To fix this problem, Senator FEINSTEIN and I are about to propose legislation that will establish a Director of National Intelligence—or DNI. The DNI will be a Cabinet-level position that will lead the intelligence community, and be responsible for aggregating intelligence for the President.

As for the specific processes that cry out for reform, the report focuses on two in particular. One, layering of uncertain conclusions—judgments were layered upon other judgments, and specific concerns and uncertainties were simply lost; two, group think—because we knew Saddam Hussein had weapons of mass destruction, and used them on his people, any data that appeared to support this continued behavior was viewed favorably, and dissenting data was discounted or underreported.

Those ''process'' types of deficiencies quickly lead one to ask: How can the intelligence community provide better oversight and supervision of ''expert'' analysts; and how can the Congress provide more effective oversight of the intelligence community? There are clearly process reforms needed within the intelligence community, and Congress's oversight of that community.

I know that Chairman ROBERTS and Vice Chairman ROCKEFELLER, are very concerned that our intelligence community is broken, and are committed to taking action in the coming weeks and month to address many of the most critical deficiencies.

With particular regard to congressional oversight, I believe that there are some fundamental things that need to be changed such as term limits of committee members. Currently, members can only serve on the Senate Intelligence Committee for 8 years. That means that when they know enough to be conversant in the intelligence business, they need to rotate off of the committee. We need intelligence committee members who can speak the lingo and understand the processes. Consequently, term limits need to be eliminated.

Also, the jurisdiction of the Intelligence Committee regarding classified matter is sometimes muddied due to overlap with the Armed Services Committee. I submit that a simplified approach to jurisdiction could enhance oversight and accountability.

The process of document classification and redaction also needs to be reviewed. When the Intelligence Committee first prepared this report, the CIA recommended that about half of it be redacted. I understand the need to protect the names of sources and intelligence methods. But I can tell you that most of those redactions were not of that nature; they were everyday, unclassified words.

The report you see today is less than 20 percent redacted, and the Intelligence Committee is still working with the CIA to release more of the report.

Notwithstanding, it is my belief that in matters such as these, the CIA is too close to the intelligence process to provide an objective view of what really needs to be classified. Consequently, I am working with Senator WYDEN to propose legislation that will establish a small independent group under the President that will review documents such as this report to ensure that classification decisions are independent and objective. In addition, I urge the President to nominate as soon as possible a candidate to serve as the Director for Central Intelligence.

This is a critical time of this Nation as we fight the global war on terrorism, and we need to have effective leadership in-place at the CIA as soon as possible. As we make progress in fixing the intelligence community, I repeat my call to both sides of the aisle to not politicize the issues or the prospective remedies. We owe it to the American people and to the members of the intelligence community to fix the fundamental problems outlined in this report, and create an intelligence community that can best serve the national security interests of the United States.

We are part of the problem. Let's find the solution.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FEDERAL MARRIAGE AMENDMENT—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S.J. Res. 40, which the clerk will report.

The assistant legislative clerk read as follows:

A motion to proceed to consideration of Senate Joint Resolution 40, a joint resolution proposing an amendment to the Constitution of the United States relating to marriage.

The PRESIDING OFFICER. Under the previous order, the time until 8 p.m. shall be equally divided between the chairman and ranking member or their designees.

The Senator from Colorado.

Mr. ALLARD. Mr. President, I take this opportunity, before we continue with the debate, to talk about how important it is that we debate in an earnest and sincere way the issue of marriage. Marriage does matter. It is important to the American people.

We heard earlier comments about how bringing up issues such as class action lawsuits, the marriage amendment, and trade were just wasting the Congress's time. Yet the other side doesn't think it is a waste of time to raise taxes, to increase more laws so we have fewer and fewer rights, to restrict the free enterprise system, and in a sense create more government.

In the debate on marriage, we are trying to accomplish a number of things. No. 1, we want to define marriage as the union of a man and a woman. No. 2, we want to restrict the action of the court's ability to define marriage. Then, No. 3—and perhaps the most important part of this debate—we want to give the American people an opportunity to debate this through their elected representatives in the Congress here and in the State legislatures.

It has been a grassroots type of process from the bottom up. We have heard a lot of concerns from people all over America about the way the courts are dealing with the issue of marriage and their frustrations in not being able to address this issue.

We heard a lot of good comments from some of my colleagues yesterday in debating the marriage amendment. In favor, we have had Senators HATCH, SANTORUM, SMITH, FRIST, BUNNING, KYL, CORNYN, SESSIONS, LOTT, and BROWNBACK—all explaining why it is important that we move forward in passing this amendment.

We have heard pretty much procedural arguments from the other side. Our side was talking about their concern about losing the institution of marriage, that it is basically a fundamental building block of society, and if we want democracies such as the United States to survive, we need to have good, functioning families. If families do well, children do well. We will hear more about that today. Then we will hear about the democratic process in which we allow American citizens to participate. This is the essence of what we were talking about yesterday and the inevitability of what is going to happen through our courts, that there is a master plan out there from those who want to destroy the institution of marriage to, first, begin to take this issue to a few select courts throughout this country at the State level.

We begin to see this in States such as Vermont and Massachusetts and a number of other States, and then proceed up through the States; and once they get favorable rulings from a few courts that are dominated pretty much by activist judges and judges who want to ignore the tradition of marriage for thousands of years, and want to bypass the legislative process—then once they have established their basis, they want to take it to the Federal courts, and they will eventually move it to the Supreme Court.

We heard arguments yesterday about how Members of this Congress and constitutional scholars believe that the Supreme Court—if it reaches the Supreme Court—by a very slim majority is probably prone to rule in a way that would eliminate the traditional family as we know it.

So this is an important issue. It is a very timely issue. We have 46 States that have individuals living in them—at least 46—who have same-sex marriage licenses. They have been granted them as a couple through either Massachusetts or Oregon or California. We

have 11 States that have had court cases filed in them today. So the platform for action from those who favor same-sex marriages has been well established.

Now, in reaction to that, we have some 48 States that have laws they have passed supporting traditional marriage—that being a union between a man and a woman. At least 10 States have constitutional amendments on the ballot. We have at least 3 States still gathering petitions. So more than 20 percent of the States have constitutional amendments that will be pending before them as we move into the election cycle.

Mr. President, I am sympathetic to this idea of federalism. I am sympathetic to the idea that we need to protect the definition of the traditional family. Federalism does not demand that we redefine the family. More important, it does not demand that we stand idly by while the courts redefine marriage for us, without giving us an opportunity to act.

This is an important issue, and it is very timely that we have this debate today in the Senate, a debate in which we try to define marriage and limit the rule of the Federal court and we allow States, through a democratic process, to proceed as they see fit toward providing benefits through civil unions or domestic partnerships. Marriage simply should not be left to the courts alone.

In my view, a large majority of Americans are with us. Marriage matters. It matters to children and it is a societal building block.

I had an opportunity to review the testimony of Governor Romney from Massachusetts. I ask unanimous consent that his testimony be printed in the RECORD as it was presented to the Committee on the Judiciary.

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

TESTIMONY OF HON. MITT ROMNEY

Chairman Hatch, Senator Leahy, Senator Kennedy, distinguished members of the committee, thank you for inviting me to testify today.

As you all know, last November a divided Massachusetts Supreme Judicial Court reformulated the definition of marriage according to their interpretation of the Massachusetts Constitution.

As I am sure you also know, I believe that decision was wrong. Marriage is not ''an evolving paradigm,'' as the Court said, but is a fundamental and universal social institution that bears a real and substantial relation to the public health, safety, morals, and general welfare of all of the people of Massachusetts.

The Court said that the traditional idea of marriage ''is rooted in persistent prejudices'' and ''works a deep and scarring hardship on a very real segment of the community for no rational reason.'' Marriage is ''a caste-like system,'' added the concurrence, defended by nothing more than a ''mantra of tradition.''

