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 we would 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.

President Bush and Senate Republican leaders support the Federal Marriage Amendment, which defines marriage as the union of a man and woman and restricts the court's ability to rule on the issue. Some Republicans want to vote on an alternative, simpler version—leaving Republican leaders scrambling...

Let's understand where we are on this issue. Senator DASCHELLE, 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 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 political stunt.

Let's face it. The Speaker has it all but handed us the issue of same-sex marriage. In the afternoon, we were told the majority knows that.

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 of the United States. I am saddened, 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 set 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 American family.
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’s 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 aspects of American family life. We have 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 proposal 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.

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. 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 to receive the most thorough consideration. I do not believe the Constitution should be 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 direct election of the President. I agree that the Constitution to define marriage. The American political structure is involved.

In 1979, the current chairman of the Judiciary Committee, the Senator from Utah, Senator Simpson continued:

"... Perhaps I will eventually learn that Senator Thurmond did not have time to consider 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. Senator Thurmond strongly supported his colleague, the Senator from Utah. He said:

"But it is absolutely necessary for proposals to be examined and considered by the Senate committee process. The Senate votes 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 let 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:

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 would bring the Federal Marriage Amendment 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
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’ civil rights for this Federal marriage amendment. I have not heard a compelling argument explaining why the committee process should be bypassed in this case.

In fact, I have 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 clearly 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 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 Federal judges, 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, but who serve as a vehicle for proposing 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 conflict with an earlier 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—a procedural vote tomorrow. 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 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 hasn’t happened. 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 vote on yet another version of the amendment.

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 we have served 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 government. 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 last fall. This 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, 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.

If I am right 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’ll see copycat laws 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 Senator Jeanne Shaheen testified at a Constitution Subcommittee hearing, no court has required a State to recognize a same-sex 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 states must 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 different 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.

We cannot use the Constitution to pass judgment on the morality of the people of a State. 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 we 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 long-standing 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 and political capital 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 our attempt to raise this issue, start on Friday, had been met mainly with silence from the other side. But when we 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.

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. Nor is it disapproval in terms of judges from Massachusetts who have radically redefined the institution of marriage in that State.

I agree with 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 those rulings and then moved back to their States of residence, 46 different States. And then, of course, we understand the process. And then a number

July 13, 2004

CONGRESSIONAL RECORD — SENATE

S7965
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 national 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—some Senators knew then what, 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 meaningless bill.

At the same time, of course, 85 of his colleagues 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 advocates 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 as presently speaking that are seeking 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 stand silent, nor did the Framers of our Constitution contemplate the people standing still when, in a virtue of the power vested in us, or in this case when judges seek to amend the Constitution under the guise of interpretation, none of the Framers, of the Constitution contemplates that the people of this country should remain silent and passive.

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 slot.

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 funnel debate, if 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 long enough 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:

Mark Twain said: After all these years, I see that I was mistaken about being a boy. 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:

William Penn said: Be sure a man and his wife nothing ought to rule but love.

Andrew Jackson said:

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 two 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.

And, perhaps more compellingly, the 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.

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 Federal’s attorneys began to ignore the 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 reaffirming 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' 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 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 homes, hoping that these courts 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. In Denmark, 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."

Even Massachusetts, in 1989, 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 experiencing 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 retrenchment, one study found married couple's 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 countries where out-of-wedlock births have skyrocketed. And I do not think our priorities are misplaced 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 communities 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 providers 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 before 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, as the institution that civilizes and propagates the human race, is where children are raised and learn the ways of right and wrong. Their consciences are formed here.

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 should oppose this 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 2:24, 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 said, ‘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 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, 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 Kay Hagan, of North Carolina; Senator Kay Bailey Hutchison, 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. 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.

Marriage, as an institution between a man and a woman, is one I could emulate. My dad was one in our home who was a strong male role model for me and my brother. I find that single parents are not doing their best to raise their children. As a single mom, my own mother did her very best to raise their children. Marriage is the glue that holds it together. 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 roles 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 he wants to treat his wife and children. 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 95 to 2. This law, which is referred to as DOMA, also protected our State of Nevada by passing 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 years ago 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 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...
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 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. Has it been a standard, a duty, a honor 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 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 amendment. It believes it is plain wrong. It is wrong in three specific.

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. One State will say a 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. No. There is 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 night and you 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 having this amendment marked up 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.

Are you at work as a constitutional amendment 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 hand over to this amendment to come to the Senate. Yet we 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 looking at 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 do not believe you 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 debate which will be proposed in aPresidential election year. Frankly, that 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.

Do you know what I think we need? I don't 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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.
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, Wyoming, or Nevada. 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 that 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 embarrass it or reduce it in any way.

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, what 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, 24 hours 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 of the United States of America?

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 and when they come 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 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 insidious arts 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. That 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.

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, that a 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 marriages; 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. I think that 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 marriage, these activities took place in the State of Nevada. 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 Conrad said there is no issue 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 opposing gay marriage. Reporting 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, as stated by the Chair, 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 on it? 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 them are 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’, during 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 of the same sex, or 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 from us. 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. The reason this is the 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 of this economy.

Since President George W. Bush has come to office, average weekly earnings have risen only 1 percent, while wages and salaries 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 7 years, and the benefits of that increase has been completely erased by inflation.

Even worse, unless Congress acts to restrict the President’s proposed over-time 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. For example, we have not acted on the President’s 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 this 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.

By the way, 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—something as important as 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, followed by 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 markup 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, 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 example, 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 a discussion 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, one of 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 caution and responsibility. 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 would also 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 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 is 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 prohibited as long as 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 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 may confer 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 incident' 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 the ability to consent to organ donation; eligibility for life or disability insurance; interstate succession, which is 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. 50) 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:

(i) 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 parenthood for children born during marriage; (e) Right to adopt; (f) Application of common law marriage (in states that recognize common law marriage) to enter into contractual agreements; (g) Right to change name at time of marriage; (h) Domestic violence laws (including restraining orders and right to occupy home); (i) 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.

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

(iii) 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 autop sy; (f) Right to make funeral arrangements or dispose of remains; and (g) Family health insurance, including rights under COBRA.

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

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

(vi) Government Benefits and Programs: (a) Survivor benefits (Social Security); (b) Military benefits (survivor, housing, health care, PX); (c) Eligibility and (consideration of eligibility) for unemployment, family income, and tax-deferral on income distributed by deceased spouse; (d) Discrimination based on marital status; and (e) Eligibility for family members for veterans benefits.

