

together through the efforts, the joys, and the sorrows of individual athletes.

We shall celebrate the almost miraculous accomplishments of American sprinter Jesse Owens, setting record after record in Nazi Germany while the crowds cheered him to victory. And the tenacity of the Philadelphia butcher's apprentice, Smokin' Joe Frazier, who struck heavyweight gold in Tokyo even though he had a broken right hand. How about American Bob Beamon's incredible 29-foot 2½-inch performance in the long jump in Mexico City, the longest Olympic record to ever stand. Swimmer Mark Spitz, who owned the press of the first half of the Munich games by dominating seven events. A personal memory I will always have concerns the perfect gymnastic performances of Mary Lou Retton, a Fairmont, WV, native, who in Los Angeles won the women's all-around. I will also never forget one of the most touching images of will and determination ever to occur at the games. This was showcased in Barcelona when Derrick Readman of Great Britain fell in the 400 meter competition after severely pulling a hamstring and finished the race leaning on his father. These are all old, but cherished memories.

The torch also symbolized a beginning, the beginning of the next centennial in Olympic history. The challenge is set in the new centennial to rekindle the two basic values that are at the core of the Olympic movement. One is the competitive fire that spurs individuals to pursue excellence in their sport and demand the best of themselves. The other is the cooperative spirit that tempers individual competition through teamwork, harmony, and understanding.

I think the 1996 Atlanta games has led us into the next centennial quite well. As host, the city translated its confidence in itself into respected internationalism. It helped guide us all once again across every barrier of race, creed, language, and culture to seek a common ground of understanding sportsmanship. This was not without cost, but the city and Olympic officials responded to the needs of athletes, coaches, spectators, tourists, and residents with swift action. They also continued to profile veteran competitors and fresh faces who embody the Olympic motto of *Citius, Altius, Fortius*—swifter, higher, stronger—and the epitome of excellence. People such as Michael Johnson, Kerri Shrug, members of the dream team, Dan O'Brien, Janet Evans, Tom Dolan, Jackie Joyner-Kersey, West Virginian Randy Barnes, Carl Lewis, Mia Hamm, and Gwen Torrence immediately spring to mind. They proudly represented the strong heritage and the competitive nature encompassed in the Olympic spirit, and I commend them and every other Olympian who has ever dared to follow a dream to be the best. ●

DEFENSE OF MARRIAGE ACT AND THE EMPLOYMENT NON-DISCRIMINATION ACT

Mr. ABRAHAM. Mr. President, I rise to discuss the Defense of Marriage Act and the Employment Non-Discrimination Act, voted on a few weeks ago. The former passed overwhelmingly in both the House and the Senate and the latter was rejected in the Senate and not voted on in the House. I voted for the Defense of Marriage Act and against the Employment Non-Discrimination Act. I would like to explain why I did so, and why I believe passage of DOMA and the failure of ENDA were proper.

In enacting Federal legislation, I believe our first consideration should always be whether a Federal solution both legitimate and necessary. Legitimate; that is, under our Constitution's allocation of powers between the national government and the States. Necessary in the sense that the States cannot solve a particular problem on their own.

Using these criteria, the Defense of Marriage Act is a limited, legitimate, and needed Federal intervention to protect the States' ability to set their own policies regarding single-sex marriage. By contrast, the Employment Non-Discrimination Act would have imposed a one-size-fits-all solution governing employment discrimination on the basis of sexual orientation without any clear and convincing showing that there is a national problem in this area. In addition, ENDA would have adopted measures far too sweeping even on the hypothesis that some national legislation was needed.

Consider first the Defense of Marriage Act, which dealt with whether the States' have an obligation under Federal law to recognize single-sex marriages. Not, it is important to understand, whether States may recognize such marriages under their own laws. DOMA leaves the States entirely free to do so or not as they may please. In fact, it leaves the States entirely free, through their legislatures or their courts, to define marriage in any way they choose.

DOMA deals only with the following issue: If State A decides to allow people of the same sex to marry, does Federal law require State B to treat these individuals as married as well if they decide to move to State B? DOMA answers that question in the negative: No, Federal law does not require State B to treat them as married just because State A chooses to do so.

This is not merely a hypothetical question. In fact, the Supreme Court of Hawaii has already strongly hinted that in its view the Hawaii Constitution requires recognition of same-sex marriages, with a final ruling to that effect from a lower Hawaii court expected any day now.

The extraterritorial effect such a ruling must receive is a quintessentially Federal matter. Indeed, even if Congress had done nothing, whether the

other 49 States would have to treat individuals of the same sex married in Hawaii as married outside of Hawaii would still have been decided by Federal law. Although no State has yet recognized same sex marriages, all 50 States generally recognize marriages performed in another State, largely on account of Federal conflict of law rules and the Federal Full Faith and Credit Clause. Without any congressional legislation, whether the States would also be required to recognize same-sex marriages contracted out-of-state would likewise have turned on these Federal laws, and therefore, only Federal legislation can assure the States will be permitted to decide this issue for themselves.

