merits.

Last Friday, Senator REID informed the Senate that the Democrats were willing to accept a time agreement with a straight up-or-down vote on the Federal marriage amendment on Wednesday. We have cleared it on our side to do that, he said; we are ready to move forward on it; we are ready to rock and roll. Those were the words of the Senator from Nevada. And the Republican leadership refused our offer.

Can you imagine that? We have listened to all these statements, all these speeches about let the Senate exercise its will, let's take action, this is urgent, important, and we agreed to do it and they said no. No, no, the Republican leadership refused our offer, and we question their sincerity about this amendment when we offer and agree to vote at a certain time and they say, no, no, we are not going to do that; we feel passionately about this amendment; we believe in the importance of our amendment, but we do not want to permit you to vote on this amendment.

In all my years in the Senate, I do not recall a single instance in which the party that supported a measure refused an up-or-down vote on its merits and instead manipulated the process to produce a cloture vote on a motion to proceed. That is what we are faced with. You ask us why we doubt their sincerity, why we question the timing of bringing this up, and the process and the procedure when we on this side say, OK, we'll vote on it, and you say no. Oh, yes, we are sincere about our motives, we care deeply about children, we care about the Constitution, we care about all of these issues, but we don't want a vote. That just doesn't add up.

Obviously, they fear that too many Republican Senators would vote against the constitutional amendment on its merits. In fact, it is possible that it would not even get a majority of Senators to support it. When it became clear that a majority of the members in the Judiciary Committee did not support this proposal, they simply bypassed the committee process altogether.

This is not a serious debate about our constitutional tradition and values. If it were, we would have a vote on this tomorrow, up or down, as the Democratic leadership has proposed. Instead, it is a procedural way in order to put people on the record. It is a sham. It is a desperate ploy to divide the Nation for political advantage. The rabid reactionary religious right has rarely looked more ridiculous. They know they don't have the votes to come even close to passing this amendment, but they have a sufficient stranglehold on the White House and the Republican leadership in Congress to force the issue to a vote anyway, in a desperate effort to arouse their narrowminded constituency and somehow gain an advantage in the elections this year. My guess is their strategy will boomerang and that vastly more Americans will be turned off than are turned on by this appeal to stain the Constitution with their language of bigotry.

There is absolutely no need to amend the Constitution on this issue. As news reports from across the country make clear, Massachusetts and other States are already dealing with the issue, and doing it effectively, and doing it according to the wishes of the citizens of their States. Contrary to the claims of the supporters of the amendment, no State has been bound—listen to this—no State has been bound or will be bound by the rulings or laws on same-sex marriage in any other State. That is the constitutional law. You can hear it described in other forms out here, and surely it has been, but I have just stated the constitutional law.

Longstanding constitutional precedents make clear that the States have broad discretion in deciding to what extent they will honor other States' laws on sensitive questions about marriage and raising families. The Federal statute enacted in 1996, the Defense of Marriage Act, makes the possibility of nationwide enforceability even more remote.

So if it is not necessary to amend the Constitution, it is necessary not to amend it. In more than 200 years of our history, we have amended the Constitution only 17 times since the adoption of the Bill of Rights. Many of those amendments have been adopted to expand and protect people's rights.

Having endorsed this shameful proposed amendment in an effort to divide Americans and assist the faltering election campaign, President Bush will go down in history as the first President to try to write bigotry back into the Constitution. No one can now claim with a straight face that he has lived up to the campaign promise to be a uniter and not a divider.

The manner in which this amendment has been brought up to the Senate floor is disgraceful. The Republican leadership has decided to bypass the usual process of debating and marking up proposed constitutional amendments in the Judiciary Committee. They know they do not have the votes to pass it out of the committee. They also know they do not have the two-thirds majority they need to pass the amendment in the full Senate, but they have chosen to rush it to the floor of the Senate anyway, in an effort to embarrass Democrats before our convention at the end of the month.

It is Republicans who should be embarrassed. As Chairman HATCH once said:

> It denigrates the committee process to bypass the Judiciary Committee, especially when an amendment to the Constitution of the United States of America, the most important document in the history of the Nation, is involved.

In the past 25 years, only 2 amendments out of 19 have been considered

on the Senate floor without having been referred to the committee first. In both these cases, the amendment was brought before the full Senate by unanimous consent. Trying to write discrimination in the Constitution is bad enough, but throwing the Senate rules out the window and proceeding with a discriminatory amendment that the majority of Americans do not want and a majority of the Senators don't support solely for the purpose of scoring points in a Presidential election campaign demeans this institution and all who have served in it.

This debate is about politics—an attempt to drive a wedge between one group of citizens and the rest of the country solely for partisan advantage. We have rejected that tactic before, and we should reject it again.

In the Goodridge case, the Massachusetts Supreme Judicial Court was interpreting the Massachusetts Constitution, not the U.S. Constitution. As a rule, the Federal Government has no authority to tell States how to interpret their own laws and constitutions. The Federal marriage constitutional amendment would change this fundamental principle of State sovereignty by imposing a rule of interpretation on State courts.

I am certainly glad it was not done at other times of American history. The Massachusetts Constitution was written by John Adams in 1780. He wrote it virtually himself, much of it copied by the Constitutional Convention in 1787.

In 1783, the issue of slavery came before the Massachusetts Supreme Court, and Massachusetts has the only constitution of all 50 States that has been interpreted as barring slavery. We were the first State of all the States to ban slavery, the only State that banned it in the constitution itself, Massachusetts, under John Adams, the only State, in 1783. And we had slaves in my State for 150 years before it.

So it is nice to hear our colleagues talk about Massachusetts and about our court and our judges there. I remind our colleagues, of the seven Massachusetts judges who voted, six were and are Republicans. Only one is a Democrat. Six are Republicans. I happen to be someone who supports the court decision in Massachusetts. I am proud of them.

But make no mistake, a vote for the Federal marriage constitutional amendment is a vote against civil unions, domestic partnerships, and other efforts by States to treat gays and lesbians fairly under the law. It is a vote against allowing States to decide these issues for themselves. It is a vote for imposing discrimination, plain and simple, on all 50 States.

Supporters of the proposed amendment claim that religious freedom is somehow under attack by States that grant the same rights and the same benefits to same-sex couples that married couples now have. But as the first amendment makes clear, no court, no State, no Congress can tell any church, any religious group, how to conduct its own affairs. No court, no State, no Congress can require any church, any synagogue, any mosque to perform a same-sex marriage. Not a single church in Massachusetts or any other State has been required to do anything it doesn't want to do, and that will continue to be the case so long as the Federal marriage constitutional amendment does not take place.

The true threat to religious freedom is posed by the Federal marriage amendment itself, which would tell churches they cannot consecrate a same-sex marriage, even though some churches are now doing so. The amendment would flagrantly interfere with the decisions of religious communities and undermine the longstanding separation of church and state in our society.

As Rabbi Michael Namath, a member of the Union for Reform Judaism and the Central Conference of American Rabbis, explained in a recent forum:

> Some religious traditions, including Reform Judaism, recognize the legitimacy of same-sex unions. Many Reform rabbis around the country routinely perform same-sex weddings. Yet some warn that if the FMA were adopted, performing a religious wedding ceremony for a same-sex couple might be unconstitutional, illegal. . . . The FMA would give the federal government express authority to bar religious groups from sanctioning same-sex marriage—and the authority to punish those that do.
>
> . . . Court challenges on ''free exercise'' grounds may not succeed because the Federal Marriage Amendment, being the more recent addition to the Constitution, might supersede the ''free exercise'' clause. If so, this would undermine the foundations of our country.

The PRESIDING OFFICER. The Senator has used the 12 minutes.

Mr. KENNEDY. Mr. President, those who oppose gay marriage and disagree with the recent decision by the supreme judicial court have a first amendment right to express their views.

There is no justification for attempting to undermine the separation of church and state in our society or to write discriminations against gays and lesbians in the U.S. Constitution. Too often the debate over the definition of marriage and its legal incidence have ignored the very personal and loving family relationships that would be prohibited by a constitutional amendment.

More and more children across the country today have same-sex parents. What does it do to these children and their well-being when the President of the United States and the Senate Republican leadership say their parents are second-class citizens?

The decision by the Massachusetts court addressed the many rights available to married couples under the State law, including the right to be treated fairly by the State's tax laws, to share insurance coverage, to visit loved ones in the hospitals, to receive health benefits, family leave benefits, and survivor benefits. In fact, there are now more than a thousand Federal rights and benefits based on marriage.

Gay couples and their children deserve to share in all of these rights and benefits, too. Supporters of the amendment have tried to shift the debate away from equal rights by claiming their only concern is the definition of marriage, but many supporters of the amendment are against civil union laws as well and against any other rights for gays or lesbians.

Just last month we saw a new dawn for civil rights in the Senate. On an amendment to the Defense authorization bill, we passed our bipartisan hate crimes legislation by an overwhelming majority, 65 to 33. Thanks in large part to the courageous and effective leadership of Senator GORDON SMITH, 18 Republican Senators joined all Democratic Senators in approving this needed protection against hate-motivated violence. Last month's vote on hate crimes showed the Senate at its best. The decision to bring up this divisive, discriminatory, and unnecessary amendment does just the opposite.

We have far better things to do in the Senate than write bigotry and prejudice into the Constitution. We should deal with the real issues of war and peace, jobs and the economy, and many other priorities demand our attention so urgently in these troubled times. I urge my colleagues to reject this discriminatory proposal.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, did the distinguished Democratic whip wish to be recognized?

Mr. REID. Did the Senator from Colorado have something he wanted to say?

Mr. ALLARD. I was going to yield some time to the senior Senator from Virginia.

Mr. REID. If I could be heard briefly, we on this side are seeing the end of people who wish to speak tonight. The only speakers we have remaining, following Senator DAYTON, are Senator CLINTON for 15 minutes and Senator JEFFORDS for 10 minutes. I ask unanimous consent that in the usual order we have been using today of back and forth, Senator CLINTON next be recognized, Senator JEFFORDS be recognized following that, and if the Republicans have speakers interspersed between those we understand that.

Mr. ALLARD. Let me understand the Senator's request. We have been alternating back and forth.

Mr. REID. We will continue to do that.

Mr. ALLARD. We will continue to do that on this side?

Mr. REID. I was saying, if the Republican side did not have a speaker we would go ahead.

Mr. ALLARD. No objection.

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

Mr. ALLARD. Mr. President, I yield the senior Senator from Virginia such time as he may consume.

Mr. WARNER. Ten minutes.

Mr. ALLARD. I yield him 10 minutes. It is always a pleasure to be able to recognize him because we all admire the work he does. I am particularly proud to be able to serve with him on the Armed Services Committee. He is the chairman and does a great job.

The PRESIDING OFFICER. The senior Senator from Virginia.

Mr. WARNER. I thank my distinguished colleague from Colorado. I commend him, as well as the Senators from Texas, Pennsylvania, and Alabama, and so many who have worked on this important constitutional amendment, S.J. Res. 40.

I have listened to the debate the past several days. I have actually gone back, together with my staff, and reviewed the CONGRESSIONAL RECORD of Friday and Monday. I feel obligated to indicate to the Senate my own views with regard to this resolution and what I intend to do.

First, I intend to vote in support of cloture on the motion to proceed to the Federal Marriage Amendment, S.J. Res. 40. I feel very strongly that the Senate should be accorded the opportunity to debate in full and to amend, if it is necessary, and I think it is necessary, S.J. Res. 40.

For that purpose, I hope cloture prevails and that we can, as a body, continue to address this very important legislation. It is of utmost seriousness.

My greatest concern throughout this process is the heavy weight that rests on all of us when we go to amend that document which has enabled this Republic—each morning we open the Senate by our Pledge of Allegiance to this Republic, which I think historians will agree is the longest continuous surviving republic in the history of the world. It is a remarkable document, the wisdom that is incorporated in our Constitution, the Declaration of Independence, and Bill of Rights.

Therefore, I think it is incumbent upon the Congress to proceed with the utmost care when amending our Constitution. I think that should be brought out in the ensuing debate if cloture prevails, and I hope it will, and I lend my support.

The proposed constitutional amendment reads as follows:

> Marriage in the United States shall consist only of the union of a man and a woman. . . .

I unequivocally support that part of this resolution. The second part, which reads:

> Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and woman.

Therein rests a concern that I have with S.J. Res. 40, and one I will work with others to address in the event hopefully that this Senate will continue its debate and the amendment process. I unequivocally support the first sentence, as I said. The time-honored tradition of marriage between a man and a woman ought to be protected in light of the attacks by certain opportunists in the judiciary on this time-honored part of our culture and heritage, a culture and heritage that our Nation, a young nation, shares with nations far older than ours.

Again, the second sentence gives me this pause, despite the statements by many of my colleagues to indicate what they believe the intent is. I do not think it speaks to the clarity that the public is entitled to and wants, and this could lead to a great deal of confusion among the American public, and I do not want to create that confusion. It could lead to considerable litigation.

Perhaps of the greatest concern on my part, it could lead to some measure of hindrance of the ability of the several States, all 50 of them if necessary, to work their will through their legislatures on the very important issues that remain; namely, whether to recognize or not to recognize those other forms of relationships, particularly the domestic partnership relationships. For these reasons, I intend to align myself post-cloture with those Senators who seek to modify the resolution to retain only, and I repeat to retain only, the first sentence:

> Marriage in the United States shall consist only of the union of a man and a woman.

I see in the Chamber the distinguished Senator from Utah. I wonder if I might pose a question. As I look at this language which gives me pause and I have spoken to, the second sentence, ''Neither this Constitution, nor the constitution of any State, shall be construed to require,'' suppose a State wishes to enact those laws they deem necessary on behalf of the people of that State, either to recognize or not to recognize the domestic partnership. Suppose they wish to put that in as a part of their constitution subject to the passage of this amendment. How would this amendment then be construed? Would it overrule a state's subsequent amendment to its own constitution?

Mr. HATCH. If this amendment was passed as the Senator reads that language, it does not prohibit the States from having civil unions or civil accommodations.

Mr. WARNER. Suppose they wish to do it not by statute but actually by an amendment to their constitution? The Senator and I understand that a constitutional amendment has a greater longevity than a statute because what the legislature does via statute one day they can undo the next day.

Mr. HATCH. So long as the action of the State, either legislatively or constitutionally, does not change the definition of a marriage as only between a man and a woman, the State would have the right to do whatever it wants to in that regard. This just merely makes it clear that nothing in the amendment requires the States to—

Mr. WARNER. I understand very clearly the intent of this in the minds of many. The State legislatures can take such steps. I believe there is a measure of confusion that causes me to pause. But it reads that ''neither the Constitution nor the constitution of any State,'' and what the Senator says is they wish to but legislation not in the form of State law, but that constitutional provision would not then be overruled by this.

Mr. HATCH. The States would have great flexibility under this amendment. But they could not change the definition of the traditional terms. The Senator is correct in his interpretation.

Mr. WARNER. I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Thank you, Mr. President.

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. . . .

With those immortal words 228 years ago, the signers of the Declaration of Independence set forth the founding principles of this country. They chose the word ''unalienable'' to mean that those rights were God-given. They were rights with which every person was born, not to depend upon the attitudes or ideologies of any government.

Eleven years later, after winning their War of Independence, after trying one unsatisfactory design of government, after many discussion, debates, arguments, and compromises, others signed their name to our United States Constitution. It was a remarkably far-sighted document—deserving of the word ''visionary''. It was intended to define, provide, and protect the rights of American citizens and the structure of their democratic government.

Unfortunately, their founding principles and idealism had some glaring deficiencies. When they said all men were created equal, they meant only men, and only white men. It took 130 more years before those constitutional rights were extended fully and equally to all citizens—to African-Americans, to women, and to everyone else. Those constitutional amendments signaled only the starting points, not the finish lines, to full opportunities, equal protections, and freedom from discrimination, harassment, and assault. Those paths were difficult, often dangerous, and sometimes even fatal for their travelers. Slowly, too slowly, unevenly, yet inexorably This country has progressed toward the realization of those God-given rights: life, liberty, and the pursuit of happiness, for every American citizen.

The life that God gives each of us; the liberty to be as God made us; and the right to pursue our individual needs, goals, and fulfillments—whatever necessary ingredients of our happiness. We receive no assurances of happiness, but the promise we have the God-given right to pursue it.

Today, we are a Nation of 293 million citizens. That is a lot of very different people pursuing a lot of very different forms of happiness. It is an enormous and continuous challenge for government to permit life, liberty, and pursuit of happiness and to decide where limits must be established.

The Constitution requires, however, that those limits must apply fairly and justly—and that those liberties can only be taken away for a compelling reason and through a due process.

People's differences are no longer legitimate reasons. Not different colors of skin, different religious beliefs, different genders, nationalities, or physical characteristics. People don't have to like other people's differences, but they must allow and tolerate them.

Allowing and tolerating differences is what separates democracies from dictatorships. Even dictatorships allow behaviors and beliefs which conform to their ideas and ideologies. However, they will not permit or tolerate behaviors and beliefs which differ from theirs. Those groups of people are persecuted, punished, and even murdered for their differences.

It is sometimes difficult for those of us who live in democracies to allow other beliefs and behaviors, which we dislike or disapprove of. It is especially difficult if those other beliefs or behaviors differ from our own moral or religious views. Although our Constitution separates ''church and state,'' we do not willingly give up or even compromise our strongly held beliefs based upon our religious teachings or moral values.

Many Americans who oppose gay and lesbian relationships or marriages believe they are called to do so by God, by Jesus Christ, by the Bible, or by another religion's instructions. Recently, I reread the Bible's New Testament, which provides the foundation and instruction for my Christian faith. I reluctantly bring the Bible into this debate, because I often hear people, who denounce homosexuality, claiming that ''the Bible'' or ''the New Testament'' supports their views.

However, in the entire New Testament, there is only one reference to same-sex relationships, in Chapter Two of Paul's Letter to the Romans. Jesus Christ does not mention them even once in any of the four Gospels.

Instead, His overriding instruction was to love thy neighbor as thyself. That was his second great commandment, which superseded all the rest.

Jesus also warned several times to beware of false prophets. How could they be identified? He said that they spread hate, instead of love.

I do not understand how some religions developed their strong prejudices against gays and lesbians—prejudices which are not only unsupported by Jesus' teachings in the Bible, but which even violate his instructions to love one another, as I have loved you, to judge not, lest ye be judged, to spread love, not hatred.

Yet the discrimination against gays and lesbians in this country has been filled with judgment and hatred.

Thousands of American citizens have been fired from their jobs, evicted from their homes, harassed, threatened, assaulted, even murdered, because of their sexual orientations. Some other Americans have spread that hatred and caused that harm, while professing their own religious piety and moral superiority.

Who has the authority to dispute that every human being is God's intentional creation; that we are different because God made us different, not superior, not inferior, just different, equal in the sight of God, equal in the U.S. Constitution?

There is a better way to resolve this widespread concern about the effects of couples' State court decisions on marriage—decisions which are being resolved by the legislatures and the people of those States, and which contrary to the ''marriage is under terrorist attack'' hysteria, as some politicians are promoting, do not threaten either the Federal laws or the State laws against same-sex marriages.

As others have noted, a 1996 Federal law, called the Defense of Marriage Act, already does what the proponents of this constitutional amendment want to do.

The Defense of Marriage Act was passed ''to define and protect the institution of marriage.'' That law states:

> 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.

The law goes on to say that no State shall be required to recognize a same-sex relationship treated as marriage anywhere else. That is the law of the United States of America, unchallenged Federal law. How much more protection could the institution of marriage need from the Congress? None.

The proposed constitutional amendment has not one whit of additional legal protection to what the Federal law already provides, so why are we being subjected to this charade of politicians' piety, an oxymoron if ever there was one? It is an election year, a Presidential election year. It is no coincidence that the defense of marriage law was passed in 1996, another Presidential election year.

One can only wonder how marriage managed to make it through the 2000 Presidential election without something being done to it then.

That is really what is going on. This political ploy is not about ''saving marriage''; it is about saving politicians' jobs. Thank goodness we have Senator so and so, they will say back home, to save us from the heathen hordes. Thank goodness we have the President saving us, too. We may not have jobs or health care. We cannot afford prescription drugs or gasoline. They are bankrupting the Federal Government with deficits, they are destroying our credibility throughout the world, they made a mess of Iraq, they cannot find weapons of mass destruction or Osama bin Laden or whoever shut down Congress with anthrax or ricin, but they are defending marriage—again and again and again and again. Let's reelect them.

It is a tragic day in America when politicians exploit the Constitution of the United States to get themselves reelected. It is a tragic day for millions of Americans who are being exploited by those politicians. This is a hurtful, hateful, harmful debate for America, one that only will get uglier, meaner, more divisive, and more dangerous if it moves on to State legislatures as the constitutional amendment requires.

It must be stopped here and now. That is why I will vote against the constitutional amendment. If my colleagues really do want to save marriage for now and for posterity, turn it over to the authority of established religions. In the many wedding ceremonies which I attend, marriage is described as an institution created by God. Yet those services conclude with ''whom God has joined together let no one cast assunder.''

If marriage belongs to God, as I believe it does, then our separation of church and state government should not interfere with its administration by the properly chosen religious authorities. Instead, government should adopt a different term to use for the legal rights and responsibilities under a civil contract, which I believe any two adults should equally be able to enter into. Giving marriage back to the churches, synagogues, and mosques and separating it from government is marriage's salvation and society's solution.

Let us direct our efforts to protecting America from al-Qaida. Leave the Constitution alone and leave marriage to God.

I yield the floor.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Utah.

Mr. REID. Will the Senator yield?

Mr. HATCH. I am happy to yield.

Mr. REID. Mr. President, we have two final speakers tonight, Senator CLINTON and Senator JEFFORDS. Following that, we would have no more speakers on this side.

So when the distinguished chairman of the committee finishes his speech, Senator CLINTON will be recognized and following that, Senator JEFFORDS.

Mr. HATCH. I think Senator BROWNBACK would like to be recognized. Following Senator CLINTON, Senator BROWNBACK will speak.

Mr. REID. How much time is left on both sides under the order already entered?

The PRESIDING OFFICER. There is 40 minutes on the Democrat side.

Mr. REID. Fine. And how about the majority?

The PRESIDING OFFICER. There is 75 minutes on the majority side.

Mr. REID. After the distinguished Senator from Utah speaks there will probably be no time left.

Mr. HATCH. He hopes. I have not noticed the great sense of humor lately of the Senator from Nevada but that was very good.

I will respond to some of the arguments that my colleagues have been making against this measure today.

First, I thank them for coming to the floor and making themselves heard. This is an extremely important issue and it deserves a serious debate. After all, we are talking about traditional marriage. We are talking about traditional marriage that has existed for more than 5,000 years that apparently is going to be overturned if we do not do something about it.

One argument I have heard from my colleagues on the other side of the aisle is on behalf of States rights. Yesterday, the distinguished Senator from California argued that we run the risk of violating the sacred rights of the States if we pass this amendment. This morning, her colleague from California, the junior Senator from California, made the same point. The distinguished Senator from Wisconsin, too, believes marriage should be defined in the States.

When Senators who normally argue for extending national power start citing George Will and Bob Barr, we should probably look at their arguments with a heightened level of scrutiny and maybe even security because there is something wrong here when these liberal Senators are using as their champions George Will and former Congressman Barr, who is one of the most conservative Congressmen who ever sat.

When legislators and other advocates who not only tolerate but actually embrace repeated judicial amendments to the Constitution—I will talk about judicial amendments to the Constitution—there is sudden resistance to popular amendments, the people's amendments, it must be taken with at least a grain of salt.

We are talking about judges taking over and amending the Constitution at will, which is what is happening in our society, and not only Justices of the Supreme Court but four liberal activist justices on the Massachusetts Supreme Court, binding every State through the full faith and credit clause to their concept of same-gender marriage. It was a 4-to-3 vote. Three liberal justices disagreed with the four liberal justices in Massachusetts.

They surely know, these friends of ours on the other side who are suddenly finding the importance of States rights, they surely know that by opposing a constitutional amendment to protect marriage, judges will continue imposing same-gender marriage over the will of the American people or over the will of the people in the States.

Their constituents deserve better than these misleading arguments. They know that.

We did not choose the schedule for this issue. It was chosen for us. And we do act reluctantly.

Let me pose a question. If this is such a political issue, why did President Bush and Vice President CHENEY indicate on the campaign trail in 2000 that it was premature to pursue an amendment? They both did, by the way. The American people were as opposed to amending traditional marriage then as they are now. The reason for this change in strategy is quite simple. In the year 2000, an amendment was premature. It is no longer.

In 1996, not one State required same-gender marriages—not one. Now, however, Massachusetts has. Massachusetts has, I have to say, because same-gender marriage is the law of the Commonwealth of Massachusetts, determined by four activist, liberal justices.

Today, 46 States, for the first time in history, have same-gender married couples living in them. That was not the case in the year 2000. And the argument that it was premature to call for a constitutional amendment was a good argument at that time, but not today, with 46 States with same-gender married couples living in them, and one State imposing its will through judicial legislation, if you will, on all 50 States.

Eleven States are having not only their traditional marriage laws but even a State amendment, in the case of Nebraska, targeted by committed interest groups. In Washington State, a couple married in Oregon is seeking recognition of their marriage. In New York, Attorney General Eliot Spitzer has amazingly concluded that even though New York law explicitly limits marriage to between a man and a woman, he—I guess the ''god almighty'' Attorney General of New York, Eliot Spitzer—will recognize same-gender marriages performed out of State.

He may be right because under the full faith and credit clause, that is what is going to be imposed on all States because of four avant-garde liberal justices in Massachusetts.

The list of legal challenges goes on. In the year 2000, when President Bush and Vice President CHENEY urged patience on this issue, traditional marriage was secure. The States could handle this issue on their own. Today, they no longer can, all because of four activist, liberal justices in Massachusetts versus three liberal justices in Massachusetts, in a 4-to-3 verdict.

Courts are poised to remove this issue from them, destroying the democratic principle of self-governance that some of these folks on the other side are arguing should never be done. Why, the States ought to have the right to determine these things for themselves.

Well, let me go over that one more time.

Courts are poised to remove this issue from the States, destroying the democratic principle of self-government that our Constitution was established to guarantee.

Gov. Mitt Romney, in his testimony before our committee last month, got the point and demonstrated the impact of his State court's decision to sanction same-gender marriage. I quote him:

> The effect of one state recognizing same-gender marriage will not be confined to Massachusetts alone. Our state's borders are porous. Citizens of our state will travel and may face sickness and injury in other states. In those cases, their spousal relationship may not be recognized, and it would be likely that litigation would result. Massachusetts residents will move to other states, and thus issues related to property rights, employer benefits, inheritance, and many others will arise. It is not possible for the issue to remain solely a Massachusetts issue; it must now be confronted on a national basis.