(vii) 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 consent for certain dispositions or transfers; (c) Dower rights; (d) Homestead rights; and (e) Rent control protections, where applicable.

(viii) Bankruptcy: (a) Joint filing.

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

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

(xi) Miscellaneous: (a) Benefits and rules pertaining to family status; (b) Right to receive and obtain absentee ballot; (c) Consideration of family income for purpose of student aid eligibility; (d) Automatic presumption of parentage for children born outside marriage; (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 to be allowed to sign another partner’s death certificate. This proposed constitutional amendment would preclude such a finding by a court.

This amendment also would have prohibited Vermont from establishing civil unions. 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-
The current version states that marriage or the legal incidents thereof shall 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 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 polygamy is entered 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 act of democratic conversation 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 the country—issued a report that stated the following:

[The 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 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 our children? If so, why was the Senate interested in protecting marriage 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.

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 “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 we are facing a situation we face today is 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 distinction 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 total 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 comprehensive analysis of 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. 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 oradjourn this meeting 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 to undo what he 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 that 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 yield 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 FEINGOLD 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 in their attempts to 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 that marriage is worth the work 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 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 the 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, the Constitution 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 be 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 before our committees to talk about 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 23 hearings 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 that all of our concerns are being sidetracked 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 re-writing 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 could possibly have been saying by that amendment that is just the first sentence of the two-sentence Allard amendment. Insofar as Senator SMITTY’s position, whether he intends to offer it—and I cannot vouch for what Congress Daily says, but it seems to be pretty typical, it is a little bit of a 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 blindsight 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, 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 with us,” 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 reason 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.

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 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 oppositesex 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 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 remain personal prejudices 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 Democratic 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. We 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 1995 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 North Dakota 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 polygamy 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 or not 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 concerning her views on 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 view that we, as Americans, mainly 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 or shouldn’t do. The truth is, what Louis Brandeis once called the laboratories of democracy—work out these various policies.

The truth is, we are not only talking about whether we should emphasize 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 courts, in the Commonwealth of Massachusetts Supreme Court, in one State deny 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 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 the amendment, but he still claims to be in favor of traditional marriage. I don’t know if, again, this is one of those nuance, 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 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 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, 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, including the largest increases in 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—and 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 just read 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, at least initially, chosen to try to overturn 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 are talking about 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.
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 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 want 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 respect 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 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 grievously 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. The American people do not want to talk about. We want to talk about whether a gay couple can engage in a relationship or a marriage.
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 our 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 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 is the basis 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 again, not respecting the 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. 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 Sturgeon, argument after argument 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 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 people. What we suggest is 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 right-wing friends 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 areagnostics, 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 mainstream media. It is the way you get 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 and civilizations 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 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 has been said 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 you want to stop this 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 to enjoy the things 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 assure you 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 or 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 change of 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 decrease that caused 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 is now 60 percent of first-born children in Sweden from 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 about kids? What about the future? 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 that started the baby boom was a generation that understood what family is. That is what family is—f-a-m-i-l-y. It says it.

That is central to the future of this worth and value as a person. It is being destroyed. What is in clear and present danger is the homeland. The great majority, 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 get through the process we have before, 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 FEINSTEIN and SCHUMER would be Senator KENNY 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 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 lack 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 agenda pending, a 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. 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 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 Krr 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 hope to make them build new 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 not about politics. It is 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. What does it do? It does not help families. Why? It does not create a 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 is divide. Americans are tired of divisive debates. This amendment is just simply a distraction.

Let 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 define 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. A faster track to Federal law, this constitutional amendment is unneeded.

Some of my constituents are worried that churches will be forced to perform gay marriages. Under separation of
Ten years ago, I introduced an amendment to the crime bill which was scheduled to expire in September. That was a classic catch-22. The ban would expire, and when it did, the United States would be flooded with assault weapons. The police and the public would be at risk. The ban was scheduled to expire on September 14, once the ban is expired, it will be much easier for terrorists to arm themselves with military-style weaponry. And make no mistake, gun manufacturers and sellers are waiting to make a close watch.

My amendment to the crime bill which is scheduled to expire in September is a classic catch-22. The ban would expire, and when it did, the United States would be flooded with assault weapons. The police and the public would be at risk. The ban was scheduled to expire on September 14, once the ban is expired, it will be much easier for terrorists to arm themselves with military-style weaponry. And make no mistake, gun manufacturers and sellers are waiting to make a close watch.

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 again. From the Department of Justice:

As the President has stated on several occasions, he supports the reauthorization of the 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 leadership.

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 gangsters, by criminals, by grievance killers, by troubled children to kill their schoolmates. We also know from al-Qaeda training manuals that al-Qaeda 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 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 market 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, these guns could be banned 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.

There is an arms shipment 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 don’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 these guns, 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:

(CONGRESSIONAL RECORD — SENATE S7983)

EXTEND THE BAN ON ASSAULT WEAPONS

The clock is running out on a 10-year-old federal ban on certain types of semiautomatic weapons. Without a bill designed for legitimate uses.

automatic assault weapons, the 1994 legislation that would have protected gun manufacturers from lawsuits died in March when senators failed to reauthorize the law. A majority of Americans support the ban, which restricts the transfer and possession of 19 types of assault weapons, such as the AK-47, the Uzi and the TEC-9. So do the National Rifle 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 are for drug traffickers.

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 assault weapons in magazines that hold more than 10 rounds. At the same time, it exempts 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 step toward reducing mayhem with powerful guns. It’s time for him to start acting like it.

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.

(RENEW THE WEAPONS BAN)

The debate over the nation’s assault weapons ban will be repeated this spring, with Sens. Dianne Feinstein arguing the need for extending her groundbreaking legislation. Left aside is the issue of who can lay claim to the original ban.

That is still strong opposition to extending the weapons ban in spite of its obvious merits speaks to the power of the nation’s second amendment. That is absolutely necessary step of outlawing the bullet-spraying semiautomatic guns favored by criminals. His effort proved crucial, as the legislation passed the Senate 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 wasting 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. In 1996, Bush pledged to “stand up to the alarmists.” He also said he would support the ban if Congress approves one. But that likely will expire in September.