Additionally, some States, including my own home State of Michigan, have recently enacted laws explicitly refusing to recognize same-sex marriages contracted in other States. Whether these laws would be allowed to stand likewise would have been a Federal issue even in the absence of any action by Congress. The courts, including, ultimately, the U.S. Supreme Court, would have either enforced these exceptions as being consistent with the Federal Constitution's Full Faith and Credit Clause or would have struck them down pursuant to that Clause.

Thus it is very hard to see how congressional action to make clear that other States need not recognize a same-sex marriage simply because it was recognized in Hawaii can possibly be cast as an illegitimate intervention by the national government. The national government necessarily has to choose sides, either to say that the Hawaii view shall prevail in all 50 States, or that it need not do so, or that it shall do so in some instances. How it chooses sides is the only open question. The Federal government will either resolve this issue by means of a statute adopted by a Congress elected by the people of the States and signed into law by the popularly elected President or by means of a U.S. Supreme Court decision applying existing Federal conflict-of-law principles and the Federal Constitution's Full Faith and Credit clause as best it can. But in any event, the Federal Government will be resolving what effect these marriages will have outside of Hawaii.

That being the case, it is clear to me that there is no reason to prefer that this decision be made by the Federal courts than by the democratically elected components of the Federal Government. Rather, it is better for this choice to be made by the democratically elected branches—that is, by Congress and the President.

Having established that the decision at issue—the extraterritorial effects of Hawaii's laws—is inevitably one that must be made by the national Government, and one that should be made by that Government's elected rather than life-tenured officials, the question that remains to be decided is the bottom line: should other States be required by

Federal law to recognize single-sex marriages if one State decides to do so, or shouldn't they? It is clear to me that the choice most consistent with principles of federalism is to specify that the other 49 States will not be required to follow Hawaii's lead. That again is what DOMA does. My colleagues who have argued that federalism counsels against congressional action are missing the obvious. The virtues of a federalist system—permitting experimentation among the States, and recognizing differing values and standards in different communities—are plainly best served by making clear that the other States need not recognize same-sex marriages entered into out of State. It is Congress's failure to act to make this clear that could well result in significant Federal intrusion into this State matter by allowing the Federal courts to impose Hawaii's answer on the other 49 States. By enacting DOMA, this Congress left each of these States free to decide for themselves whether to recognize such marriages or not.

Some DOMA opponents argue that such a congressional resolution of this matter is unconstitutional because it violates the Full Faith and Credit Clause. They are wrong. That Clause expressly permits the Congress to specify whether and to what extent particular State statutes and judgments shall receive extra-territorial effect. The Full Faith and Credit Clause states, in full:

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

The Full Faith and Credit Clause explicitly gives this Congress the authority to prescribe the "effect" of a State's public acts, records, and judgments. As Prof. Michael McConnell of the University of Chicago Law School, has persuasively argued, this includes the authority to prescribe no extraterritorial effect to a particular category of a State's public acts, records, and judgments. This also serves what is often said is the purpose of the Full Faith and Credit Clause—above all—to preserve harmony among the States. By allowing the States to make their own judgments about same-sex marriages, DOMA does just that. Indeed, the courts have found that the States have some retained authority along these lines under the public policy exception to the Full Faith and Credit Clause—even in the absence of an Act of Congress. Congress surely has the power to reinforce the court-created public policy exception to the Full Faith And Credit Clause.

And that is all the Defense of Marriage Act does, by providing that:

No State, territory, or possession shall be required to give effect to any public act, record, or judicial proceeding of another State, territory, or possession respecting a relationship between persons of the same sex that is treated as a marriage.

In short, DOMA does not prohibit States from adopting laws permitting same-sex marriages; it does not require them to do so. Hawaii remains entirely free to continue on its own path, as does Michigan. The only effect DOMA will have on the States is to prevent what the courts might otherwise find to be the possibly constitutionally-compelled result that every State recognize same-sex marriages contracted in another State, where such unions are permitted. By simply stating that the Federal Full Faith and Credit Clause does not require the States to recognize same-sex marriages, DOMA leaves the States free to recognize them or not recognize them as they see fit.

This is completely different from the Employment Non-Discrimination Act, to which I will now turn.

Right now, the States are free to have or not have their own laws prohibiting discrimination in employment on the basis of sexual orientation and their own means of enforcing these laws. Nine States have them, forty-one do not.