We need an amendment that restores and protects our societal definition of marriage, blocks judges from changing that definition, and then, consistent with the principles of federalism, leaves other policy issues regarding marriage to State legislatures. That is how the States can control this. That is the right way to have the people in charge rather than four liberal justices imposing this on all of America.

Like I say, I think gay people have a right to their lifestyle, certainly in the privacy of their home. But they do not have the right to impose that lifestyle or to impose their views on everybody in America by changing the definition of marriage. They should not have that right.

The real threat to the States is not the constitutional amendment process, in which the States participate, but activist judges who disregard the law and redefine marriage in order to impose their will on the States and on the whole Nation.

Governor Romney's diagnosis is correct. At this point, a commitment to States rights is a recipe for depriving States of any authority over the matter.

And so our Republican leadership did what leaders do, they adjusted their direction. Because the situation today is vastly different than what we faced in 2000, we require a different solution.

Our goals are not what Mrs. BOXER, the distinguished Senator from California, has described. Nobody here is concerned about whether same-gender couples should care about each other. Nobody here denies them that right. Nobody here is even concerned about that. And nobody is concerned about whether they are moving in down the street.

What we are concerned about is the likelihood that the courts are going to amend the laws in every State in the land by judicial fiat. We are concerned that a small interest group is lobbying the courts to do its dirty work, hoping that judicial fiat will accomplish what it cannot achieve in open political debate.

In not one State has the legislature amended its laws to allow for same-gender marriage—not one. We are fooling ourselves if we think that the courts care. They have already begun their work to undermine traditional marriage. And rest assured, more is on the way. If the States think they have sufficiently protected their traditional commitments to marriage, they had better think twice.

What we are witnessing is an unprecedented usurpation of the people's will. But those who support this judicial disregard for popular authority do not bravely defend this irresponsible activism. Instead, they take the easy way out. It should be left to the States, they say. Easier said than done. The fact is, these decisions are already being removed from the people by judicial fiat, by four justices in Massachusetts, of all places. The laws of this country, the laws of every State in the Nation, will be amended to allow for same-sex marriage absent our action. The two distinguished Senators from California, and the distinguished Senator from Wisconsin, Mr. FEINGOLD, and many others, do not address this likelihood in the least—not in the slightest.

As Senator DASCHLE is aware, the people of South Dakota are adamantly opposed to judicial amendment of their traditional marriage laws, and I suppose in most other States as well—in fact, every other State. For that reason, he has said he opposes same-gender marriage. But what happens when a gay couple moves from Massachusetts to South Dakota and seeks to have its union recognized? On this point, which is really the only question in this debate, he and his allies fall silent. What happens? Under the full faith and credit clause, that marriage is going to have to be recognized.

Unfortunately, the will of those citizens will not matter in the least to a judiciary bent on securing same-gender marriage throughout the land. We have demonstrated through our discussion of the Lawrence case, the Romer case, and the Defense of Marriage Act, that the courts are ready to act. It is telling that in a constitutional debate we have not heard one peep from the opposition about these relevant legal precedents.

I can understand how these discussions might make the opposition uncomfortable. Their lesson is clear. Same-gender marriage will replace traditional marriage unless we act. It is that simple.

And you folks out there watching this, you better tell your Senators they better act on this or traditional marriage is going to bite the dust because of four activist, liberal justices from Massachusetts who had one more vote than the three who voted against them.

When we see cracks in a dam, we take steps to repair those cracks. We do not wait until the dam breaks and we have to build a new one. Well, the only way to repair the current legal situation on marriage is to pass a constitutional amendment. I wish it was not, but it is.

My colleagues are not addressing the legal concerns. Instead of arguing about the Constitution, some of them have taken cheap shots and contend that we are engaging in discrimination. Come on. We are in the 21st century. I don't know of anybody in this body who engages in discrimination. Certainly I don't.

Does this mean more than three-fourths of the States are bigoted? That is how many enacted the Defense of Marriage Act to preserve traditional marriage. Does this mean the vast majority of the American people are bigoted? Or that Senators JOHN KERRY and JOHN EDWARDS are? Of course not. What about Rev. Walter Fauntroy, former Member of Congress, the African-American pastor of Washington's New Bethel Baptist Church, and Bishop Wilton Gregory, the African- American president of the United States Conference of Catholic Bishops? The answer to all of these is no. Similarly, I do not think it is proper to conclude that the more than 60 percent of Senator BOXER and FEINSTEIN's own constituents who voted for traditional marriage are bigots either. They are not.

Those making these slanderous accusations are well aware that many of those in favor of an amendment have frequently pursued legislation to protect the rights of gay citizens. Our attempts to protect traditional marriage laws have nothing to do with the private choices of gay and lesbian citizens; they have everything to do with the right of the American people to protect traditional marriage, which, in addition to its private elements, is a public institution with clear public purposes—namely, the rearing of future citizens. Our efforts simply seek to maintain the right of the American people to decide this issue for themselves through their elected representatives, which will be taken away from them if we allow the Supreme Court of Massachusetts to dictate this rule of law to every State in the Union.

My colleagues making these arguments might want to at least look at article V of the Constitution. An amendment only becomes law once three-quarters of the States agree to it. In short, the States are the integral part of the amendment process. I have stopped trying to make sense of some of these so-called arguments of those opposed to protecting traditional marriage, but this one, that an amendment that requires the consent of the States would undercut the rights of the States, is particularly galling.

There is no going back now. This issue will be decided one way or another. Either the American people will amend the Constitution to protect traditional marriage or the courts will ignore the expressed commitments of citizens in every State and amend the Constitution to require same-gender marriage. The choice is ours.

I simply don't understand how the opposition can seriously claim that this issue does not merit our attention. I suggest it is one of the most important issues to ever come before either body of Congress. Without self-government, all of our other rights are for naught. That is exactly what is at stake. We are expanding rights through this amendment. We are further securing the rights of democratic communities to decide this most important of social policies on their own, rather than having them stripped from them by unaccountable and unrepresentative judges.

Let me make this last point absolutely clear: We are not restricting rights with this amendment. We are expanding the rights of democratic communities to decide issues for themselves.

Before I close, I would like to go through a few of these charts because I believe they make the case very well. This first chart says, ''Not one legislature has voted to recognize same-sex unions.'' Think about it. In 1996, not one had voted to recognize same-sex unions, not one. All of the blue stands for the zero. But in 2004, we now have 46 States with same-sex married couples from Massachusetts and some of these other rogue jurisdictions. As you can see, there are very few States—only four—that do not have it: Maine, West Virginia, Louisiana, and Montana. Every other State has same-gender marriages within those States that will have to be recognized under the full faith and credit clause against the wishes of those particular States.

Look at this next chart: ''States that define marriage as a union between a man and a woman.'' The red States or orange States are States that define marriage as the union between a man and a woman. The only ones that do not are Oregon, New Mexico, Wisconsin, New Jersey, Connecticut, Rhode Island, Massachusetts, and New York. They are the only States that have not defined marriage as only between a man and a woman. All other States have done that, including Alaska and Hawaii, the two that are out in the ocean there. That is a very telling chart. We have these people saying: We are taking the rights away from the people to decide these things. No. We are taking the rights away from the courts to tell everybody in America what they should do, and all these States that have enacted traditional marriage laws, all of these States are going to be overruled by four liberal, activist, radical justices on the Massachusetts Supreme Court.

Look at what Kevin Cathcart of Lambda Legal, one of the leading gay rights organizations, said:

> We won't stop until we have [same-sex] marriage nationwide.

Justice Scalia was very prescient when he said:

> The Lawrence decision leaves on pretty shaky grounds State laws limiting marriage to opposite-sex couples.

Evan Wolfson, director of Freedom to Marry, another gay rights organization, said:

> But when Scalia is right, he's right. We stand today on the threshold of winning the freedom to marry. This is a big issue.

Professor Laurence Tribe, highly respected liberal spokesperson for the liberal cause, constitutional law professor at Harvard Law School, a person I personally enjoy listening to, very

bright, very fine teacher, he had this to say:

You'd have to be tone deaf not to get the message from Lawrence that anything that invites people to give same-sex couples less than full respect is constitutionally suspect.

Now, one last one here. This last one shows States with pending court cases involving same-sex marriage. The ones that are in the rust color, you will notice, are States with pending court cases involving same-sex marriage. These are the States where already we have pending cases: Washington, Oregon, California, New Mexico, Wisconsin, Indiana, Florida, North Carolina, West Virginia, Pennsylvania, Maryland, Delaware, New Jersey, New York, Vermont, and Massachusetts. Those are States where we already have pending cases forcing this on those States. I suppose that most all the others will, too, but they may not have to go into all the other States because any one of those States could also impose this, as Massachusetts has done as well.

We are talking about a very important issue, and that is that gays should have a right to their own way of living. I would certainly stand up to try and do what is right and fair for gay people in our society. I have. I have done it and taken a lot of criticism for having done so. I have been right to do so. But they should not have a right to redefine traditional marriage through four activist, liberal justices in the State of Massachusetts imposing their will on all of America because of the full faith and credit clause.

Even though 40 States have adopted the Defense of Marriage Act, most constitutional scholars agree that the Defense of Marriage Act will be ruled by these cases unconstitutional, and thus every State in the Union, against the will of the people, will have to recognize gay marriage, or will have their concepts of traditional marriage, which have been uniform throughout the country just blasted into smithereens—all, again, because of a liberal court in Massachusetts.

I hate to say this, but it is true. Our colleagues on the other side want liberal judges. The reason is because liberal judges can enact legislation from the bench. You will notice the word ''legislation'' should never be part of the judging process. But they can and will enact legislation, as these Massachusetts judges have done, which these liberals could never get through the elected representatives of the people in a million years. They don't want the people to decide this. They want the courts to decide it. That is what they say when they say they believe in States rights—that Massachusetts should determine for all of America how marriage should be defined.

As you can see, we are in a plethora of lawsuits. It is not going to stop until we take the bull by the horns and pass a constitutional amendment. I think most people would acknowledge that this amendment does not have the votes at this point; it doesn't have 67 votes. But this debate is very important. I don't know of a more important debate in our country's history. If we undermine traditional marriage in our society, I think we are going to regret it.

I don't think judges should determine the sociology of our society. I don't think they should be legislating from the bench. I don't think judges should be making these decisions unilaterally, and a 4-to-3 decision was made in this particular case. I think the people ought to make this decision. We know that 40 States have already adopted the Defense of Marriage Act, which is likely to be struck down. I believe the other 10 States will adopt it before it is all over. This was done by four activist judges in Massachusetts versus three others who are also liberals, but they would not go as far as to strike down traditional marriage.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mrs. CLINTON. Mr. President, I have listened with great interest to the debate over the last several days. I believe there are many sincere positions being advocated on this floor on really all sides of this issue, because there are many sides. This is an incredibly important and quite solemn responsibility that we have before us.

S.J. Res. 40, this joint resolution, proposes an amendment to the Constitution of the United States relating to marriage. So maybe even more than the usual debate, this calls for each of us to be engaged, to be accurate, and to be thoughtful about the positions we take with respect to this proposed amendment.

Now, a number of my colleagues have come to the floor to speak about the solemn responsibility that we hold in our hands with respect to amending our Constitution. I am in agreement that the Constitution is a living and working, extraordinary human accomplishment that protects our citizens, grants us the rights that make us free, and we in this body took an oath; we swore to defend and protect the Constitution of the United States.

So to consider altering this document, one of the greatest documents in the history of humanity, is a responsibility no Member can or should enter into lightly, for what we do here will not only affect our fellow citizens in the year 2004, but it will affect every generation of Americans to come.

As Henry Clay once observed:

The Constitution of the United States was made not merely for the generation that then existed, but for posterity—unlimited, undefined, endless, perpetual posterity.

So we do owe an obligation to those we represent today and to future generations as we embark upon this very solemn undertaking. We should not amend the Constitution to decide any issue that can and will be resolved by less drastic means. We should not amend the Constitution to federalize an issue that has been the province of the States since our founding—in fact, as Senator KENNEDY reminded us, even before our founding as a nation.

I believe marriage is not just a bond but a sacred bond between a man and a woman. I have had occasion in my life to defend marriage, to stand up for marriage, to believe in the hard work and challenge of marriage. So I take umbrage at anyone who might suggest that those of us who worry about amending the Constitution are less committed to the sanctity of marriage, or to the fundamental bedrock principle that exists between a man and a woman, going back into the midst of history as one of the foundational institutions of history and humanity and civilization, and that its primary, principal role during those millennia has been the raising and socializing of children for the society into which they become adults.

Now, if we were really concerned about marriage and the fact that so many marriages today end in divorce, and so many children are then put into the incredibly difficult position of having to live with the consequences of divorce, perhaps 20, 30 years ago we should have been debating an amendment to the Federal Constitution to make divorce really, really hard, to take it out of the States' hands and say that we will not liberalize divorce, we will not move toward no-fault divorce, and we will make it as difficult as possible because we fear the consequences of liberalizing divorce laws.

If one looks at the consequences of the numbers of divorces, the breakup of the traditional family, you could make an argument for that. If we were concerned about marriage, why were we not concerned about marriage when marriage was under pressure over the last decades because of changing roles, because of changing decisions, because of the laws in the States that were making it easier for people—husbands, wives, mothers, and fathers—to get divorced?

We searched, and I don't see anyone in the history of the Senate or the House who put forward an amendment to try to stop the increasing number of divorces in order to stem the problem and the difficulties that clearly have been visited upon adults certainly but principally children because of the ease of divorce in this society over the last decade. We didn't do that.

We could stand on this floor for hours talking about the importance of marriage, the significance of the role of marriage in not only bringing children into the world but enabling them to be successful citizens in the world. How many of us have struggled for years to deal with the consequences of illegitimacy, of out-of-wedlock births, of divorce, of the kinds of anomie and disassociation that too many children experienced because of that.

I think that if we were really concerned about marriage and that we believed it had a role in the Federal Constitution, we have been missing in action. We should have been in this Chamber trying to amend our Constitution to take away at the very first blush the idea of no-fault divorce, try to get in there and tell the States what they should and should not do with respect to marriage and divorce, maybe try to write an amendment to the Constitution about custody matters. Maybe we should have it be a presumption in our Federal marriage law that joint custody is the rule. Maybe we ought to just substitute ourselves for States, for judges, for individuals who are making these decisions every single day throughout our Nation.

We did not do that, did we? Can any of us stand here and feel good about all of the social consequences, the economic consequences? We know divorce leads to a lowered standard of living for women and children. Then, of course, if we were to deal with some of the consequences of out-of-wedlock births, the lack of marriage, we could have addressed that in a constitutional amendment. Perhaps we should have amended the Constitution to mandate marriage.

Is it really marriage we are protecting? I believe marriage should be protected. I believe marriage is essential, but I do not, for the life of me, understand how amending the Constitution of the United States with respect to same-gender marriages really gets at the root of the problem of marriage in America. It is like my late father used to say: It is like closing the barn door after the horse has left.

We hear all of these speeches and see these charts about the impact on marriage. We are living in a society where people have engaged in divorce at a rapid, accelerated rate. We all know it is something that has led to the consequences with respect to the economy, to society, to psychology, and emotion that so often mark a young child's path to adulthood.

So what are we doing here? Some say that even though marriage has been under pressure—which, indeed, it has—and has suffered because of changing attitudes toward marriage now for quite some years, even though most States are moving as rapidly as possible to prohibit same-gender marriages, we have to step in with a Federal constitutional amendment.

The States, which have always defined and enforced the laws of marriage, are taking action. Thirty-eight States—maybe it is up to 40 now—already have laws banning same-sex marriage. Voters in at least eight States are considering amendments to their constitutions reserving marriage to unions between a man and a woman. But the sponsors argue that we have to act with a Federal constitutional amendment because the full faith and credit clause of the Constitution will eventually force States, if there are any left, that do not wish to recognize same-sex marriages to do so.

That is not the way I read the case law. With all due respect, the way I read the case law is that the full faith and credit clause has never been interpreted to mean that every State must recognize every marriage performed in every other State. We had States that allowed young people to marry when they were 14, and then States that allowed young people to marry when they were 16 or 18. The full faith and credit clause did not require that any other State recognize the validity of a marriage of a person below the age of marital consent according to their own laws.

Every State reserves the right to refuse to recognize a marriage performed in another State if that marriage would violate the State's public policy. Indeed, the Supreme Court has long held that no State can be forced to recognize any marriage. That is what the case law has held. But just to make sure there were no loopholes in that case law, the Congress passed and the President signed the Defense of Marriage Act, known as DOMA.

The Defense of Marriage Act has not even been challenged at the Federal level, and because the Supreme Court has historically held that States do not have to recognize laws of other States that offend their public policy, it is assumed that any challenge would be futile.

So what is it we are really focused on and concerned about here?

If we look at what has happened in the last several months—and there are others in this body who are more able to discuss this than I because it affects the laws of their States—as Senator KENNEDY said, in Massachusetts, a court decision will be challenged by a referendum. In California, San Francisco's action permitting the licensing of same-sex marriages was stopped by the California State courts. The DOMA law that was enacted already protects States from having to recognize same-sex marriage licenses issued in other States.

So I worry that, despite what I do believe is the sincere concern on the part of many of the advocates of this amendment, they have rushed to judgment without adequate consideration of the laws, the case laws, the actions of the States, and that their very earnest, impassioned arguments about marriage have certainly overlooked the problems that marriage has encountered in its present traditional state within the last several decades in our country.

The PRESIDING OFFICER (Mr. TALENT). The time of the Senator has expired.

Mrs. CLINTON. Mr. President, I ask unanimous consent for 2 more minutes.

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

Mrs. CLINTON. Mr. President, we all know this amendment is not likely to pass at this time because concern for our Constitution and the solemn responsibility that falls to us with respect to amending it is a bipartisan concern. There are many on the other side who will not tamper with the Constitution to deal with the heated politics of the moment. Yet we are taking precious time away from other matters about which I worry, about which I am concerned, most profoundly the challenges we confront from our adversaries in al-Qaida and elsewhere who we know are plotting and planning against us.

I hope that once we hold the vote tomorrow—and the States continue to do what the States are doing—that we will get back to the business of both protecting and serving the American people and solving the problems they confront each and every day. Maybe we can come to some agreement that the Founders had it right and that the concerns that have been expressed about marriage will be taken care of as they traditionally have in the States which have held the responsibility since before our founding as a nation.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from New York yields the floor. The Senator from Colorado.

Mr. ALLARD. Mr. President, I yield 15 minutes to the Senator from Oklahoma, the chairman of our Budget Committee and somebody I would like to recognize in a public way for all of the hard work he has provided for us in the Senate, particularly his hard work on the budget as the chairman of the Budget Committee.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 15 minutes.

Mr. NICKLES. I thank my colleague from Colorado for yielding. I compliment Senator ALLARD for his work on this amendment and on this issue. It is a very important issue.

I also compliment Senator HATCH for the very fine statement he made earlier, as well as Senators SANTORUM, SESSIONS, and CORNYN. Several of our colleagues have made very eloquent remarks about this amendment and about the fact that marriage is under attack. I want to come at it from a little different perspective.

I was the principal sponsor of the Defense of Marriage Act, which passed and was signed into law by President Clinton in 1996. I heard my very good friend from Minnesota, Senator DAYTON, mention that this is about politics, and I wanted to inform him as the sponsor of DOMA, the Defense of Marriage Act, it was not about politics in 1996, it was because in 1996 the Hawaiian Supreme Court was getting ready to legalize same-sex marriage, and under the general understanding of full faith and credit, if they recognized it, there would be a lot of same-sex couples running to Hawaii to be married and they would return to other States and those States would be required to recognize it.

We thought that was a serious mistake. We did not want that mixed court

decision in Hawaii to become the law of the land. So we passed the Defense of Marriage Act. It passed by a vote of 85 to 14.

I notice several of the people who are arguing against a constitutional amendment are arguing for States rights. Several of the people who have argued against this amendment also debated and voted against the Defense of Marriage Act, which was basically a States rights approach to the solution.

Now, let us frame this as an issue. Marriage is under attack. It is under attack in several respects. It is under attack by a liberal court in Massachusetts which wants to redefine marriage, including same-sex couples. They were not elected. It is under attack by mayors in some cities: the mayor of San Francisco, and the mayor of New Paltz, NY.

They wanted to legalize or grant licenses to same-sex couples. It happened to be against the law in the State of California. It is very interesting that a newly elected mayor would decide to defy State law, actually break State law, but he was doing it and gained great notoriety. He was on TV most every day. Then a mayor in New Paltz, NY, wanted to do the same thing. I am not sure what the State law in New York is. But marriage is under attack as defined by this Congress. The Defense of Marriage Act says marriage is between a man and a woman, and yet we had either an unelected court or mayors saying, no, they know better.

So if it is under attack, how is it protected? Is it protected better by a statute or by a constitutional amendment? That is a legitimate debate, and I respect people who say we have the Defense of Marriage Act, but many of the people who are making that claim voted against the Defense of Marriage Act, so I question whether they really believe in States rights or they are using it at this particular point. But it is under attack.

What has happened differently between now and when the Defense of Marriage Act passed in 1996, one decision was the Lawrence decision. Every once in a while I will sit in on a Supreme Court debate. I sat in just a month ago on the question on the Pledge of Allegiance, whether we could actually have in the Pledge of Allegiance ''one Nation under God.'' In that case, the Ninth Circuit Court, which makes a lot of very absurd rulings, said we should not have ''one nation under God.'' Thankfully, the Supreme Court rejected that argument. I enjoyed listening to that debate.

I wish I had attended the Lawrence v. Texas debate because I am absolutely astounded at their conclusion. Senator SANTORUM deserves great credit because he took a lot of flak, but he denounced that decision. He denounced it strongly, and he was right. I did not pay enough attention to the Lawrence decision, nor to the Texas statute, which probably should have been overturned or should have been repealed by the Texas legislature. Possibly that is a debate for another day. They went a lot further than just dealing with the Texas statute.

In the Lawrence case, the Supreme Court found:

> . . . a State's governing majority has traditionally viewed a particular practice as immoral is not sufficient reason for upholding a law prohibiting the practice . . .

Sorry about that, States, sorry if you had morality as part of the reason you are legislating, but the Supreme Court thinks that may not be enough.

That is a very troubling case. I have heard a lot of constitutional scholars and others say because of the Lawrence case the Defense of Marriage Act would probably be determined unconstitutional. I hope they are wrong.

The Defense of Marriage Act passed with 85 votes. I hope the Supreme Court will pay attention to the fact that it passed with 85 votes. That was not 51 to 49. So if they are going to overturn the Congress—incidentally, it passed in the House by an overwhelming margin, even greater than that, I believe. So I hope it will not be determined unconstitutional. But the Lawrence case does mean marriage is under attack.

When there is a mayor of San Francisco who decides in spite of State law that he is going to start granting marriage licenses or a mayor in New York or by a 4-to-3 decision in the State of Massachusetts—all of those things have happened since the Defense of Marriage Act passed. So it really boils down to which body, which element of our democracy is going to be making this decision? If we are going to redefine marriage and say that it is legal between same-sex couples, should that not be decided by State legislatures and/or elected Federal officials? It certainly should not be decided by an unelected 4-to-3 decision in one liberal court in the country. So to stop that 4-to-3 decision, particularly given the fact that there is a Supreme Court decision which seems to give credibility to that decision, maybe a constitutional amendment is in order. My guess is it probably will not pass until they do overturn the Defense of Marriage Act, and then I believe there really will be a revolt around the country. Then it might get the necessary two-thirds vote in both Houses of Congress and be ratified by three-fourths of the States.

Our forefathers showed great wisdom in making it very difficult to amend the Constitution. It has only been amended 27 times—only 17 if we take out the Bill of Rights—in the last 228 years. That is pretty remarkable. They made it very difficult to amend the Constitution.

We are dealing with something very fundamental when we are talking about how marriage is defined. Marriage is a very esteemed union between a man and a woman, a contract with Government recognition, with benefits, a sacred union, a sacrament in some religions, a very special relationship, not to be changed or altered, frankly, by a 4-to-3 decision, by an unelected court, trying to redefine something so important. It should be decided by elected officials.

So we have a process. We have the statute process, which we have done, and we have a constitutional process which may be necessary in light of the Lawrence decision and in light of the State of Massachusetts, in light of the mayor of San Francisco, in light of mayors in other places around the country who wish to make such a fundamental change and do it without authority, without election, without backing.

In the State of Hawaii, when the State supreme court there tried to redefine marriage, there was an uproar and basically they passed a constitutional amendment that allowed the legislature to define marriage. The legislature defined marriage as a union between a man and a woman. The legislature stopped it.

Hopefully maybe legislative action would be enough, but my concern is that in spite of the fact that 38 States have passed identical legislation to DOMA, in spite of the fact that 4 additional States have passed something very close to it, 42 out of 50 States passing legislation basically defining marriage as between a man and a woman, is that there still might be a 4-to-3 decision that becomes the law of the land because of what I believe is an absurd decision based on the Lawrence decision. I hope that is incorrect, but I do want to fight to defend marriage as between a man and a woman. That can be done constitutionally. It can be done statutorily. I do think that people, through their elected officials, should be making this decision instead of an unelected 4-to-3 decision in a court. This is vitally important.

So, again, I compliment my colleague, Senator ALLARD, for his leadership on this issue. I hope people will take this very seriously. The benefits of marriage are great. Undermining marriage has great negative consequences for our country, and I hope our colleagues will weigh those decisions very closely and at least support the motion to proceed. It is a legitimate debate as to whether the amendment should be one sentence or should it be two sentences, should it be rewritten or tweaked one way or another. We will not know unless we pass the motion to proceed. So I urge our colleagues to support the motion to proceed in tomorrow's vote.

Mr. ALLARD. Mr. President, I thank the Senator from Oklahoma for a very fine statement. He brings a special perspective to this debate because he was the initial sponsor of the Defense of Marriage Act.

Mr. McCAIN. Will the Senator yield for a unanimous consent request?

Mr. ALLARD. I yield to the Senator from Arizona.

Mr. McCAIN. I ask unanimous consent I be allowed to follow the Senator from Kansas for a period of 12 minutes.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Is there an objection to the unanimous consent request?

Mr. JEFFORDS. Mr. President, I have another engagement I am supposed to be at now.

Mr. ALLARD. I do not believe it is going to interfere with you. You are next, then I think Senator BROWNBACK.

Mr. MCCAIN. You are up. Then I asked unanimous consent to follow the Senator from Kansas.

Mr. ALLARD. You are next.

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

The Senator from Vermont is recognized.

Mr. JEFFORDS. Mr. President, I find it sad and unfortunate that the Senate is spending crucial time on this divisive issue, driven so obviously by partisan politics rather than sound public policy. We know this amendment has no chance of passage, so why are we here? Just a week after Secretary Ridge detailed the real threats that the Nation faces right here at home, why are we instead debating the vague and questionable dangers to the institution of marriage. We should be working to fund homeland security, but that bill languishes while we launch into a cultural war.