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 is 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 those who have written the president, urging him to join them. And they have written him.

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.

(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, or who should be 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 wea-

pons 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 ef-

fort 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.
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 danger by selling 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 to make it easier for Democratic senators to add in two amendments. One would have banned assault weapons, and the other would have required background checks for gun sales 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 expired Sept. 13, leaving the nation more vulnerable to future cop-killers, 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 senators of the Oregon congressional delegation to join the bill to reauthorize the ban in its current form and to pressure the Senate leadership to put the matter up for a vote before the law sunsets in September.

Several studies show a marked decline since 1994 in assault weapons traced to crime, we'll concede that the federal ban has not been entirely effective in preventing 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 held up the bill to extend the smartly effective 5-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 lobbied Congress. If the bill reaches his desk, and the gun lobby has vowed to keep it from getting there. Bush won't have to lift a finger to make the ban effective.

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

But the answer is to tighten and to extend the law, along the lines of California's smarterly effective 5-year-old assault-weapons ban, and not to return to the days when a dozen or more assault weapons could be bought at a Uzi at a local gun shop.

Law enforcement groups are urging that the ban be continued. It would be a travesty of justice if the police who have 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 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 the right of weapons. 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 is 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 voters, 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 group of fanatical representatives, and that it be renewed be-...

Mr. SCHUMER. 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 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 signed 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 leaves to go—and ask 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 Detroit Free Press, May 7, 2004

ASSAULT GUNS: MOTHERS MARCH FOR A NEEDED RENEWAL OF NATIONAL BAN

Thousands will gather on Mother's Day Sunday in Washington, D.C., including at the right thine, ann Michtar, 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.

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

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

We are here today to bring up another important issue—people's lives and the right of weapons. 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 is 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 voters, 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 group of fanatical representatives, and that it be renewed be...
promote support for the ban, which will expire in September unless Congress renews it. The ban covers a range of assault weapons andhigh-powered rifles that greatly exceed the ordinary baptistry 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 modifications. 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 enable a host of work by groups fighting for sensibleguns.

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-stylesuccessed 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 by the other closed a loophole that permitted people to purchase firearms at gun shows without having to undergo in-

The NRA loudly insists that the law is flawed because it bars some guns while allowing nearly identical ones to have beencosmeticallytweaked. That’s absolutely correct. But when Sen. Diane 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 way to effectively regulate California’s 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.

Both congressional leaders, too accustomed to taking marching orders from the National Rifle Assn., have stymied the reauthoriza-

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 ban’s failure, 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 lobby will not yet grant. The president recently that the House would not try if Congress fails to renew a federal ban following nearly identical weapons that have expired.

The 1994 ban bars the manufacture and im-

The ban is scheduled to expire next year unless Congress renews it. The 10-year-old federal assault gun ban will expire in September unless Congress renews

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 to promote sales and to give their customers the promise 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 accom-

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 matter greatly now, just as his continued silence suggests that he values the NRA’s support over Americans’ safety.

The 1994 law made it illegal to manufac-

The 1994 ban bars the manufacture and im-

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 to promote sales and to give their customers the promise 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 accommodatethat extremism is more troubling still.

promise 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.

The NRA loudly insists that the law is flawed because it bars some guns while allowing nearly identical ones to have beencosmeticallytweaked. That’s absolutely correct. But when Sen. Diane 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 way to effectively regulate California’s 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.

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 to promote sales and to give their customers the promise 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.

The NRA loudly insists that the law is flawed because it bars some guns while allowing nearly identical ones to have beencosmeticallytweaked. That’s absolutely correct. But when Sen. Diane 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 way to effectively regulate California’s 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.

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 to promote sales and to give their customers the promise 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.

The NRA loudly insists that the law is flawed because it bars some guns while allowing nearly identical ones to have beencosmeticallytweaked. That’s absolutely correct. But when Sen. Diane 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 way to effectively regulate California’s 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.

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 to promote sales and to give their customers the promise 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.

The NRA loudly insists that the law is flawed because it bars some guns while allowing nearly identical ones to have beencosmeticallytweaked. That’s absolutely correct. But when Sen. Diane 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 way to effectively regulate California’s 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.
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 weaponry. 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. According to the 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 crimes 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 their rights, the theory that the only permissible purpose of the 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, and again—I guess I am—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 criticizing their words, they then the only permissible purpose of the constitutional amendment is to expand, not limit individual rights, presumably including the right to same-sex marriage.

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 lobbied 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.

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 I know one of the reasons 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 here. If 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 work, then they are exactly where I 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.

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, 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—Afri-
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 Republican Senators opposed to 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 demand protection against 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 security and protecting the lives of American soldiers, and that 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 proposed mass layoffs on employees, 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 an 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 don't want a vote on it. They 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 what extent they will extend their 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. 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 does not want to pass the amendment to the Constitution. No one can now claim 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 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 cut it out of the Constitution. 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. They have rushed it, knowing that they would lose a vote at the end of the month.

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

Massachusetts marriage opponents 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. 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 move forward on it; 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; 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 to debate it 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.

In the Chamber. I will be glad to yield the floor to the Senator from Massachusetts who wants a vote on the merits. Do you hear me? The Republican leadership does not want a vote on the merits.
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 means so much to the 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 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 under John Adams, who 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 under John Adams, who wrote it virtually himself, much of it copied by the Constitutional Convention in 1787.

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 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 Minnesota Jewish Council and a Reform Rabbi, explained in a recent forum:

Some religious traditions, including Reform Judaism, recognize the legitimacy of same-sex unions. Many Reform rabbis have performed same-sex weddings. Yet some warn that if the FMA were adopted, performing a religious wedding ceremony for a same-sex couple could result in the loss of tax-exempt status. The FMA would give the federal government 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 discrimination 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 like 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 discriminatory marriage amendments 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 GORDON SMITH, 18 Republicans have something he wanted to say.

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

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.

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 serve with him on the Armed Services Committee. He is the chairman and does a great job.

The PRESIDING OFFICER. The senator from Virginia.
Mr. ALLARD. 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 to thrive. We opened 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 the Bill of Rights.

