SENATE—*Wednesday, June 7, 2006*

The Senate met at 9 a.m. and was called to order by the Honorable SAM BROWNBACK, a Senator from the State of Kansas.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Great Shepherd of us all, remind us that You will not permit us to be tested beyond our strength. Inspire us in the face of great challenges by the fact that You have weighed the difficulties and will give us the power to meet them. Make us grateful for the opportunities to express our love for You by cheerfully bearing our crosses.

Strengthen our Senators. Do not remove their mountains, but give them the energy to climb them. Lead them around life's stumbling blocks to a destination that brings glory to You.

We pray in Your powerful Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable SAM BROWNBACK led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 7, 2006.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SAM BROWNBACK, a Senator from the State of Kansas, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. BROWNBACK thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MARRIAGE PROTECTION AMENDMENT—MOTION TO PROCEED

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the motion to proceed to S.J. Res. 1, which the clerk will report.

The bill clerk read as follows:

Motion to proceed to the consideration of S.J. Res. 1, proposing an amendment to the Constitution of the United States relating to marriage.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 9:40 shall be equally divided between the two leaders or their designees.

RECOGNITION OF THE MAJORITY LEADER

The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning we will have a brief period for closing remarks prior to the 10 a.m. vote on the Marriage Protection Amendment. That vote will be on a vote for cloture on the motion to proceed to S.J. Res. 1.

Following the 10 o'clock vote, the Senate will recess in order to attend a joint meeting with the House for the President of the Republic of Latvia, who will be addressing both Houses at 11 o'clock this morning. Senators should remain in the Chamber following the vote so we may leave at approximately 10:40 for that joint meeting.

When we return at noon, we have set aside debate times on two issues. First, from 12 o'clock to 3 o'clock, we will be debating the motion to proceed to the repeal of the death tax. A cloture motion was filed on proceeding to the death tax repeal. That vote will occur tomorrow morning. We have also set aside debate from 3 o'clock to 6 o'clock on the motion to proceed to the Native Hawaiians measure. The cloture vote will occur on that motion to proceed during tomorrow's session, as well.

I add that this week we have other matters to consider, including some nominations. We hope to reach agreements to consider Sue Schwab to be U.S. Trade Representative, the Assistant Secretary of Labor for Mine Safety and Health, and several available district judges who are on the Executive Calendar. We will be scheduling those for consideration through the remaining days this week.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Democratic leader is recognized.

VOTING

Mr. REID. Mr. President, my only response would be on this side of the aisle, we will be voting on the estate tax.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, we will shortly be voting on what will presumably be the 28th amendment to the U.S. Constitution. We all know the outcome of that vote. The amendment will fall well short of the 60 votes required for cloture, let alone the 67 votes required to pass a constitutional amendment, so it will fail, as it did 2 years ago. I am pleased that the Senate will reject this amendment.

I am heartened so many Senators have come to the Senate to speak out strongly against this misguided proposal, but I am saddened that once again the Senate has spent several days on such a divisive and unneeded proposal, a proposal that pits Americans against one another. I think it appeals to people's worst instincts and prejudices.

The arguments made by supporters of the amendment simply do not hold up under scrutiny. Supporters argue that Federal courts are basically on the brink of recognizing same-sex marriage and that States may be forced to recognize same-sex marriage performed in other States. Of course, neither of these things have happened, and no one has explained why we should do a preemptive strike on the basic governing document of the country to address a hypothetical future court decision.

Supporters talk about traditional marriage but in some ways have very little respect for the traditional role of the States in regulating marriage. If they did, they would not be trying to impose a restrictive Federal definition of marriage on all States for all time. The supporters argue that this amendment will not effect the ability of State legislatures to extend benefits to same-sex couples or enact civil unions, but as I tried to point out in some depth yesterday, even the legal experts who would support this constitutional amendment cannot even agree about its potential effect and scope. We are not talking about putting together a statute; we will put this into the Constitution.