As of today, the Senate has passed only 1 of the necessary 13 appropriations bills for fiscal year 2005. We need to fund veterans health care, educational programs, worker protection, job training, Head Start, environmental preservation, crop insurance, and food safety. We need to reauthorize our Nation's welfare programs. Our highways crumble while the Transportation bill is stalled and we take no action.

These are the priorities of the American people. But instead of facing these most basic responsibilities, we are here today to make judgment calls about people's personal lifestyles. I must ask, where are the priorities of the majority leadership? How is it that we have to come to use the Senate floor as a warmup for political conventions, bowing to extreme religious agendas rather than the agenda of the American people? How did this happen?

I am afraid the answer can be summed up very easily. We are here because of election year posturing.

I find it ironic that some in this Chamber want to amend our Nation's most sacred and historic document because of some unfounded and irrational fear. It is ironic because these are the same people who have argued that we should not trample on States rights. Yet they think our States are not capable of deciding how marriage should be defined. I believe our States are not only capable but deserving to define marriage in the way they see fit. Every State will bring its own approach, and I am proud the way my State led the Nation in addressing this issue more than 4 years ago.

The Vermont Legislature, a part-time body made up of farmers and teachers, passed the civil unions legislation. They gave gay and lesbian couples all the same legal rights extended to married couples, and the legislature did so in a bipartisan fashion, amid rancorous protests by some who proclaimed Vermont's lawmakers will suffer dire consequences as a result of this decision.

I can tell you today that all of these fears have been unfounded, and my home State is better off for the experience. Having witnessed Vermont's approach, I beg to differ with anyone in this body who argues that States are not able to decide this issue for themselves. Here in the Senate we should be spending our time debating legislation that is inclusive, not exclusive. This body did so when it recently passed a hate crimes bill to extend the definition of hate crimes to those who are targeted solely on sexual orientation, gender, or disability.

We should be focusing our energies on passing bills such as the Employment Nondiscrimination Act and the Domestic Partner Health Benefits Equity Act. I am proud to support these bills, and I am even more proud because they continue in the great American tradition of inclusiveness and tolerance and acceptance.

I will vote against this constitutional amendment, and I urge the majority leadership to take up, rather than push aside, the critical pending legislation that so desperately needs and calls for our attention.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. ALLARD. Mr. President, I yield 15 minutes to the Senator from Kansas. I compliment him in a public way for his leadership on this very important issue.

The PRESIDING OFFICER. The Senator from Kansas is recognized for 15 minutes.

Mr. BROWNBACK. I thank the Senator from Colorado for his leadership in putting this issue before the U.S. public and before the world. This is something we need to debate.

I want to specifically address the argument that is being put forward so often from the other side that we do not need to do this now; there is no fire burning; there is no particular issue that is going on here; the States can easily handle this; just let them handle it and take care of it; we do not need to do this until the Supreme Court takes it up.

I want to talk about, Why do we need to take this up now? Fortunately, we have a case study. People who went to business school, went to law school, learn through case studies. You study a case, study what took place, and you try to analyze what happened there to figure out what could have been done better, what should have been done, what was done, and what was its impact.

We have an excellent case study in the Netherlands on what is taking place when this sort of debate occurs. The reason it is important to engage this debate now and not wait until after the Supreme Court might rule, or after this goes through a number of States, is because of what they went through in the Netherlands.

I want to talk about one chart, the out-of-wedlock birth rates in the Netherlands, 1970–2003.

You can see it does not have a favorable trendline. In 1970, it is down around 2 percent. Indeed, the Netherlands was noted for a long period of time for having a very low out-of-wedlock birth rate, and among European countries they were highly regarded for that. Even though it was an open society, it had a very low out-of-wedlock birth rate. People had children in wedlock.

Then you can see in 1980 this thing starts rocketing and really taking off. What took place in the Netherlands—and I am going to have quotes from some Dutch scholars that just recently came out. We have the material from Stanley Kurtz that a number of people talked about. But what happened there was this ongoing debate for a period of about 10 years before same-sex marriage passed in the Netherlands, this public debate about, you know, we can have different sorts of family arrangements, we can have registered partnerships. They had that before same-sex marriage passed.

We had symbolic marriage registers for same-sex couples. We had the first supreme court case loss, first court case loss—and what we had was just this debate and discussion with the society, the culture, over a period of years saying we can separate this issue of raising children and the issue of marriage. We can have marriages just be an expression of care and concern and love for each other without really considering or thinking about what it is, the union of man and woman and raising children together.

We now have social science data. We have discussed a lot on this floor that the best place to raise a child is in a family with a man and woman, a husband and wife, bonded together for life in a low-conflict marriage. We know that is the ideal place. We have discussed that. The social science data is clear on it.

Yet what you saw take place here as you engage this debate and society started talking to itself, reforms and court orders, we saw society saying it is not that critical how marriage is organized in looking at children. It is more about the adults than about the children. Let us open this institution.

What took place was you had this huge growth to where it is up to 30 percent of children born out of wedlock in the Netherlands in 2003 from the 1980 total here at 5 percent over that period of time.

What do scholars say about this? Dutch scholars are actually saying we

have to figure some way to try to reinstitute the notion and the nature of traditional marriage. The marriage between a man and woman, raising children in this type of household, is the best place for us to do that.

In recent years, they note, there is statistical evidence of Dutch marital decline, including ''a spectacular rise in the number of illegitimate births.'' By creating a social and legal separation between the ideas of marriage and parenting, these scholars warn, same-sex marriage may make young people in the Netherlands feel less obligated to marry before having children.

Again, this ongoing debate about marriage isn't about forming this bond and a family unit. It is how two people express love for one another, and then that started permeating and getting into society.

One of the signatories, Dutch law professor M. Van Mourik, said that ''the reputation of marriage as an institution—in Holland—is in serious decline.'' The decision to legalize gay marriage, said Mourik, should certainly have never happened. ''In my view, that has been an important contributing factor to the decline in the reputation of marriage.''

One of the letters' other signatories, Dr. Joost van Loon, believes gay marriage has contributed to a decline in the reputation of Dutch marriage. It is ''difficult to imagine'' that the Dutch campaign for gay marriage did not have ''serious social consequences,'' said Van Loon, citing ''an intensive media campaign based on the claim that marriage and parenthood are unrelated.''

My point in saying this and addressing the concerns from the other side that it is not particularly timely, we need to do work on other things, is if we don't engage and discuss this and talk about the importance of marriage and the natural union and raising children in that setting, you will see society say, I guess it doesn't matter, these things are separate. And you will see this taking place more where we have slowed down and stopped the rise in out-of-wedlock births in the United States. This isn't something that has been charting up for a long term here, and that has been capped and started back down.

Now we are pushing in a welfare reform bill—a discussion about marriage and the welfare reform bill—because we know it is the best place to raise children. It will result in a healthier relationship for a man and a woman on a long-term basis. People will live healthier, longer, and happier.

We don't want this to happen in the United States. The case study is here, and we look at the incredible social experiment—something that has not been done in societies for 5,000 years. We are talking about putting that in society. We need to push back and say no, this is not good for children. It is not good for families. It is not good for America, nor the American culture.

I urge my colleagues when they say this isn't timely to look at what has happened in the case study we have. If this isn't discussed at a very early stage and people say, no, this is not the way we want to go, then you will get this rise taking place and the situation none of us want and that everybody agrees is not good for the children. I think one has to ask oneself in this debate, where are we going to focus? Are we going to focus on raising the next generation or are we going to focus on other issues? I think clearly the right focus for legislators in looking to build a good, strong society in the future is to focus on that next generation.

I thank my colleague from Colorado for leading this debate. I thank the Chair and yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I may require 15 minutes. I ask unanimous consent to extend from 12 to 15 minutes.

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

Mr. MCCAIN. Mr. President, most Americans believe, as I do, that the institution of marriage should be reserved for the union of a man and a woman. But only a very small majority, and perhaps not quite a majority, support the idea—at this time—of amending the Constitution to prohibit the States from changing the legal definition of marriage to include any union other than that between a man and a woman. I know that Americans who support a Federal marriage amendment feel very strongly that same sex marriages judged lawful by the Supreme Court of the Commonwealth of Massachusetts, and permitted, for a brief period, unlawfully, in certain other localities, threaten the institution of marriage as a core value of our culture. I know also that many of the opponents of the amendment believe it is purposely divisive, discriminatory and intended to deny some Americans their right to the pursuit of happiness. And I know that many, many of those Americans who do not presently support the amendment, but oppose same-sex marriage do not perceive it is urgently necessary to address this issue by means of amending the most successful and enduring political compact in human history.

This close division of public opinion assures us one thing. A Federal marriage amendment to the Constitution will not be adopted by Congress this year, nor next year, nor anytime soon until a substantial majority of Americans are persuaded that such a consequential action is as vitally important and necessary as the proponents feel it is today. It is perfectly appropriate for Americans who do feel that strongly today to call the offices of their elected representatives and urge them to support the amendment. But their efforts would be better spent trying to convince a supermajority of the public to share their urgency because until they do there will not be a supermajority in Congress and among State legislatures willing to amend our Constitution.

By my count, there is not at this time even a small majority of senators who would vote for Senator ALLARD's amendment, much less the 67 votes required by the Constitution. That won't change unless public opinion changes significantly. The founders, wisely, made certain that the Constitution is difficult to amend, and, as a practical political matter, can't be done without overwhelming public approval. And thank God for that. Were it any easier I fear we could not make the claim for the Constitution's enduring success that I have just made.

Many, if not most, Americans have reasoned that there is no overriding urgent need to act at this time. And they are right to do so. The legal definition of marriage has always been left to the states to decide, in accordance with the prevailing standards of their neighborhoods and communities. Certainly, that view has prevailed for many years in my party where we adhere to a rather stricter federalism than has always been the case in the prevailing views among our friends in the Democratic Party. Some fear that the decision in Massachusetts will ultimately result in the imposition of different views on marriage in communities where the traditional view of marriage is considered singular and sacred. But there really is insufficient reason presently to fear such a result.

I supported the Defense of Marriage Act adopted by Congress and signed into law by President Clinton in 1996. As my colleagues know, the Defense of Marriage Act, DOMA, was proposed in response to a decision by the Supreme Court of the State of Hawaii which concluded that a law banning same-sex marriages may violate the Equal Protection Clause of Hawaii's constitution. DOMA provides States an exemption from the ''full faith and credit'' clause so that each State would be able to decide for itself whether to recognize same-sex marriage. The law neither compels a State to recognize a same-sex marriage from another State, nor does it prohibit States from recognizing such marriages. It simply protects each State's right to choose how it will define marriage. Currently, 39 States have defense of marriage laws in place. And thus far, there has yet to be a successful challenge to DOMA in Federal Court.

The Defense of Marriage Act represents the quintessentially federalist and Republican approach to this issue. The constitutional amendment we are debating today strikes me as antithetical in every way to the core philosophy of Republicans. It usurps from the states a fundamental authority they have always possessed, and imposes a Federal remedy for a problem that most states do not believe confronts them, and which they feel capable of

resolving should it confront them, again according to local standards and customs.

If a constitution is to be amended, it should be a State constitution. According to a report by the Heritage Foundation, an organization not known for its liberal sympathies, ''the best way to defend against a state court that might seek to overturn State public policy or force recognition of another state's marriage policy is to amend the State constitution to establish a state constitutional marriage policy.'' At this time, 16 States have pending constitutional amendments to protect marriage, and at least 3 others are expected to introduce such amendments soon. Colleagues who have told me of actions taken in this city or that county to impose a legal definition of marriage that conflicts with the prevailing view of marriage in their State have a far less draconian remedy at hand to correct the injustice than amending the United States Constitution—it is in their state legislatures. What evidence do we have that States are incapable of further exercising an authority they have exercised successfully for over 200 years? The actions by jurists in one court in one state do not represent the death knell to marriage. We will have to wait a little longer to see if Armageddon has arrived. If the Supreme Court of the United States rejects the Defense of Marriage Act as unconstitutional; if State legislatures are frustrated by the decisions of jurists in more states than one, and if state remedies to such judicial activism fail; and finally, if a large majority of Americans come to perceive that their communities' values are being ignored and other standards concerning marriage are being imposed on them against their will, and that elections and state legislatures can provide no remedy then, and only then, should we consider, quite appropriately, amending the Constitution of the United States.

I know passions run high on this issue. Americans who support the Federal marriage amendment do so very forcefully. They want this vote. But they should also know, and we should make sure they do know that it will never be adopted until many more Americans feel as strongly as they do. They have every right to demand a vote, even if the outcome is well-known. There are, of course, many other urgent priorities left to address in this Congress, not the least of which concern the physical security of this country, as Secretary Ridge has recently reminded us. But I have in the past supported legislation I knew lacked the necessary votes to prevail, and still insisted on a vote. In those cases, however, I had much broader public support for the legislation than exists for this proposed amendment. Still, I would normally be inclined to support any procedural motion to allow proponents their vote. But a procedural vote is unlikely to succeed, as we all know. That's why I supported the Democratic leader's offer of a unanimous consent agreement to allow an up or down vote on Senator ALLARD's amendment. I would very much like an up or down vote on the amendment. That offer was rejected, and it seems at the moment that the only vote on this issue that we're going to be allowed will be a procedural vote. I would not want to obscure my position on this issue by voting to proceed to the amendment, and then, following that vote's failure, having no further opportunity to take my stand by voting, and to be held accountable by my constituents for that vote. So, I am inclined at this time, if this will be our only vote in this debate, to cast a vote that reflects my position on the federal marriage amendment proposed by Senator ALLARD.

I refer to Federalist Paper 45 to explain my vote, in which James Madison wrote ''the powers delegated by the proposed Constitution to the Federal Government, are few and defined. Those which are to remain in the State Governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation and foreign commerce; with which last the power of taxation will for the most part be connected. The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties and properties of the people, and the internal order, improvement and prosperity of the State.'' I stand with Mr. Madison on this question, and against a Federal marriage amendment that denies the States their traditional right and their clear opportunity to resolve this controversy themselves.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, I oppose amending our Constitution with the Federal Marriage Amendment (FMA) because it interferes in a fundamental State matter, and, worse yet, it does so for the purpose of disfavoring a group of Americans. We have never amended our Constitution for that purpose, and we should not start now. The timing of this debate strongly supports my point that the FMA's supporters are concerned not with preserving the sanctity of marriage, but with preserving Republican politicians.

I am disappointed that we are debating a divisive and mean-spirited amendment that violates the traditions of Federalism and local control that the Republican party claims to cherish. We should be upholding the commitment to tolerance that underlies our Constitution, not betraying it with a premature debate that we all know will yield nothing but division in this body and among the American people. I urge all Senators to honor our oath as Senators to ''support and defend the Constitution'' and not sacrifice it to this short-term partisan exercise.

This debate risks great harm by casting States and gay Americans into second-class status and also harms the Senate. The Republican Senate leadership has shown contempt for the constitutional amendment process by bringing this proposed constitutional amendment directly to the Senate without the approval—or even the consideration—of the Judiciary Committee or its Constitution Subcommittee.

The Senate and the Judiciary Committee have followed a consistent practice for the consideration of constitutional amendments in the past. Before a constitutional amendment receives floor consideration it is debated and voted on by both the Subcommittee on the Constitution and the Judiciary Committee as a whole. This is the process that the Senate is currently following for the amendment to ban flag desecration, an amendment that has been considered by the Senate on numerous occasions, and that we followed in conjunction with the crime victims rights constitutional amendment. By contrast, the Federal Marriage Amendment, which is being considered for the first time, was not debated or voted on in either the subcommittee or the full Committee, yet it is before us on the floor today.

Past attempts to skirt Committee consideration of constitutional amendments, in the absence of an agreement between the parties, have drawn sharp condemnation. Twenty-five years ago, an amendment calling for direct election of the President and Vice-President was brought to the floor without Judiciary Committee approval. Senator HATCH, the then-ranking Republican member on the Constitution Subcommittee, said: ''To bypass the committee is, I think, to denigrate the committee process, especially when an amendment to the Constitution of the United States of America, the most important document in the history of the Nation, is involved.'' The late Senator Thurmond said that ''if a bill of this nature is not going to be referred to a committee to consider it, I do not know why we need Committees in the U.S. Senate.'' In 1979, Senator HATCH said it was ''unconscionable to bring up legislation under these circumstances.'' Apparently what was ''unconscionable'' in 1979 is applauded in 2004 so long as it is being done for partisan Republican purposes.

I joined with all of my Democratic colleagues on the Judiciary Committee in writing last month to the Chairman to request that this amendment go through the normal channels. That request was ignored by the Chairman and apparently rejected by the Senate Republican leadership as it chooses for its own benefit to change yet another longstanding practice of the United States Senate.

The procedural treatment the Republican leadership is giving this proposed amendment to the Constitution of the United States is perhaps more appropriate for a resolution commemorating

an organization's anniversary or a celebratory day, which are sometimes discharged from the Judiciary Committee without debate and agreed to by the full Senate. When we are dealing with a resolution designating something as universally accepted as ''National Girl Scout Week,'' it does not offend me to skip Committee consideration. But short cuts are not fitting when we are talking about amending our fundamental national charter.

Perhaps cutting corners like this and its maneuvering reveals how the Republican leadership really sees this amendment. Perhaps this exercise is, after all, not intended as a serious effort to amend the Constitution—something deserving deliberate consideration and careful refinement during the Committee process. It seems that this forced exercise is intended instead as the legislative equivalent of a political bumper sticker, suddenly appearing on the Senate floor late in an election year.

I assume that our longstanding practice was disregarded because the majority did not want to risk seeing the FMA defeated in committee. Or perhaps their decision to press this matter into debate, in spite of last week's terrorism warning, the unresolved intelligence failures and torture scandal and the lack of progress on a budget and Federal appropriations matters, was made hastily to fit the political calendar. Forcing a debate at this time shows they have no interest in passing an amendment—they simply want to go through the motions to please their hard-right base and try to inflict political damage of those of us who stand up for the Constitution. The New York Times reported yesterday how much pressure Republicans have been under from their extreme right wing to turn to this matter. This is apparently especially true now that the Republican Party has decided to try to put a pretty face on its harmful policies at its upcoming convention by featuring its few moderates. Those moderates do not set the policy for the national Republican Party and oppose this amendment. However the national Republican Party tries to dress itself up at its convention, the hard truth is that they are choosing to foster division by pressing this matter. If the Senate Republican leadership were interested in amending the Constitution, they would not bring this amendment to the floor now and face certain defeat. Committee consideration of an amendment is not merely a box to check in a procedural flowchart. Committee consideration of any legislation, especially constitutional amendments, affords an opportunity to address problems that are not easily remedied on the Senate floor. Committee consideration can also ensure that we agree on what an amendment does, even if we disagree on whether what it does is desirable. I certainly do not believe that we are at that point as we begin this premature debate. In that light, I would like to discuss some of the open questions raised by this amendment.

I would like to place in the RECORD a story from the February 14 Washington Post about the formation of the FMA. The basic theme of the report was that even the drafters of the FMA disagree about what it means. Matt Daniels, the head of the Alliance for Marriage, a group promoting the FMA, was honest enough to tell the Post that the drafters of the amendment did not worry too much about the wording, saying, ''I don't think we expected there would be this much attention paid to it.'' Although the language of the amendment before us has changed slightly from the original version, it is essentially the same as the sloppy patchwork version introduced last year. I think that Mr. Daniels' attitude speaks volumes about the respect the supporters of this amendment have for the Constitution.

This attitude is apparently shared by President Bush, who has made clear his desire to use this issue for political advantage. Although the President has asked Congress to amend the Constitution to ban gay marriage, he has refused repeated calls to state specifically what language he believes Congress should adopt. Like the Senate leadership, the President appears happy to seek political profit by demeaning both the Constitution and gay and lesbian Americans.

I would contrast the casual approach of the President toward the words of our Constitution with the approach of Senator BYRD—the most senior member of this body and a fierce defender of the Constitution—during the 1997 debate over the Balanced Budget Amendment. Senator BYRD said:

> I would like to remind my colleagues that law and legislating is about the examination of details. We don't legislate one-liners, or campaign slogans. Here, in this body and in the other body, we put the force of the law behind details that impact mightily upon the daily lives of our people. That is a solemn responsibility. And it is more important than political popularity, or winning the next election or marching lockstep to the orders of one political party, or another.
>
> Especially in the case of amending the Constitution, that responsibility weighs more heavily. For in that instance we are contemplating changes in our basic, fundamental organic law—changes that, when once implanted in that revered document, can only be removed at great difficulty, and which will impact, quite possibly, upon generations of Americans who, yet unborn, must trust us to guard their birthright as Americans.''

Senator BYRD was right—the words of a Constitutional amendment matter deeply. This is the third version of this amendment that has been introduced in the Senate, and it may not be the last. Senator HATCH has publicly toyed for months with introducing a different version of the amendment and Senator SMITH is reported to be working on still another version.

The version of the Federal Marriage Amendment before us today reads as follows: ''Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman.''

First, the amendment appears to dictate to voters what language they can put in their own State Constitutions. The natural reading of the FMA suggests that voters in a State could not place in their State Constitutions any benefits for same-sex couples that could be defined as ''legal incidents'' of marriage. This limitation is particularly noteworthy in light of the current proceedings in Massachusetts. In response to the Supreme Judicial Court's decision in Goodridge, the Massachusetts Legislature has approved an amendment to the Massachusetts Constitution that would limit marriage to heterosexual unions but provide many of the benefits of marriage to same-sex couples through civil unions. This amendment is supported by Governor Mitt Romney, who testified before the Judiciary Committee last month.

Yet it appears that the Massachusetts amendment might be rendered unenforceable if the FMA were adopted, for no court would be permitted to ''construe'' the Massachusetts Constitution to provide for civil unions, which surely provide many of the ''legal incidents'' of marriage. Without judicial recognition of civil unions, the rights created for gay couples under the Massachusetts Constitution would not be worth the paper they are written on, even if they were approved by a majority of the State's voters.

Governor Romney told the Judiciary Committee that he somehow supports both the Federal and Massachusetts amendment, and did not believe they conflicted. I do not see how he can hold that position. Neither did former Representative Bob Barr, a conservative Republican from Georgia, who testified before the Committee at the same hearing. Congressman Barr said:

> Governor Romney essentially is here to ask the Congress to step in and have the federal government invalidate the actions of the highest state court in his state, and also to strangle before its birth the proposed state constitutional amendment that his own state legislature passed this year. That State constitutional amendment, if passed next session and ratified by his state's voters, would deny marriage rights to same-sex couples, but also provide civil unions. The Federal Marriage Amendment, however, would invalidate any civil union provided by the Massachusetts state constitution, and of course would also invalidate all same-sex marriages in the state.''

Second, it is unclear from the language of the FMA whether its prohibition on ''construing'' a Constitution is limited to the judicial branch. From the plain text of the amendment, executive branch officials—from a Governor to county clerks—would similarly be prohibited from construing even a duly-passed State constitutional amendment to provide for the ''legal

incidents'' of marriage, whatever those should be. This is a potentially breathtaking imposition on our States and their officials.

Third, the term ''legal incidents'' is itself extraordinarily vague. Since the amendment did not go through the proper channels, we have no Committee report language to clarify this or any of the other vague elements of this amendment. We do have the thoughts of Marilyn Musgrave, the House sponsor of the FMA, from a memo she produced to explain the meaning of the amendment. In her view, ''legal incidents'' include, among many other things, the right to bring actions for the wrongful death of a partner, rights and duties under adoption law, and even the right to hospital visitation. Her sweeping view would thus prevent any court anywhere from finding that any State constitutional provision might protect a person's right to visit their same-sex partner in a hospital. And in the absence of a Committee report on the amendment, courts would likely have little choice but to give substantial weight to her view.

Fourth, although some supporters of the proposed amendment state categorically that the amendment leaves State legislatures free to pass civil union laws, that claim is also open to serious doubt. Surely Senator ALLARD and his allies cannot mean to put the Senate through this ordeal only to put the word ''marriage'' off limits to same-sex couples. Should a State pass a law that provides for marriage in all but name, would supporters of this amendment not mount legal challenges based on the amendment's first sentence? Indeed, two of the amendment's intellectual godfathers—Professors Robert George of Princeton and Gerald Bradley of Notre Dame Law School—have said they believe it would forbid civil unions that were sufficiently similar to marriage.

Fifth, the application of the amendment is not even limited to State actors, but would also apparently bind the behavior of private organizations, including private religious organizations. The first sentence of the amendment purports to define marriage for all time and for all purposes. In other words, no one could marry same-sex couples, regardless of whether that person was acting on behalf of the State. This is one of the reasons why so many religious organizations oppose this amendment, including the Episcopal Church, USA, the Alliance of Baptists, and the American Jewish Committee.

The only amendment that binds private parties is the Thirteenth, which forbids slavery anywhere in the United States. Given the stain of slavery on our nation, and its inherent evil, the Thirteenth Amendment's sweeping ban is obviously appropriate. To take that extraordinary step here and to impose a definition upon all churches and faiths to tell them what they must do is overreaching and inappropriate. Marriage is first and foremost a religious concept and institution. Respecting religion, the Federal Government ought to stay out of defining what a religious definition of marriage can be.

One thing we can say with certainty about this amendment is that if it is passed, it will present a field day for litigation.

This amendment is all the more mean-spirited because it is unnecessary. Unless we are planning to use the constitutional process to overturn a single State's marriage policy—a purpose that I doubt has the support of even one-third of this body—the only possible rationale for the amendment is to authorize States not to recognize same-sex marriages performed in other States. This rationale is already accomplished, however, by both the inherent right of States to establish their own policies regarding marriage and by the Defense of Marriage Act, which Congress passed and President Clinton signed in 1996.

Many proponents of this amendment have stated as fact that the Constitution's Full Faith and Credit Clause requires States to give the force of law to marriage licenses issued by other States. This is simply not the case. Lea Brilmayer, a professor at Yale Law School and an expert on the Full Faith and Credit clause, told the Judiciary Committee in March that the Clause was designed and has been interpreted to ensure that judgments entered by one State's courts are respected in other States. Marriage licenses are not judgments, she said, and they have ''never received the automatic effect given to judicial decisions.'' Rather, ''courts have not hesitated to apply local public policy to refuse to recognize marriages entered into in other states.''

Moreover, Professor Brilmayer testified that the Full Faith and Credit Clause ''has never been understood to require recognition of marriages entered into in other states that are contrary to local 'public policy.' The 'public policy' doctrine, which is well recognized in conflict of laws, frees a state from having to recognize decisions by other States that offend deeply held local values.''