Therefore, I think it is incumbent upon us 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 legislation. 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 my colleagues in the Congress to proceed. I hope, 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 pause, despite the statements by some opponents to mandate 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 of which are, I believe, 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 word that 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 to the peace 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 legislatures do is they do not by statute but actually by an amendment to their constitution? 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. So long as the action of the State, either legislatively or constitutionally, does not change the definition of 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—

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. One wonders that 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, and endowed by their Creator with certain unalienable rights, that among these, 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 to be free and equal. In the course of history, we have expanded those rights to African-Americans, to women, and to everyone else. Those constitutional amendments signaled great strides in 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—whatsoever necessary ingredients of our happiness. We receive no assurances of happiness, but 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 the government to permit life, liberty, and the 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 is lost in 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 behaviors and beliefs, which we dislike or disapprove of. It is especially difficult if those other behaviors or beliefs differ from our own moral or religious views. Although our Constitution separates “church and state,” we do not willingly give up even the most 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 in 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-gender things, in Order 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 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 current 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 regulation, rule, or interpretation of the authority which 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 play 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 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 reflect them.

It is a tragic day in America when politicians exploit the Constitution of the United States to get themselves re-elected. It is a tragic day for millions of Americans who are anathema 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 separate.”

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 authority. 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 Boxer and the whole of the Senate.

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. Pine. 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 serious debate. After all, we have been 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 thing 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 by 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 even skepticism 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 we ever had.

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. This 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 decision to undermine traditional marriage.

The list of legal challenges goes on. In this case, the distinguished Senator from Massachusetts, Attorney General Eliot Spitzer, 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. 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 argument is that judicial fiat will accomplish what the Constitution amendment process, in which the States participate, cannot. Judges who disregard the law and reforge the definition of 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 have not sufficiently protected their traditional commitments to marriage, they had better think twice.

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 intermarry in other States. In those cases, their spousal relationship may not be recognized, and it would be likely that litigation would result. Massachusetts law will prevail, 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 the 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 on other people by requiring their marriage to be recognized anywhere 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.

Let me pose a question. If this is such a political issue, why didn’t 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 not an issue and it was never going to be.

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 group 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 argument is that judicial fiat will accomplish what the Constitution amendment process, in which the States participate, cannot. Judges who disregard the law and redefine marriage in order to impose their will on the States and on the whole Nation.

Gov. Mitt 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 have not 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 dis- regard for popular authority do not bravenly defend this irresponsible activ- ism. Instead, they take the easy way out. It is much easier to tell the Senate or the courts they say, Easier said than done. The fact is, these decisions are already being removed from the people by judi- cial fiat, by four justices in Massachu- setts, of all places. The laws of this country, the laws of every State in the Nation, are enacting laws that make same-sex marriage absent our action. The two distinguished Senators from California, and the distinguished Sen- ator 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 sup- pose those States as well. Do not we have to build a new one. Well, the situation on marriage is to pass a con- stitutional amendment. We have not wait until the dam breaks and take steps to repair those cracks. We do not, but it is.

And you folks out there watching this, you better tell your Senators they better act on this or traditional mar- riage 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 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 con- stitutional 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. Cowardly, as I have told the 25 constituents I don’t know of anybody in this body who engages in discrimination. Cer- tainly 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 ma- jority of the American people are big- oted? No, for the Senators JOHNNY and JOHN EDWARDS are? Of course not. What about Rev. Walter Fauntroy, former Member of Congress, the Afri- can-American pastor of Washington’s New Bethel Baptist Church, and Bishop William Kimbrough, the African-American president of the United States Con- ference of Catholic Bishops? The an- swer to all of these is no. Similarly, I do not think it is proper to conclude that the more than 60 percent of Sen- ator BOXER and FEINSTEIN’s own con- stituents who voted for traditional marriage are bigots either. They are not.

Those making these slanderous accu- sations are well aware that many of those in favor of an amendment have frequently pursued legislation to pro- tect the rights of gay citizens. Our at- tempts to protect traditional marriage laws have nothing to do with the pri- vate choices of gay and lesbian citi- zens; they have everything to do with the rights 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 fu- ture citizens. Our efforts simply seek to maintain the right of the American people to decide this issue for them- selves through their elected representa- tives, 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 argu- ments 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 the 50 States, 38, 46 States with same-sex mar- riages within those States that will have to be recognized under the full faith and credit clause against the wishes of those particular States. My colleagues making this argument are and all these States that have not defined marriage as only be- tween a man and a woman. The red States or orange States that redefine marriage should be given and a woman and a woman. The only ones that do not are Oregon, New Mexico, Wis-consin, New Jersey, Connecticut, Rhode Island, Massachusetts, and New York. They are the only States that have not defined marriage as only be- tween a man and a woman. All other States have done that, including Alas- ka and Hawaii, the two that are 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 Massa- chussets 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 national in this country.'

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 organiza- tion, 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 re- spected liberal spokesperson for the liberal cause, constitutional law pro- fessor at Harvard Law School, a person I personally enjoy listening to, very

July 13, 2004
CONGRESSIONAL RECORD — SENATE  S7993
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 do 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 judges 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 consensus marriage laws overturned. I believe they should not have a right to redefine marriage as Massachusetts has done.  

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 have done so. As these liberal judges in Massachusetts 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 in which 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 held by our fellow citizens on 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 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 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 made not merely for the generation that then existed, but for posterity—unlimited, undefined, endless, perpetual posterity.  

So we owe an obligation to those we represent today and to future generations as we embark upon this very solemn undertaking. We should, of course, 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 of challenging the law. 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 law was under attack 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 notion that no one has the right 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 have been there but the credit clause of the Constitution will not allow 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 the law. That is our law. We just have 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 the referendum. In California, San Francisco’s action permitting the licensing of same-gender 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 earnestness in the passion that 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. Tal-ENT). 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 into account of as they traditionally have in the States which have had the responsibility since before our founding as a nation.

I thank the Chair, I yield the floor.

Mr. ALLARD. Mr. President, I yield 15 minutes to the Senator from Okla- homa, 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 Senator 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 De- fense of Marriage Act, which passed and was signed into law by President Clinton in 1996. I heard my very good friend from Minnesota, Senator DAY-TON, mention that as Senator HATCH and I did, 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 for marriage are arguing for same-sex 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, was doing 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 have 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 Supreme 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 that 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 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 court. This is vitally important.