And so the Court simply redefined marriage, and, based on their reading of the Massachusetts Constitution, declared that ''the right to marry means little if it does not include the right to marry the person of one's choice.''

This is no minor change, or slight adjustment. It is a fundamental break with all of our laws, experiences and traditions.

When some in the state Senate asked whether a ''civil unions'' bill would satisfy the ruling, the Court rejected the alternative, writing that traditional marriage amounts to ''invidious discrimination'' and that ''no amount of tinkering would remove that stain.''

In response, our legislature proposed a constitutional amendment that ''only the union of one man and one woman shall be valid or recognized as a marriage in Massachusetts,'' and establishing civil unions for same-sex couples. While I do not think civil unions should be written into the constitution, the main and laudable effect of the amendment would be to overturn the Court's decision.

This was the first step in the legitimate process, by which the representatives of the people turn to the sovereign people to decide this momentous issue. But it takes time to amend the constitution in Massachusetts. The legislature must pass this amendment again, and then it would be submitted to the people for consideration.

Because it will take time to follow the process of constitutional amendment in the Commonwealth, I asked the Massachusetts Attorney General to call for the Court to withhold their pronouncement until the people could consider the question, so that they would not be excluded from a decision as fundamental to our societal well-being as the definition of marriage. He declined to do so.

Several last minute challenges to the decision were also summarily rejected.

So, as a result, on May 17, the Commonwealth of Massachusetts began issuing marriage licenses to persons of the same sex. These licenses are valid for up to 60 days and are filed with the State Department of Public Health two months after a marriage has taken place. Therefore, we do not have official statistics and information yet from our Department of Public Health. However, the Boston Globe recently surveyed the 351 cities and towns in Massachusetts and the results of their survey do provide some information on the activity since May 17.

According to the Globe, in the first week that the issuance of marriage licenses to same-sex couples became legal, over 2,400 such licenses were issued. The vast majority of these licenses were issued to Massachusetts residents, because our state does have a law which prohibits couples from entering into valid marriages in Massachusetts if there is an impediment to marriage in their home state. Applicants are required to sign a form signifying their intent to reside in Massachusetts in order to receive a license.

Originally, we were aware of six communities where the clerks refused to honor that law. The Globe reports that at least 164 out-of-state couples, from 27 states and Washington, DC, were issued licenses by these clerks. 56 of those couples specified on their application that they do not intend to move to Massachusetts. For those couples whose unions would not be recognized in their home state, according to Massachusetts law, their marriage is null and void.

At my request, the Attorney General directed the city and town clerks to comply with the existing Massachusetts law, and it is my understanding that currently, all the cities and towns are in compliance. Legislation is pending in the Massachusetts legislature which would repeal this residency law and, although it has passed the Senate, it doesn't appear likely to pass the House in the short period remaining before adjournment.

Nevertheless, other actions are underway to eliminate the residency requirement. Two suits have been filed against this law, one from a dozen Massachusetts towns and another from several same-sex couples from Maine, New Hampshire, New York, Rhode Island and Connecticut. The couples argue that this new right is so powerful that denying it to non-residents violates the Massachusetts constitution, as well as the Privileges and Immunities Clause of the U.S. Constitution.

With the inauguration of same-sex marriages, a plethora of legal and regulatory issues are now arising. Although we will eventually be able to sort these issues out, it will take time. And, more importantly, we must move through many of these issues without the benefit of adequate time for full consideration of all the impacts. I expect that we will continue to see new issues arising for the foreseeable future as the Commonwealth struggles to understand all the changes that will now be sought due to this judicial ruling.

A number of the issues we are now reviewing relate to state benefits. In some cases, we have been in contact with the federal government to understand their position on the eligibility for benefits that are provided by the state but funded by the federal government. For example, we have been told that we cannot use federal funds to provide meals for an elderly same-sex spouse if the person's eligibility for the services is due to their spousal status. We have not heard yet from the Veterans Administration as to whether we can bury two same-sex spouses at our state Veterans cemeteries. Medicaid is a particularly interesting situation. Under our state laws, we use federal income eligibility guidelines. In this case, since the marriage is not recognized by the federal government, the person will be deemed eligible for Medicaid based on their individual income, not their two-spouse income. And, CMS has confirmed that federal matching funds will be available in this instance. However, if the person is eligible for Medicaid due to their spousal relationship, federal matching funds cannot be used since the federal government does not recognize the marriage. Similarly, CMS has notified us that federal transfer of asset rules regarding spouses will not apply, nor will spousal impoverishment provisions apply, to same sex spouses.

There are other very troubling issues. We now must consider whether to amend our birth registration process, which currently requires the name of a mother and a father. Should we change our birth registration document to read ''Parent A'' and ''Parent B''? What impact would this have on child support enforcement, considering that birth certificates are a critical tool that are used to find and force absentee fathers to provide child support.

A number of legal issues are expected related to divorce and inheritance rights, particularly regarding those couples who move out of Massachusetts to states where their marriage is not recognized. The private sector is also beginning to grapple with ramifications of this change. We have been told anecdotally that some companies may be dropping domestic partnership benefits now that same-sex couples can wed, thus eliminating a benefit that was available in the past. Pension issues are also expected to arise, particularly for surviving spouses who do not meet the requirement for number of years married when marriage was not legal prior to May 17.

These issues will not be confined to Massachusetts alone. Our state's borders are porous. Citizens of our state will travel and may face sickness and injury in other states. In those cases, their spousal relationship may not be recognized, and it would be likely that litigation would result. Massachusetts residents will move to other states, and

thus issues related to property rights, employer benefits, inheritance, and many others will arise. It is not possible for the issue to remain solely a Massachusetts issue; it must now be confronted on a national basis.

We need an amendment that restores and protects our societal definition of marriage, blocks judges from changing that definition and then, consistent with the principles of federalism, leaves other policy issues regarding marriage to state legislatures.

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.

At this point, the only way to reestablish the status quo ante is to preserve the definition of marriage in the federal constitution before courts redefine it out of existence.

Congress has been gathering evidence and considering testimony about the need for a constitutional amendment to protect marriage. The time fast approaches for debate, and then decision.

The decision you will make will determine whether the American people will be allowed to have a say in this matter, or whether the courts will decide this matter for them.

At the heart of American democracy is the principle that the most fundamental decisions in society should ultimately be decided by the people themselves. Surely the definition of society's core institution, marriage, is such a decision.

Let me conclude with this point: Despite the warning signs, the Massachusetts Legislation hesitated, and refused to act. But the court had no such reluctance, and acted decisively. Now on the defensive, the legislature has begun the long and difficult process of amending the Constitution to undo what the Court has done. But it may soon be too late.

This is what happened in Massachusetts. It is in your hands to determine whether or not this will be the fate of the nation.

Mr. ALLARD. Mr. President, if you read carefully through his testimony, he talks about the fundamental change that is happening in Massachusetts and many of the issues that he as a Governor in a State that has a court that actually went contrary to the wishes of the legislature to redefine marriage as something different than a union of a man and a woman. He talked about the effect that this redefinition is having on such basic programs as meals for the elderly and veterans and spousal benefits, burial rights, Medicaid, birth registration process, child support enforcement, inheritance, private sector, how employees are struggling with this particular issue. He makes a very important point that States are porous. So what is going on in Massachusetts has the potential to have an impact on other States, particularly if this gets to the U.S. Supreme Court, or we find the U.S. Supreme Court deciding to overrule DOMA, the Defense of Marriage Act, and decide that somehow or other it is unconstitutional.