If this Congress had adopted ENDA, we would have ended State experimentation and forced one uniform solution—punitive damages and all—onto every State. Rejecting ENDA is the choice that leaves the States free to adopt whatever policies they choose. Thus, from a federalism perspective, ENDA was an intrusion on the States' ability to make choices, whereas DOMA was a device for facilitating State-choice.

That is not to say that ENDA would necessarily be wrong for that reason. Sometimes national solutions are precisely what are called for to address a problem the States cannot solve on their own. But that is not the case here. The need for a national law such as ENDA has yet to be demonstrated. I am not suggesting that there are not problems—I don't know if there are. But neither do my colleagues. There have been no hearings, no testimony, no reports on the reason for national legislation on this matter.

According to estimates published in *Harpers* magazine and the *Personnel Journal*, the average annual income for gays and lesbians is about \$36,000, compared to about \$18,000 for the population at large. The average household income for gays and lesbians is estimated at \$47,000, also substantially above the average household income for the general population. The study reported on in the *Personnel Journal* also found that gays and lesbians are more than twice as likely to hold managerial or professional positions than heterosexuals.

Does this prove that there is no discrimination on the basis of sexual orientation in the work force? Of course not. There may be a serious problem here—but we just don't know. Moreover, if there is, a number of States have adopted antidiscrimination laws. I would like to know what gave rise to

them, what they provide, how they compare to what is being proposed here, and if they are leading to less employment discrimination based on sexual orientation in the States that have them than exists in the States that do not.

It also ought to be noted that the Employment Non-Discrimination Act would have effected a major change in this country's civil rights laws. For the first time, a characteristic strongly related to an individual's behavior would effectively have the legal status of a characteristic like an individual's race or gender. This is an enormous and unprecedented expansion of the civil rights laws. Arguing against gays in the military, Colin Powell said:

Skin color is a benign, non-behavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument.

We need to think much harder than we have about this before embarking on a change of this magnitude.

Finally, even if I were persuaded that we needed a national law on this matter, ENDA went much, much too far. In particular, it would have forced organizations charged with the care of children to hire, retain, and promote individuals without regard to sexual orientation. It would have imposed the same obligation on many religious organizations, irrespective of their religious convictions. I think even many who believe we should pass some kind of law in this area would rightly be hesitant to cover entities of these types with the first national law adopted on this subject.

First, as to organizations that work with children. ENDA would have forbidden discrimination in employment on the basis of sexual orientation by any employer with 15 or more employees. This would include not only large corporations that sell their products to adults, but also public schools, private schools, day camps, child care and foster care centers, baby sitting agencies, and a large number of other institutions. There is not even a weak argument to the contrary since despite the protestations of the bill's proponents, ENDA contained no private organization exception.

ENDA also would have applied to the hiring decisions of the Boy Scouts, the Girl Scouts, and other, similarly-situated organizations. Proponents of the act claimed otherwise, relying on ENDA's exception for bona fide private membership clubs. The Boy Scouts and the Girl Scouts, however, are extremely unlikely to qualify—the same private club language in other statutes has generally been interpreted to mean truly small and exclusive societies. Even some exclusive, members-only clubs with secret membership committees have been sued by the EEOC as falling outside the exception. The only contrary authority is a Federal court decision whose holding is that the Boy Scouts do not constitute a place of

public accommodation under Title II of the Civil Rights act—in other words, the cited case really stands only for the proposition that the Boy Scouts are not a restaurant.

In addition to covering a variety of children's organizations, the Act would also have applied to a large number of religious organizations. While the bill appeared to include an exception for them, it defined the term "religious organization" so narrowly as to exclude a wide array of religious organizations and activities. "Religious Organization" was defined to mean only:

A religious corporation, association or society; or

A religious school if the school is owned, controlled, managed, or supported by a religious corporation, association or society—or the school's curriculum is directed toward the propagation of a particular religion."

Even then—the religious organization's for-profit activities would have been subject to the bill's prohibitions.

Under this definition, the hiring decisions of religious radio stations and bookstores—which are not religious corporations—religious pre-schools—which are not religious schools—and religiously affiliated colleges that are not divinity schools and are not controlled or supported by a religious corporation would have been covered. Even churches' and religious schools' decisions to hire individuals to sell books or church or school memorabilia would have been covered if those activities were conducted for profit. This, of course, on top of the fact that as I explained earlier, the hiring decisions of non-religious entities involving kindergarten teachers, camp counsellors, Little League coaches, Day Care Centers, or Boys Town counsellors would have been covered by the Act.

Given the novelty of any kind of prohibition of discrimination on the basis of sexual orientation, it seems to me that the bill's coverage surely should have been significantly narrower.