In the State of Hawaii, when the Supreme Court found that 42 out of 50 States have passed identical legislation to DOMA, in spite of the fact that 4 additional States have passed something very close to it, I do not know unless we pass 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 no objection, and 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 one 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 compelling realities, 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 has 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 hearings by lawyers 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 Non-Discrimination 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 critically-needed 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 have to do this now; there is no fire burning; let’s put this 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, learned 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 State legislatures, 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. And you can see it took place in the States and— 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 because the States passed 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 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 for each other. And was it 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 1980s 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 the Netherlands, 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 they feel it is 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 will happen. And maybe 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 how we are going to do this right? And where should the focus for legislators in looking to build a good, strong society in the future be 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 a little more time. I am unanimous consent to extend from 12 to 15 minutes.

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

Mr. MCCAIN. Mr. President, most Americans are persuaded 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 should not be recognized.

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 will happen. And maybe 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 how we are going to do this right? And where should the focus for legislators in looking to build a good, strong society in the future be 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 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 marriage in the State was unconstitutional. As my colleagues know, the Defense of Marriage Act was proposed in response to a decision by the Supreme Court of the State of Hawaii which concluded that a law banning same-sex marriage was unconstitutional. As my colleagues know, the Defense of Marriage Act was proposed in response to a decision by the Supreme Court of the State of Hawaii which concluded that a law banning same-sex marriage was unconstitutional. As my colleagues know, the Defense of Marriage Act was proposed in response to a decision by the Supreme Court of the State of Hawaii which concluded that a law banning same-sex marriage was unconstitutional.

I support the Defense of Marriage Act adopted by Congress and signed into law by President Clinton in 1996. 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 intact marriage 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—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 that 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 against and push back against this, this is not good for children. It is not good for families. It is not good for America, nor the American culture.
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 country to impose a legal definition of marriage that conflicts with the prevailing view in their State have a far less draconian remedy at hand to correct 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 by jurists in their courts 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 Federal Marriage Amendment on constitutional grounds, then, and only then, should we consider amending our Constitution with the FMA.

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, 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 is unconstitutional and an affront to the States their traditional right and their clear opportunity to resolve this constitutional marriage policy. 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.

This 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, and the upward trend has been considered by the Senate on numerous occasions, and that we followed in conjunction with the crime victims rights constitutional amendment. By considering 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 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 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 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 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 the Majority County, in the name of 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 a designated event, such 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 Dr. Daniels and his 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 leadership wants 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 of the Republican Party 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 Senate, we reject 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 on, even if they were approved by a majority of the State’s voters.

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 through civil unions. This amendment is supported by Governor Mitt Romney, 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 through civil unions.

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, executives or branches officials—from a Governor to a government sub-agency—may 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 breath-taking imposition on our States and their officials.

Third, the term “legal incidents” is itself extraordinarily vague. Since the amendment does 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 actions, 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 in a religious or civil organization. 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 extra step and try 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 the 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.

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 false. 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 rendered 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 does not 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 laws will 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 people’s “right to marry” under 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 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 mode 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 with 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 less radical policy, however, for 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 Supreme Court are justified. Perhaps the Court will overrule Lawrence. My point is that the Court has not been subject to the kind of activist interference that the Rehnquist Court was. In recent years, the Court has adhered to the kind of restraint that the Senate should now encourage in its consideration of the other amendments. When the Court 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 amendment 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 colleagues and me. He said, “We know that the future is uncertain, and our fortunes unclear. I would like to think that we would like me for a long time to come, but if they do not, I fear the consequences of the FMA are substantial. Could liberal activists use the FMA argument to modify the Second Amendment? Or force income redistribution? Or ban tax cute?” 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 opponents. This is simply an attempt by colleagues to use the FMA argument to modify the Second Amendment? Or force income redistribution? Or ban tax cute?” 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 opponents. This is simply an attempt by colleagues to use the FMA argument to modify the Second Amendment? Or force income redistribution? Or ban tax cute?” 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 opponents. This is simply an attempt by colleagues to use the FMA argument to modify the Second Amendment? Or force income redistribution? Or ban tax cute?” 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 opponents. This is simply an attempt by colleagues to use the FMA argument to modify the Second Amendment? Or force income redistribution? Or ban tax cute?” 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 opponents. This is simply an attempt by colleagues to use the FMA argument to modify the Second Amendment? Or force income redistribution? Or ban tax cute?” 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 opponents. This is simply an attempt by colleagues to use the FMA argument to modify the Second Amendment? Or force income redistribution? Or ban tax cute?” 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.
“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 and thus serves as the federal law regarding the 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. It is the 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 (untested 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—ordinary American people are not be given the opportunity to settle it through a constitutional amendment expressing their longstanding conviction about marriage. Even if we will someday see a day, try an idea of which senators understand—try an idea of which senators understand—try an idea of which senators understand—try an idea of which senators understand—try an idea of which senators understand—try an idea of which senators understand—try an idea of which senators understand—try an idea of which senators understand—try an idea of which senators understand—all the evidence that article be printed in the Record.

What about Spedale’s report of lower divorce rates and decline in Sweden and Denmark (Norway hasn’t reported). Second, marriage statistics in countries with very high registered marriage rates declined by 10 percent, while heterosexual divorce rates declined by 12 percent. Writing in the McGeorge Law Review, Eskridge claimed that Spedale’s study contained the “same irresponsibility” of those who predicted gay marriage would undermine marriage. Andrew Sullivan’s Spedale-inspired piece was sub-titled, “The case against same-sex marriage crumbles.” Yet the half-page statistical analysis of homosexsual marriage in Warren Spedale’s unpublished paper doesn’t begin to get at the truth about the decline in marriage in Scandinavia during the nineties. Scandinavian marriage rates are now so weak on the grounds of marriage and divorce no longer mean what they used to.

The family dissolution rate is different 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. Marriages 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 people marrying, what growth 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. For 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 countries with very low registered marriage rate (such as Denmark) must be carefully parsed. In his study of the Norwegian family in the nineties, for example, Spedale shows that a small increase in Norwegian marriage rate over the past decade has more to do with the institution’s decline than with any renaissance. Much of the increase in Nor- way’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 age of 40 is a returning wave.) 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 and always will be weak in Scandinavia, but in these rates no longer mean what they would in America. In Scandinavian demography, with fewer people marrying, we are seeing the out-of-wedlock birthrate, and the family dissolution rate.