Many of us have looked at what has happened in other countries where they have liberalized the marriage laws, particularly the Scandinavian countries and the Netherlands. In the Scandinavian countries, for example, for a number of years they have recognized same-sex marriage. As a result of that, there has been a very disturbing trend in that more and more children are born out of wedlock. In fact, if you look at the figures today in some of the Scandinavian countries, well over 50 percent of their children are born out of wedlock. We looked, more recently, at what has happened to the Netherlands—a country which traditionally, before 5 years ago, had a very strong record as far as children being born in wedlock, a country that promoted the idea of traditional marriage. But they have changed; they changed the definition of marriage, and they allow same-sex marriage. They are seeing that now there is an alarming increase in the number of children that are born out of wedlock.

We are faced with a challenge from the courts that will fundamentally change this society in America if the Congress does not act. We heard arguments yesterday about the Goodridge case in Massachusetts and Lawrence v. Texas, using the privacy issue, combined with the good faith and credit laws of the Constitution, and how the courts are setting the groundwork to overturn what traditional marriage means in the United States.

So it is very appropriate that we have this debate now. It is very appropriate that we have a full debate. I have been rather disappointed that we have not had more actual debate on the meaning of marriage from the other side. We have had debate about procedure, and I think there is a frustration about procedure. But I want the American people to understand that there is a fundamental difference between the way Republicans do business and the Democrats do business. We believe in a bottom-up approach. So we work for a consensus. I spent a long time at the very start of this process looking at a number of proposals on how we are going to amend the Constitution, working with grassroots groups and with my colleagues, and working with constitutional scholars.

We eventually came up with a conclusion, with the Judiciary Committee putting the final touches on the amendment, that the kind of language we need is what is now embodied in the amendment that is up before the Senate today for debate. This is where we developed the consensus. When you develop a consensus, that doesn't mean other ideas cannot come forward. As we strive, then, the next step is to strive for consensus on the Senate floor. I have been working personally with Senator GORDON SMITH from Oregon. He and I have been working together to strive for consensus.

So this idea that all of a sudden we would just deal with the first sentence in this amendment is not anything that is an unexpected result on this side because we recognize that perhaps maybe we cannot get an ideal amendment to move forward, perhaps maybe we have to work toward another version of the amendment that I have introduced that would allow for us to establish a consensus on the Senate floor.

That is where Senator SMITH has come in with his proposal, and actually he does it at the request of myself and other Members of the Senate because we are working for a consensus. That is what the Senate is all about. So I hope that we can get serious participation from the other side in the debate on this floor; we do have a number of Senators on the Republican side who want to continue to talk about how important marriage is.

So my hope is that we can move forward in a civilized and thoughtful manner on how important traditional marriage is to America, and to give the American people an opportunity to participate.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I am glad to hear Senator ALLARD say he welcomes the debate because that is the reason I came to the Senate floor today: to debate this issue. As someone who has been married 42 years, as a Democratic woman, I believe I can talk about marriage and what we need to do to strengthen marriage.

Unfortunately, there is not one item on the table here that strengthens marriage and helps people stay married, that helps the family, and that is going to be part of what I talk about.

It is interesting that Senator ALLARD said there is a great difference between Republicans and Democrats on this issue. I beg to differ with him. You cannot say you stand and speak for all Republicans today. In the ''Roll Call,'' it says:

True Conservatives Oppose the Federal Marriage Amendment.

George Will:

Amending the Constitution to define marriage as between a man and a woman would be unwise for two reasons. Constitutionalizing social policy is generally a misuse of fundamental law. And it would be especially imprudent to end state responsibility for marriage law at a moment when we require evidence of the sort that can be generated by allowing the states to be laboratories of social policy.

That is George Will, a Republican syndicated conservative columnist.

Then we have Lynne Cheney, wife of DICK CHENEY, a Republican:

I thought that the formula [Dick Cheney] used in 2000 was very good. First of all, to be clear that people should be free to enter into their relationships that they choose. And, secondly, to recognize what's historically been the situation, that when it comes to conferring legal status on relationships, that is a matter left to the states.

That is none other than Lynne Cheney, the wife of the Republican Vice President, a Republican herself and conservative.

Then there is Bob Barr, former Congressman from Georgia and author of the Defense of Marriage Act:

Marriage is a quintessential state issue. The Defense of Marriage Act goes as far as is necessary in codifying the federal legal status and parameters of marriage. A constitutional amendment is both unnecessary and needlessly intrusive and punitive.

Bob Barr.

Senator Alan Simpson, a former Senator from Wyoming, Republican conservative:

> A federal amendment to define marriage would do nothing to strengthen families—just the opposite. And it would unnecessarily undermine one of the core principles I have always believed the GOP stood for: federalism.

That is Alan Simpson, a former Republican Senator.

Then Lyn Nofziger, former White House Press Secretary and assistant to President Ronald Reagan, a Republican:

> There are two kind of amendments. One kind would give the federal government more authority, usually at the expense of the states, and broaden its intrusions into the lives of its citizens. These include—

And he lists the ones with which he disagrees, with which I do not agree. He says the equal rights amendment would do that. He also says that proposals to ban same-sex marriage and abortion would violate federalism.

He says:

> I favor neither of the latter two but I oppose constitutional amendments that would ban them.

In other words, he agrees that gay marriage is not what he supports, but he does not believe in this constitutional amendment.

Mr. President, I say to Members of the Senate and anyone else listening to the debate, let's be clear, when the manager stood up and said Republicans and Democrats have a different approach, he forgot about a few Republicans who do not agree with him: George Will, Lynne Cheney, Bob Barr, Alan Simpson, and Lyn Nofziger. And by the way, quite a few on his side of the aisle stated they do not support the amendment. Let's be clear here, this is not a question of Republicans versus Democrats.

After today, we have 27 legislative days until adjournment—27 legislative days to deal with the most pressing issues of the country.

There were three developments around here in the last few days that underscore the work we should be doing right now.

First, we were all summoned to the secret briefing room here in the Capitol and told we were under the threat of attack from al-Qaida between now and election day. Why is it that I can tell you this if it was secret? Because it has been all over. Immediately from that room came Tom Ridge, the head of the Department of Homeland Security, to a press conference to announce this threat. This is serious. Let's put up what Tom Ridge said so my colleagues can see it for themselves:

> Credible reporting now indicates that al-Qaeda is moving forward with its plans to carry out a large-scale attack in the United States in an effort to disrupt our democratic process.

July 8, 2004.

I have a question to my colleagues in the Senate and to all Americans who may be listening to this debate: What is more important to you, what is more a threat to you—al-Qaida moving forward with its plans to carry out a large-scale attack in America to disrupt our democratic process or two people who happen to be of the same gender moving in together down your street?

Let us be honest. However we feel about gay marriage or civil unions or domestic partnerships, however we feel on those matters, what is more of a threat to you and your family? You need to ask that question, put aside politics, and whatever answer you come up with, I have to believe most would say al-Qaida, not Mary and Carol or Jim and Carl, but al-Qaida, people whose names we do not know.

That is the first thing that happened last week. What else happened. A new report was released showing that the intelligence of our country is in disarray, intelligence we relied upon, intelligence that was used to make the case for war where more than 800 of our beautiful Americans are dead and 5,000 or more of them are injured, some without legs, some without arms, some who will never be the same, most of whom will never be the same.

What is more important to America today? Fixing the intelligence problem—we do not even have a head of the CIA; maybe it is time we thought about getting someone to be permanently in charge—or worrying about two people of the same gender who move in together down your street? I believe you need to ask yourself that question as you watch us in the Senate in this debate: What is more important to you, to your family, to your security, to your children?

Some of you are worried about a draft; you are very worried about a draft. What is more important—fixing our intelligence, making sure al-Qaida cells are drummed out of this country?

By the way, I looked at reports from this administration 30 days after 9/11, and do you know what they told us? Al-Qaida was in 45 countries, including America. Not one cell was in Iraq. Instead of going after al-Qaida, we turned around and went into Iraq based on faulty information.