Under this long-established ''public policy'' doctrine, the nearly 40 States that have elected to pass their own ''Defense of Marriage'' acts would be expected not to have to recognize a same-sex marriage from Massachusetts. Of course, the small minority of States that have not passed such laws are free to pass them at any time. If they do not do so, just maybe preventing the recognition of other States' gay marriages is not a burning issue for their citizens.

As the Judiciary Committee has learned, the Constitution places no requirement on Pennsylvania to recognize a gay marriage from Massachusetts. In the unlikely event that Federal courts take a different view and alter the historic understanding of the Full Faith and Credit Clause, however, the Defense of Marriage Act provides an additional layer of security for States that do not wish to recognize same-sex marriage.

The federal law says that no State shall be required to give effect to any public act, record, or judicial proceeding of another state respecting a relationship between persons of the same sex that is treated as a marriage. It is the law of the land, and no court has found it to be unconstitutional. It seems to me that DOMA is presumptively constitutional, especially since the Full Faith and Credit Clause itself provides Congress with the power to direct the Clause's interpretation:

> 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.

Some of my colleagues have suggested that we need to amend the Constitution now because the Supreme Court may either (a) invalidate DOMA and find that the Full Faith and Credit Clause requires 50-State recognition of Massachusetts gay marriages; or (b) go beyond even that analysis by finding a right to same-sex marriage under the Equal Protection Clause of the Fourteenth Amendment.

My initial reaction to these predictions about the judiciary is that they do not square with the Rehnquist Court I have been watching for the last 17 years. It is true that the Supreme Court found last year, in Lawrence v. Texas, that Texas and a handful of other States could no longer make it a crime for homosexual couples to engage in sexual acts in the privacy of their own home. And it is true that many of those who support the Federal Marriage Amendment decried this imposition on Texas's right to punish its gay and lesbian citizens. It is a far leap, however, from saying that gay couples should not be thrown in jail and saying that they have a Constitutional right to marry. The comparisons that some are making between the Lawrence and Goodridge decisions are vastly overblown.

My second reaction, however, is the one that should move the Senate to reject this amendment. Perhaps my colleagues' fearful predictions about the activism of the Rehnquist court will come true. More likely, they will not. But Congress's job is not to imagine outcomes that appellate courts or even the Supreme Court might conceivably reach and preemptively amend the Constitution to prevent them. We have had enough difficulties during this Congress stemming from a preemptive war—we need not add a new preemptive theory to our arsenal. When it comes to the Constitution, it is simply wrong for the Senate to ''shoot first and ask questions later.'' Rather, it is our duty to show restraint.

If the Court should reverse 200-plus years of understanding of the Full

Faith and Credit Clause, or find that the Equal Protection Clause prohibits limiting marriage to heterosexual couples, a future Congress can react to that decision however it sees fit. That Congress will act in a way consistent with the views and circumstances of their time.

I believe preemptive action on this matter would set a precedent that both Republicans and Democrats in this body would come to regret. Congressman Barr, the author of the Defense of Marriage Act, illuminated this point when he testified last month. Congressman Barr said:

> In treating the Constitution as an appropriate place to impose publicly contested social policies, [the FMA] would cheapen the sacrosanct nature of that document, opening the door to future meddling by liberals and conservatives. . . . The Founders created the Constitution with such a daunting amendatory process precisely because it is only supposed to be changed by overwhelming acclamation. It is so difficult to revise specifically in order to guard against the fickle winds of public opinion blowing counter to basic individual rights like speech or religion.

Part of Congressman Barr's testimony should be of particular note to my conservative colleagues. He said, ''We know that the future is uncertain, and our fortunes unclear. I would like to think people will think like me for a long time to come, but if they do not, I fear the consequences of the FMA precedent. Could liberal activists use the FMA argument to modify the Second Amendment? Or force income redistribution? Or ban tax cuts?'' This should be food for thought for all those—from the right or from the left—who would use the Constitution as a playground for their policy preferences.

This is a sad day for the Senate. We all take an oath to uphold the Constitution of the United States. But when the Republican majority brings a constitutional amendment to the floor in defiance of our normal procedures, and with full knowledge that it will not pass, it demonstrates a fundamental disrespect for our Constitution and for this institution, the United States Senate.

I close by echoing the words of Senator BYRD from the debate on the Balanced Budget Amendment: ''What is really wanted by some in this body is not the amendment itself, but an issue with which to whip its opponents. This is simple politics, my colleagues. And it is politics at its most unappealing and destructive level.''

I will have more to say about the Federal Marriage Amendment as this debate proceeds.

Mr. REID. Mr. President, we have no speakers tonight.

In the morning, it is my understanding that the majority leader is going to allow—I am quite sure this is true—we would have an hour on each side on this amendment. Therefore, on the Democratic side in the morning, so there is no confusion, I want to make sure if any Senator is calling tonight, there is no more time. We have allocated all the time. If people call in the morning, there is no time left.

I ask unanimous consent that tomorrow, if the majority leader allows us the 55 minutes—I think he will—we have Senator DODD, 15 minutes; Senator CARPER, 10 minutes; Senator LIEBERMAN, 5 minutes; Senator KENNEDY, 5 minutes; Senator LEVIN, 10 minutes; Senator LEAHY, 10 minutes; and I would hope the two leaders could close the debate tomorrow morning using their leader time or whatever time is agreed upon by the Senate.

I ask consent on our side, our 55 minutes be divided as I have indicated.

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

Mr. ALLARD. Mr. President, I will take a moment to talk a little bit about my amendment. The purpose of my amendment is to protect marriage. There has been an editorial written by the Weekly Standard which I would like to share with my colleagues. There are three paragraphs I will recite. I ask unanimous consent to have the editorial printed in the RECORD. This is the editorial in the Weekly Standard called ''Cloturekampf,'' written by Terry Eastland.

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

[From the Weekly Standard, July 19, 2004]

CLOTUREKAMPF

(By Terry Eastland)

Senate Republicans deserve credit for pushing this week for a vote on a constitutional amendment that would define marriage in the United States as consisting only of the union of a man and a woman. Whether they will get that vote is an open question. Under Senate rules, 60 votes likely will be needed to cut off debate in order for a vote on the amendment to occur. Those who count heads in the Senate tell us that as few as two Democrats may be willing to vote for cloture, as it is called, and as many as 12 Republicans may be prepared to vote against it. The votes for cloture might not even total 50.

Yet if you believe that the courts ought not to be irrevocably fixing policy upon such a vital question as what constitutes marriage, there is merit, especially in an election year, in determining just who is and who is not willing to vote on an amendment that would enable the people to decide whether they want to settle the issue as they choose. Which is to say, consistent with their conviction that marriage is what it always has been—only the union of a man and a woman.

As matters now stand, marriage defined as the union of any two people is the policy of only one government—the Commonwealth of Massachusetts. The policy was fixed by the Supreme Judicial Court of Massachusetts in a decision last November that ran roughshod over the legislature's constitutional authority. The federalist impulse in our shop says that maybe on the question of marriage nothing at all should be done—in which case a state would be allowed to go to hell in a handbasket, if that should be the desire of its judges, and the ruling is allowed to stand. We are reminded that states also can do the right thing, from our point of view, and in fact have. The people of Hawaii responded to their high court's decision implying a constitutional right of same-sex couples to marry by passing a constitutional amendment prohibiting such marriages. And the people of Alaska voted for a similar constitutional amendment in response to a lower-court judge's ruling announcing a right to same-sex marriage.

Nonetheless, it is now unlikely that the states will be able simply to do as they wish on the question of marriage. Under the Massachusetts Constitution, no amendment in response to the supreme judicial court's decision will be possible until 2006, and in the meantime there is no stopping same-sex nuptials, of which there have been thousands so far, including many from out of state. It is only a matter of time before some same-sex couples who have returned home file lawsuits pressing their states to recognize their unions.

A basis for their claim will be the federal Constitution's requirement that states give ''full faith and credit'' to other states' judicial proceedings. The federal Defense of Marriage Act of 1996 offers an authoritative interpretation of the ''full faith and credit'' clause designed to prevent the interstate transmission of same-sex marriage. But the Supreme Court has repeatedly told Congress that it lacks the power to do that, and there is no reason to think that the Court would change its mind.

The odds are strong, then, that same-sex marriage will travel via the federal courts to other states. There also remains a possibility that the Supreme Court itself might simply strike down the traditional definition of marriage. Recall that last summer in Lawrence v. Texas the Court, with Justice Anthony Kennedy writing, did not merely void the nation's sodomy laws. Kennedy also embraced an amorphous right to sexual liberty (untethered to constitutional text or history) that denies the historic right of the people to enact legislation based on their moral views. The Massachusetts Supreme Judicial Court, not incidentally, drew inspiration from Kennedy's Lawrence opinion.

The question facing the Senate and, for that matter, the House of Representatives, is whether federal judges should be allowed to decide the issue in the way they are likely to—or whether the American people should be given the opportunity to settle it through a constitutional amendment expressing their longstanding conviction about marriage. Even a failed cloture vote will give the country an idea of which senators understand—and which do not—that the definition of marriage is now an unavoidably national issue, and that, if marriage is to remain the union of a man and a woman, the issue will have to be addressed through a constitutional amendment.

Mr. ALLARD. Also, while I am at it, I would like to add Senator DOLE as a cosponsor to S.J. Res. 40.

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

Mr. ALLARD. Mr. President, the editorial states:

> Nonetheless, it is now unlikely that the states will be able simply to do as they wish on the question of marriage. Under the Massachusetts Constitution, no amendment in response to the supreme judicial court's decision will be possible until 2006, and in the meantime there is no stopping same-sex nuptials, of which there have been thousands so far, including many from out of state. It is only a matter of time before some same-sex couples who have returned home file lawsuits pressing their states to recognize their unions.
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This is the gist of many of our arguments we are making today.

It has been called to my attention, through press reports, there has been a new lawsuit filed in the State of Massachusetts, that an attorney in Massachusetts has now filed a lawsuit on behalf of eight couples who are asking that the State of Massachusetts repeal their provisions which say they will not recognize same-sex marriages of individuals who come from other States. The Governor of Massachusetts relayed that issue to us during testimony before the committee. They just filed that. So here is another court case that has been filed that is another attack on marriage. That is why I think it is so very important we move forward with this debate.

This is not a political debate. It is not driven by politics. It is driven by the courts. Again, we have an organized effort, I believe, by proponents of same-sex marriage who want to undo the idea of a traditional marriage.

Right now, we have 46 States that have same-sex couples living there who have marriage licenses. I have been informed there is an organized effort to begin to file cases in those respective States. We have 11 States that have court cases currently filed in them. I was told several days ago that within those 11 States we have about 32 cases that have been filed, total.

We have 48 States that have passed laws protecting traditional marriage. I have behind me a chart that defines marriage as a union between a man and a woman. We had a very fine statement from the Senator from Oklahoma who talked about the need and why he carried that amendment that protected the definition of marriage and allowed States their basic right to defend their position as far as the definition of marriage.

This definition has been supported by huge majorities in these States in their legislative bodies. I happen to disagree with my colleague from the State of Arizona. I think a large percentage of Americans are concerned about changing the definition of traditional marriage. I think as they begin to more fully understand, they are going to be more forceful in the message they are sending to the Senate, and I think eventually the Members of this Senate will realize how very serious this particular issue is which is before us today.

We have at least 10 States that have constitutional amendments on the ballot, and 3 States that are still gathering petitions. This issue is here before us today. It is an important issue. The people of the United States are concerned about what is happening in the courts. That is the reason we are here today to carry on this debate.

There are some profound implications, I believe, to the rearing of children. Marriage matters. I have an article entitled: ''The End of Marriage in Scandinavia.'' It is written by Stanley Kurtz, in the Weekly Standard, and dated February 2, 2004, in which he talks about the impact of redefining marriage in the Scandinavian countries and on children. I ask unanimous consent that article be printed in the RECORD.

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

[From the Weekly Standard, Feb. 2, 2004]

THE END OF MARRIAGE IN SCANDINAVIA: THE ''CONSERVATIVE CASE'' FOR SAME-SEX MARRIAGE COLLAPSES

(By Stanley Kurtz)

Marriage is slowly dying in Scandinavia. A majority of children in Sweden and Norway are born out of wedlock. Sixty percent of first-born children in Denmark have unmarried parents. Not coincidentally, these countries have had something close to full gay marriage for a decade or more. Same-sex marriage has locked in and reinforced an existing Scandinavian trend toward the separation of marriage and parenthood. The Nordic family pattern—including gay marriage—is spreading across Europe. And by looking closely at it we can answer the key empirical question underlying the gay marriage debate. Will same-sex marriage undermine the institution of marriage? It already has.

More precisely, it has further undermined the institution. The separation of marriage from parenthood was increasing; gay marriage has widened the separation. Out-of-wedlock birthrates were rising; gay marriage has added to the factors pushing those rates higher. Instead of encouraging a society-wide return to marriage, Scandinavian gay marriage has driven home the message that marriage itself is outdated, and that virtually any family form, including out-of-wedlock parenthood, is acceptable.

This is not how the situation has been portrayed by prominent gay marriage advocates journalist Andrew Sullivan and Yale law professor William Eskridge Jr. Sullivan and Eskridge have made much of an unpublished study of Danish same-sex registered partnerships by Darren Spedale, an independent researcher with an undergraduate degree who visited Denmark in 1996 on a Fulbright scholarship. In 1989, Denmark had legalized de facto gay marriage (Norway followed in 1993 and Sweden in 1994). Drawing on Spedale, Sullivan and Eskridge cite evidence that since then, marriage has strengthened. Spedale reported that in the six years following the establishment of registered partnerships in Denmark (1990–1996), heterosexual marriage rates climbed by 10 percent, while heterosexual divorce rates declined by 12 percent. Writing in the McGeorge Law Review, Eskridge claimed that Spedale's study had exposed the ''hysteria and irresponsibility'' of those who predicted gay marriage would undermine marriage. Andrew Sullivan's Spedale-inspired piece was subtitled, ''The case against same-sex marriage crumbles.''

Yet the half-page statistical analysis of heterosexual marriage in Darren Spedale's unpublished paper doesn't begin to get at the truth about the decline of marriage in Scandinavia during the nineties. Scandinavian marriage is now so weak that statistics on marriage and divorce no longer mean what they used to.

Take divorce. It's true that in Denmark, as elsewhere in Scandinavia, divorce numbers looked better in the nineties. But that's because the pool of married people has been shrinking for some time. You can't divorce without first getting married. Moreover, a closer look at Danish divorce in the post-gay marriage decade reveals disturbing trends. Many Danes have stopped holding off divorce until their kids are grown. And Denmark in the nineties saw a 25 percent increase in cohabiting couples with children. With fewer parents marrying, what used to show up in statistical tables as early divorce is now the unrecorded breakup of a cohabiting couple with children.

What about Spedale's report that the Danish marriage rate increased 10 percent from 1990 to 1996? Again, the news only appears to be good. First, there is no trend. Eurostat's just-released marriage rates for 2001 show declines in Sweden and Denmark (Norway hasn't reported). Second, marriage statistics in societies with very low rates (Sweden registered the lowest marriage rate in recorded history in 1997) must be carefully parsed. In his study of the Norwegian family in the nineties, for example, Christer Hyggen shows that a small increase in Norway's marriage rate over the past decade has more to do with the institution's decline than with any renaissance. Much of the increase in Norway's marriage rate is driven by older couples ''catching up.'' These couples belong to the first generation that accepts rearing the first born child out of wedlock. As they bear second children, some finally get married. (And even this tendency to marry at the birth of a second child is weakening.) As for the rest of the increase in the Norwegian marriage rate, it is largely attributable to remarriage among the large number of divorced.

Spedale's report of lower divorce rates and higher marriage rates in post-gay marriage Denmark is thus misleading. Marriage is now so weak in Scandinavia that shifts in these rates no longer mean what they would in America. In Scandinavian demography, what counts is the out-of-wedlock birthrate, and the family dissolution rate.

The family dissolution rate is different from the divorce rate. Because so many Scandinavians now rear children outside of marriage, divorce rates are unreliable measures of family weakness. Instead, we need to

know the rate at which parents (married or not) split up. Precise statistics on family dissolution are unfortunately rare. Yet the studies that have been done show that throughout Scandinavia (and the West) cohabiting couples with children break up at two to three times the rate of married parents. So rising rates of cohabitation and out-of-wedlock birth stand as proxy for rising rates of family dissolution.

By that measure, Scandinavian family dissolution has only been worsening. Between 1990 and 2000, Norway's out-of-wedlock birthrate rose from 39 to 50 percent, while Sweden's rose from 47 to 55 percent. In Denmark out-of-wedlock births stayed level during the nineties (beginning at 46 percent and ending at 45 percent). But the leveling off seems to be a function of a slight increase in fertility among older couples, who marry only after multiple births (if they don't break up first). That shift masks the 25 percent increase during the nineties in cohabitation and unmarried parenthood among Danish couples (many of them young). About 60 percent of first born children in Denmark now have unmarried parents. The rise of fragile families based on cohabitation and out-of-wedlock childbearing means that during the nineties, the total rate of family dissolution in Scandinavia significantly increased.

Scandinavia's out-of-wedlock birthrates may have risen more rapidly in the seventies, when marriage began its slide. But the push of that rate past the 50 percent mark during the nineties was in many ways more disturbing. Growth in the out-of-wedlock birthrate is limited by the tendency of parents to marry after a couple of births, and also by the persistence of relatively conservative and religious districts. So as out-of-wedlock childbearing pushes beyond 50 percent, it is reaching the toughest areas of cultural resistance. The most important trend of the post-gay marriage decade may be the erosion of the tendency to marry at the birth of a second child. Once even that marker disappears, the path to the complete disappearance of marriage is open.

And now that married parenthood has become a minority phenomenon, it has lost the critical mass required to have socially normative force. As Danish sociologists Wehner, Kambskard, and Abrahamson describe it, in the wake of the changes of the nineties, ''Marriage is no longer a precondition for settling a family—neither legally nor normatively. . . . What defines and makes the foundation of the Danish family can be said to have moved from marriage to parenthood.''

So the highly touted half-page of analysis from an unpublished paper that supposedly helps validate the ''conservative case'' for gay marriage—i.e., that it will encourage stable marriage for heterosexuals and homosexuals alike—does no such thing. Marriage in Scandinavia is in deep decline, with children shouldering the burden of rising rates of family dissolution. And the mainspring of the decline—an increasingly sharp separation between marriage and parenthood—can be linked to gay marriage. To see this, we need to understand why marriage is in trouble in Scandinavia to begin with.

Scandinavia has long been a bellwether of family change. Scholars take the Swedish experience as a prototype for family developments that will, or could, spread throughout the world. So let's have a look at the decline of Swedish marriage.

In Sweden, as elsewhere, the sixties brought contraception, abortion, and growing individualism. Sex was separated from procreation, reducing the need for ''shotgun weddings.'' These changes, along with the movement of women into the workforce, enabled and encouraged people to marry at later ages. With married couples putting off parenthood, early divorce had fewer consequences for children. That weakened the taboo against divorce. Since young couples were putting off children, the next step was to dispense with marriage and cohabit until children were desired. Americans have lived through this transformation. The Swedes have simply drawn the final conclusion: If we've come so far without marriage, why marry at all? Our love is what matters, not a piece of paper. Why should children change that?

Two things prompted the Swedes to take this extra step—the welfare state and cultural attitudes. No Western economy has a higher percentage of public employees, public expenditures—or higher tax rates—than Sweden. The massive Swedish welfare state has largely displaced the family as provider. By guaranteeing jobs and income to every citizen (even children), the welfare state renders each individual independent. It's easier to divorce your spouse when the state will support you instead.

The taxes necessary to support the welfare state have had an enormous impact on the family. With taxes so high, women must work. This reduces the time available for child rearing, thus encouraging the expansion of a day-care system that takes a large part in raising nearly all Swedish children over age one. Here is at least a partial realization of Simone de Beauvoir's dream of an enforced androgyny that pushes women from the home by turning children over to the state.

Yet the Swedish welfare state may encourage traditionalism in one respect. The lone teen pregnancies common in the British and American underclass are rare in Sweden, which has no underclass to speak of. Even when Swedish couples bear a child out of wedlock, they tend to reside together when the child is born. Strong state enforcement of child support is another factor discouraging single motherhood by teens. Whatever the causes, the discouragement of lone motherhood is a short-term effect. Ultimately, mothers and fathers can get along financially alone. So children born out of wedlock are raised, initially, by two cohabiting parents, many of whom later break up.

There are also cultural-ideological causes of Swedish family decline. Even more than in the United States, radical feminist and socialist ideas pervade the universities and the media. Many Scandinavian social scientists see marriage as a barrier to full equality between the sexes, and would not be sorry to see marriage replaced by unmarried cohabitation. A related cultural-ideological agent of marital decline is secularism. Sweden is probably the most secular country in the world. Secular social scientists (most of them quite radical) have largely replaced clerics as arbiters of public morality. Swedes themselves link the decline of marriage to secularism. And many studies confirm that, throughout the West, religiosity is associated with institutionally strong marriage, while heightened secularism is correlated with a weakening of marriage. Scholars have long suggested that the relatively thin Christianization of the Nordic countries explains a lot about why the decline of marriage in Scandinavia is a decade ahead of the rest of the West.

Are Scandinavians concerned about rising out-of-wedlock births, the decline of marriage, and ever-rising rates of family dissolution? No, and yes. For over 15 years, an American outsider, Rutgers University sociologist David Popenoe, has played Cassandra on these issues. Popenoe's 1988 book, ''Disturbing the Nest,'' is still the definitive treatment of Scandinavian family change and its meaning for the Western world. Popenoe is no toe-the-line conservative. He has praise for the Swedish welfare state, and criticizes American opposition to some child welfare programs. Yet Popenoe has documented the slow motion collapse of the Swedish family, and emphasized the link between Swedish family decline and welfare policy.

For years, Popenoe's was a lone voice. Yet by the end of the nineties, the problem was too obvious to ignore. In 2000, Danish sociologist Mai Heide Ottosen published a study, ''Samboskab, Aegteskab og Foraeldrebrud'' (''Cohabitation, Marriage and Parental Breakup''), which confirmed the increased risk of family dissolution to children of unmarried parents, and gently chided Scandinavian social scientists for ignoring the ''quiet revolution'' of out-of-wedlock parenting.

Despite the reluctance of Scandinavian social scientists to study the consequences of family dissolution for children, we do have an excellent study that followed the life experiences of all children born in Stockholm in 1953. (Not coincidentally, the research was conducted by a British scholar, Duncan W.G. Timms.) That study found that regardless of income or social status, parental breakup had negative effects on children's mental health. Boys living with single, separated, or divorced mothers had particularly high rates of impairment in adolescence. An important 2003 study by Gunilla Ringbäck Weitoft, et al. found that children of single parents in Sweden have more than double the rates of mortality, severe morbidity, and injury of children in two parent households. This held true after controlling for a wide range of demographic and socioeconomic circumstances.

The decline of marriage and the rise of unstable cohabitation and out-of-wedlock childbirth are not confined to Scandinavia. The Scandinavian welfare state aggravates these problems. Yet none of the forces weakening marriage there are unique to the region. Contraception, abortion, women in the workforce, spreading secularism, ascendant individualism, and a substantial welfare state are found in every Western country. That is why the Nordic pattern is spreading.

Yet the pattern is spreading unevenly. And scholars agree that cultural tradition plays a central role in determining whether a given country moves toward the Nordic family system. Religion is a key variable. A 2002 study by the Max Planck Institute, for example, concluded that countries with the lowest rates of family dissolution and out-of-wedlock births are ''strongly dominated by the Catholic confession.'' The same study found that in countries with high levels of family dissolution, religion in general, and Catholicism in particular, had little influence.

British demographer Kathleen Kiernan, the acknowledged authority on the spread of cohabitation and out-of-wedlock births across Europe, divides the continent into three zones. The Nordic countries are the leaders in cohabitation and out-of-wedlock births. They are followed by a middle group that includes the Netherlands, Belgium, Great Britain, and Germany. Until recently, France was a member of this middle group, but France's rising out-of-wedlock birthrate has moved it into the Nordic category. North American rates of cohabitation and out-of-wedlock birth put the United States and Canada into this middle group. Most resistant to cohabitation, family dissolution, and out-of-wedlock births are the southern European countries of Spain, Portugal, Italy, and Greece, and, until recently, Switzerland and Ireland. (Ireland's rising out-of-wedlock birthrate has just pushed it into the middle group.)

These three groupings closely track the movement for gay marriage. In the early

nineties, gay marriage came to the Nordic countries, where the out-of-wedlock birthrate was already high. Ten years later, out-of-wedlock birth rates have risen significantly in the middle group of nations. Not coincidentally, nearly every country in that middle group has recently either legalized some form of gay marriage, or is seriously considering doing so. Only in the group with low out-of-wedlock birthrates has the gay marriage movement achieved relatively little success.

This suggests that gay marriage is both an effect and a cause of the increasing separation between marriage and parenthood. As rising out-of-wedlock birthrates disassociate heterosexual marriage from parenting, gay marriage becomes conceivable. If marriage is only about a relationship between two people, and is not intrinsically connected to parenthood, why shouldn't same-sex couples be allowed to marry? It follows that once marriage is redefined to accommodate same-sex couples, that change cannot help but lock in and reinforce the very cultural separation between marriage and parenthood that makes gay marriage conceivable to begin with.

We see this process at work in the radical separation of marriage and parenthood that swept across Scandinavia in the nineties. If Scandinavian out-of-wedlock birthrates had not already been high in the late eighties, gay marriage would have been far more difficult to imagine. More than a decade into post-gay marriage Scandinavia, out-of-wedlock birthrates have passed 50 percent, and the effective end of marriage as a protective shield for children has become thinkable. Gay marriage hasn't blocked the separation of marriage and parenthood; it has advanced it.

We see this most clearly in Norway. In 1989, a couple of years after Sweden broke ground by offering gay couples the first domestic partnership package in Europe, Denmark legalized de facto gay marriage. This kicked off a debate in Norway (traditionally more conservative than either Sweden or Denmark), which legalized de facto gay marriage in 1993. (Sweden expanded its benefits packages into de facto gay marriage in 1994.) In liberal Denmark, where out-of-wedlock birthrates were already very high, the public favored same-sex marriage. But in Norway, where the out-of-wedlock birthrate was lower—and religion traditionally stronger—gay marriage was imposed, against the public will, by the political elite.

Norway's gay marriage debate, which ran most intensely from 1991 through 1993, was a culture-shifting event. And once enacted, gay marriage had a decidedly unconservative impact on Norway's cultural contests, weakening marriage's defenders, and placing a weapon in the hands of those who sought to replace marriage with cohabitation. Since its adoption, gay marriage has brought division and decline to Norway's Lutheran Church. Meanwhile. Norway's fast-rising out-of-wedlock birthrate has shot past Denmark's. Particularly in Norway—once relatively conservative—gay marriage has undermined marriage's institutional standing for everyone.