Supporters rail against activist judges. But if this vaguely worded amendment ever passes, it will result in substantial litigation. What are the legal incidents of marriage? Is a civil union a marriage in all but name and therefore subject to the amendment? Judges would have to answer these and other questions that the supporters of the amendment have so far failed to resolve. There is certainly a rich irony in that.

We have heard moving speeches, and I do not doubt the sincerity of the speakers, about the central role and

volume of marriage in our society. What I still do not understand, and what the supporters of the amendment have failed to demonstrate, is why we should prevent States from deciding to open this institution to men and women who happen to be gay and lesbian all over the country.

Married heterosexual couples are shaking their heads and wondering, how, exactly, the prospect of gay marriages threatens the health of their marriages.

This amendment would make a minority of Americans permanent second-class citizens of this country. It would prevent States, many of which are grappling with the definition of marriage, from deciding that gays and lesbians should be allowed to marry. It may even prevent States from offering certain benefits of marriage to same-sex couples through civil union or domestic partnership legislation. And it would write discrimination into a document that has served as a historic guarantee of individual freedom.

Gay Americans are our neighbors, our friends, our family members, and our colleagues. Millions are loving parents in strong and healthy families. Let's not demonize them. Let's not play upon fears. Let's not use them as scapegoats for perceived social problems. Let's allow—in fact, let's encourage—States to extend rights and responsibilities to these decent, loving, law-abiding families. We can start today by rejecting this unnecessary, mean-spirited and poorly drafted constitutional amendment.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FEINGOLD. Mr. President, I ask the time during the quorum call be equally divided on both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FEINGOLD. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ALLARD). Without objection, it is so ordered.

Mr. BROWNBACK. How much time is remaining on our side of the aisle?

The PRESIDING OFFICER. There is 14½ minutes.

Mr. BROWNBACK. I ask when 7½ minutes have been used, I be informed.

The PRESIDING OFFICER. The Chair will inform the Senator.

Mr. BROWNBACK. Mr. President, if Members of the Senate vote as their States have voted on this amendment, the vote today will be 90 to 10 in favor of a constitutional amendment. Forty-five States have defined marriage as the union of a man and a woman.

I want to show my colleagues an outdated map. It shows the number of States that have weighed in on the topic of marriage. Yesterday, Alabama voted by 81 percent to define marriage as the union of a man and a woman. The dark green States are those that have already passed; light green are those where it is pending, and only five States have not defined marriage as a union between a man and a woman. So if Senators would represent their States, this amendment would pass 90 to 10. It would pass with the definition of marriage as the union of a man and a woman. And if anybody wants to define it otherwise, it will have to go through the State legislature, not the courts.

So there is nothing to oppose in this amendment. If your State wanted to go at it by a different route, it says it has to go through the legislature. It can't be forced by the court. What is wrong with that?

I find it a sad prospect that we might not be able to pass this 90 to 10. Marriage is a foundational institution. It is under attack by the courts. It needs to be defended in this way by defining it as the union of a man and a woman as 45 of our 50 States have done. If it is going to be defined otherwise, it must be done by the legislatures and not by the courts.

This morning we are going to vote on a constitutional amendment to define marriage as the union of a man and a woman. This is about who is going to determine the definition, whether it is the courts or the legislative bodies. The amendment is about how we are going to raise the next generation. How are they going to be raised? It is a fundamental issue for our families and for our future. It is an issue for the people. It is not an issue that the courts should resolve. Those of us who support this amendment are doing so in an effort to let the people decide.

There has been a lot of eloquent debate about this constitutional amendment. I have been on the Senate floor most of the time. I have heard very little debate against the amendment. I have heard a lot of people complaining that we ought to take up something else, that this is not so important. I look at it and say, we have this many States that have deemed it important enough that they would put it on their ballots. This is important. We have had basically one, two, maybe three speakers say they really question the amendment, but most of them say we shouldn't spend our time on this amendment. We shouldn't spend our time on the estate tax. They don't mention the native Hawaiian bill that is coming up, or suggest that we should not spend our time on that.