Our people are dead and dying to this minute, to this day, to this moment. I visit them at Walter Reed, and I see the damage done. There are many Californians. I pay tribute to every one of those brave, unbelievably patriotic, caring members of the armed services who have given their lives with honor, deep honor when your Commander in Chief asks you to sacrifice yourselves for a decision he has made. You are honorable. And, no, you did not die in vain when your Commander in Chief asked you to go. Of course not.

I ask you, with our people dying every day, with the intelligence failures we have seen—and by the way, in my opinion, not only was the intelligence wrong, not only was it misused, not only was it misinterpreted, it appears to me there was pressure brought to bear to skew that intelligence, and that is the next phase of our inquiry that we will go into.

What kind of pressure was put on people to come up with an opinion? How does that relate to all of this? Because we are not talking about ways to stop al-Qaida. We are not talking about ways to fix our intelligence. We are talking about amending the Constitution of the United States, which is a very serious thing to do. It has hardly been done in the history of our Nation. Our forefathers were brilliant about making a constitution that is so flexible that we do not have to amend it every other day, but that is what we are doing about two people of the same gender who may want to care about each other. That is what we are doing today. That is what we did yesterday. That is what we did Friday. That is what we will do tomorrow. If the Senate proceeds, that is what we will do for the immediate future.

I hope the Senate will not proceed to it with all that we have to do.

There is a third thing that happened. In addition to being warned by Tom Ridge, in addition to being told by a bipartisan committee that our intelligence is in disarray in this country, there is something else new. We have news yesterday that discussions are being held within this administration about whether and how to possibly postpone elections if there is an attack on election day or in and around election day.

To this Senator, to even consider postponing our elections, the most ardent symbol of American democracy, because of terrorist threats is nothing more than allowing the fear that they bring to rule this country. This country is too strong for that. This country is too great for that. With our men and women overseas, literally dying for the rights of other people to vote, how could we even consider postponing the election?

If this administration is so concerned about the possibility of terrorist attacks—and to listen to them and to read this clearly they are—and if they are even seriously thinking of disrupting the centerpiece of American democracy, then our priority in the Senate and in the administration should be how to best defend against those attacks, not how to close polling places. Talk about misplaced priorities. It is worse than Alice in Wonderland. One has to pinch themselves, in light of all that we know, that we are more worried as a Senate about two people of the same gender caring about each other wanting to visit each other in the hospital than we are about these unbelievable threats that are facing our Nation, and we are not doing anything about that.

Let me tell the American people who may be listening, as well as my colleagues, what is not being done to make them safer. We do not yet have a port security bill which has been voted

in a unanimous fashion out of the Commerce Committee. It would create command and control centers to improve security at America's ports. There has been no action by the full Senate.

My understanding is the bill was going to be brought here and there were difficulties with it on the other side of the aisle; the Republicans did not want to bring it up. Rail security, another bill voted unanimously out of the Commerce Committee, on which I serve, again there has been no action by the full Senate.

I have to say, in every report one reads Madrid is mentioned. The rail security problems are major.

So here we have a port security bill that unanimously came out of the committee, a rail security bill that unanimously came out of the committee, and those on the other side, the Republicans, are objecting to bringing those bills forward.

Transit security, $5 billion over the next 3 years to improve security on local transit systems approved by the Banking Committee in May, and there has been no action by the full Senate. Nuclear plant security, a bill to assess threats to and require improvements at nuclear facilities approved by another committee that I sit on, the Environment and Public Works Committee, there has been no action by the full Senate. Chemical plant security, a bill to require chemical facilities to have and implement a new security plan to protect against terrorist attacks approved again by the Environment and Public Works Committee October 2003, no action by the full Senate.

Airline security, the administration is cutting the number of air marshals. I had the privilege of writing the language in the air security bill that we passed after 9/11 to put air marshals on high-risk flights. What do we see? Cutting back on air marshals, not training enough pilots for the Federal flight deck officer program that allows for pilots to carry a weapon in the cockpit if he or she is trained as a sky marshal. The administration is not moving forward with that at all. They are slow-walking it. They have approved only a few pilots.

What about the threat of shoulder-fired missiles? I have been working on that with CHUCK SCHUMER, STEVE ISRAEL, and others. They are slow-walking these countermeasures. We know there are tens of thousands of shoulder-fired missiles. Terrorist groups have them. They can buy them for very little money on the black market. We know that aircraft have been shot at and shot down. What are we doing about it? Again, slow-walking this.

While Air Force One is protected when the President travels, he has countermeasures on that plane, and I fully support it and thank goodness we have it, but if we can do it there—and in Israel they can protect their commercial airlines—why can we not do it here? I will tell my colleagues the reason. The other side does not want to bring up these issues. They want to worry about two people of the same gender caring about each other and they are going to make a whole deal over this for days and days.

We have been warned over and over again. The FBI warned us a long time ago about the threat of shoulder-fired missiles. They are slow-walking that. They are holding the port security bill at the desk, the rail security bill at the desk, the transit security bill at the desk, the nuclear plant security bill at the desk, the chemical plant security bill is being held at the desk.

How about the COPS Program? We all supported that. We want to put 50,000 more cops on the beat. We put 100,000—and I see my colleague, the senior Senator from California, and I know about the great work that committee did on the COPS Program. But, oh, no, the Bush budget request cuts the COPS program by 87 percent and no new hires.

So now we see why the Republicans want to talk about gay marriage. They cannot point to anything they have done in the past to make us safer.

Firefighters, the Bush budget cuts firefighter assistance by one-third and provides no funding for the SAFER Act to hire 75,000 new firefighters.

We all remember the heroes after 9/11 and how everyone, Republican and Democrat, rallied around our firefighters. The cynicism around this place is unbelievable.

First responders, the bill to provide FEMA assistance to local first responders was approved by the EPW Committee in July of 2003. There has been no action by the full Senate.

So I have shown—and I have not even gone into them in great detail—what we ought to be doing if our focus is defending our homeland.

It seems we do not have any problem focusing our resources abroad, trying to bring democracy to others while this administration seems completely at a loss on how to protect us at home. It is extraordinary to me. To come out to a microphone and say to the American people, look at these threats, here are Tom Ridge's own words:

> Credible reporting now indicates that al-Qaida is moving forward with its plans to carry out a large-scale attack in the United States in an effort to disrupt our Democratic process.

We then hear proposals discussed on how to delay the elections. This is pretty clear. But any leader who gives you this, and then doesn't step to the microphone and say: And, American people, we know how to protect you; we know how to make our ports safer; we know how to make our railroads safer; we know how to protect you against a guerrilla attack against a nuclear powerplant—oh, no, they give out iodine pills. That is what they do in this administration. They send iodine pills to people who live within 100 miles of a plant so they can be ''protected'' from cancer. It is extraordinary to me.

The other thing they do is they hold press conferences on the war in Iraq. Then they say it is going to get worse before it gets better. I don't understand that kind of leadership. Maybe I am old fashioned, but I think leadership is about seeing a problem and fixing it to the best of your ability—laying out the plans on how you are going to fix it. If you do not do that, you fail the test of leadership.

We need to be stronger at home. We need to be respected abroad. Senator KERRY and Senator EDWARDS are taking that message across this country. What I am trying to say today is that message is real.

I am saying there are many things we can do. I have just laid out 10 things we should be doing now instead of worrying about two people of the same gender moving down the street who happen to care about each other. But all we hear about is the fear part, and no plan. Remember how we had no plan for Iraq, except the military plan which was brilliantly executed, but then there was nothing after it? We have no plan to protect our homeland.

It is time to stop the fear mongering like this, unless you are going to say what we are doing to make us safer and carry it out. We have to start protecting our people, our homeland, and our democracy at home. But, again, what does the administration want to do? A constitutional amendment to prohibit gay marriage. A constitutional amendment that will deny—and make no mistake about it—millions of Americans equal rights because even if it doesn't say so explicitly, it will mean that those in domestic partnerships or in civil unions—which I strongly support—will not get equal rights or equal responsibilities.