The family dissolution rate is different from the divorce rate. Because so many Scandinavian couples have opted out of marriage, divorce rates are unreliable measures of family weakness. Instead, we need to

---

The gist of many of our arguments are we 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 Massachusetts attorney has asked 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 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 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 their highest court in Arizona, the last summer in Lawrence v. Texas, with Justice Anthony Kennedy writing, did not merely void the nation’s sodomy laws. Kennedy also embraced an amorphous right to sexual liberty (untested 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—ordinary American people are not be given the opportunity to settle it through a constitutional amendment expressing their longstanding conviction about marriage. Even if we will someday see a day, try an idea of which senators understand—all the evidence that article be printed in the Record.

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 today 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. Brian Spedale, Sullivan and Eskridge cite evidence from Denmark (1993) must be carefully parsed. In his study of the Norwegian family in the nineties, for example, Spedale 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 Norwegian 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 age of 40 is a returning wave.) As for the rest of the increase in Norway’s 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 and always will be weak in Scandinavia, but in these rates no longer mean what they would in America. In Scandinavian demography, with fewer people marrying, we are seeing the out-of-wedlock birthrate, and the family dissolution rate.

The family dissolution rate is different from the divorce rate. Because so many Scandinavian couples have opted out 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, the居 couples with children break up at two to three times the rate of married parents. So rising rates of cohabitation and out-of-wedlock births are a proxy for rising rates of family dissolution.

By that measure, Scandinavian family dissolution is no longer a precondition for parenthood, or the treatment of Scandinavian family change is a matter of the sociology of childbearing means that during the nineties, the total rate of family dissolution in Scandinavia significantly increased.

Scandinavian 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 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 the culturally conservative and religious districts. So as out-of-wedlock childbearing rises beyond 50 percent, it is reaching the toughest areas of cultural resistance. The most important trend toward the post-marriage decade may be the erosion of the tendency to marry at the birth of a second child. Once even that marker disappeared, 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, Kambeskard, and Abrahamson describe it, in the words of the sociologist Mai Heide Ottosen, “Marriage is no longer a precondition for settling a family—neither legally nor normatively. . . . What defines and makes the foundational institution is cultural.”

So the highly touted half-page of analysis from an unpublished paper that supposedly shows marriage replaced by unmarried cohabitation may have reached the end of marriage by turning children over to the welfare state. The same study found that in Sweden, even as Sweden has more than double the rates of family dissolution, when married 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 teenagers. Whatever the causes, the discouragement of lone motherhood is a short-term effect. Ultimately, mothers and fathers can get along financially alone. Still, out-of-wedlock births are raised, initially, by two cohabiting parents, many of whom later break up.

There are also cultural-ideological causes of out-of-wedlock births that are more than in the United States, radical feminist and social justice ideavists pervade the universities and the media. Many Scandinavian social scientists view the collapse of the nuclear family and the spreading of nontraditional unions as a cultural revolution. They see a new age dawning when religious marriage is supplanted by a society that is not “organized” 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.

However, the author concludes that there is a middle group that includes the Netherlands, Belgium, Great Britain, and Germany. And recently, France, was a member of this middle group, yet their rates of out-of-wedlock births have moved it into the Nordic category. North American rates of cohabitation and out-of-wedlock births into this middle group are resistors to cohabitation, family dissolution, and out-of-wedlock births are the southern Euro-mediterranean states of Spain, Italy, and Greece, and, until recently, Switzerland and Ireland. Ireland’s rising out-of-wedlock birthrate has pushed it into the middle group.

These three groups closely track the movement for marriage by gay people. 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 Nordic countries. Coincidentally, nearly every country in that middle group has recently either legalized some form of gay marriage, or is seriously considering it. In the early nineties, the out-of-wedlock birthrates have the gay marriage movement achieved relatively little support.

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 not about raising children, that change couldn’t happen in the church as hidebound and divided. The church as hidebound and divided. The church as hidebound and divided. The church as hidebound and divided. The church as hidebound and divided. The church as hidebound and divided. The church as hidebound and divided. The church as hidebound and divided. The church as hidebound and divided.

The division over heterosexual cohabitation broke into the open in 2000, at the height of the marriage debate between gay partners in 1993. Denmark, where the out-of-wedlock birthrates have passed 50 percent, and the effective end of marriage as a protective social shield for children has become thinkable. Gay marriage isn’t the cause, but it’s a sign of the separation of marriage and parenthood; it has advanced it.

In liberal Denmark, where out-of-wedlock births were already very high, the public favored gay marriage. But in conservative Scandinavia, where the out-of-wedlock birthrate is lower—and religion traditionally stronger—gay marriage was imposed, against the public will.

Norway’s gay marriage debate, which ran most intensely from 1991 through 1993, was a culture-changing event. And once enacted, gay marriage had a decidedly unconservative message. In 1991, (Sweden expanded its benefits packages into de facto gay marriage in 1993.) 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 birthrates shows that the opponents of marriage are succeeding. Norway’s Lutheran state church has been openly rebellious minority liberal leaders, and placing a greater role in precipitating marital decline.

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 births 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. In Norway, where out-of-wedlock births 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 church, and the prominence of secular and left-leaning social scientists. In the post-gay marriage nineties, as Norway’s once-religious center became a hub of new religious movements, gay marriage became one of several factors contributing to further increases in cohabitation and out-of-wedlock birthrates. In Norway, where out-of-wedlock births were lower, religion stronger, and the public opposed same-sex unions, gay marriage had an even greater role in precipitating marital decline.

Kari Moxnes, a feminist sociologist specializing in divorce, is one of the most prominent voices in Norway’s emerging group of public social scientists. As a scholar who studies 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 er en kjærlighetstragedie” ("It’s a love-tragedy"), 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 (welcomed) death knell for marriage itself. Moxnes identified how marriage’s experience in forging relationships unconnected by children—as social pion- eers in the separation of marriage from parenthood—has prepared the rise of out-of-wedlock births to win.

A frequent public presence, Moxnes enjoyed her big moment in 1999, when she was embroiled in a dispute with Arnstad, the energy minister, Marit Arnstad, minister of children and family affairs in Norway’s Christian Democratic government. Moxnes had criticized Arnstad’s classes for teaching children the importance of wedding vows. This brought a sharp public rebuke from Haugland. Re- sponding 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 conserv- ative 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 birthrates shows that the opponents of marriage are succeeding. Norway’s Lutheran state church has been openly rebellious minority liberal leaders, and placing a greater role in precipitating marital decline.