We are going to have this vote. People are going to be responsible for this vote. We are making progress in America on defining marriage as the union of a man and a woman, and we will not stop until it is defined and protected as the union of a man and a woman. We have far more States now that have voted on this issue than the last time we voted on it. We now have far more court challenges taking place to this fundamental definition of how we look at the union of marriage.

Marriage is about our future. I continue to be struck by the opponents of this amendment who say it is an effort to promote discrimination. The amendment is about promoting our future, our families, how we raise that next generation, and about allowing a definition of a fundamental institution to be made by the people rather than by the courts.

I have shown a number of charts demonstrating that the best situation for our children to be raised is in a home with a mother and father. Children need these two parents. It is not that you can't raise good children in a single-parent household; you can. Many struggle heroically to do so. Yet we know from all the data that the best place is with a mother and father. Children do best academically and socially, and they are more likely to be raised in financially stable homes when a mother and father are both present.

More importantly, they have the security of knowing there are two people in their lives who provide security and stability, two people who provide something, each differently, but that is very important.

These two people become one. They are united. They become one bonded together. This past weekend, my mother-in-law and father-in-law celebrated 56 years of marriage. While often they may disagree with one another—sometimes pretty heatedly, sometimes one could call it almost barking at each other—they are inseparable. They are one. It is a beautiful thing to see. It is the way that we should uphold these institutions. Their children and their grandchildren and great-grandchildren get to see these two people, two old trees leaning against each other, holding each other up, physical bodies not anything near what they used to be, but supporting and helping and setting a foundation for all future generations to look at and say: That is the way it ought to be done.

Life hasn't always been easy for them. There have been difficulties through time. They have had some hardships, working together. My father-in-law has done very well, served

in Korea, during which time they were separated by many miles.

My parents have been married over 50 years. You look at them and say: That is the way it should be, where two become one. Out of that union comes more people, more children, raised with a solid set of foundational values that you hope can be good citizens. We are all going to have difficulties and problems, but isn't that something that we can do and we should do for the next generation?

We have an important issue in front of us, the definition of marriage. We have a country that is watching and that knows what they believe marriage should be defined as, the union of a man and a woman, as 45 States have defined it. The courts are moving otherwise. We say let the legislatures decide, and that it is an important issue, meritorious of our vote.

To those who oppose this amendment, I think they will have to explain to a lot of people why they oppose marriage as the union of a man and a woman and why they don't think the State legislatures should be the ones responsible for defining this but, rather, that this should be defined by the courts. I don't think their position is across America.

This is important. I hope my colleagues support this constitutional amendment.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ALLARD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ALLARD. Mr. President, I begin by thanking the majority leader and the 32 cosponsors of S.J. Res. 1, the Marriage Protection Amendment. I thank the Senator from Kansas for his leadership, courage, and for standing in support with me of marriage.

We as Senators are called to duty to debate this issue today out of respect for the democratic process. The voice of the people has been heard loud and clear. Marriage is the union of a man and a woman.

It has been heard in the 20 States with constitutional amendments passed by an average of over 70 percent of voters. It has been heard in the 26 States with statutes protecting traditional marriage. It has been heard in 45 States and in this Congress.

Unfortunately, dissatisfied with the outcome of the democratic process, a handful of activists have launched a carefully coordinated campaign to circumvent the democratic process and redefine marriage through the courts.

As a result, I introduced S.J. Res. 1, an amendment to the Constitution, that simply defines marriage as a union of a man and a woman, while leaving all other issues of civil unions or domestic partnerships to the States. I am pleased the issue has this week been debated in a democratically elected and deliberative body—where it belongs.

Throughout the course of the past 2 days, I have heard countless arguments in favor of marriage from both sides of the aisle. Surprisingly, many of the same people making those arguments will not vote for our amendment to protect marriage.

Equally as surprising, notwithstanding their opposition, I heard few arguments opposing my amendment on the merits. Instead, most of those opposed to the amendment shifted the debate to issues other than the pending business. I suspect these shifts were meant to divert attention away from their intent to vote differently than an average of 70 percent of their constituents do when they vote on the issue of same-sex marriage at home.