Finally, even if these problems could have been solved, there is a serious risk that covered entities would be subject to harassing lawsuits under this bill by any individual dissatisfied with an employment decision. Since sexual orientation isn't subject to easy proof, being a state of mind—unlike gender or race—ENDA would have allowed anyone with a job where 15 or more people are employed—or applying for such a job—to sue for perceived employment discrimination on the basis of sexual orientation. Even employers found innocent of either knowing or caring what an employee's sexual orientation is, would potentially be saddled with expensive and time-consuming lawsuits defending themselves. Thus—irrespective of its necessity—the specific legislation at issue was overly-broad in scope and virtually impossible to apply as intended.●

UNITED STATES POLICY TO EGYPT

● Mr. SIMON. Mr. President, I have visited Egypt and other nations in the Middle East several times. Egypt is playing a key role in the peace process. As former Secretary of State Henry Kissinger said, "Without Egypt, there is no war, without Syria, there is no peace." A strong and healthy Egypt that has an open and peaceful relationship with Israel and its neighbors is a key to ensuring stability in the Middle East.

Former President Anwar Sadat and the current President, Hosni Mubarak, have helped develop a vibrant and growing Egypt and secure an enduring stable peace with Israel. Under President Sadat, Egypt became the first Arab nation to make peace with Israel. Making that peace allowed Egypt to concentrate on other domestic priorities and Israel's other neighbors to become accustomed to the notion of peace with Israel. And, even after his death, President Sadat's dream of an expanded peace in a more stable Middle East began to take greater shape.

President Mubarak continued Sadat's rapprochement with Israel and helped contribute to plans for establishing a Palestinian homeland. He also worked for greater dialog with Israel and other Arab nations that remained technically, at war with Israel. In light of Egypt's precarious position, though, President Mubarak has been under immense pressure from domestic as well as international forces.

Since 1992, the Government has been under attack from an Islamic guerrilla group that has committed several acts of terrorism. In response, the Egyptian Government has for the past 4 years resorted to military tribunals, whose methods and procedures are often unfair, to try Islamic militants, as well as moderate political opposition members. Egyptians have also been illegally detained and allegedly tortured while in police and military custody. While Egypt's human rights record is not as bad as most nations in the region, I am still concerned.

I am also concerned that too much of U.S. foreign aid to Egypt goes to the military. Egypt's unemployment rate is over 17 percent, almost 50 percent of its people live at or below the poverty line, and pollution remains an intractable problem. The United States can help Egypt more effectively by putting less emphasis on military aid, and more on economic aid so that Egypt can invest in its infrastructure, worker training, and education.

Egypt, as a leader in the Arab world, sets an example for other nations to follow. It cannot remain a stabilizing force if its military grows, while its economy suffers and its own citizens are mistreated and jailed without trial or thorough investigation. Fighting terrorism does not have to lead to abrogation of civil liberties. As I approach my return to academia, I will continue to encourage ways for the

United States Egypt partnership to achieve greater peace and stability in the Middle East.

Mr. President, we must recognize that a stable and secure Egypt is good for peace in the Middle East. It is in the United States best interest to see a democratic Egypt with human rights observed.

SCOTT CORWIN

● Mr. GREGG. Mr. President, I rise today to make a difficult statement. Scott Corwin will be leaving the Appropriations Committee staff at the end of this Congress to return to his home State of Oregon.

Since taking over the chairmanship of this subcommittee a year ago, I have come to rely on Scott's advice and counsel. He has worked long hours under difficult circumstances to meet what many would view as impossible deadlines—and he met them all. He handled controversial issues fairly and directly.

I appreciate Scott's hard work, and I admire his dedication to public service. Although we will miss Scott, I am sure that Senator HOLLINGS and Chairman HATFIELD will join me in wishing Scott and his new bride Kristen well in their future together.●

A CALL FOR JUSTICE: SUPPORT THE INTERNATIONAL WAR CRIMES TRIBUNALS

● Mr. PELL. Mr. President, as I look back over my years of service here in the Senate, I am struck by how much international relations have changed and how much they have stayed the same. In just the last few years, we have witnessed the dramatic end of the cold war and a wave of democracy spreading around the globe from the Republic of China on Taiwan to the newly established countries in Eastern Europe. Advances in technology have opened new channels of communication between people of different cultures and languages. Economic development, investment and trade have become major factors in bilateral relationships. And in unprecedented fashion, the international community has reached consensus on the need to reduce nuclear weapons, to protect the environment, and to promote international peace and security.

Yes some things have not changed since my arrival in the U.S. Senate. The world is still plagued with civil wars. Children continue to lack access to basic health care and immunizations. And despite the lessons learned from the horrible atrocities that took place under the Nazi regime in World War II, we have failed to stop genocide and ethnic cleansing from occurring once again. In wars that have ravaged both the former Yugoslavia and Rwanda, aggressors have flown in the face of international law and committed the gravest crimes against humanity. If we in the international community are determined to learn the lesson this time,