Gay marriage is both an effect and a rein-}
here has been radically individualized, and utterly detached from marriage. Registered partnerships have reinforced existing trends. The press treats gay partnerships more as revelation stories than marriage stories. The popular message of registered partnerships—for social scientists, handball players, and bishops alike—has been that any nontraditional family configuration has to be considered as normal. Nor does Catholicism guarantee immunity. Ireland, perhaps because of its geographic, linguistic, and cultural proximity to the English model, recently voted overwhelmingly to permit out-of-wedlock births far in excess of the rest of Catholic Europe. Without a definite shift in ineluctable, Kiernan openly wonders how long America can resist the pull of stages three and four.

Although Sweden leads the world in family decline, Sweden is ripe for a healthy turn away from single-parenting. Both Swedes marry less, and bear more children out of wedlock, than any other industrialized nation. But Americans lead the world in single-parent-adoptions. To counter 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 America we 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. Moreover, the divorce rate cuts two ways. Our cultural libertarianism, as the best way thinker, who claims 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 not to risk losing the right to redefine itself. The goal of the gay marriage movement 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 decade of the twentieth century, the Nordic countries have been leading the way on marital childlessness. Norway and Denmark, under the leadership of Kathleen Kiernan, the British demographer, use a four-stage model by which to gauge a country’s movement toward Swedish levels of marital and nonmarital 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 accepted, and nonmarital births stop growing dramatically associated with marriage. Norway was at this third stage, but with recent demographic and legal changes has entered stage four (both Norway and Denmark), marriage and cohabitation become practically indistinguishable, with many, perhaps even most, children born and raised outside of marriage (and marriage). Unlike Kierans, these stages may vary in duration, yet once a country has reached a stage, return to an earlier phase is unlikely. (She offers no empirical evidence on this generalization.) In the case of the Scandinavian welfare state, this means that although the presentation of the Scandinavian welfare state encourages family dissolution in the long term, in the short term, Scandinavian parents giving birth out of wedlock benefit from the fact. 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. The provision of a guaranteed income can no longer provide. 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 influence of the Scandinavian Law Institute has proposed a series of legal reforms (“Principles of Family Dissolution”) designed to equalize marriage and cohabitation. Adoption of the AJI 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 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 Swedes aged 45 and over had lived together had only one child. By 2001, 56 percent of unmarried, cohabiting parents in Norway had two or more children. This suggests that 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 permits a precautionary point of no return. Divorce, or even eliminating premarital cohabitation, is not what’s at issue. With no-fault 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 certainly the premarital testing phase is not the same as unmarried parenthood. Potentially, a line between two can hold.

Developments in the last half-century have surely weakened the links between American marriage and parenthood. Yet to a remarkable degree, American parents have managed to, 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 are present in the wealthy and socially homogeneous Scandinavia.

All of these considerations suggest that the marriage-dissolution debate is too important to kick. Kierans maintains that as societies progressively detach marriage from parenthood, stage reversal is impossible. America is now suffering from out-of-wedlock births, marriage and cohabitation. Adoption of the AJI principles would be a giant step toward the Scandinavian system.
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 difference is that registered partnerships do not permit adoption or artificial insemination, and cannot be celebrated in state-affiliated churches. These limitations are often leaked. The only difference in 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 made, but there are plenty of sons 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 “Europeanize” to “Americanize” 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 will see the effect 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 with results 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.

The national 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 factually—that 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 in the manner of 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 definition 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. 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 until we have an amendment that would allow a State to define 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 a State to define marriage as a union 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 until we have an amendment that would allow a State to define marriage as a union between a man and a woman.

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 summarize only 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 hang in 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 who are we 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 women talk 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 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, morals and laws 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 believe that 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 take a lead 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 the three 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—one 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 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 blase 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 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, and 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 good 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 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
Mr. President, we know these are statistical numbers. We know many families do not have the financial 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 smaller 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 are children reared in nonintact families.

Close to 4 out of 10 American children go through a parental divorce.

Children from married-parent families have more positive attitudes toward future marriage, and greater success in forming lasting marriages. . . . Young men from married family backgrounds 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. 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 there are acting as parents, 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 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, 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. Nothing, in anything, 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, if it 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 ask 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 any body.

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. I have been away from the Chamber, and I have not 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 anything. I cannot report it. I have not. 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 publically that they have done a great job in my office. I have been presented 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, and as the deliberation, they 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 that 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. However, what they want 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. 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 countries 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 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 recognizing the 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 the 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 values that are being underemphasized 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 welfare reform. 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. 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.

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 increduously important in 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 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 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
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 definitively a role for a mother and a father and a husband and a wife, and that the culture that promotes the basic fundamental that they teach our 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 be 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 they have been in the Senate, I have been one of those 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 to have, 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 schools, and they 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 proponents 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 from Colorado—

Mr. ALLARD. Mr. President, we have been hearing the point that there is no three is far 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 final 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 had a Federal court and the Federal court refused to hear their appeal and could be decided any day.

In Alaska, there is an interesting case, a case pending currently in the Alaska Supreme Court. That court has refused to hear a case on same-sex couples. This case has been argued in the Alaska Supreme Court and could be decided any day.

In Arizona, the State supreme court has refused to hear a case brought where two men were denied a marriage license and sued in 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. 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. 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. They have registered same-sex 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 challenge.

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 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. In this first case, there 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 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, as well as 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 Iowa. The Iowa court 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 December of 2003 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-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 the State's decision 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 a lawsuit 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 State judiciary committee 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 to say marriage in New Jersey was protected. They made a court case about it. The New Jersey supreme 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 refused to review an appeals court ruling 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 Cumberland County, NC. So they filed a lawsuit.

In Oklahoma, the State ballot initiative may be challenged. The ACLU is threatening to challenge a November 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 2001. 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 is 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 Georgia case and the Lawrence v. Texas case, and then the Constitution as it applies between the interaction between States and courts 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
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 President Bush was focusing 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. We have been unshaken, that institution has fissures in the foundation; it is still an institution worth preserving. It is an institution worth rebuilding. It is an institution worthy fixing the cracks in that foundation. It is an institution worth shining 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 accept, 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 as the timeless, 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 mom and pop 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 of doing 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, however, you can’t happen, but it isn’t the idea. 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 conditions, 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 good. What we are here 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, 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 us and would have an opportunity to 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?
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 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 that is especially constant 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.