Norway's Lutheran state church has been riven by conflict in the decade since the approval of de facto gay marriage, with the ordination of registered partners the most divisive issue. The church's agonies have been intensively covered in the Norwegian media, which have taken every opportunity to paint the church as hidebound and divided. The nineties began with conservative churchmen in control. By the end of the decade, liberals had seized the reins.

While the most public disputes of the nineties were over homosexuality, Norway's Lutheran church was also divided over the question of heterosexual cohabitation. Asked directly, liberal and conservative clerks alike voice a preference for marriage over cohabitation—especially for couples with children. In practice, however, conservative churchmen speak out against the trend toward unmarried cohabitation and childbirth, while liberals acquiesce.

This division over heterosexual cohabitation broke into the open in 2000, at the height of the church's split over gay partnerships, when Prince Haakon, heir to Norway's throne, began to live with his lover, a single mother. From the start of the prince's controversial relationship to its eventual culmination in marriage, the future head of the Norwegian state church received tokens of public support or understanding from the very same bishops who were leading the fight to permit the ordination of homosexual partners.

So rather than strengthening Norwegian marriage against the rise of cohabitation and out-of-wedlock birth, same-sex marriage had the opposite effect. Gay marriage lessened the church's authority by splitting it into warring factions and providing the secular media with occasions to mock and expose divisions. Gay marriage also elevated the church's openly rebellious minority liberal faction to national visibility, allowing Norwegians to feel that their proclivity for unmarried parenthood, if not fully approved by the church, was at least not strongly condemned. If the ''conservative case'' for gay marriage had been valid, clergy who were supportive of gay marriage would have taken a strong public stand against unmarried heterosexual parenthood. This didn't happen. It was the conservative clergy who criticized the prince, while the liberal supporters of gay marriage tolerated his decisions. The message was not lost on ordinary Norwegians, who continued their flight to unmarried parenthood.

Gay marriage is both an effect and a reinforcing cause of the separation of marriage and parenthood. In states like Sweden and Denmark, where out-of-wedlock birthrates were already very high, and the public favored gay marriage, gay unions were an effect of earlier changes. Once in place, gay marriage symbolically ratified the separation of marriage and parenthood. And once established, gay marriage became one of several factors contributing to further increases in cohabitation and out-of-wedlock birthrates, as well as to early divorce. But in Norway, where out-of-wedlock birthrates were lower, religion stronger, and the public opposed same-sex unions, gay marriage had an even greater role in precipitating marital decline.

Sweden's position as the world leader in family decline is associated with a weak clergy, and the prominence of secular and left-leaning social scientists. In the post-gay marriage nineties, as Norway's once relatively low out-of-wedlock birthrate was climbing to unprecedented heights, and as the gay marriage controversy weakened and split the once respected Lutheran state church, secular social scientists took center stage.

Kari Moxnes, a feminist sociologist specializing in divorce, is one of the most prominent of Norway's newly emerging group of public social scientists. As a scholar who sees both marriage and at-home motherhood as inherently oppressive to women, Moxnes is a proponent of nonmarital cohabitation and parenthood. In 1993, as the Norwegian legislature was debating gay marriage, Moxnes published an article, ''Det tomme ekteskap'' (''Empty Marriage''), in the influential liberal paper Dagbladet. She argued that Norwegian gay marriage was a sign of marriage's growing emptiness, not its strength. Although Moxnes spoke in favor of gay marriage, she treated its creation as a (welcome) death knell for marriage itself. Moxnes identified homosexuals—with their experience in forging relationships unencumbered by children—as social pioneers in the separation of marriage from parenthood. In recognizing homosexual relationships, Moxnes said, society was ratifying the division of marriage from parenthood that had spurred the rise of out-of-wedlock births to begin with.

A frequent public presence, Moxnes enjoyed her big moment in 1999, when she was embroiled in a dispute with Valgerd Svarstad Haugland, minister of children and family affairs in Norway's Christian Democrat government. Moxnes had criticized Christian marriage classes for teaching children the importance of wedding vows. This brought a sharp public rebuke from Haugland. Responding to Haugland's criticisms, Moxnes invoked homosexual families as proof that ''relationships'' were now more important than institutional marriage.

This is not what proponents of the conservative case for gay marriage had in mind. In Norway, gay marriage has given ammunition to those who wish to put an end to marriage. And the steady rise of Norway's out-of-wedlock birthrate during the nineties proves that the opponents of marriage are succeeding. Nor is Kari Moxnes an isolated case.

Months before Moxnes clashed with Haugland, social historian Kari Melby had a very public quarrel with a leader of the Christian Democratic party over the conduct of Norway's energy minister, Marit Arnstad. Arnstad had gotten pregnant in office and had declined to name the father. Melby defended Arnstad, and publicly challenged the claim that children do best with both a mother and a father. In making her case, Melby praised gay parenting, along with voluntary single motherhood, as equally worthy alternatives to the traditional family. So instead of noting that an expectant mother might want to follow the example of marriage that even gays were now setting, Melby invoked homosexual families as proof that a child can do as well with one parent as two.

Finally, consider a case that made even more news in Norway, that of handball star Mia Hundvin (yes, handball prowess makes for celebrity in Norway). Hundvin had been in a registered gay partnership with fellow handballer Camilla Andersen. These days, however, having publicly announced her bisexuality, Hundvin is linked with Norwegian snowboarder Terje Haakonsen. Inspired by her time with Haakonsen's son, Hundvin decided to have a child. The father of Hundvin's child may well be Haakonsen, but neither Hundvin nor Haakonsen is saying.

Did Hundvin divorce her registered partner before deciding to become a single mother by (probably) her new boyfriend? The story in Norway's premiere paper, Aftenposten, doesn't bother to mention. After noting that Hundvin and Andersen were registered partners, the paper simply says that the two women are no longer ''romantically involved.'' Hundvin has only been with Haakonsen about a year. She obviously decided to become a single mother without bothering to see whether she and Haakonsen might someday marry. Nor has Hundvin appeared to consider that her affection for Haakonsen's child (also apparently born out of wedlock) might better be expressed by marrying Haakonsen and becoming his son's new mother.

Certainly, you can chalk up more than a little of this saga to celebrity culture. But celebrity culture is both a product and influencer of the larger culture that gives rise to it. Clearly, the idea of parenthood

here has been radically individualized, and utterly detached from marriage. Registered partnerships have reinforced existing trends. The press treats gay partnerships more as relationships than as marriages. The symbolic message of registered partnerships—for social scientists, handball players, and bishops alike-has been that most any nontraditional family is just fine. Gay marriage has served to validate the belief that individual choice trumps family form.

The Scandinavian experience rebuts the so-called conservative case for gay marriage in more than one way. Noteworthy, too, is the lack of a movement toward marriage and monogamy among gays. Take-up rates on gay marriage are exceedingly small. Yale's William Eskridge acknowledged this when he reported in 2000 that 2,372 couples had registered after nine years of the Danish law, 674 after four years of the Norwegian law, and 749 after four years of the Swedish law.

Danish social theorist Henning Bech and Norwegian sociologist Rune Halvorsen offer excellent accounts of the gay marriage debates in Denmark and Norway. Despite the regnant social liberalism in these countries, proposals to recognize gay unions generated tremendous controversy, and have reshaped the meaning of marriage in the years since. Both Bech and Halvorsen stress that the conservative case for gay marriage, while put forward by a few, was rejected by many in the gay community. Bech, perhaps Scandinavia's most prominent gay thinker, dismisses as an ''implausible'' claim the idea that gay marriage promotes monogamy. He treats the ''conservative case'' as something that served chiefly tactical purposes during a difficult political debate. According to Halvorsen, many of Norway's gays imposed self-censorship during the marriage debate, so as to hide their opposition to marriage itself. The goal of the gay marriage movements in both Norway and Denmark, say Halvorsen and Bech, was not marriage but social approval for homosexuality. Halvorsen suggests that the low numbers of registered gay couples may be understood as a collective protest against the expectations (presumably, monogamy) embodied in marriage.

Since liberalizing divorce in the first decades of the twentieth century, the Nordic countries have been the leading edge of marital change. Drawing on the Swedish experience, Kathleen Kiernan, the British demographer, uses a four-stage model by which to gauge a country's movement toward Swedish levels of out-of-wedlock births.

In stage one, cohabitation is seen as a deviant or avant-garde practice, and the vast majority of the population produces children within marriage. Italy is at this first stage. In the second stage, cohabitation serves as a testing period before marriage, and is generally a childless phase. Bracketing the problem of underclass single parenthood, America is largely at this second stage. In stage three, cohabitation becomes increasingly acceptable, and parenting is no longer automatically associated with marriage. Norway was at this third stage, but with recent demographic and legal changes has entered stage four. In the fourth stage (Sweden and Denmark), marriage and cohabitation become practically indistinguishable, with many, perhaps even most, children born and raised outside of marriage. According to Kiernan, these stages may vary in duration, yet once a country has reached a stage, return to an earlier phase is unlikely. (She offers no examples of stage reversal.) Yet once a stage has been reached, earlier phases coexist.

The forces pushing nations toward the Nordic model are almost universal. True, by preserving legal distinctions between marriage and cohabitation, reining in the welfare state, and preserving at least some traditional values, a given country might forestall or prevent the normalization of nonmarital parenthood. Yet every Western country is susceptible to the pull of the Nordic model. Nor does Catholicism guarantee immunity. Ireland, perhaps because of its geographic, linguistic, and cultural proximity to England, is now suffering from out-of-wedlock birthrates far in excess of the rest of Catholic Europe. Without deeming a shift inevitable, Kiernan openly wonders how long America can resist the pull of stages three and four.

Although Sweden leads the world in family decline, the United States is runner-up. Swedes marry less, and bear more children out of wedlock, than any other industrialized nation. But Americans lead the world in single parenthood and divorce. If we bracket the crisis of single parenthood among African-Americans, the picture is somewhat different. Yet even among non-Hispanic whites, the American divorce rate is extremely high by world standards.

The American mix of family traditionalism and family instability is unusual. In comparison to Europe, Americans are more religious and more likely to turn to the family than the state for a wide array of needs—from child care, to financial support, to care for the elderly. Yet America's individualism cuts two ways. Our cultural libertarianism protects the family as a bulwark against the state, yet it also breaks individuals loose from the family. The danger we face is a combination of America's divorce rate with unstable, Scandinavian-style out-of-wedlock parenthood. With a growing tendency for cohabiting couples to have children outside of marriage, America is headed in that direction.

Young Americans are more likely to favor gay marriage than their elders. That oft-noted fact is directly related to another. Less than half of America's twentysomethings consider it wrong to bear children outside marriage. There is a growing tendency for even middle class cohabiting couples to have children without marrying.

Nonetheless, although cohabiting parenthood is growing in America, levels here are still far short of those in Europe. America's situation is not unlike Norway's in the early nineties, with religiosity relatively strong, the out-of-wedlock birthrate still relatively low (yet rising), and the public opposed to gay marriage. If, as in Norway, gay marriage were imposed here by a socially liberal cultural elite, it would likely speed us on the way toward the classic Nordic pattern of less frequent marriage, more frequent out-of-wedlock birth, and skyrocketing family dissolution.

In the American context, this would be a disaster. Beyond raising rates of middle class family dissolution, a further separation of marriage from parenthood would reverse the healthy turn away from single-parenting that we have begun to see since, welfare reform. And cross-class family decline would bring intense pressure for a new expansion of the American welfare state.

All this is happening in Britain. With the Nordic pattern's spread across Europe, Britain's out-of-wedlock birthrate has risen to 40 percent. Most of that increase is among cohabiting couples. Yet a significant number of out-of-wedlock births in Britain are to lone teenage mothers. This a function of Britain's class divisions. Remember that although the Scandinavian welfare state encourages family dissolution in the long term, in the short term, Scandinavian parents giving birth out of wedlock tend to stay together. But given the presence of a substantial underclass in Britain, the spread of Nordic cohabitation there has sent lone teen parenting rates way up. As Britain's rates of single parenting and family dissolution have grown, so has pressure to expand the welfare state to compensate for economic help that families can no longer provide. But of course, an expansion of the welfare state would only lock the weakening of Britain's family system into place.

If America is to avoid being forced into a similar choice, we'll have to resist the separation of marriage from parenthood. Yet even now we are being pushed in the Scandinavian direction. Stimulated by rising rates of unmarried parenthood, the influential American Law Institute (ALI) has proposed a series of legal reforms (''Principles of Family Dissolution'') designed to equalize marriage and cohabitation. Adoption of the ALI principles would be a giant step toward the Scandinavian system.

Americans take it for granted that, despite its recent troubles, marriage will always exist. This is a mistake. Marriage is disappearing in Scandinavia, and the forces undermining it there are active throughout the West. Perhaps the most disturbing sign for the future is the collapse of the Scandinavian tendency to marry after the second child. At the start of the nineties, 60 percent of unmarried Norwegian parents who lived together had only one child. By 2001, 56 percent of unmarried, cohabiting parents in Norway had two or more children. This suggests that someday, Scandinavian parents might simply stop getting married altogether, no matter how many children they have.

The death of marriage is not inevitable. In a given country, public policy decisions and cultural values could slow, and perhaps halt, the process of marital decline. Nor are we faced with an all-or-nothing choice between the marital system of, say, the 1950s and marriage's disappearance. Kiernan's model posits stopping points. So repealing nofault divorce, or even eliminating premarital cohabitation, are not what's at issue. With nofault divorce, Americans traded away some of the marital stability that protects children to gain more freedom for adults. Yet we can accept that trade-off, while still drawing a line against descent into a Nordic-style system. And cohabitation as a premarital testing phase is not the same as unmarried parenting. Potentially, a line between the two can hold.

Developments in the last half-century have surely weakened the links between American marriage and parenthood. Yet to a remarkable degree, Americans still take it for granted that parents should marry. Scandinavia shocks us. Still, who can deny that gay marriage will accustom us to a more Scandinavian-style separation of marriage and parenthood? And with our underclass, the social pathologies this produces in America are bound to be more severe than they already are in wealthy and socially homogeneous Scandinavia.

All of these considerations suggest that the gay marriage debate in America is too important to duck. Kiernan maintains that as societies progressively detach marriage from parenthood, stage reversal is impossible. That makes sense. The association between marriage and parenthood is partly a mystique. Disenchanted mystiques cannot be restored on demand.

What about a patchwork in which some American states have gay marriage while others do not? A state-by-state patchwork would practically guarantee a shift toward the Nordic family system. Movies and television, which do not respect state borders, would embrace gay marriage. The cultural effects would be national.

What about Vermont-style civil unions? Would that be a workable compromise?

Clearly not. Scandinavian registered partnerships are Vermont-style civil unions. They are not called marriage, yet resemble marriage in almost every other respect. The key differences are that registered partnerships do not permit adoption or artificial insemination, and cannot be celebrated in state-affiliated churches. These limitations are gradually being repealed. The lesson of the Scandinavian experience is that even de facto same-sex marriage undermines marriage.

The Scandinavian example also proves that gay marriage is not interracial marriage in a new guise. The miscegenation analogy was never convincing. There are plenty of reasons to think that, in contrast to race, sexual orientation will have profound effects on marriage. But with Scandinavia, we are well beyond the realm of even educated speculation. The post-gay marriage changes in the Scandinavian family are significant. This is not like the fantasy about interracial birth defects. There is a serious scholarly debate about the spread of the Nordic family pattern. Since gay marriage is a part of that pattern, it needs to be part of that debate.

Conservative advocates of gay marriage want to test it in a few states. The implication is that, should the experiment go bad, we can call it off. Yet the effects, even in a few American states, will be neither containable nor revocable. It took about 15 years after the change hit Sweden and Denmark for Norway's out-of-wedlock birthrate to begin to move from ''European'' to ''Nordic'' levels. It took another 15 years (and the advent of gay marriage) for Norway's out-of-wedlock birthrate to shoot past even Denmark's. By the time we see the effects of gay marriage in America, it will be too late to do anything about it. Yet we needn't wait that long. In effect, Scandinavia has run our experiment for us. The results are in.

Mr. ALLARD. Mr. President, I see we have the Senator from Alabama in the Chamber. I would like to give him an opportunity to address the Senate.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. I thank the Presiding Officer and Senator ALLARD for his leadership on this issue. I am proud to cosponsor this legislation with him.

I think a constitutional amendment is appropriate, and I believe it is worthy of this Senate to take time to discuss it. I believe it is important for the American people to understand the danger, the threat to marriage as we have known it in this culture and, indeed, as it has been known for thousands of years. It is endangered by the decisions of unelected judges who are not accountable to the public. As a result, it is their States rights that are being eroded through this kind of activity.

The U.S. Supreme Court, as I discussed in some detail last night, through the ruling in Lawrence v. Texas has very clearly—philosophically and as a matter of principle—placed marriage as we have known it in jeopardy. Indeed, Justice Scalia predicted, in dissent, this is exactly where the Court is headed. It is exactly what the Supreme Court of the United States is going to do. It is going to rule consistent with the Supreme Court of Massachusetts. We are on the verge of seeing that happen. If they do not do it next year, or even the year after that, that does not mean that marriage as we know it in America today is not under threat of a Supreme Court ruling. No one in this body would assert with confidence that the Supreme Court, in light of their language in the Lawrence case, is not about to adopt a ruling similar to that of Massachusetts. So marriage is in jeopardy by the U.S. Supreme Court, jeopardy in terms of the way we have defined it traditionally.

This is not an act of the people. It is not an act of any legislature. No State or Federal legislative body that has ever sat has concluded this way. None. None has voted for this kind of definition of marriage.

I will emphasize, first of all, for those who believe that States have the ability to do something by passing a constitutional amendment or a State statute dealing with marriage to affirm traditional marriage, that would be wiped out by one ruling of the U.S. Supreme Court. The U.S. Supreme Court, when it defines the equal protection clause of the due process clause of the U.S. Constitution, trumps any State law.

What we are doing is to protect, defend the rights of the States to adopt legislatively the position they have always adopted. I believe it is an important national issue, as has been discussed by a number of very fine lawyers.

JON KYL, yesterday, in his statement—and Senator KYL has argued three cases before the U.S. Supreme Court—delineated the mess we will be in when people move from State to State with children they have adopted. Their relationships are one in one State, another in another State. A national definition of marriage is healthy for the country.

But I tell you, I would admit, we would not be here if it were not for the courts. We would not be seeking a constitutional amendment. We would not be in this debate had we not been placed in a position where the American people have to stand up and defend their democratic powers against an activist judiciary.

Let me add parenthetically, this is what the debate over judges is about; it has been going on in this Congress for several years now. President Bush believes in judges who follow the law, not make the law, judges who do not believe it is their right and that they have the power to impose their personal views on people through their ''definition'' of the Constitution of the United States.

For 200 years plus, we have had an equal protection clause. It is only recently that some judges seem to believe that allows them to redefine marriage.

That is a stunning activist decision. It is the same kind of decision we have seen on the Pledge of Allegiance, the same kind of decision we have seen on many other issues coming before us today. It would be very appropriate that the American people, following the constitutionally approved process of a constitutional amendment, would answer that and say what they think about marriage and how it ought to be defined. The truth is that we will be better off with a fundamental definition of marriage nationally. It is important that we do so because of the action of the courts.

Some say: Well, the American people don't want this. My phones are ringing off the hook. I don't know about Senator ALLARD or the Presiding Officer. I had my people check. We have had 1,500 calls for this amendment and less than 30 or 40 opposed. The American people are concerned about it, and rightly they should be. Maybe, as with a lot of important issues that come before the Senate, they are not fully informed of what is happening, and this debate will help them become better informed. I don't know.

My colleague, Senator MCCAIN, suggested that the American people don't support this constitutional amendment. I am just looking at some recent survey data. Here is one from June 23–24, 2004. Do you favor or oppose a constitutional amendment that defines marriage as a union between a man and a woman: Favor, 57 percent; opposed, 38 percent. That was New Models survey.

Here is one, CBS News-New York Times. Would you favor or oppose an amendment to the U.S. Constitution that would allow marriage only between a man and a woman: Favor, 59 percent; opposed, 35 percent. That is March of this year.

I don't think the American people are fully understanding of just how far the courts have moved and just how much the traditional definition of marriage is under attack today. Members of this Congress need to think about that. I don't believe it is going away after this vote. The issue will remain alive. The American people are going to continue to contact their legislators because the matter is important. Marriage is important.

Senator BROWNBACK, who does such a good job, has gone into some detail today and yesterday on how we have seen in Europe and Scandinavia that the adoption of same-sex marriages has furthered the decline in respect for marriage in those countries. And after those acts have occurred, we have seen a substantial surge in the number of out-of-wedlock births in those countries and the decline of marriage. It is rather dramatic.

Just within the last few days, six experts from Scandinavia have written a letter to other European nations and the United States, I suppose, telling them that they ought to be careful when they start tinkering with the traditional definition of marriage. It has serious sociological impacts on the life and culture of those countries. It is time for us to back up a little bit.

I would also note parenthetically that we have not adopted the socialist model of Europe. Our economy is

stronger. Our unemployment is less. Our growth rate is higher. Our economy is healthier than Europe. We have not followed their mentality on national defense and we have the strongest military in the world and we have the strongest capability in the world. So why would we want to adopt their ideas about marriage? It would be the wrong thing for us to do.

The fact that we have resisted in those areas tells me that we are not on an inevitable decline in marriage.

The PRESIDING OFFICER. Under the previous order, the time of the majority has expired.

Mr. SESSIONS. I ask unanimous consent that I be allowed to speak as in morning business.

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

Mr. SESSIONS. We need to think about those issues and consider seriously the direction this country intends to take on marriage. That is all I am saying. I urge my colleagues to realize this is a significant vote. What we say indicates what this Nation, what this culture thinks about marriage.

I am going to talk in a moment about why it is important. But I do believe it is not disputable that adopting a same-sex marriage culture undermines and weakens marriage.

We had two articulate African-American leaders speak to a group of us a few days ago. They pointed out how hard they worked to sustain marriage in their churches and in their communities, how important they believe it is that there be stable, strong families so that children can be raised in that environment, and how hard they have worked at it and how frustrated they are that we would think about changing the definition of marriage because they are convinced that it would undermine the classical marriage relationship.

Let me just say one more thing parenthetically. I do not believe this debate should be negative. I do not believe it should put down any person, any group of people who have alternative lifestyles. Our Nation allows people to express themselves and live as they choose. I do believe, however, that it is important for us to have as the marital relationship in our country the ideal relationship of a man and a woman. That is what we have always done, and that is what we ought to proceed with now.

I do not believe it is appropriate for me to judge someone else's behavior. That is between them and their Lord. One wise thinker talked about the Scriptures. He said: The Scriptures say we should not be greedy, that we should not be violent. The Scriptures say we should not be angry. All of us violate all kinds of values, principles, moral rules of behavior that our Creator has set for us. So I am not here to judge anybody or condemn anybody. They must live and make their own judgments about how to behave. I have certain beliefs about proper standards of behavior, but I am not able to say I am any better than anybody else who may or may not fail to act in a proper way.

Let's talk about why marriage is important. If we are at a point where we are convinced that this judicial change could further weaken the institution of marriage, then what impact will that have on the people of this country? What impact will that have on the quality of life and the health and vitality of our next generation of young people?

I had the privilege to chair a hearing recently in the Health, Education, Labor, and Pensions Committee. It was entitled ''Healthy Marriage: What Is It and Why Should We Promote It.'' It was a very excellent hearing. I learned an awful lot.

We asked three questions. First, is marriage good? Is it a good thing? Second, if marriage is good, should the Government involve itself in promoting that good? And finally, significantly, can the Government make any difference in marriage in a culture?

After listening to a distinguished panel of witnesses, I determined that the answer to each of these questions is yes. First, we know that marriage is a social good. Children are more likely to be healthy in two-parent homes, and there is less government dependence when people are in families led by married parents.

Second, while government should not be involved in the decision to marry—of course, that is an individual decision—once that decision is made, government should be on the side of supporting marriage, affirming marriage, certainly doing nothing to undermine marriage or reduce its power, its legitimacy, and its sanctity in society.

Government is often on the side of promoting social good. For example, government incentives exist for home ownership. Why? Because we believe home ownership makes for a more stable community. It allows families to generate wealth and create wealth and have something to live in in their old age. That is a good goal and we promote it. We have tax breaks for charitable giving because we want to encourage charity. We have government grants, loans, and tax breaks to encourage people to enhance their education. We have government incentives for preventive health care.

Finally, government can make a difference. Positive examples of government involvement in helping marriage include the Oklahoma marriage savers initiative, as former Oklahoma Gov. Frank Keating testified at our hearing. The marriage savers community policy is something we studied carefully. In the community that has a marriage savers policy, it has strengthened marriage.

I thought the most dramatic testimony came from Dr. Barbara Dafoe Whitehead. I will talk about her testimony in a moment. We also heard from Roland Warren and Dr. Wade Horn, who testified on a number of issues.

All right. So if we continue the European model of deemphasizing the importance of classical marriage, defining it down, if we follow that direction and that further undermines marriage in a society, will it hurt our society? Will we be diminished by it?

Let me share with you some of the facts that have been assembled by Barbara Dafoe Whitehead, Ph.D., director of the National Marriage Project. Ten years ago, she wrote an article that was voted one of the most significant articles in the second half of the 20th century. The title was, ''Dan Quayle Was Right.'' It had to do with former Vice President Dan Quayle's speech in which he questioned the blasé way we treat divorce in our society, and he raised aggressively the importance of marriage. He was roundly condemned and made fun of at that time. Dr. Whitehead later wrote her article. She said she took a lot of criticism. She had criticism from colleges and universities about the data that she had reported from various studies around the country. She noted that she doesn't hear criticism today. Nobody disputes the data. No one disputes that a two-parent traditional family is a healthy, positive force for our society. That is why it is perfectly legitimate for any government to provide laws that further that. That is what we want to do.

Government has a right to further social institutions, to affirm them legally, those institutions that make their society more healthy. This is some of what she said in her statement to the committee:

> On average, married people are happier, healthier, wealthier, enjoy longer lives, and report greater sexual satisfaction than single, divorced, or cohabitating individuals.

Well, after that, I went home and thanked my wife for putting up with me all these years. That is a good affirmation of marriage. There are very few matters that are not encompassed in there that are improved by marriage. She went on to say:

> Married people are less likely to take moral or mortal risk, and are even less inclined to risk-taking when they have children.

Isn't that a good thing? I think so.

> They have better health habits and receive more regular health care. They are less likely to attempt or to commit suicide. They are more likely to enjoy close and supportive relationships with their close relatives and to have a wider social support network. They are better equipped to cope with life crises, such as severe illness, job loss, and extraordinary care needs of sick children or aging parents.