Let's be clear. The authors of this amendment say it has nothing to do with domestic partnerships or civil unions; those are fine.

No. I will have later in my statement the lawyers who tell us that, in fact, it will be impossible for domestic partners or civil unions to receive anywhere near the same rights or responsibilities as married couples. This constitutional amendment, if it passes, would guarantee legal challenges to civil unions and domestic partnerships, as I said. That is David Reeves, a partner and legal expert at a well-respected law firm here in Washington.

How about the American Bar Association? They say:

> The language of the constitutional amendment is so vague that the amendment could be interpreted to ban civil unions and domestic partnerships and the benefits that come with them.

So be clear what you are doing. Even if you oppose marriage between people of the same gender, if you support civil unions or domestic partnerships, you are condemning them because they will not be able to have the same benefits. This constitutional amendment is divisive to this country. It even divided Lynne Cheney from DICK CHENEY. Let's

just look at what DICK CHENEY said before he changed his mind in this election year. This is the statement that now his wife supports:

> The fact of the matter is we live in a free society and freedom means freedom for everybody. And I think that means that people should feel free to enter into any kind of relationship they want to enter into. It's really no-one else's business in terms of trying to regulate or prohibit behavior in that regard.

This is what he says:

> 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 was DICK CHENEY in the year 2000. Now, because the President has decided that he needs to do this right now rather than keep us safe from al-Qaida and move forward and help us get our legislative packages through to protect the American people, that this is more important, then Vice President CHENEY now supports the amendment. But his wife Lynne has taken a decidedly different view. I have, in fact, shown you that before. Her comments:

> I thought the formula Dick Cheney used in 2000 was very good. First of all, to be clear that people should be free to enter into their relationships that they choose and secondly to recognize what's historically been the situation, that when it comes to conferring legal status on relationships, that is a matter left to the States.

So when I say it is divisive to the country, it has divided Mrs. Cheney from DICK CHENEY and that is just an example of how it divides people.

I will tell you the reason it does. First, it is unnecessary. The States are taking care of this. Second, we are enshrining discrimination into the Constitution, a document that is meant to expand rights. We have never, underline never, amended the Constitution to deny rights, to deny equality.

In his testimony before the Senate Judiciary Committee earlier this year, University of Chicago Law School professor, Cas Sunstein, noted that:

> All of the amendments to the Constitution are either expansions of individual rights or attempts to remedy problems in the structure of government. The sole exception being the 18th amendment that established prohibition and that attempt to write social policy into the Constitution was such a disaster that it was repealed less than 15 years later.

The list of adopted constitutional amendments is short but impressive. There are the first 10 amendments, the Bill of Rights, that guarantees important liberties to the American people, from freedom of speech and the press, to the right to be secure in our homes, to the freedom of religion. It is the 13th, 14th, and 15th amendments that undid the terrible injustices of slavery, ensuring African Americans the right to vote and guaranteeing everyone equal protection under the law.

Then there is the 19th amendment that gave women the right to vote. We know what a struggle that was. The suffragettes worked mightily, long and hard.

The 24th amendment banned poll taxes to further ensure that minorities have the right to vote.

The 26th amendment gave 18-year-olds the right to vote. I remember that debate was, if you are old enough to die for your country, you should be old enough to vote in your country.

It is quite an impressive list. It is a short list. It obviously sought to expand freedom and equality, and it did so.

The other day I happened to see my grandchild watching a show. They were singing a song—which I will not sing, so don't panic—which goes like this, in words:

> One of these things is not like the other,
> One of these things just doesn't belong.

This proposal before us today doesn't belong in the Constitution of the United States of America. That is why so many organizations, 127, have come out against this amendment. Let's take a look at them. It is a huge list. Many of these groups have absolutely no interest in the debate over same-sex marriage, but they share one common goal: Preventing discrimination from being written into our Constitution. Let me mention a few of these:

The Japanese-American Citizen League says:

> The Japanese-American community is keenly aware of what it means to be the target the Government sanctions and implemented discrimination and mistrust. We believe discrimination in any form is un-American.

The National Council of La Raza, the National Black Justice Coalition, the Mexican-American Legal Defense and Educational Fund, the Leadership Conference on Civil Rights, the Labor Council for Latin American Advancement, the American Jewish Committee, the NAACP, the National Asian-Pacific American Women's Forum, the National Hispanic Leadership Agenda say that this will be the first time in history that an amendment to our Constitution ''would restrict the rights of a whole class of people in conflict with its guiding principle of equal protection.''

These Americans who are in these groups—and by the way, there are a lot of religious organizations in this group: The Religious Action Center, you have a number of religions—the Interfaith Alliance, University Fellowship of Metropolitan Community Churches, Presbyterian Church Washington Office—a lot of these folks, not only do they not want to see discrimination written into the Constitution, but they believe the Constitution is a gift to us. I agree with that—a gift we inherited from giants among men who wrote it 217 years ago. We know no document is perfect, but when we amend the Constitution, it would be to expand rights, not to take away rights from decent, loyal Americans. This great Constitution of ours should never be used to make a group of Americans permanent second-class citizens.

This Constitutional amendment is so flawed it couldn't pass the Judiciary Committee. The leadership has to bypass the committee in order to get this bill before the full Senate. Sometimes that happens. We have seen it happen with various bills that come to the Senate floor. This isn't just a bill; this is an amendment to the Constitution of the United States. It needs to get 67 votes in the Senate. We don't even know if a majority of the Senate is in favor of it; yet here it is. Instead of doing what they would do to protect our people, this is what we are doing.

This amendment would make it impossible, if it passed, for States to say that two people who love each other, care for each other, and are willing to die for each other, have no inheritance rights, equal hospitalization rights, or equal benefits under the law. That is an outrage.

Don't let anyone tell you: I am for this amendment because it basically says marriage is between a man and woman, but I support civil unions and domestic partnerships. You can't do it. The lawyers tell us that once this is enshrined in the Constitution, the States will not be able to confer equal benefits on civil unions or domestic partnerships. Marriage is not a Federal issue; it is a matter of State law. For some it is a religious issue. Some religions recognize same-sex marriages and some do not. Again, many religions oppose this amendment, including the Alliance of Baptists, Episcopal Church, the 216th General Assembly Presbyterian Church.

When I got married, it was a religious service and I had my civil recognition, so I had both religion and civil present. Guess what. The Federal Government wasn't involved. That was OK. That is the way it has been.

My State has a domestic partnership law. California's law I believe is a good start. It gives same-sex couples many of the same rights and responsibilities as married couples. It isn't perfect. I think we need to do more. But even this imperfect law means so much to some people in California. For this Congress to take that away from them by amending this Constitution is wrong and it is mean spirited. That is what experts tell us will happen. My State has made this decision. Other States are making their decisions. What is wrong with that?

The very same people who are always preaching States rights now feel they must move forward. I already gave you Vice President CHENEY's statement about the fact that we live in a free society, freedom means freedom for everybody, and he didn't think there ought to be a Federal policy in this area. I believe those words of his from the year 2000 stand up. Frankly, the words he is uttering today are just bowing to the political pollsters. That is really a shame. The Constitution is too great a document for it to be used as a political football. The Constitution is too great a document to be used as an applause meter before a convention. Yet that is what we are seeing.

I don't know what message the people who are bringing this to you want to convey. Is it to send a message that certain Americans are inferior? I hope not. But that is a message that is being sent to a lot of people who are hurting right now.

I have heard my colleagues say the reason for this amendment is that the American family is in a fragile condition. One of my colleagues says marriage is under assault by gay marriage or gay relationships.

I want to tell you something straight from my heart. Not one married couple has ever come up to me and said that their marriage is under assault because two people of the same gender living down the street care about each other. If your marriage is under assault because of that, you have other issues that you should deal with.

If we were truly concerned about strengthening marriage and families in this country, I will tell you there are a lot of things we could do, just like we could do a lot of things to make us safer. There are a lot of things we can do.