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?

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, this is reality—and we tend 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 suggest 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 quote Senator Clinton where she says: 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. 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 Oregon marriages, some with respect to the Arizona marriages, some with respect to the Oregon 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 the people in Massachusetts, it is not. There are 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 that this is a serious public policy issue. Where 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 1960s and 1960s with respect to 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, but I am not sure of that. To hear the states claiming that we have to change the statute 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 a lot of liberal justices of superior courts in 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 substitute 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 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. This will be court over court 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.

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 the people in Massachusetts, it is not. There are 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 that this is a serious public policy issue. Where 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 1960s and 1960s with respect to 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, but I am not sure of that. To hear the states claiming that we have to change the statute 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 a lot of liberal justices of superior courts in 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 substitute 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 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. This will be court over court 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.
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 single issue, every single 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 legislation has not been unknown that there have been actually as many as three amendments on the floor of the Senate. 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 accomplished as you can, which means you take plan A and 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 in the Senate.

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 amend- ment 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. There are 58 senators. 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 KEN- NEDY’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 marriage. I am proud that they attempted 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 Massa- chusetts don’t want. I am proud of them.

I don’t think John Adams would have said the same thing. I don’t think Jef- ferson 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 hangnerng 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 expensive process, a tedious 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 liv- ing? You see, I thought from article V of the Constitution 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 Constitu- tion. That is what I thought this living, dynamic document was. It 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 Constitu- tion, 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 for one of the votes in the House, and three-quarters of the State legisla- tures.

By the way, in responding to an earlier comment of a colleague on this side, it is not three-quarters of the State legislatures, it is 17 members 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 prob- ably there. The thing that it is 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 suspect me, but I don’t know. Probably a few more are right now sort of staying low, saying all the right things, what the polls in- dicate is popular, and have their fin- gers 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 we 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 weaken the Constitution?

Someone suggested this doesn’t rise to the level of a constitutional amendment: 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, 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? More than enough of 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. 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 mind 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. Because there is no one there to pick up the pieces. You can say, 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 that much. 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 place enough? Is it not a special 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—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, 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, yet 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 someone or hurt somebody. 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 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, and I have shared with them 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

SIGNED

George W. Dent, Jr., Schott—van den Eynden Professor of Law, Case Western Reserve University School of Law.

David P. Plotkin—Professor of Law, University of Miami School of Law.

Peter M. Skidmore—Professor of Law, University of Nebraska College of Law.

Evan C. Tager—Professor of Law, University of Pennsylvania School of Law.

Mary L. Bonauto—Professor of Law, Boston University School of Law.

Richard C.ˉJ. Gray—Professor of Law, University of California at Berkeley School of Law.

Robert Post—Professor of Law, Columbia University School of Law.

James A. Duggan—Professor of Law, University of Richmond School of Law.

[Jul 13, 2004]
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 states that marriage, throughout the United States, marriage shall be the “union of a man and a woman.” The second sentence states that no state or political subdivision of the United States shall be held to require a different result. While this reiteration may be arguably unnecessary, it is far from contrary.

The second sentence also serves another purpose, however, preserving decisions about legal benefits to the deliberate legislative process. 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 unilaterally.

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 that addresses the growing concern for marriage in the United States. In doing so, the Amendment is deliberately crafted so as to preserve the integrity of state sovereignty. The FMA does not impose a national marriage law, and poses no plausible threat to individual or private organizational actors.

The first sentence of the amendment maintains a clear 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 that would be open to public debate and to the people and their elected representatives.

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 protect the nation’s interests with the principles of federalism. It is a common-sense response to a very real threat to the ability of 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.
Court began the process of incorporating federal constitutional guarantees in its Fourteenth Amendment jurisprudence, a growing number of federal constitutional provisions have been disregarded.

As to appropriateness, it must be asked whether it is wise to have fifty different marriage policies in the United States. While there will be significant variations in many (probably most) state policies, there is some need for uniformity. This is an axiomatic preposition of a federal constitution: the specific policies requiring unity are specified in the national constitution. The most important examples are included in the limitation on state power to regulate interstate commerce.

Finally, if 3/4 of the states ratify the FMA, this would signal an acceptance of a super-majority from all three branches of government. This is technically true (and is true of all other Constitutional amendments that affect government power), but I think it is misleading. The judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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), I think it is misleading. In construing the meaning of the Constitution, judges are not likely to be consistent. It is one thing to construe the language of the Constitution values on marriage; quite another to interpret the language of the Constitution values on same-sex marriage.

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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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 misleading. In construing the meaning of the language of the Constitution values on marriage, judges are not likely to be consistent. They construe the language of the Constitution values on marriage, but not the language of the Constitution values on same-sex marriage.

The FMA gives the American people a voice. 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), I believe it is misleading. To construe the meaning of state constitutions, judges are not likely to be consistent. It is one thing to construe the language of the Constitution values on marriage; quite another to interpret the language of the Constitution values on same-sex marriage.

The FMA gives the American people a voice. 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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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 misleading. In construing the meaning of the language of the Constitution values on marriage, judges are not likely to be consistent. It is one thing to construe the language of the Constitution values on marriage; quite another to interpret the language of the Constitution values on same-sex marriage.

The FMA gives the American people a voice. 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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.

The FMA gives the American people a voice. 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), I believe it is misleading. In construing the meaning of state constitutions, the judicial branch has been almost alone in constraining the meaning of state constitutions. Thus, the major thrust of the FMA is to curtail judicial definition of marriage recognition.
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 my 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 will knotty this in 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 where 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. 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 co-equal 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, and I just started on my legal career and opted to do something different, and that was run for Congress.

I point out 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 Madison gave 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 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 new law is shared, and it 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 sets up their judges. 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: Why is that? 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. If I win 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, like 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 small hills of Germany. 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 think you see this very 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 a cultural 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 do not 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 best for the country and 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 in fact 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 I believe the President 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 we 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 about self-fulfillment, 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 about self-fulfillment, 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 about self-fulfillment, 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 about self-fulfillment, 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 about self-fulfillment, 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 about self-fulfillment, 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 about self-fulfillment, 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?
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 is 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 are on this logistical 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, and 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 the messages from those places where they 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 suggest 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 get 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.

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 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.

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 sustained.

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 it 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. SES-)

I thank 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.