Those are things that come from a marriage. She said:

> If family structure had not changed between 1960 and 1998, the black child poverty rate in 1998 would have been 28 percent rather than 45 percent, and the white child poverty rate would have been [less, also].
>
> Children experience an estimated 70 percent drop in their household income in the immediate aftermath of divorce and, unless

there is a remarriage, the income is still 40 percent to 45 percent lower 6 years later than for children in intact families.

Mr. President, we know these are statistical numbers. We know many families do an extraordinary job outside of the two-parent relationship. Single moms are some of the most courageous people this country has today. They do a great job in many ways, but it is more difficult. Statistically speaking, we know it is more difficult to be as effective.

I will add some other things.

The risk of high school dropout for children from two-parent biological families is substantially less than that for those from single-parent or stepfamilies. Children from married-parent families also have fewer behavioral or school attendance problems and higher levels of educational attainment. They are better able to withstand pressures to engage in early sexual activity and to avoid unwed teen parenthood.

I think those are important values.

They are significantly more likely to earn four-year college degrees or better, and to do better occupationally than children from divorced or single-parent families.

On average, children reared in married-parent families are less vulnerable to serious emotional illness, depression and suicide than children from non-intact families.

Close to 4 out of 10 American children go through a parental divorce.

Children from married-parent families have more satisfying dating relationships, more positive attitudes toward future marriage, and greater success in forming lasting marriages. . . . [Y]oung men from married families are less likely to be divorced and more likely to be married. . . . In addition, young men from married-parent households have more positive attitudes toward women, children, and family life than men who grew up in nonintact families.

Poverty rates for married couples are half those of cohabitating couple parents and one-third those of noncohabitating single parents in households with other adults.

The traditional family is a protection against poverty. The numbers are indisputable on it. I don't see how we can dispute it. So the question is, Do we agree that the rulings of the courts that threaten traditional marriage will further a decline and disrespect for marriage? Will it weaken the definition of marriage, reduce its power and sanctity and integrity? Is that true? I think it is. If that is so, then that is not good for our culture.

If there are not families here to raise children, if there are not families here to nurture them, if there are not families to educate them, to hug them at night, to take them to church, or to help them with their homework, or to tell them how to get over their anger and forgive people who have wronged them, and to go on and be happy and be strong and courageous and do the right thing, who is going to do that? Is it going to be the government, through increased social taxes and welfare, or a secular institution who, by definition, as we have learned in this body, cannot say anything of a spiritual nature in terms of raising children? Do they have to be raised by some secular State? Are we going to be better off if that occurs? I don't think so.

I am not talking about partnerships by people who choose to live together. I am talking about the State definition of marriage. Is that important for America? I think it is.

I see the Senator from Kansas. He eloquently, as I indicated earlier, delineated and explained why the redefinition of marriage guarantees that continual erosion of marriage, and if we erode marriage, we erode this culture, and it will hurt children. It will undermine them and it will undermine our strength as a nation, something any State, any nation has a right to be engaged in, and it ought to be engaged in through its elected representatives, the people they elect, and the people should be able to decide this.

I could go on with point after point from Dr. Barbara Dafoe Whitehead. Her scientific, indisputable evidence of the dangers we face if we think we can blithely go along with the idea that marriage is only what makes people feel good, that marriage is only for adults and what they feel at the time and what they would like to do at the time.

People can do what they like to do—they really can—in this country. We are not putting people in jail for that. But they do not need to have a definition of marriage apply to relationships of that kind. The American people have not voted for it. They have never voted for it. They do not favor it now, and I do not believe they are going to vote for it.

The question is, Will we allow them, through this constitutional amendment process, to speak to the unelected judges through the proper amendment process? Will we block it in the Senate? Or are we going to send it out to the States and let the people have a chance to be heard? I think that is what we ought to do. I cannot imagine why we would not want to do that.

A lot of people say: I do not believe in same-sex unions, or I believe marriage ought to be between a man and a woman. It is nice to say that. Why don't you vote for it? Let's have people up here vote for it; otherwise, we are facing a very strong likelihood we will continue to see the courts erode this historic institution that is so important to our culture.

I thank the Chair.

Mr. SANTORUM. Will the Senator from Alabama yield for a question?

Mr. SESSIONS. I will be pleased to attempt to answer the question of the Senator from Pennsylvania.

Mr. SANTORUM. I have been away for a few hours, running around the Hill, which we tend to do. I want to ask the Senator from Alabama or the Senator from Colorado, has anyone today or in the past 3 days come to the floor of the Senate and announced their support for a redefinition of traditional marriage?

Mr. SESSIONS. I am not aware of that.

Mr. ALLARD. I am not aware of anybody.

Mr. SANTORUM. I have not read any article in a publication or heard any radio or seen any television show or report thereof where anyone in this Chamber has said anything but that they support the definition of traditional marriage.

Mr. President, do my colleagues have any comments?

Mr. SESSIONS. I think the Senator from Pennsylvania is exactly correct.

Mr. SANTORUM. Yet we have heard on the floor today, have we not, that those of us who support a definition with which they agree, that Members who have criticized us for offering this, are intolerant, hateful, and gay bashers for proposing language which they say they support; is that an accurate description of what has gone on here today?

Mr. SESSIONS. I have not been here throughout the day. I have not heard all of those charges made, but it does seem close to what I have been reading and hearing; yes.

Mr. SANTORUM. Mr. President, does the Senator from Colorado wish to comment on Members who oppose this constitutional amendment yet support the language of it, which I find to be somewhat remarkable, but they support the definition of traditional marriage and have stated so, yet accuse those of us who would like to put it in law, in a constitutional amendment, as being purveyors of hate and intolerance; is that not what has happened today on the floor of the Senate?

Mr. ALLARD. To respond to the question of the Senator from Pennsylvania, I think there has been some attempt to try to make that case today on the floor. As the lead sponsor of this particular amendment, it does not hold any water for me because, as was reported in the papers, I have had individuals work for me who profess to the fact that they are homosexual, and despite that, I recognize publicly that they have done a great job in my office. I have even presented an award to one of those individuals so he would have a scholarship to go to school and further his education.

So anybody who tries to make a case as far as this individual is concerned of animus in their debate, somehow there is animosity, it will not hold water. In fact, what this issue is about, No. 1, is any individual who wants to profess a lifestyle that incorporates same-sex marriage, that is their personal decision, but the debate is they simply do not have a right to change the definition of marriage, and that is what this debate is all about.

Mr. SANTORUM. I would like to pick up on what the Senator from Colorado said, which is, I know in my office, we have provisions in our office manual which actually prohibit any discrimination on the basis of race, sex, national origin, or sexual preference. We have those provisions in our office manual. And we do not discriminate in hiring.

I believe people can make contributions and should make contributions

and should be able to contribute to our society, particularly here on the Hill. I know, as has been reported widely in the press, there are a lot of people in this category on both sides of the aisle who are homosexuals who make great contributions to this Chamber. No one wants to deny them their ability to live out their dreams. But as I think the Senator from Colorado said, it is important for us to understand that this debate is not about limiting anybody's choices, except children, because that is really what this debate is about.

If we change the definition of marriage, we end up limiting the choices of children and having the right to have a mother or father. I know this is on the time of the Senator from Alabama. I wanted to make sure I had not missed anything.

Mr. SESSIONS. No, I think the Senator made a very critical point, and that is there is no room to suggest that those of us who read the Supreme Court opinion of the United States, who watch what is happening in Massachusetts, who have seen what is happening in other places around the country, actions that are contrary to the will of the people of the United States of America through their elected representatives—and people say—they agree with the people. People indicate they are supportive of where the people are. So how can they condemn an amendment that Senator ALLARD has worked on that simply affirms the traditional definition of marriage that they say they support?

Mr. BROWNBACK. Mr. President, will the Senator from Alabama yield for another question?

Mr. SESSIONS. I will be pleased to yield.

Mr. BROWNBACK. If I can ask the Senator from Alabama, it seems to me that we have been discussing for at least 2 years, maybe 5 years now, ways to strengthen marriage in America. I believe the Senator supported the elimination of the marriage tax penalty. We have had huge debates about that marriage tax penalty, the whole issue being, how can we strengthen marriage and why do we want to do that. Because it is the best place to raise children and the Government has a great interest in it.

We just embarked, I believe, on a welfare debate where we were debating the issue within welfare and trying to encourage marriage amongst people on public assistance because it raises them out of poverty and helps children; is that correct, we have been debating those two issues as ways to strengthen marriage?

Mr. SESSIONS. The Senator is absolutely correct. Dr. Wade Horn, from the Department of Health and Human Services, who testified before my committee, says that any welfare reform we pass must help strengthen marriage because without marriage, poverty is increased.

Mr. BROWNBACK. Then it seems questionable to me, if we have done these sort of things, we have invested billions of dollars to try to strengthen marriage, we are doing away with the marriage penalty tax because we want to encourage marriage because that is good for children and good for America, and we are trying to encourage marriage in the welfare reform bill because it is good for children and good for people in poverty to lift them out of poverty, and the Senator was citing that, then why would we allow the courts to redefine marriage to include same-sex unions where we know in case study after case study that weakens the institution of marriage, that hurts the creation of strong, vital marriages, and it is defining marriage downward? Why would we do something that is so counter to what we have been trying to change over the past several years by making promarriage policies and we would now do something that is antimarriage and against the children?

Mr. SESSIONS. I could not agree with the Senator more. Why would we do this? I think most Senators who are elected to this Senate have campaigned on and heard from their constituents a growing concern and unease about some of the cultural trends we are seeing, particularly in family and values in the family. All of us have said we are going to do something about it. We need to strengthen family and not undermine it. I believe this is a step downwards.

I know the Senator was an admirer, as I have been, of former Senator Daniel Patrick Moynihan, a great scholar, a man who studied social policy in depth as a professor, as a Cabinet member, and as a Senator. The Senator stated the other day how important that Democratic Senator from New York felt about marriage. If the Senator recalls those words, it would be important for us to hear them again.

Mr. BROWNBACK. I worked with him on a number of issues, and he was a great study of culture. He actually said the central conservative truth is that culture is more important than government. What culture honors and what it does not honor, what it upholds, what it says is good, and what it says is wrong is more important than the government around it. He was saying actually that the central role of government at all levels should be to see that children are born and remain in intact families. This was his comment. He was saying that because that is the central foundational character of building the institution that we have. It is not government. Government is important. It provides a number of very useful functions, but it is not the central entity. It is that family basis that builds the strong citizenry, strong people.

As a cultural commentator, he saw that. As a matter of fact, he nearly lost his job in the 1960s by commenting about the disintegration of the American family in a particular ethnic group at that time, but he was just saying that if that family unit is ruined, it goes downhill and has an effect on the children. That is why he felt so strongly about it and why I feel so strongly about it. In looking at these cultural indicators, we need to do everything we can to help this institution that is in trouble.

Marriage is in trouble in America. I have a chart that I will quickly share with my colleagues to show the type of trouble we are in.

Mr. SESSIONS. Mr. President, I yield the floor to the Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. BROWNBACK. Mr. President, to make this point, and I will not belabor it with my colleagues who want to speak, but I want to show the portion of children entering broken families has more than quadrupled since 1950. I think a lot of us in this room were born in the 1950s. We can see on this chart the children born out of wedlock and as parents are divorced in 1950 is about 12 percent or so. Going to the year 2000, it is up to about 55 percent. The reason that is problematic is we know children operate and function best in a family with a mom and a dad and a low-conflict union. We know that marriage is incredibly important to the formation of these children for the next generation. That does not mean they cannot succeed in this type of setting. They can, and many do. It just means the odds are tougher. It is more difficult for them.

Now if we take this institution of marriage that is already having difficulty, already is having trouble staying together, and say to it basically we are going to define it differently now than we have through 5,000 years of human existence—and the reason it has been defined this way for 5,000 years of human existence is there is a natural order to us. We know that marriage is between a man and a woman. It is written in our hearts. We understand that. A law does not have to be written on it; it is in the natural order of mankind. If we start telling people by the law, and the law is a teacher, no, it is not really that, it can be any sort of union one wants: It can be two men, it can be two women, then it starts to further make difficult this situation and it further erodes the marital union. That is the problem.

This is not about same-sex marriage. This is about kids. This is about a 5,000-year-old institution that has served society throughout history, and it is being redefined in a way that goes against what we understand it is in our hearts. This is harmful, and we know that from other countries that have engaged in it.

This is going the wrong way, and it is against clear public policy trends that we have engaged in in this body. It is even against what everybody in this body says. Everybody in this body says they are for traditional marriage between a man and a woman. So if they are, then vote that way and stand up for it instead of further harming these

trendlines of an institution that is vitally important. We should not do that.

Mr. ALLARD. Will the Senator from Kansas yield for a question?

Mr. BROWNBACK. Yes, I would be happy to.

Mr. ALLARD. I have always felt that marriage was the fundamental building block of any society, and especially if one is talking about a democracy like we have in the United States. I have always been of the view that as long as there is a good basis for families to function, that means there would be less need for government, and there would be fewer programs. That has always had a particular appeal to me because I do not believe we need more government; I believe we need less government.

I have always felt that there is definitely a role for a mother and a father and a husband and a wife, and that the culture that promotes the basic fundamental unit where they teach their children about the future based on their experiences in life is something that is very difficult to supplant as an effective unit, and I think historically over thousands of years that has proven true. We are on the verge of redefining marriage which will put this basic unit that is so fundamental to society at risk. Would the Senator from Kansas agree with that?

Mr. BROWNBACK. I could not agree more. Since I have been in the Senate, I have been one who has spoken out about the cultural problems that we have had and that we are in. If we take an already weakened institution—that is, the central basis by which we have values that we pass on to the next generation the lessons learned from the prior generation, where there are people who care and are in a bonded relationship that is there for life—if that is further eroded by teaching through the law that it can be any sort of arrangement one wants it to be and it is about how people care for each other, if they have love for each other, and not about the next generation or building that family and building children for the next generation, we really are moving ourselves into a terrain we have not seen in human history. What we see taking place now says it takes us in the wrong direction.

We know that clearly from the Netherlands and we know that from their scholars now who are saying they have to figure some way to try to again instill traditional marriage because people are walking away from it. There are counties in Norway where 80 percent of the children are born out of wedlock because you have defined away that marriage institution and you have said it is not a sacred institution, it is a civil rights institution, and it can be any arrangement you want. It weakens a fundamental institution we need for this country to be strong in the future.

Mr. ALLARD. I would like to thank the Senator from Kansas for his leadership. He has become recognized as a strong proponent of families and proponent for children. I, for one, appreciate his leadership in the Senate.

Mr. BROWNBACK. I thank my colleague and yield the floor.

Mr. SESSIONS. Will the Senator yield for two brief questions? One is, as you discussed and I attempted to discuss, isn't it valid and doesn't a government have a rational basis to affirm traditional marriage? Isn't there evidence, based on the data we have heard and seen, that there is a rational, foundational basis for a government to affirm the traditional marriage as opposed to other relationships in society?

Mr. BROWNBACK. There is not only a rational basis as the legal argument would have it, there is a moral imperative to do so. If you want a strong citizenry in the future, raised in a situation that is optimal—a mom and a dad bonded together for life, in a low-conflict union—if you want an optimal setting for most of your citizenry, you are obligated to push this union in a setting and to say, in speaking to the society, this is where we need the children raised. This is the optimal setting. This is the place.

Not that everybody will achieve the optimal. They clearly will not. All families in this country, mine included, have had difficulties in this area. There is no question about that. But if you remove the optimal and say it is too hard, we can't get there, and let's give up, it is a sure way to pave the road down. We know that from other countries' experience.

It is not only a rational basis, a legal argument, I would say it is a moral imperative as a government official that you press as much as you can to have children raised in this optimal setting.

Mr. SESSIONS. I couldn't agree with you more. You stated it so well.

I do not want to demean or speak down about any relationship or any persons and the choices they make. But let's say this. Statistically speaking, do fathers and mothers both make different contributions to the health and development of a child?

Mr. BROWNBACK. Obviously we know that from the social data. I have charts I have gone through previously that show that each contributes differently to the makeup and the nature of that child and making a healthy, well-rounded child. We know that from the social data.

But there is another argument that I think is actually more powerful. We know that in our hearts. We know that from the time we have come up in this society. We know that from 6,000 years of human history. That is one of those things that, again, is written on the heart of man, that you know this is the way it is to be.

Even when you talk with people today who are raising children in a single-parent household, by and large virtually all of them wish what they had was a mom and a dad here in a bonded relationship who love each other and care for each other, that recognize divine authority in their lives and that pass on to that next generation the hope and their love and the yearning for yet a better era coming forward.

That is what we all want. It is not by accident or even by social programming that we want that. That is written on our hearts. All of our colleagues would agree with that. I think we should recognize the truth of that and not say that may be written on your hearts but that was programmed when you were a kid growing up in Parker, KS, and this is different. This is there. It is there for a reason. It is there because it is best for the kids.

Mr. SESSIONS. I thank the Senator.

Mr. BROWNBACK. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, we have been hearing the point that there is no threat and we are being somewhat paranoid about this issue. But I have a summary here of the court actions that have been brought up in the various States throughout this country. I am amazed, frankly flabbergasted, at the number of cases that have been brought before the various State courts and in some cases the Federal court. I thought I would take a moment to go through some of these cases. I think once you have seen the whole litany of cases here you begin to understand there is an organized, concerted effort starting at the State courts and then eventually moving into the Federal courts and hopefully, by those who support same-sex marriage, to the U.S. Supreme Court for a favored ruling. I will start with Alabama.

This case has been recently dismissed as of April. They had two men in an Alabama State prison who sued the State for the right to marry each other. They said they had a Federal constitutional right to marriage. As I mentioned, this case was dismissed.

In Alaska, there is an interesting case, a case pending currently in the State supreme court. The ACLU has sued to prevent Alaska from granting benefits to married couples if the State does not provide the same benefits to same-sex couples. This case has been argued in the Alaska Supreme Court and could be decided any day.

In Arizona, again the State supreme court has refused to hear a case brought there where two men were denied a marriage license and sued in State court. They lost in the district court on their first appeal and curiously the gay rights groups tried to talk them out of pursuing their case because it interfered with the group's national litigation strategy. Let me repeat this. Gay rights groups tried to talk them out of pursuing their case because it interfered with the group's national litigation strategy. On May 25 of this year, the Arizona Supreme Court refused to hear their appeal which should bring this particular litigation to an end.

In the State of California, we have a number of pending cases. That is probably not a surprise to anybody here on

the floor. There is a case pending in the State supreme court about San Francisco's mayor who defied State law and began issuing marriage licenses to same-sex couples in February of this year. They made a court case about it. The States refused to register the marriages and same-sex couples from 46 States received licenses while San Francisco was issuing licenses. Several lawsuits were filed to challenge San Francisco's action. They are now consolidated in the California Supreme Court. The State of California is defending its traditional marriage laws and the statewide initiative that passed with 60 percent of the vote in 2000. Again, a decision is expected on that particular case.

I would like to correct the record. I think one of the colleagues made the statement that there are no Federal court challenges to DOMA, the Defense of Marriage Act. Actually, in Florida there is a Federal court challenge to DOMA, or the Defense of Marriage Act. A private attorney announced on the 11th of this month that he would soon file a Federal lawsuit challenging the DOMA law. The lawsuit is expected to be filed as we move forward.

We have two separate cases pending in State trial court in Florida. Two cases have been filed in the State trial court challenging Florida's traditional marriage laws. Again, this first case is a class action filed in Broward County by a private attorney. Later it was filed in Key West by the National Center for Lesbian Rights.

It was interesting to get the public reaction when the private attorney talked about filing his Federal lawsuit in Florida with the Federal court challenge, and the reaction from those groups supporting same-sex marriage. They didn't want him to file that because they felt it would bring it too quickly to the U.S. Supreme Court and they would not be prepared in order to make the case in front of the Supreme Court. I thought that was an interesting reaction in the public media when that case was talked about being filed.

In Georgia, there was a case seeking recognition of a Vermont civil union, which was rejected by Georgia's State court. In Burns v. Burns, the parties sought to have a Vermont civil union treated as a legal marriage in Georgia and the trial court and court of appeals refused to treat a Vermont civil union as a marriage and the Georgia Supreme Court declined to review the case.

In Indiana, there is a case pending in the Indiana Court of Appeals. Three same-sex couples sued in Marion County Superior Court for the right to marry under the Constitution.

This case was dismissed and is now on appeal to the intermediate State appeals court. This case is Morrison v. Sadler.

In Iowa, there is a same-sex divorce case that was dismissed. Two women entered into a civil union in Vermont and later asked an Iowa trial court to grant them a divorce.

They are coming at this from various angles.

In December 2003, the Iowa court initially granted the divorce, but after his action was challenged because Iowa did not recognize same-sex marriage in Vermont civil unions, the judge reworked the order dividing the couple's property. The civil union was not recognized.

In Maryland, a lawsuit was filed July 7 of 2004. The ACLU filed a lawsuit in State court demanding the State grant marriage licenses to same-sex couples.

In Massachusetts, activists announced on June 16, 2004, that they would challenge in court the 1913 Massachusetts law that prevents same-sex marriage to out-of-State couples. I believe that case was filed today.

In Montana, there is a case pending in State supreme court. The Montana chapter of the ACLU sued on behalf of two lesbian employees of the Montana State University system challenging that the State discriminates against gay and lesbian employees by giving spousal benefits only to married couples. The trial court dismissed the case in November of 2002 and the case is now pending on appeal before the Montana Supreme Court. This case is called Snetsinger v. Board of Regents.

In Nebraska, there is an interesting Federal case. There is a Federal case pending in Federal District Court. The ACLU has filed suit to challenge a State constitutional amendment that defines marriage as man and woman and bars civil unions or domestic partnerships. They went much further than what my amendment provides. The ACLU argued that the State constitutional amendment violates the U.S. Supreme Court's decision in Romer v. Evans. In a preliminary ruling, the Federal district judge indicated sympathy with the ACLU claim and the Nebraska attorney general Jon Bruning told the Senate Judiciary Subcommittee on the Constitution that he expects Nebraska to lose the case. This is the constitutional amendment in Nebraska that was passed with 70 percent of the voters in Nebraska. I think this has all sorts of implications. It has been filed in the district court.

There is a case in New Jersey pending in the State court of appeals. In 2002, Lambda Legal filed a suit in State court on behalf of same-sex couples seeking to marry. The State district court dismissed their case and Lambda has appealed to the intermediate State appeals court. The case is called Lewis v. Harris. The town of New Asbury, NJ has announced that it will file amicus briefs in support of the same-sex couples.

In New Mexico, there is a case pending in State trial court. The Sandoval County clerk issued marriage licenses to same-sex couples in February of 2004. The New Mexico Supreme Court has agreed to hear arguments regarding the issuing of marriage licenses to same-sex couples in Sandoval County. It is unclear if the court will decide the case this summer or fall, or if the decision will be delayed until 2005.

In New York, there is a case pending in State trial court in March and April of 2004. The ACLU and Lambda Legal each filed lawsuits arguing that to deny same-sex couples the right to marry one another violates the New York Constitution.

In North Carolina, a case was withdrawn by a same-sex couple. In March 2004, they were denied a marriage license by Durham County, NC. So they filed a lawsuit.

In Oklahoma, the State ballot initiative may be challenged. The ACLU is threatening to challenge a November 2004 ballot.

In Oregon, there is a case on appeal to the State intermediate court in Multnomah County, which includes Portland, which began issuing marriage licenses to same-sex couples in February of 2004. More than 3,000 marriage licenses were issued. On April 20, the State trial court ruled the marriage licenses conducted over the past 2 months were legal and that Oregon must register the marriages as valid. The State court of appeals stayed the lower court's order requiring the State to recognize the 3,022 marriage licenses of same-sex couples in the Portland area.

In Pennsylvania, a lawsuit has been threatened after a same-sex couple was denied a marriage license.

In Rhode Island, the State attorney general stated on May 17 that he interpreted Rhode Island law to require recognition of Massachusetts same-sex marriages.

In Tennessee, the Associated Press reported a same-sex couple was planning to file a lawsuit.

In Texas, a same-sex divorce case was dismissed there.

In Virginia and Washington, there are three cases pending in State trial court.

In West Virginia, we have a case dismissed by the supreme court with a possible review by the U.S. Supreme Court.

This gives an overview of the amount of lawsuits that have been filed throughout this country in trying to establish a case in certain venues that could be appealed to a higher court.

This is an organized effort. I think when you look at the cases that have been filed in the various courts, it is hard to say marriage shouldn't be protected. Marriage is under assault. That is why it is important that we move forward with this particular piece of legislation because, as has been stated time and time again here on the floor of the Senate, when you look at the Goodridge case and the Lawrence v. Texas case, and then the Constitution as it applies between the interaction between States and comments from members of the U.S. Supreme Court, there is definitely a threat to traditional marriage.

My hope is we can get this passed, get it through the House, and get it before the people of America so they can

help decide this issue. If they are successful, then it means the courts will not have defined marriage. The American people will have had an opportunity to enter into this debate. With this particular amendment before us, through their elected representatives the American people will have an opportunity to have their voice heard in the Senate. It was brought up in the House. As they will read it in the papers this fall, later on people will have an opportunity to express their views through the Members in the U.S. House of Representatives. Then at some point in time, if we get enough votes—a two-thirds vote in both the House and Senate—then it goes to the States and three-quarters of the States ratify it, then this means it is debated in the legislatures and the American people will have an opportunity to again make their views known about how they feel about protecting marriage.

This was put in place by our Founders because ultimately they did not want to have the courts to have the final say on issues where there was a large percentage of the population in America who felt they would have an opportunity to address this issue through a constitutional amendment.

This is something that has been laid out by our Founders. I think it is time we have this amendment before us now for debate.

Let me make one additional comment. In the Oregon State Court of Appeals, they decided this week that the State must enroll the marriages, which would be to recognize marriages.

This issue is moving forward. I am pleased about the amount of support we have had from Members of the Senate coming forward and expressing their support. I thank them for that. I thank them for the leadership of the Senator from Pennsylvania and the Senator from Kansas. I thank the Senator from Alabama for his support. Without them, I think a good deal of the substance of this debate would have been missed. I appreciate their effort and dedication to the family.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, I return the thanks to the Senator from Colorado for his willingness to step forward and introduce this legislation. He has carried it with a firmness of purpose and a gentle touch, which is his way, in the way of bringing this issue squarely to the Senate before the American public. He is to be congratulated.

The leader is in the Senate. I thank him for agreeing to bring this bill before the Senate, to have a vote on this constitutional amendment in the Senate, and to have this first public debate about the institution of marriage and the attempt to redefine that institution by the courts.

If I can, I want to start from scratch to answer the question that many have offered today on the other side of the aisle, which is, Why are we here?