We have not raised the minimum wage in 8 years. People are trying to hold their families together on a minimum wage. Two people working on a minimum wage are probably just at the poverty line. Why don't we raise our minimum wage and help our low-income families? We could pass a bill to make sure our families and our married couples have the same health insurance as we have. I think it is a great idea. Open it up. We could pass a bill like that. We could pass a bill to make sure all children have a high-quality education. We could fully fund the No Child Left Behind Act. That would take pressure off of our families. Instead of freezing the number of children in afterschool programs—and I have a lot in my heart about that because I wrote the afterschool law with Senator ENSIGN. We have frozen that program for 3 years. We have a million kids in it. That is another one. Open it up. Let these children in. Take the pressure off our families. Take the assault off our marriages. That would really help. Keeping our children safe until mom or dad comes home is something we could do.

Now we have some saying the amendment is needed to stop the activist judges. Not one Federal judge has ruled on the issue of same-sex marriage.

I have to say: Is this a new thing we now have on the other side? Suddenly they are upset about activist judges. I can understand if they are concerned about activist judges. Why did they vote for many of them for the most part? My colleagues voted to confirm James Leon Holmes. Regarding women's right to choose, where was the concern when he said the ''concern for rape victims is a red herring because conceptions from rape occur with the same frequency as snow in Miami.'' He is going to take that opinion that is so wrong and defies science and is so activist in nature so he can change the law.

Where was the concern about William Pryor, who our colleagues on the other side of the aisle voted for, who said the Federal Government should not be involved in the business of public education or the control of street crime? Imagine a Republican saying that when it was Dwight Eisenhower who wrote the very first public education bill.

All of a sudden, we have concern about activist judges when they are voting for activist judges every day.

This same William Pryor called the Voting Rights Act, which guarantees voting rights to all of us, an affront to federalism. They didn't have a problem with that.

What about Charles Pickering, who worked to reduce the sentence for a man convicted of burning a cross on the lawn of an interracial couple?

What about activist judges who stopped the State recount in the recent Presidential election and essentially decided that election when most legal scholars said, they won't do it, the Supreme Court will allow a recount to go forward.

On every count, this argument seems to me to be disingenuous and only before the Senate to hurt some people who are going to cast a tough vote, so use it in 30-second spots. Indeed, some of those 30-second spots have already begun.

Shame on us. This job is too important, this country is too great. The Senate means too much to too many people to use it like this. It is not right.

If this was really about activist judges, we would be debating this after a Federal judge has actually acted. By the way, the timing of that would be inconvenient for my colleagues on the other side because no Federal judge will act before the Democratic Convention.

What we see—and it is really sad, but it has to be said—is crass, cold-hearted politics. Distracting attention from the real issues facing our Nation, this constitutional amendment is being used as a weapon of mass distraction. Again, already it is being used in 30-second commercials.

I hope and I pray the people of this country will see this debate for what it is. Members are going to hear a string of speeches: We have to do this because marriage is under assault.

The next question is, If marriage is under assault, what are you doing to help make family life easier for our people, easier for our hard-working people at a time when women and men both have to work because it is so tough, at a time when actual wages have gone up 1 percent but the cost of health care almost 30 percent, the cost of gas up, the cost of college tuition up well over 20 percent, the worst job record in the last 3 years?

Since this administration took over, we have had the worse job creation record since Herbert Hoover. Fewer jobs are in existence today than when George Bush took over. Do Members want to take the strain off of our marriages, off of our families? Let's have an economic recovery. Let's stop the good jobs from going abroad by giving incentives to create jobs here. Let's raise the minimum wage. Let's assure the people of this country that they will be protected from the threat of shoulder-fired missiles.

When we go up to that secret room upstairs and we are told that al-Qaida is moving forward to disrupt our democratic process and to attack our country, what do we come down here to do? Nothing to take away that threat. Holding bills at the desk, including rail security, transit security, port security, chemical plant security, nuclear plant security—I could go on with the other issues we ought to be discussing. But, no, we do not have time to take care of that.

Now I hear we are going to go to the Australian free-trade agreement after this. I love the Australians and they are great friends of America. But I love the people I represent, too. And when I see threats like this, I cannot sleep at night, worried about it. I didn't come here to stand and debate constitutional amendments that do nothing to make life better for anyone in this country. But that is what they want to do. It is a very sad day.

We are all God's children. No two of us are alike. We have different color eyes. We have different color hair. We have different color skin. We are different genders, different religions, different backgrounds, different views. I come from a State of 35 million people, the most unbelievably diverse State in the Nation. Yes, different sexual orientations is part of that mix. We are all different. Yet we are all God's children. We are all united behind this country and the common cause of freedom, justice, fairness, and equality. That is what unites us.

In this Chamber, we have a job to do. That is to advance the cause of freedom and justice and equality, and to advance the status of our people economically. Doing this does not help any of it.

A constitutional amendment before the Senate is an attempt to use our diversity to divide us instead of to unite us. Ironically, it is being brought by the President and his friends in the Senate who said he would be the great uniter, a healer; that he would change the tone in Washington.

The tone has changed. It is worse than it has ever been in all my years here, and this is the end of my second term in the Senate. I was in the House for 10 years. Before that I was in local government. I have never seen a worse tone.

This constitutional amendment is an attempt to appeal to our prejudice instead of to our compassion, to our hatreds instead of to our hopes, to our fears instead of our dreams. The constitutional amendment is an appeal to

what is the worst in us instead of what is best in us. We are better than that, or we should be better than that.

In his first inaugural address, Republican President Abraham Lincoln appealed to the better angels of our nature. This amendment flies in the face of those words.

Regardless of what anyone thinks about gay marriage, regardless of whether Members are for domestic partnerships or civil unions—which, again, I strongly support—regardless of whether Members support or oppose the laws in their State, this constitutional amendment should be defeated, and the motion to proceed, if it is a vote on that, I hope that fails, as well. The signal will be, when we defeat this motion to proceed, the message we are sending is we want to get to the business of the American people that will make marriages better and stronger, that will protect our people from threat of terrorist attack, not to sit here and talk about a constitutional amendment which the author knows hasn't got one slim chance of passing. He is taking up valuable time on an issue that does nothing at all to help our people.

I urge my colleagues to do the right thing. I urge my colleagues to put the Constitution above any political gain. I urge my colleagues to put the Constitution above their political well-being.

Here is what I have known in the many years I have run for office. When you take a stand out of deep conviction, people know. They may not even agree, but they ask, Do I want someone who is willing to take a hard stand and someone I can trust to do that when the chips are down? They want that. They will see that is what a true patriot is, not someone who reads the polls and says the polls show this or that. The point in the Senate sometimes is to lead. I wish it would be that way every day, but especially it should be that way when there is an amendment to the Constitution. I hope once we dispose of this and vote down the motion to proceed, and they do not get enough votes on that, we can turn our attention to the awesome challenges and the difficult issues we face. Once we send that signal, America will see we did right by the Senate, we did right by our constituents, and we did right by this country that we love so much and we hold so dearly.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. ALLARD. Mr. President, I will yield to my good friend from Missouri, but first I will make a couple points.

First, we are just beginning to defend marriage. This debate may go well beyond this year. I anticipate we will have more votes. But the message is, we are just beginning.

Second, this is a moderate amendment. We do allow States the opportunity to find civil unions and domestic partnerships. This is not a civil rights union. This is not a civil rights issue.

I will have an opportunity later on in our debate this afternoon to talk about these very points.

First, I call on my good friend, the junior Senator from Missouri.

I served with him in the House, and I am proud to call him my friend. He is doing a great job in the Senate. I yield to the Senator from Missouri, Mr. TALENT.

Mr. TALENT. I understand we have about 20 minutes until lunch. May I have the 20 minutes?