Some have suggested we are here because we hate certain people. Some suggest we are here because we are politically motivated to try to rally troops before the election. Some suggest we are here because we want to change the subject to something other than what we have been debating for the last several months in the Senate.

We suggest we are here because we want to preserve an institution that has served civilization well for 5,000 years. While that institution has been shaken, that institution has fissures in the foundation; it is still an institution worth preserving. It is an institution worth rebuilding. It is an institution worth fixing the cracks in that foundation. It is an institution worth shoring up and strengthening that foundation.

It is not an institution that we need to say, because it is broken, because the institution of marriage is not what it once was—I think everyone will accept in this body, those who are fighting for traditional marriage, will say no, the institution of marriage is not what it once was. It certainly has been the glue that has held the family together. Every culture, every civilization known to man, has had an institution of marriage of some bright, ritual symbol that has shown the monogamous bond between a man and a woman. Why? For the purpose of continuing on that civilization and a recognition that children need moms and dads and moms and dads who are in committed relationships is the ideal.

I look at my kids. I am blessed to have seven children, six of which we are raising. I know my children feel safer, feel more secure, more confident, knowing their mom and dad are there and are supportive and loving.

There are lots of people in our society who were raised by single parents who feel that love and support from that single parent. Those single parents in many cases do extraordinary jobs. But even if you talk to single parents and kids raised by single parents and you ask them, wouldn't it have been better, the ideal, if mom and dad were joined together in a healthy marriage, raising you in a safe and secure and stable home? The answer is, invariably, yes.

What we are here to debate is not an abstract concept of what marriage is or what it should be, but it is a real social benefit. I cannot think of anything more we can do—and the Senator from Kansas talked about this—there is nothing more we have focused in on in the last several years than trying to shore up and affirm marriage. Whether it is the marriage penalty or the marriage initiative the President put forward in the welfare bill, the idea from all the social science data is there are enormous benefits to marriage.

We had a hearing in the Finance Committee, on which I serve. The hearing brought forth witnesses from the left and right. We asked them a series of questions about marriage and its benefits. There was a woman representing the Democratic side of the aisle. She made the argument that raising children by parents in an alternative form is just as good as being raised by a mother and a father in a loving, stable relationship. That argument is over. Yes, it can happen, but it is not the ideal. It is not best for children across the board.

The children do better in school. They have less dropouts, fewer emotional and behavioral problems, less substance abuse, less abuse and neglect, less criminal activity, less early sexual activities, and fewer out-of-wedlock births. And more. The evidence presented was dumped on us overwhelming, the benefits of marriage, irrespective of social or economic condition, the benefits of having a mother and a father contributing their unique nature to the nature of that child.

The evidence is in. The jury is in. Marriage is good. Marriage is a public-policy-desirable goal. Why? Because it benefits children but it also benefits mothers and fathers.

I read yesterday, and I will repeat today, a listing of five things in the sense of the purpose of marriage, what it does to benefit the culture.

No. 1, the bonding between men and women that ensures their cooperation for the common good.

By the way, this article was written by two professors in Canada, a woman professor who is straight and a homosexual man. They wrote this article in support of traditional marriage in opposition to a redefinition of traditional marriage to include same-sex couples. They did so based purely on sociological data, on psychological data, on the overwhelming evidence of the public good of traditional marriage.

No. 1, I mentioned, the important bond between men and women.

No. 2, the birth and rearing of children, at least to the extent necessary for preserving and fostering society and culturally approved ways.

No. 3, bonding between men and children so men are likely to become active participants in family life.

I will stop to focus on that for a minute. We have an initiative in the President's welfare bill, the Father's Initiative, that Senator BAYH and I have championed, responsible fatherhood. Why? Because in our culture today there are crosscurrents about what fatherhood means. In certain subcultures, fatherhood means having children, period. What are the effects in that subculture of the role of the father being simply biological and nothing more?

When fathers are absent versus when fathers are involved: Fathers absent, two times more likely to abuse drugs; fathers absent, two times more likely to be abused; two times more likely to become involved in a crime; fathers absent, three times more likely to fail in school; three times more likely to commit suicide; and five times more likely to be in poverty.

The evidence is in. There is a role for society to encourage fathers to be more

than biological fathers, but to be involved in the rearing of that child, preferably in a committed relationship with the mother. These numbers all go up if you have committed, stable, low-conflict relationships between the mother and the father.

So there is a role for government, as a public policy, for the benefit of children and the community in which they live because these children just do not, through this activity, affect themselves, do they? No, no. When they commit crimes or when they abuse drugs or when they commit suicide or when they live in poverty, that does not just stay with them. So there is a real public policy objective in promoting stable marriages and fatherhood.

No. 4, some healthy form of masculine identity. What does that mean? Well, they go on—which is based on the need for at least one distinctive, necessary, and publicly valued contribution to society. It is especially important today because two other cross-definitions of ''manhood,'' which is the definition of manhood being ''provider'' and ''protector,'' are no longer distinctive now that women have assumed those roles in society.

So what are they saying here? They are saying that men have an identity crisis. The traditional role of the man is no longer the traditional role of the man. You say: Well, what's the big deal? Everybody is equal.

When you rob someone of a role they believe they have, as society in some degree has, then you have a belief among large segments of society that they have no role; they do not have to provide; they do not have to protect; they do not have to nurture. That is not the role anymore for men in society. It simply is to pursue selfish goals, but they are not needed anymore.

We can all go back about the genesis of this and the movement that caused it, but the bottom line is, it is real, and it is reflected in these numbers. So it is important for society to say to men that marriage is good and expected and is healthy and is optimal, and to have laws that say that dropping specimens off at a sperm bank is not fatherhood, but committed relationships with the mother of your children in a marriage that gives you and her and your children security is expected.

Now, I know there are a lot of cultures that do not support that, subcultures in America, but the legal, statutory reflection of the culture should be that ideal. Our laws should reflect the ideal of what is best for that man, for that woman, and for those children.

No. 5, the transformation of adolescents into sexually responsible adults; that is, young men and women who are ready for marriage and to begin a new cycle. This relates the key contributions that men and women make to the upbringing of young men and young women.

As the father of boys and girls, I make different contributions as a father to my girls than I do to my boys. They look at me different. I am different in their minds, and I represent different things that will have an effect on them in their ability to have successful relationships in the future. That is real.

Now, we can all play games that people can substitute, that it does not matter whether it is two men or two women or one man or one woman or no women or no men or whatever, but the fact is, there is a difference. We tend to try to deny that. It is politically correct to say there is not a difference, but the fact is that fathers and mothers contribute different things to children.

So why did I go through all this? It is important to understand what we are talking about here is very important, and what is being talked about in the courts across America is destroying this very important institution to the American society—to any society.

Now, some have suggested this is not a real assault, that it is trumped up for political purposes. Two of the speakers, remarkably—Senator CLINTON and Senator DAYTON—both of them said—I will quote Senator CLINTON where she says: The Defense of Marriage Act, known as DOMA, has not even been challenged at the Federal level. That is a quote from her statement today. For the record, false. False. Senator DAYTON made a similar comment. I think others have made similar comments, except I have the transcripts of these two Senators. False. I submit for the record that there are pleadings in Florida and pleadings in Washington State challenging the constitutionality of the Defense of Marriage Act.

So the idea that the Defense of Marriage Act is not under assault is not true. The Senator from Colorado a few minutes ago laid out the State-by-State challenges that are going on, some with respect to the Massachusetts marriages, some with respect to the Oregon marriages, some with respect to the New York marriages, some with respect to the California marriages, and we go on and on. And there will be more.

I think there are challenges in 46 States to traditional marriage as being unconstitutional. So to suggest that 46 States—whether it is civil unions or marriages—are being challenged by same-sex couples or whether it is two States where the Defense of Marriage Act is being challenged, that somehow or other that is not a serious threat when one State has already determined that there is a constitutional basis, and in writing the decision referred to a U.S. Supreme Court case decided last year—Lawrence v. Texas—in making the determination that you could not discriminate against same-sex couples with respect to marriage, and we do not believe here that this is a serious assault? What do we need? Do we need all the States and the Supreme Court to decide this issue, and then we say: OK, now we decide. Well, the Senator from New York said her father used to refer to it as closing the barn door after the horse has left.

By the way, this is a remarkably similar strategy to that which was used in the 1950s and 1960s with respect to the issue of abortion. What happened in that case was a little different. Instead of the courts imposing abortion on the States—although that may have been done; I am just not aware of, maybe as well as I should be, the history—but I do know certain legislatures throughout the country began changing the statutes with respect to abortion, which, of course, 50, 60 years ago was basically illegal in every State in the country. Over time, just a few States changed their law. This created conflicts between the States as to how they were going to deal with this issue.

The same thing is happening here State by State. At a minimum, there will be more States because there are certainly a lot of liberal justices of supreme courts in the various States around the country. There will be more States that will ''find'' this constitutional right either within the Federal or State constitution or both.

There will be another State and another State that will accept a redefinition of marriage. And the conflicts that will result as a result of that are reflective of the one case I just submitted, which is the Washington State case. In the Washington State case, a lesbian couple married in Canada where they have such laws and came to Washington State and filed bankruptcy. So they wanted distribution of assets based on marriage. And the State of Washington just said: We have to figure out whether or not this is constitutional, whether we have to accept this or whether the Defense of Marriage Act bars us from doing so.

We will get this in State after State after State, and there will be conflicts. There will be court decisions all over the place. The Supreme Court will have to come in and say: We didn't want to do this. We feel our hand is forced—just like Roe v. Wade—that this is an issue that cannot have this kind of disparity of unequal treatment between States, and we will then settle it for everybody, which will, of course, mean a complete redefinition of marriage. You don't have to have a crystal ball to figure this one out.

We can sit back. This is the great, this is the classic just sit back; say what you believe the public wants to hear; profess your allegiance to traditional values, and then let someone else do the dirty work for you. And it will happen. It will happen. Maybe more dramatically, the court may say we are going to take this on and do it ourselves. There seems to be a majority in the court to do that. But even if they are not aggressive, eventually it is a done deal.

And everyone will come out here and profess: No, the States can deal with it. The States can handle this. We are for States rights. To hear the Senator

from Massachusetts talk about States rights, I thought maybe the ceiling would fall. Issue after issue, time after time, Members on that side of the aisle vote continually to take power from the States, continually to federalize every issue.

But when it comes to something as irrelevant, something as unimportant as the family and marriage, no, no, we can't deal with this. No, this is in the general State purview, as if passing major education reform isn't a State issue. That is a State issue. As if doing welfare isn't a State issue. State issue. Transportation, State issue. Health care, welfare, all of these issues which we spend most of our time and an increasing portion of our money on are all under the purview, under this Constitution, of the States, and we have no problem dictating to the States how to run their schools, how to run their hospitals, how to run their welfare departments. But not when it comes to protecting this fragile institution, this institution that is so out of favor within the popular culture.

Listen to the music. Do you hear affirming things about the treatment of women in the music in the popular culture today? Do you hear songs about commitment and marriage in the popular culture today? Do you see movies reaffirming the traditional role of fathers raising their children and responsible actions on the part of parents and would-be parents? This is an institution that is swimming against a toxic tide of popular culture that wants to just drown it.

As the justices from Massachusetts said, speaking for our culture, I believe, marriage is a stain on our laws that must be eradicated. That is how Hollywood views marriage. That is how the music industry views marriage. That is how the media views marriage.

What are they writing about here? Are they writing about this marriage debate? No, they are writing about the conflict between Republicans in trying to get a vote on the floor of the Senate. Give me a break. One AP reporter writes this story, and he is a decent man. I know he can't be this uninformed.

What are we trying to accomplish on the floor of the Senate? We have two amendments on this side of the aisle. It has not been unknown that there have been actually as many as three amendments on this side of the aisle. This is not unknown to anybody. What do we want to do? Well, we can't put forward both so we put forward one, the one that we believe is our best, our optimal solution. By the way, that is done with frequency in the U.S. Senate, where you come forward with what you want to accomplish. And if you can't get that done, what do you do? You offer plan B, what you think will get something accomplished but not as much as you want.

And so we wanted to offer plan A. And if plan A didn't work—A, Senator ALLARD's amendment—then we would offer plan B, which happened to be GORDON SMITH's amendment.

That is not confusion or division. It is simply a time-tested, age-old strategy in every dealing that I am aware of in life, which is you try to get as much as you can. And if you can't, you take plan B and try to get as much as you can there. But that is not what people write. They don't want to write about the substance of the marriage debate, which by and large has not really been engaged in here.

The substance on the other side of the aisle when it comes to this issue is that, No. 1, it is political. No. 2, we should be talking about homeland security. I am for homeland security. But there isn't enough money in the world that you can spend to secure the home more than marriage. You want to invest in homeland security? You invest in marriage. You invest in the stability of the family. That is what this amendment is.

I hear from speaker after speaker: There are more important things to debate on the floor of the Senate than the family. Think about that. There are more important things to debate: homeland security, spending more money, which, by the way, won't be spent until October 1 of next year. Spending a few billion more dollars is more important than preserving the traditional family in America. No, they haven't been debating the substance.

I asked the Senator from Alabama earlier, I don't believe anybody has come forward and said they are not for traditional marriage. I think I am wrong. I was handed Senator KENNEDY's speech.

Senator KENNEDY said: I happen to be someone that supports the court decision in Massachusetts. I am proud of them. I happen to support the court decision in Massachusetts. I am proud that four justices redefined and forced the Massachusetts legislature to rewrite their laws, and they are the only ones who are allowed to do that, forced the legislature to rewrite their laws with respect to marriage. I am proud of them.

Do we hear any comment about this agenda? What is this agenda? I am proud that four unelected judges can usurp the authority of the legislative branch and roll them and force them to do something that the people of Massachusetts don't want. I am proud of them.

I don't think John Adams would have said the same thing. I don't think Jefferson or Madison would have. One of my colleagues referred to Madison, that he would be with Madison. I don't think Madison would see it as the role of judges to rewrite the Constitution when they have a hankering to do so. I think Mr. Madison would have a big-time problem with what he would see as an abuse of article V. Article V is an amendment of the constitutional process. Nowhere in there do I see Mr. Madison talking about judges changing the Constitution when they feel like it. But, you see, as the Senator from New York, Senator CLINTON said, ''I am in agreement that the Constitution is a living and working accomplishment.''

My question is, who is doing the living? You see, I thought from article V that the living part was those of us here in the legislature, those of us across the States who would determine when it is appropriate to institute new rights or obligations in the Constitution. That is what I thought this living, dynamic document was. But that is not what those who oppose this amendment believe the Constitution is, no. The living that is going on is not the American public doing the living. Oh, no. It is a few hand-picked judges who have the right to breathe life into the Constitution. See, they are the ones who get to change the Constitution, without going through this complex, sort of long, drawn out, tedious, expensive process of getting two-thirds of the votes here in the Senate, and two-thirds of the votes in the House, and three-quarters of the State legislatures.

By the way, in responding to an earlier comment of a colleague on this side, it is not three-quarters of the United States, it is three-quarters of the state legislatures by a majority vote.

By the way, from everything I have seen, and from every poll I have seen across America, those votes are probably there. The problem here is in this great institution that is supposed to be a reflection of American values, 99 to 1, we are all for traditional marriage. But it is like a mirror in this case because it is not real. You can sort of look at that reflection and try to touch it, but it is not real, it is only a reflection because they are not voting that way.

If you want to protect traditional marriage, you should vote for cloture and for one of these constitutional amendments that will be offered. The Hippocratic oath says, ''First, do no harm.'' My question to those who are going to vote ''no'' tomorrow is, what harm do you believe a constitutional amendment does to the institution of marriage, which you say you support? You support the definition within this constitutional amendment that marriage is between one man and one woman. All but one Senator said they support that. There may be more who don't. I suspect maybe a lot more, but I don't know. Probably a few more are right now sort of staying low, saying all the right things, what the polls indicate is popular, and have their fingers crossed and are thinking let this issue pass; let this issue pass by and let it quiet down, and then let the courts do what we want them to do. Then we will get what we need.

But if they don't feel that way, if they are truly in support of traditional marriage, which many profess they are—and I argue I would probably agree most are in favor of traditional marriage—then what harm do we do by putting language into our Constitution

to protect that institution which everybody says they are for? What harm is done? Do we harm the Constitution? Do we cheapen the Constitution?

Someone suggested this doesn't rise to the level of a constitutional amendment. I remind people what the last constitutional amendment was. It is fun reading. It is always good to pick up the Constitution. I know Senator BYRD carries one and hangs out with it all the time. I will read the 27th amendment:

No law varying the compensation for the services of Senators and Representatives shall take effect until an election of Representatives shall have intervened.

Congress cannot get pay raises until after the election. Big deal. By the way, I know one Senator said, ''I am going to stand with James Madison.'' That is what the Senator from Arizona said. The 27th amendment—do you know what it is called? The Madison amendment. James Madison, the architect of the Constitution, had an amendment that said Congresses cannot receive pay raises. A big, weighty issue. The fate of the country hangs in the balance. ''I will stand with James Madison.'' Do you know what Madison said? If you believe enough in something, you put it in the Constitution if that is the only way you fix the problem. I don't believe anyone can look at the legal state of play in this country and say there is any other real option.

A philosopher named Christopher Lash said: ''Every day we get up and we tell ourselves lies so we can live.'' What did he mean by that? Well, there are certain things we have to tell ourselves so we can go on and do what we want to do, certain truths we have to ignore so we can go on and live our lives.

There are all these people dying and suffering in Africa from AIDS, and we tell ourselves there is not much I can do about that so I will go on with my day. There are 1.2 million children dying from abortions in this country. We tell ourselves that is a tragedy, but there is nothing I can do, so I can go on and have my breakfast. We all do it. I do it. Everybody does it. We tell ourselves little lies so we can feel comfortable with the decisions we make to go on with the life we want to live and make the decisions that make us feel comfortable.

The Senate tomorrow is going to tell itself a little lie—that we don't need to do this, that families will be OK without us, and the States can handle the issue. Now, some will say they don't believe that is a little lie. They will say they disagree with that. We can all rationalize whatever decision we want to make. We can all make our case. In the history books, when this time is written about, we will be able to make our case. We will be able to say, you know, had I known this was going to happen, I would have voted differently. I would have stood with Mr. Madison and voted for that amendment. But how was I to know? How was I to know this was the beginning of the end of marriage, and the beginning of the end of the family in America, and the beginning of the end of the freedom we hold in this country so dear, where Government doesn't run and have to take care of every need because nobody else is around to do it.

If you look at the socialist countries that have gone in the direction of destruction of the family, you only need to look at the imposition and heavy weight of government. Why? Because there is no one there to pick up the pieces. You can say, if I had known, if I had only known. Every day we get up and tell ourselves lies, so we can live. The problem is this lie hurts the future lives of millions of children in America. And they are going to have to live with the consequences of the lie you tell.

We have an opportunity to do something so simple, so basic, so natural: Simply affirm what this country has known for hundreds of years, what the Western World has known since its inception, and simply put in a document that represents the best of America the ideal that children deserve moms and dads; that the glue of the family, marriage, is worth a special place. Do we not believe that marriage, that glue that binds men and women and children together, deserves a special place right next to limiting pay raises of Members of Congress? Is that a special enough place? Is it not a special enough place for something that we know is essential for the future of America?

We debate a lot of important issues here, but there is nothing—nothing—more important than the future survival of this country. That is what we are here for. We took that oath of office. Why? To preserve and protect. That is our job. We have other jobs outside this Chamber, but within this Chamber our job is the preservation of these United States.

I do not see how anyone can possibly imagine a whole nation without whole families. Yet we will choose tomorrow to risk everything. Think about this. We will choose tomorrow to risk everything. Why? What is worth this risk? What is worth this experiment in sociology heretofore unseen? What is worth that much?

I ask the silent chairs on the other side of the aisle: What is worth this much not to give marriage a chance? As broken and as battered and as shattered as the institution is, let's use this opportunity, in a time of horrible, divisive politics, to band together and say there is one thing on which we can agree: that men and women should bind together to have children and raise them in stable families. Can we at least agree on that?

What will the answer be? What will all of God's children say tomorrow? No. No. No, I can't go that far; sorry, got too many other things to worry about; too political an issue; too divisive an issue; too intolerant an issue; just trying to bash people; you don't really care about families; this is simply about politics. The lies we tell ourselves every day just so we can live.

I come here not because I want to win an election, not because I want to bash anybody or hurt anybody. I come because this is good for America. This is the foundation of everything that makes America great, and it is worth saving. Give it a chance. Don't snuff out this candle that is just barely keeping the light on. Give it a chance. I accept the fact that it is in trouble. I accept the fact that we have darn near blown it, but don't use that as an excuse to do nothing. This is not about hate. This is about giving our children the best chance of having a bright tomorrow.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Colorado.

Mr. ALLARD. Mr. President, I was definitely moved by the presentation that my colleague from Pennsylvania made on this issue. I thank him for his comments.

One thought that came to my mind as I heard his comments was that I do not think James Madison—who, by the way, is a hero of mine—would have envisioned the need, and his contemporaries would have envisioned the need, for protecting marriage. I have no doubt in my own mind that if he had thought that marriage would need that protection that he and his contemporaries would not have hesitated to have made that a part of the Constitution.

As we have gone over this debate, I have been somewhat frustrated to hear from opponents of this amendment constant criticism and misrepresentation about what this amendment is all about and what it does. Over the weekend, I received a number of indepth legal analyses from legal experts, scholars, and law professors from around America. I want to point out that when we are amending the Constitution, it is serious business. I have spent considerable time consulting with legal scholars, constitutional scholars, consulting with my colleagues, and working with staff in the Judiciary Committee because I wanted to get it right.

In an effort to clear up some of these ridiculous charges made against this marriage amendment, I ask unanimous consent that there be printed in the RECORD a brilliant letter on the meaning of the amendment by eight law professors.

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

[July 12, 2004]

THE MEANING OF THE PROPOSED FEDERAL MARRIAGE AMENDMENT

SIGNATORIES

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In the context of the recent and ongoing debate over a proposed marriage amendment to the United States Constitution, various questions concerning the meaning and interpretation of the proposed amendment have been raised by opponents of the measure. As supporters and proponents of the amendment, we have prepared this memorandum in an effort to clarify the meaning and intent of the proposed marriage amendment.

Introduced as Senate Joint Resolution 40 by Senator Wayne Allard and 18 co-sponsors, the marriage amendment provides: ''Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman.''

SUMMARY

We are concerned that many arguments voiced in opposition to the marriage amendment are based in hypothetical speculation, rather than serious constitutional analysis. The FMA is a simple, two-sentence amendment which carefully addresses the growing threat to marriage in the United States. In doing so, the Amendment is deliberately crafted so as to preserve the integrity of state regulatory authority over marriage and poses no plausible threat to individual or private organizational actors.

The first sentence of the amendment maintains a common definition of marriage throughout the United States, ensuring consistency in the public legal status which is deeply embedded in both state and federal law. The second sentence reiterates and expands upon the first sentence, ensuring that questions of marriage-like benefits for unmarried couples are reserved to legislative processes. The amendment would have no effect on the various ways that governments might try to provide benefits to couples or individuals based on something other than their marital status.

All implausible arguments to the contrary, the proposed FMA would have no effect on personal arrangements, religious ceremonies or other actions by private individuals or organizations. The FMA takes advantage of the U.S. Constitution's provision for the people's representatives to respond to their will and protects, rather than interferes with the principles of federalism. It is a commonsense response to a very real threat to the ability of the people in this nation to protect the most basic institution of society as it has been understood throughout recorded history.

THE FMA IS CLEAR AND UNAMBIGUOUS

A recent memo, circulated among members of Congress, argues that the first and second sentences of the proposed amendment contradict one another, in that the second sentence allegedly authorizes same-sex marriage under certain circumstances. Such a reading of the second sentence is unwarranted, and does not comport with the clear language of the amendment.

There can be no contradiction found between the two sentences of the amendment. At most, it could be argued that the second sentence is redundant with respect to marital status, repeating what has already been stated in the first sentence. The first sentence of the amendment provides that throughout the United States, marriage shall be the ''union of a man and a woman.'' The second sentence states that no state or federal constitutional provision shall be held to require a different result. While this reiteration may be arguably unnecessary, it is far from contradictory.

The second sentence also serves another purpose, however, preserving decisions about legal benefits to the deliberative legislative process. In this respect, the second sentence goes beyond the first, protecting the autonomy of state legislatures to extend benefits according to the needs and desires of their constituents. Both sentences must be read as part of the same policy statement: marriage is an important social institution throughout the United States, and cannot be redefined by judicial fiat. The people of the individual states reserve authority to extend or withhold benefits to same-sex couples through their elected legislative bodies.

It has been suggested that this plain reading of the marriage amendment is merely a smokescreen for an amendment which will later be used to in efforts to strike down domestic partnership and other civil benefit arrangements. Opponents cite litigation challenging California's domestic partnership law or Philadelphia's ''life partnership'' ordinance as evidence that the FMA will be used similarly. Whatever the particular merits of the California and Pennsylvania litigation, the outcome of such claims are based upon technical provisions of state law, and will have little bearing upon the interpretation of the proposed marriage amendment.

While there are many in the United States who would prefer that the Congress propose an amendment which would ban civil unions, domestic partnerships, or other similar arrangements at the state level, the interpretation put forward by the sponsors and other supporters in Congress has been clear and unambiguous: the marriage amendment is intended to define marriage as the union of a husband and wife, and to reserve questions of benefits for state legislative bodies.

THE FMA DOES NOT INTERFERE WITH PRIVATE ACTIONS

Certain opponents of the marriage amendment have argued that the amendment will impinge upon the actions of private individuals and organizations, including religious organizations. To the contrary, the amendment touches only the public legal status of marriage, recognized in all fifty states. Private actions, whatever the source, can neither create a legal marriage nor violate the text of the amendment. Until recently, all fifty states have had laws which recognize marriage only as the union of a man and a woman, and yet private actors remain free to extend domestic partner benefits, perform or engage in commitment ceremonies, or even refer to themselves as spouses.

It is difficult even to construct a theory on which an amendment dealing with marriage might be applied to private actors. Certainly the absence of language limiting the amendment to government actors is not in itself evidence that it is intended to apply as against private individuals. Neither the Second, the Fourth, the Fifth, nor the Eighth Amendment to the Constitution contains any explicit reference limiting the scope to state actors, yet they are clearly understood as such. For instance the Second Amendment says ''the right of the people to keep and bear Arms, shall not be infringed'' but it would be implausible to argue that as a result, an employer could not ask an employee to leave their weapons at home.

Marriage has long been a public legal status, directly conferred and regulated by law in each of the fifty states. The solemnization of a marriage, even if performed by clergy or other religious figure, requires state licensure and has legal effect. Concern over the impact of the marriage amendment on private actors appears to be rooted in a misconception of marriage as a private relationship. Marriage, however, is not merely a private relationship, but a public legal status. As such, all constitutional reference to marriage is properly understood as a reference to that legal status.