Mr. ALLARD. Twenty minutes.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. TALENT. I appreciate that. I very much appreciate the kind words of my friend from Colorado in introducing me. That is probably more than I deserve, and it is certainly better than I usually get when I stand up to speak on the Senate floor.

We are in the midst of another filibuster. I say that because if I didn't say it, given the Senate procedures, it would not be evident to people that that is what is happening. But we are filibustering yet another measure before the Senate. This one has a little twist to it. Those who are filibustering are willing to allow us to go to a vote on the amendment, if we have no amendment to the amendment. In other words, if nobody wants to offer any amendment to change this amendment at all, to try and perfect it, then they will permit an immediate vote. So what we are told is that we must either have an immediate vote without any changes even being considered or no vote at all.

I suspect that the filibuster will be sustained when we vote on it. It is a shame because this is an important measure, and the people are entitled to see who in this body is for protecting traditional marriage and who is not, because nothing less than that is at stake. Members of the Senate should not be mistaken or deceived by discussions of other issues or attempts to restate what this amendment is about or assurances that we don't really need to do anything and everything will be OK.

The courts of this country are engaged in a process by which they are going to force the people, whether they like it or not, to accept a fundamental change in the basic building block of our society. I kind of think that is important. I think it is worth debating. It is a sign of the regard in which marriage is held by some of those who are filibustering that they don't think it is important enough to be worth debating.

Marriage is our oldest social institution. I was thinking about this the other day. It is not older than the impulse to seek God, but it is older than our formal religions. It is older than our system of property. It is older than our system of justice. It certainly predates our political institutions, our Constitution, even our union in this country. And marriage may be the most important of all these institutions because it represents the accumulated wisdom of literally hundreds of generations over thousands of years about how best to lay the foundation of a home in which we can raise and socialize our children.

Every society has to be able to do certain things in order to survive. It has to produce wealth, goods, and services so people can live. It has to resolve disputes so that people don't kill each other over problems that they have. It has to be able to raise children who are reasonably content, reasonably well adjusted, and reasonably committed to the norms of that society. It is possible to do that. I put in that word for those in the gallery who may have teenagers as I do. It is possible for children to be reasonably content, well adjusted, and committed to the norms of society. And the way that we do that, the way we have decided over the millennia to do that in this country, and, indeed, throughout the world, is through marriage.

It doesn't always work that way, obviously. No human society, no human institution is perfect. A spouse may die. The marriage may break up. The marriage may be so completely dysfunctional that maybe it ought to break up. People sometimes are single when children are born, and very often in those circumstances the person who is raising the child is able to make it work. They act heroically to raise the child on their own.

If a child in that circumstance went to his mom or dad or aunt or uncle or grandma or grandpa or guardian, whoever was trying to raise him or her on his own and said, When I grow up, when I want to have children, would you recommend that I try and find somebody who is committed to raising the child—say it is a girl—if I try and find a man who is committed to me and committed to the home and committed to raising our children in that context, would you recommend that I do that or not? How many of those single moms or dads or grandmas or grandpas or aunts or uncles who have raised kids or are raising kids, how many would say, No, do it the other way? They would say: Do it that way, if you can.

It is hard under any circumstances. But it is less hard if you have a husband or a wife who is there, who is committed, who wants to help. That is what marriage is about. Americans know that as a matter of commonsense. Americans live in this civilization. Americans of all different backgrounds, all different ethnicities, all different religions, all support traditional marriage. They know that, if possible, kids should be raised by a mom and a dad, committed in the context of marriage to their family. Americans know that and have known it. They have built that society and that culture.

The social scientists have figured it out. Here is a representative statement. The Senator from Kansas read a

number of similar statements the other day, but this was by Scott M. Stanley who is a Ph.D. at the Center for Marital and Family Studies at the University of Denver, which my friend from Colorado has the honor to represent. He said:

> As a result of decades of accumulated data, many family scientists, from the fields of sociology, psychology and economics, have concluded—

Here is the news bulletin—

> children and adults on average experience the highest level of overall well-being in the context of healthy marital relationships.

And what is marriage? We are entitled to ask that about all our social institutions. What is it? It is not complicated. In short form, it is one mom, one dad, one at a time. Everybody has the same right to get married. There is no discrimination involved in a social institution. Everybody has the same right to get married. But nobody has the right to marry anybody they want to. There are certain restrictions. You can't marry a close relative. You can't marry somebody who is already married. Is that discrimination if we tell people, No, you can't marry somebody if they are already married? That is not marriage. And you can't marry somebody of the same sex.

And why? Because marriage is the institution—remember, it is many things; yes, it is an expression of love and commitment between two people and that is beautiful—that we in our society rely upon for raising our children. And it is best for kids, if possible and where possible, to have a mom and a dad. And that is one thing that two people of the same sex cannot give children. They cannot give them a mom and a dad.

It comes down to this: People in this country are free to live the way they want to live. That is one of our cultural norms that, by the way, marriage supports. Marriage is the building block of a society which believes, among other things, that people should be free. And people are free to live the way they want.

The Senator from California talked about two same-sex people who love each other and want to live together. Legally people are free to do that. But that does not mean that they are free to change the basic cultural institutions on the health of which everybody and everybody's rights depend.

We have models of this around the world. In Scandinavia they have changed traditional marriage, legalized same-sex marriage. The result there is increasingly nobody gets married. Fewer and fewer kids are raised outside of that context. It is not good. If you think it is good, come down here and say that. Say that is why you want to oppose the amendment.

It is worth asking also how we got here. No legislature has acted on this. I haven't heard about hearings in the State legislatures around the country. No referendum has passed. I served in the legislature for 8 years in Missouri and was proud to do so. I served on the committees that considered family law. We debated a lot of issues involving family law. We changed the law a lot. It has not happened in this country. People have not adopted referendum. In fact, all the actions have been the other way. To the extent that they have passed referendum or laws, they have all been in support of traditional marriage.

So how did we get here?

We got here because a majority of the Massachusetts Supreme Court decided people should have the right to same-sex marriage. Because of the way our Federal system works, it is very likely—whether people want to admit this or not—that other courts will force people in other States to recognize same-sex marriage because one State has. That is the way our system works. It may not happen, but it is quite likely to happen.

When I heard about that decision by the Massachusetts Supreme Court, I asked myself: What about everybody else's rights? What is the most basic political right people in this country, and indeed throughout the free world, have? What is the political right that people in this country have fought and died for for hundreds of years? We see people around the world now heroically fighting for this. The first and most basic right is the right of the people to govern themselves.

The Framers thought that right was so self-evident, you didn't have to argue for it. Maybe we should restate it for the Massachusetts Supreme Court. It means that the only just government is the one that derives its powers from the consent of the governed. That means that every act of any governmental body has to be the result of a process in which the people have, at some time, consented.

In this country, people have to consent to the acts by which they are governed. Typically, they could do that through the process of a representative democracy. They elect people or defeat them, depending on whether they agree with them. We would not tolerate it for a second if a President got up one day and said: I don't like the way our society is functioning; I am going to issue a decree and everybody has to do it differently now.

It would not matter whether we agreed, we would say you don't have the authority to do that. It is because of that basic right of self-government that judges are supposed to construe and apply the law, not invent and impose the law.

Now, the construction may be strict or liberal. Provisions of the Constitution may be vague. But the construction has to be a faithful construction—whether it is strict or liberal—to the proper exercise within the American constitutional system of the judicial power. Even if a provision of the Constitution is so vague that we are not certain what the right answer, the right interpretation is, it doesn't mean there are no wrong interpretations. It doesn't mean there are no interpretations which clearly are outside of the scope of what the people who wrote the document said or intended.

I want to assert this before the Senate now: It is wrong to say the Constitution of the United States, or any of the several States, contains a right to same-sex marriage. It is intellectually dishonest to claim that the Massachusetts decision was one of interpretation and application, rather than invention and imposition. They were not interpreting the Constitution; they were imposing what they wanted on the people of Massachusetts, without their consent.

In this country, you don't do that. I have been around legislative bodies a long time. I have won some battles and lost some. Sometimes I think I have lost a lot more than I have won. Certainly, when I served in the minority in the Congress and in the legislature, I lost more battles than I won. That is the way the system works. I can live with that. But I don't like being told I have no right to participate. I don't like being told my views are such that I cannot petition the representative process to get what I want out of it.

Unless we pass a constitutional amendment, we will allow the courts of this country to disenfranchise tens of millions of Americans on an issue that is of greater importance to them on a day-to-day basis—because it involves the way in which their children and other people's children are going to be raised—than most of the issues we discuss. If we cannot agree in this body on anything else, we can agree on this: Everybody should have the right to advance their point of view in the legislative process on this issue, and that we can trust the good sense of the American people to produce the right result in the end. I am willing to do that, but the only way we can do that is by passing a constitutional amendment. That is what this country is about.

I have just a few minutes. I will deal with some of the arguments that have been raised against this. One is that this is political. Well, I have been in legislative bodies a long time. When people start talking about a bill or an argument being political, they are really saying that we know if we have to vote on this, we are going to vote in a way that people probably don't like back home, and we would really rather not vote on it.

Let me say this. This is not a battle that my friend from Colorado sought when he introduced this amendment. This battle is being forced upon us by the courts of the country. If you don't want to vote on this, get the Massachusetts Supreme Court to reverse itself. We will go back to what we had before, and gladly so.

Another argument is that we are holding up other business. I say to the people who are making that argument, as I said at great length on the floor of the Senate the other day, you are filibustering the other business. If you

want to go to other business, stop filibustering it. You filibustered the class action bill last week, the welfare bill, the Energy bill, medical malpractice, and judicial nominations. You can filibuster if you want.

Unfortunately, here we allowed very broad filibustering. But one thing you cannot do is filibuster and then accuse everybody else of being obstructionists. That isn't right. Let the other measures go and we will go with them.

Another argument is that we should show more respect for the Constitution and that we should not amend the Constitution. You know, that is kind of a selective argument. That says basically you can amend it through the courts. The courts can amend it any way they want, without regard to the right of the people to govern themselves; but we cannot amend it through the process that the people have provided to amend it. The argument is kind of cheeky. It says we can get court decisions that exclude you from participating in the normal process, so you cannot pass a law to do anything about it. But then, if you go to the constitutional amendment process, which is the only process we have left open to you, you are not showing any respect for the Constitution.

Look, my time is running out. I see a colleague who may want to add a word or two at the end. You are either for protecting traditional marriage or you are not. There is no way around this debate. The courts are forcing it on us. They have changed the law in Massachusetts. People are getting married there and filing lawsuits in other States to challenge those State laws. This is here. We are either going to do something about it or we are not. You are either for protecting traditional marriage or you are not. It is not about homeland security. It is about whether you really think that marriage, as we have understood it for thousands of years, is important in some sense, even if you cannot explain it, to the kind of society we live in. I think so. I know most of the people think so.

My tone has been one of frustration. I am sorry about that. This frustrates me. It is something that, clearly, we ought to do. I don't know anybody who has come down here and argued against traditional marriage. Let's pass this constitutional amendment, work on it for a reasonable amount of time, get it in as good a shape as we can, and do the business the people expect us to do. Let them make their own decisions about their own culture.

I yield the floor.

I thank the Senate, and I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I ask unanimous consent that we allow the Senator from Texas an additional 10 minutes to discuss the Hispanic conference that she is having here.

The PRESIDING OFFICER. Is there objection?

Mr. SCHUMER. Reserving the right to object, I ask unanimous consent to modify the request of my friend from Colorado that after the Senator from Texas speaks on the Hispanic convention for 10 minutes, the Senator from California and I be given an additional 15 minutes to talk about the renewal of the assault weapons ban.

The PRESIDING OFFICER. Unfortunately, the Chair will not be able to preside and has to object to the unanimous consent request.

Mr. SCHUMER. Mr. President, I have no objection to the Senator from Texas speaking for 10 minutes. I ask unanimous consent that when the Senate resumes business at 2:15 p.m., at some point between 2:15 p.m. and 5 p.m. today, we be given 15 minutes to talk about this issue.

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

The Senator from Texas.

Mrs. HUTCHISON. I thank the Chair.

Mr. President, I appreciate this opportunity to talk about the Federal marriage amendment before the Senate. It is important that we focus on this very important issue and look at the reason we are taking it up.

Some people come up to me and say: Why are we doing this now? We already have the Defense of Marriage Act. Additionally, people say: Is this such a pressing issue that it needs to be discussed right now?

I cosponsored this amendment because if we wait until the Defense of Marriage Act is taken through the courts and potentially declared unconstitutional, questions would arise about what marriage is in our country.

I do not think many would disagree that the traditional concept of marriage is what must be protected. Traditional marriage has been the foundation of our families for generations, in fact, centuries. It is best for our children now, and is the best chance our children have for brighter futures.

Inevitably, single-parent households exist due to death or an inability to keep marriages together. But it is proven, that if possible, a married couple, a man and a woman, raising a family give children the best chance to succeed in their lives.

Today, same-sex couples from 46 States have traveled to Massachusetts, California, and Oregon to receive marriage licenses with the intention of returning to their respective States to challenge their State's laws. Forty-two States have specific laws defining marriage as the union of a man and a woman. My State of Texas has such a law.

Activist judges and lawyers have been using the judicial system to undermine the traditional definition of marriage without public consent or debate. This is not just an attack on our families, but also on our democratic form of government. Elected representatives of the people are supposed to make the laws of our country.

In 1996, Congress enacted the Defense of Marriage Act—it was passed 85 to 14 on the Senate floor—to protect marriage by allowing States to refuse to recognize an act of any other jurisdiction that designates a relationship between individuals of the same sex as a marriage.

I have heard arguments that DOMA would not withstand a full faith and credit Constitutional challenge, but we continue to see courts, such as the Massachusetts Supreme Court, and officials in California deny the laws of this country and their particular States.

I do not think the Constitution should be amended lightly. I would like to see our Constitution amended only when it is absolutely necessary to correct a fundamental problem. However, this is one of those times. This is one of those times when we have judges acting as legislators. This must be stopped and can only be stopped by the Constitution.

The full faith and credit clause of our Constitution says:

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

The full faith and credit clause should not be used by the courts to validate marriages because marriages are not legal judgments, they are civil contracts. Unfortunately, we are witnessing a change where activist judges are making laws with their judgments, and the full faith and credit clause faces enormous challenge.

Currently, there are 11 States facing court challenges to their marriage laws. Recent court decisions indicate that neither State attempts to define marriage nor DOMA may be sufficient to protect the ability of States to define marriage. At least seven States will have State constitutional amendments on their ballots in 2004 to define marriage as between a man and a woman.

In my State of Texas where the legislature passed a law defining marriage as between a man and a woman, controversy now exists about how State courts must treat civil unions. The State attorney general has said that Texas does not recognize Vermont civil unions, and, therefore, no divorce or separation must be granted in Texas for this union.

These are just a few of the questions that are beginning to arise because of the acts of judges in Massachusetts and local officials in California.

It is very important that elected representatives make this decision. People must have the right to hear the discussion, talk about it, and be represented by their elected officials. That is the issue here.

I do not think we will have the votes on Wednesday to proceed to this critical issue, but this is an important step toward starting the debate. Marriage between a man and a woman that produces children and strong families is

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

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

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

I yield the floor.

RECESS

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

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

The PRESIDING OFFICER. The Senator from Nevada.

FEDERAL MARRIAGE AMENDMENT—MOTION TO PROCEED—Resumed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Wisconsin.

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

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

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

> The President has bet the farm on Iraq.

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

Mr. Weyrich also recently stated:

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

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

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

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

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