THE AMENDMENT PROCESS IS DEMOCRATIC DECISIONMAKING AT ITS APEX

Opponents often claim that the FMA somehow infringes the democratic process by writing something new into the Constitution. Under this theory the Bill of Rights and each subsequent amendment have displaced democratic decisionmaking. The Constitutional amendment process ensures significant popular input, both in the process of approval in the Senate and House of Representatives and in the ratification process where a supermajority of states have to concur. Of course, after the amendment is ratified it limits future conduct, but so do all Constitutional provisions. An amendment that has been ratified can also be changed through the democratic process as the experience of Prohibition demonstrates.

The national consensus required for a formal amendment to the Constitution is not the only way in which the meaning of the Constitution is amended, however. The other process (apparently favored by opponents of the FMA) involves a lawsuit with handpicked plaintiffs in a sympathetic jurisdiction where only arguments filtered through the legal briefing process will be heard. Then, the amendment is made by a majority of judges on a court who construe constitutional text to require a redefinition of marriage. At least the FMA would have to be ratified by three-fourths of the state legislatures, not a mere handful of judges who hear only arguments made by lawyers.

Finally, as already noted, the amendment would still allow state legislatures to enact laws that provide benefits to unmarried couples.

THE FMA IS A DEFENSE OF FEDERALISM

Some opponents of the FMA argue that it violates the principle of federalism by intruding into domestic relations law, an area traditionally governed by state law. This argument presupposes that there is no threat to federalist principles from the ongoing attempt to secure a redefinition of marriage through the courts. There is reason to believe that some or many courts would adopt an expansive reading of the Full Faith and Credit Clause or other state or federal constitutional provisions that would in effect nullify the policies of states which would choose not to recognize same-sex marriages. Of course, this, as much as a federal marriage amendment, would create a national marriage policy and eviscerate any federalist protection of marriage laws.

It should be noted that the question of marriage validity is already a matter of at least some federal concern. The right-to-marry cases all invalidated state restrictions on marriage on federal grounds. See *Loving* v. *Virginia*, 388 U. S. 1 (1967); *Zablocki* v. *Redhail*, 434 U.S. 374 (1978); *Turner* v. *Safley*, 428 U.S. 78 (1987). As the Defense of Marriage Act indicates, federal law relies on a definition of marriage in extending certain benefits such as Social Security death benefits, 42 U.S.C. 405. and other federal retirement programs. See *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572 (1979). At least since the U.S. Supreme

Court began the process of incorporating federal constitutional guarantees in its Fourteenth Amendment jurisprudence, a growing number of federal constitutional provisions have limited the states' power.

As to appropriateness, it must be asked whether it is wise to have fifty different marriage policies in the United States. While there is obviously significant room for variations in many (probably most) state policies, there is some need for uniformity. This is an axiomatic presupposition of a federal constitution. Many of the specific policies requiring unity are specified in the national constitution. The most important examples are included in the limitation on state power, since they ensure state uniformity in such matters as coining money or exercising a foreign policy. U.S. CONST., Art. I, §10. Perhaps most obvious is the Guarantee Clause which rests on the assumption that while specifics of state government may vary, at a minimum ''[t]he United States shall guarantee to every state in this union a republican form of government.'' U.S. CONST., Art. IV, §4. The FMA stands for the proposition that the basic legal definition of marriage is a fundamental policy of this type.

Finally, if ¾ of the states ratify the FMA, this would signal an acceptance of a super-majority of states of any minimal limitation on their power just as the ratification of the 19th Amendment allowed state legislatures to acquiesce in the limitation of their right to deny women the vote.

THE FMA DOES NOT UNDULY CONSTRAIN THE BRANCHES OF GOVERNMENT

The memo charges that the proposed FMA would ''take the job of constitutional interpretation away from all three branches of government.'' While this is technically true (and is true of all other Constitutional amendments that affect government power), it is also somewhat misleading. In practice, the judicial branch has been almost alone in construing the meaning of state constitutions. Thus, the, major thrust of the FMA is to curtail judicial redefinition of marriage. To the extent other governmental actors want to use a reading of the constitution to justify a redefinition of marriage (such as when a mayor issues marriage licenses to same sex couples saying the constitution made him do it), they would be constrained by the FMA but such a practice is not likely to be widespread. A legislature, in fact, would be able to offer marital benefits without any constitutional justification for doing so.

Additionally, the memo says that the ''federal Constitution should not purport to say what state law does or does not mean.'' Taken at an extreme, this would negate the U.S. Supreme Court's decision invalidating bans on interracial marriage or, in fact, any federal Constitutional limitation on state law. At least the FMA would have to be ratified by a super-majority in the states it is regulating.

THE FMA GIVES THE AMERICAN PEOPLE A VOICE

Some have argued that the proposed marriage amendment will increase the role of the judiciary in determining the definition of marriage and its legal incidents. To the contrary, the amendment would resolve current marriage disputes pending in at least 11 states, while establishing a uniform rule of law which minimizes the scope of future litigation.

In recent years, five primary fields of marriage litigation have evolved: (1) constitutional claims for same-sex marriage (including both state and federal claims); (2) constitutional claims for marital benefits; (3) statutory claims for marital benefits; (4) constitutional claims for interstate marriage recognition; and (5) claims for interstate recognition based on state statute and public policy. Of these five broad areas, the proposed marriage amendment would eliminate (or greatly reduce) the role of judges in resolving constitutional claims for same-sex marriage, marital benefits, or marriage recognition. Statutory claims for marital benefits would likely remain unaffected, while interstate recognition claims would be minimized (but not eliminated, due to the possibility that states will recognize alternative civil benefit statuses).

The creativity of attempts to make the plain meaning of the FMA seem confusing and contradictory is illustrative of the problem. These creative readings of constitutional provisions by judges have precipitated the issue and the FMA will bring a needed clarity to the matter. By confining the crucial social issue of the definition of marriage to courtroom battles, opponents of the FMA have left the people of this nation with little choice but to amend the Constitution.

Without an amendment, the marriage debate will continue to be waged by attorneys and legal elites, in courts of law where the American people have little or no voice. The amendment process, on the other hand, will produce the type of public dialogue and national consensus which this important issue deserves.

Mr. ALLARD. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I will briefly reiterate an important factor—Senator SANTORUM has eloquently argued the legal and the policy issues that are so important with regard to marriage and why that institution needs to be strengthened, not weakened. Policies of government create tendencies in the culture. The recognition of same-sex marriages would have a tendency to weaken marriage, and that is exactly the wrong direction we ought to go.

How did it occur that we are debating the question of the definition of marriage in the Senate? It occurred because of a ruling last year by the U.S. Supreme Court in Lawrence v. Texas that clearly implied that the Supreme Court of the United States believes that the Equal Protection clause of the U.S. Constitution says one cannot have marriage only between a man and a woman, as has been done in every culture that I know of since the beginning of time and as I believe every single legislature that has ever sat in the history of the American Republic has so defined.

These judges in Massachusetts have now followed up on that Lawrence case of the U.S. Supreme Court and taken it to its conclusion, citing the Lawrence case in its opinion. They have declared that the Equal Protection clause of the constitution of Massachusetts—basically similar to the U.S. Constitution—says one cannot treat same-sex unions differently from traditional marriage. That is a serious stretch, in my view. That indicates that our courts are losing discipline; our courts are imposing, through interpretations of the Constitution, their personal values on society. That is not correct.

It undermines democracy. It undermines the power of the American people to decide for themselves how their culture and their society ought to be ordered. I believe very strongly in that. So it is not surprising to me that the senior Senator from Massachusetts, Mr. KENNEDY, probably the leading defender of judicial activism in this body, is the only one who I have heard since we have been in this debate say he agreed with that activist decision. It is a decision by a court to step out and impose through interpretation of the language of the Constitution values on the American people of which they do not approve.

Indeed, it is not even the values of the people of Massachusetts, as we know the Governor has roundly opposed this. The legislature has taken action. Efforts are being undertaken to pass a constitutional amendment to fix it. So even in the most liberal State in the Nation, even with Senator KENNEDY—and his colleague, I suppose, opposing this amendment—the people and the legislature and the Governor do not approve of this. So certainly the American people have a right to be concerned.

I see the Senator from Pennsylvania. He spoke on this. I have heard him speak on the issue of judges before. I would like to ask his view— is this not just one more example of the divide and the difference of opinion that exists in this body about the role of a judge? Is this not indicative of what President Bush has expressed his concern about, which is activism in judges? Does not judicial activism undermine democracy when we have unelected judges setting social policy?

Mr. SANTORUM. That is a great question. I say to the Senator from Alabama that going back to Madison, Adams, and the Massachusetts Constitution talked about the importance of a balance of powers, a checks and balances; that if one branch of the Government were to become too powerful then our Republic is in danger. Democracy itself is in danger.

I think what the Senator from Alabama is referring to is the judiciary over the last several years, as a result of the feeling within certainly the liberal branch of the judiciary, that they can take on the role of a legislature in either passing laws in the form of judicial opinions or forcing the legislature to pass laws as a result of constitutional edict. It is getting to the point where there are these three branches of Government that all sort of operate under the Constitution, and we are supposed to be able to oversee each other. One might want to make the argument that maybe we are not doing a particularly good job of oversight; that we are not doing a very good job of checking the judiciary in its repeated attempt now to usurp power away from the people's branch.

The people's branch is not the judiciary. It is not the executive. It is us. We are the ones who stand for election on a regular basis. We are the ones who are responsible to a local constituency.

We are the ones who are in closest touch with what the people would like to see done. The judiciary is probably the most removed because they are completely unelected.

Mr. SESSIONS. Could I interrupt the Senator and just follow up on that?

Mr. SANTORUM. Yes.

Mr. SESSIONS. The Senator is in part of the leadership in this Senate on the Republican side. Is it not true, based on his experience, that even the House and the Senate defend amongst themselves their prerogatives and do not the House and the Senate defend their own power against the executive and does not the executive branch defend its own power against the legislative branch?

Mr. SANTORUM. It is one of the most disputed and argued—we have committees that argue over jurisdiction just between where bills are referred. We all know this in all of our lives, when there is an area of authority, that area of authority is protected, not just because it is one's particular area of authority but one knows what they do in their job, particularly in the area of the legislature and of government, sets a precedent for how future people will do their job. If one gives up power, it is going to be hard for someone to get back when it may be necessary for them to do so.

So we hold our power or fight for our rights not just because we want to exercise that power but because it is important institutionally that the power rest in the proper place.

Mr. SESSIONS. Well, with regard to Madison, that father of the Constitution and a man I admire, he set up coequal branches and he expected each one to be a check and a balance on the other. Would not the Senator expect that Madison would have expected this Senate and this Congress to defend its prerogative to set policies concerning marriage and family and resist the encroachment of that power from the courts?

Mr. SANTORUM. The answer to that is clearly yes. In fact, the Senator is a much better lawyer than I ever was, and I say that to the Senator from Alabama as someone who was a prosecutor and a very accomplished lawyer. I made it up to a fourth year associate, so I just started on my legal career and opted to do something different, and that was run for Congress.

I recall when Madison wrote this Constitution about checks and balances, I am not sure he envisioned the role of the judiciary as we see it today. Marbury v. Madison sort of evolved as to what the role of the courts was in interpreting the Constitution, but clearly he gave the authority to change the Constitution not to the courts. He gave the authority to change and create rights within the Constitution to the Congress and to the States, as a check on the Congress, to make sure the States would go along with what we wanted to do.

So to change this important document, this template for the Government that we have, he wanted to create a very high bar, wanted to make sure there was broad public consensus before we did something to affect this very important document. Now this is being used as an excuse not to change it, when judges do it every day. Every day a judge will attempt to expand, usually expand in some form or another, the meaning by adapting it to contemporary standards or contemporary jurisprudence.

I don't know what that means, but it basically means I am the judge, I am the law, and I can do what I want.

Mr. SESSIONS. I would follow up on that. I remember when I was a U.S. attorney in Alabama, I got a call from an educator who was looking at their school textbook and discovered it asked a question about amending the Constitution. The first section stated that you amend it according to the way the Constitution says it should be amended. And the second paragraph says the Constitution is amended by the courts.

He asked me: You are the Federal attorney here; is that true?

I said: No, it is not true.

And he asked me to do a video.

But the point is that you are right, I say to my colleague, Senator SANTORUM. This judiciary believes it has the power to amend the Constitution by taking words such as ''equal protection'' or ''due process,'' which in the hands of a person not disciplined can be made to say a lot of different things. But good lawyers and good judges know that can be abused and they do not do so.

I think we are at a point where the American Republic has its democratic heritage at risk— if we just get to the point where we can never respond, if they can make these rulings and the Congress can never pass an amendment to overturn them, or set our own policy on behalf of the people.

Mr. SANTORUM. I would just say that checks and balances work as long as there is truly a balance. I think what we have is some people today in our judiciary, because of the activist judges, who are now saying we are all going to play by these rules, all branches of Government. Here is the game. Everybody comes to the poker table and we are going to play the game of governing the United States of America. And in the middle of the game, the court can say: I am changing the rules to my favor, so I win.

In a sense, if you think about it, when the Court, the Supreme Court, rules, they win. The only way we can change that is through this rather complex procedure laid out in article V of the Constitution, which is not an easy thing to do. In a sense, the Court has figured out that the ability for Congress to check them is very limited. As a result, they are feeling more and more empowered to project their will on society.

Mr. SESSIONS. I couldn't agree more.

Mr. SANTORUM. That would be, first, I think, dangerous, period. But it worries me even more because the Supreme Court that sits right here in Washington, DC, is certainly not what I would call Main Street America, certainly not what I would call a community that shares the values of this metropolitan area, that shares the values of the heartland of America.

I remember a good friend of mine telling me that postwar Germany was concerned about centralizing government in its major cities, Berlin or Bonn. So they did something rather unusual. They located their supreme judicial court not in their capital city or in their biggest city, they located it in the equivalent of Peoria, out in the country, where justices do not hobnob with the liberal elite that govern the nation. Either through governance-wise or governing media-wise. But they have to live and work with the common, ordinary people out across the great hills of Germany—and in our case the Great Plains of the United States.

But we don't have that here. We have this constitutional court sitting right across the street in a town where the influences are not neutral. That is why I believe you see that every single Justice—bar a couple on this Court—once they get on the Court, tend to assimilate with this town and with the prevailing view in this town, which is big government, which is government knows best, and government can do all, and which is, from the culture standpoint, not exactly where I would say Mobile, AL, is, or Pittsburgh, PA, is. Where in Colorado?

Mr. ALLARD. Sweetheart City.

Mr. SANTORUM. Certainly not where the Sweetheart City is, in Colorado.

The bottom line is that we have a court that is out of control. We have courts across this country, like in Massachusetts, that are also deciding, taking their lead from what is going on here in Washington, deciding to assert their authority and in so doing, taking power away from the American people to decide their own fate.

Mr. SESSIONS. I thank the Senator from Pennsylvania. I think he is correct.

I love the Federal courts. I practiced there full time for the biggest part of my legal career. I have tremendous respect for Federal judges. But I tend to agree with the Senator from Pennsylvania.

The senior judges in the U.S. Supreme Court, many of whom are in their eighties, have become detached from America. If they follow their role as the Founders considered, which is simply to be removed, to be independent, to analyze the language fairly and justly without partisan or personal interest, that is good. But if they develop some idea that they know what is good for the country better than the people do, if they start drifting into that mentality, then it is very unhealthy for this society.

And it is anti-democratic. It is not democratic. Because they have life-appointed positions. I have heard the Senator from Colorado speak on this and I know he believes the jurisdiction of the courts can be constrained, and he has taken a lead in that effort. He has done so in a highly intelligent and effective way, a proper way, by presenting legislation now to be discussed. But I am troubled by this trend that demonstrates to me that the Supreme Court is out of control.

Senator ALLARD, in addition to the powerful need for this Senate to protect marriage because of the cultural impact and the impact on families and children that will occur if marriage continues to decline, I think it is important for us to defend our legislative power against a branch of government that is encroaching on it. If we do not defend this power, if the Members of this body sit by and allow the courts to erode our power, then shame on us. And our children will not respect us.

We defend our interests against the President. The Senate defends its interests against the House when they try to encroach on the Senate's power. And well we should. That is what Madison and the Founders expected. I think he would expect us to defend our legitimate interests against the encroachment of the courts.

I thank the President and yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I just want to read article V and make clear what the Senator from Alabama is saying. When it comes to amending the Constitution, the first two words, if we are going to change the Constitution of the United States, the first two words are ''The Congress.''

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution....

Shall propose amendments. It is the role of Congress to simply propose amendments. So what we are doing here today is not passing. We are simply proposing this to the American people.

. . . shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

What this amendment says is to change the Constitution of the United States, we propose and the people dispose.

What is happening in Massachusetts, across this country, and in the court across the street in the Supreme Court is the Supreme Court has taken this power unto itself which was clearly left to the people. That is what we are trying to address. We are trying to let the people speak.

In the end, this debate simply is about letting the American people decide for ourselves what this rather important institution in our country is.

Again, I can think of nothing more foundational in our society than the building block of that society which is the family.

The American people have a right to make a decision. Every Member who has gotten up and talked has said they want to simply leave it to the State courts. But let me assure you, these decisions will not ultimately be made by the States. They will be made by the State courts. We have seen it in case after case after case. The courts will trump the legislatures.

Again, ultimately, even if some States can hold back the tide, other States will not. If we have a hodgepodge or patchwork of different marriage laws in this country, I will assure you the Supreme Court will not stand aside and let that continue. It will be a legal nightmare. We will have to find conformity. Conformity will certainly be to permit this new form of marriage; thus, the end of the family as we know it.

I know the Senator from Kansas and many others—the Senator from Texas and I have even pointed out—I know some are saying, What do you mean the end of the family? Won't we enhance marriage by allowing more people to marry? Won't marriage be enhanced if we allow more people to participate in that sacred bond? The evidence is in.

In the places where we have seen the introduction of civil unions and same-sex marriages, marriage rates decline dramatically. Why? Because marriage loses its meaning. Marriage is no longer about families. By the way, what goes up? The rate of out-of-wedlock births. This is common sense, isn't it?

What are we doing here? If marriage is simply about affirming one's own self-worth or affirming one's affection toward somebody else, if that is all it is, when those feelings go away, why stay married? If that is all it is, if it is all about me and my happiness, when I am not happy anymore, then I am not married anymore. If it is about me, then obviously it is not about them, the children. They only happen to come along. If marriage is simply about me, in the case of heterosexual marriage, if it is about me, and that is what a lot of divorce laws as a culture have trained us to believe marriage is about, then it is nice to have kids. It is a great thing to have kids—sometimes, some will say. Why stay married? If I am not happy because marriage isn't about children, it is about me, we reinforce that. We put a big neon sign, ''Marriage is about me. Marriage is about self. Marriage is about making me feel good. And if I don't feel good anymore, then I will not be married anymore.'' That is all marriage is about. How can you argue it is about anything else? If any two people can get married whether they can have children or not, why stop at two?

I mean if what we are doing, if marriage is a civil right as someone suggested—not in this Chamber, but I suspect one of these days will be mentioned in this Chamber, that marriage is a civil right—then why isn't it a civil right for three, or four, or five? If it is a civil right, why limit it to two? If I need to express my love to three people instead of one, if that is what fulfills me and makes me happy, then why shouldn't I be allowed to do that?

This is a very slippery slope.

The bottom line is, as I mentioned over and over again with respect to the reasons for marriage, self-affirmation is fairly low on the list of marriage importance in society. Why do we have such a legal institution? Why do we create laws that govern marriage? Why do we do that, if we didn't believe there was a societal good to be accomplished by it? Why do we give it elevated status?

You sort of have to ask this question: Is it because we go around affirming love between two people? Why don't we want mothers and daughters to be married and give them special treatment? There are a lot of daughters who take care of moms who are sick, who are elderly, who sacrifice a lot to take care of their parents and don't get the benefits they would otherwise get if they were married to their mother. Why not give them, the people who are struggling, the right to marry so they can get the benefits of marriage? If they are going to argue that marriage is about affirming the love of two people, why not? But marriage is much more from the standpoint of society and the reason we have an institution of marriage. That is a minor part of this discussion. The reason we have legal statutes for marriage is because it is about having and raising children and stable families and bonding men and women together so they can provide for the common good. There are great benefits to society with marriage.

We know if we cheapen marriage as other countries have done, fewer heterosexuals will be married, more children will be born out of wedlock, and more government will be needed to repair the dissolution of the family as a result of it. Why? For what? What great positive impact will change the definition of the marriage act? What great contribution will be made to society? Will we be able to welcome a loving society? Some will suggest we will. I don't know if we will. I think we are a loving, welcoming society with maybe the exception of the unborn. We are not particularly welcome to one-third of the children conceived in marriage who end up being killed by abortion. But beyond that, I think we are a

pretty affirmative and tolerant society—not that there are not people who aren't tolerant, not there are not people who do and say hurtful things.

By and large, we have come a long way in our society. I think it is a good thing we have become tolerant of people. Tolerance does not mean we need to change a fundamental institution that provides healthy environments for children and destroys the chance for children to have the ideal or make it a lot less likely.

I think if you look at Netherlands, Scandinavia, and look at numbers in Canada and other places, it has an impact.

I keep coming back to the fundamental right. The hour is late. I apologize to all folks who had to stay here late at night. The morning will come early.

I keep sitting here and wondering why. Why does a body of people, No. 1, profess publicly to believe that marriage should only be a union between a man and a woman and that this body believes it overwhelmingly; and, No. 2, knows that at least this issue is under contest and in dispute. There is no question about that. One State has changed the law.

To suggest this is not a threat simply is not true. It is obviously under threat. It has been changed in one rather large State.

There are cases in 11 other States, 2 cases challenging the Federal law, and in 46 States there are same-sex couples who are married from Massachusetts or one of the other States that have married people. Are all potential litigants.

Number one we believe marriage is between a man and a woman. We know that institution is under assault. We know that it is a public good and that we are for it. We know that it serves a useful purpose. Then why won't we do something to protect it?

We go down this logical train and we say, yes, all those things are true, but we can wait. Why? What is the point? Why wait? What is going to happen? Things will get worse. Certainly that will happen. Things get worse and then you feel you had the public support necessary to vote. Is that what this is about, getting the public support necessary to do this? Or do we really believe the States can handle it? Are we willing to take that risk? What is the risk if the courts do turn over more and more? We can come back and fix it later. I know a lot of people know this unspoken thing: Time is not on our side.

The culture of what is educating our children at our university, what is polluting our children's mind from Hollywood, what is coming through the mainstream media is not a message in support of traditional marriage.

Let's be honest. Does anybody question that the messages from those places where our children are getting the messages from the popular culture, from the educational establishment, is it all affirming of the traditional definition of marriage? One only needs to look at the polls of young people to know that is simply not the case.

This is simply a timebomb. If we do not bring America's focus and attention on what marriage is and why it is important, and that it should be sustained, we will lose.

Many have criticized me and Senator FRIST and others for bringing this up, saying it is premature, saying we are picking a fight for politics or whatever. Let me assure you, if I thought it was not in the best interest of protecting the American people, I would not be here. If I did not think this was critical to the future of America, I would not be here at 10 o'clock at night when I should be home tucking my kids in bed. As Members know, I try to spend time with my kids. There is nothing more important, nothing more important than my kids and my wife, my family. That is why I am here, because there is nothing more important than my family.

I hope tomorrow we get a big surprise. I always believe in that. I remember being here a few years ago and debating the issue of partial-birth abortion, about this hour of the night, trying to override the President's veto in 1996 and then again in 1998. I remember staying up late the night before the vote, saying we are just a couple votes short; maybe if we go out and give it one last good try, we will win. And we didn't.

Do you know what I found? I say to the Senator from Colorado, nobody is more constant, nobody, who I would rather see in the foxhole next to me than the Senator from Colorado. If you looked over there, he would be there. The Senator from Alabama, I say the same to him. These are stalwarts, folks who are not afraid to engage in cultural wars that are not fun to engage in because a lot of people say a lot of bad things about you.

What I say to these Members and anyone listening, losing the vote does not necessarily mean losing the issue. We had a lot of losses on the issue of partial-birth abortion. I can say without fear of hesitation it was the greatest gift that God gave us, because it gave us an opportunity to talk to the American people about this scourge on our Nation. If the President signed this innocuous bill the first time in 1996, signed it and had a bill-signing ceremony, probably it would have been filed, no one would have known, hearts and minds would not have been touched.

I believe our plan is not necessarily the best plan. Victory can come from defeat. In this case, the victory over the last 3 days, thanks to the work of these two fine Members and so many others who have come to the Senate to debate this issue, is an America that is waking up to something that we have forgotten about.

I liken the institution of marriage to oxygen in the air. The human body needs oxygen to survive. Yet we take it for granted as we just breathe. And America as a society needs marriage and families to survive. Yet we take marriage and families for granted as if it will always be. We do a lot to keep good, healthy oxygen to breathe. We do very little to keep families protected, sheltered, and supported.

Just as it is with oxygen, as you climb those high altitudes in Colorado, you find out when there is less and less oxygen, the body does not function quite as well. So it is with marriage. When there is less and less marriage, the body does not function quite as well. When you are climbing that mountain, and many people for years did not know what it was when they went up to the altitudes that they could not perform as well, and, for America, we are climbing that mountain and we are just wondering, Why aren't we doing as well?

This is an opportunity to educate America as to the need for marriage, the need for families, not in a hostile way, not in a negative way. I don't think I have heard a negative word on the floor of the Senate about anybody or anything. We simply have talked about why families and marriage is necessary for America and why children need moms and dads.

It is almost remarkable, but I suspect this is maybe the first real debate about family and marriage in the Senate. I guess in the Defense of Marriage Act we talked, maybe not. But it is a reminder to all how the things that sometimes we take most for granted are things that make us function as a society.

I thank the Presiding Officer for the willingness to stay to this late hour and engage in this very important debate. I hope tomorrow, whatever happens, I don't know what will happen, that it turns out for the best interests of America's families. I always hope that no matter what we do and how the votes come, that somehow or other it will all work out for the best for America. I believe that. And I ask for the American public to pray for that.

I yield the floor.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Colorado.

Mr. ALLARD. Mr. President, I thank the Senator from Pennsylvania for his leadership on this issue. We would not be where we are today if it were not for his dedication and hard work. I also thank the Senator from Alabama for his help and dedication on this very important issue. I personally thank each of you.

But I think when it is all over with—whether it is this year or next year or the year after that—a majority of the people in America are going to thank you for the work you have done to save the American family.

MORNING BUSINESS

Mr. ALLARD. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators speaking for up to 10 minutes.