While other issues are without a doubt very important, the Senate has and continues to devote considerable time and will likely devote even more time to debate on these important issues this year. With the overwhelming support that was voiced on this floor for the institution of marriage, one would think that addressing the nationwide attack on marriage that is underway would warrant at least 1 full day of debate on the issue.

The one tack taken by those opposed to the amendment most closely resembling an argument on the merits came in the form of States rights. While well meaning, the argument is unfounded.

First, my amendment actually protects States rights. Same-sex advocates have, through the courts, systematically and successfully trampled on laws democratically enacted in the States. My amendment takes the issue out of the hands of a handful of activist judges and puts it squarely back in the hands of the States.

Secondly, the process to amend the Constitution is the most democratic, federalist process in all our government. It is neither an exclusively Federal nor an exclusively State action. It is the shared responsibility of both. Once passed by the Congress, legislatures in all 50 States will have the opportunity to debate and decide this issue for themselves.

Finally, under my amendment, States remain free to address the issue of civil unions and domestic partnerships. Citizens acting through their State legislatures can bestow whatever benefits to same-sex couples they choose. The real danger to States rights would be to do nothing and to acquiesce to the recognition of unenumerated constitutional rights in which the States have had no participation.

The truth is, the Constitution will be amended whether we pass this bill or not. The only question is whether it will be amended through the amendment process or by unaccountable activist judges. If we fail to redefine marriage, the courts will not hesitate to do it for us.

I, for one, believe the institution of marriage and the principles of democracy are too precious to surrender to the whims of a handful of unelected activist judges. I urge my colleagues to join me in my stand for democracy and marriage by voting yes on S.J. Res. 1, the Marriage Protection Amendment.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. Mr. President, one of the first things a Member of the Senate should learn is humility, humility when it comes to some of the documents that guide our Nation. We certainly understand the Constitution we are sworn to uphold and defend is a treasured document which has guided us for over two centuries. I, for one, come to the subject of amending this Constitution with real humility. I think it is bold of some of my colleagues to believe that their handiwork, their words, could stand the test of time, could be measured against the work product of Thomas Jefferson and the greats in American history.

This matter before us today is an attempt by some of my colleagues to amend the Constitution, to change the document which has guided America for so long. I have seen a lot of these amendments come and go as a member of the Judiciary Committee. Some of them, frankly, couldn't even make it through the committee, let alone on the Senate floor or be sent to legislatures for approval.

But still Members come forward with a variety of ideas. Today, we consider the so-called Marriage Protection Amendment. My friend, my colleague from Colorado, Senator ALLARD, the lead sponsor of it, says this amendment will not infringe on the rights of States to determine the status of different relationships. Yet let me read the language of his amendment:

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

So if my State of Illinois decides to establish a domestic partnership law and say that two people of the same gender can live together and share health insurance and can be in a relationship where there would be a guarantee that they would have access to visit one another in times of hospitalization and sickness, where property rights could be established, is that a legal incident of married life? Most people would say yes. Clearly, this language says it would be prohibited. So

what we have here goes far beyond the concept of marriage. We have to take care not to put language in this Constitution that will come back to haunt us.

I step back, too, and look at this debate and wonder, why are we here on the floor of the Senate doing this? Why are we debating this issue above all others? Why are we taking virtually a week of Senate business time to debate the issue of gay marriage? I think it goes back to a statement made by President Bush a couple weeks ago on the issue of immigration. This is what he said:

We cannot build a unified country by inciting people to anger, or playing on anyone's fears, or exploiting [an] issue . . . for political gain.

He was referring to the issue of immigration, but the standard is a good one. We have a responsibility to unite America and not divide it.

Mr. President, I wish you could hear the telephone calls to my office. The people calling in support of this amendment—many of them—are very courteous and ask me to vote for the amendment. But, sadly, so many of them call spewing their hatred and bigotry of people of different sexual orientation. You think to yourself, is this good for America? Is it good for us to have this sort of angry display brought out by our actions on the floor of the Senate at a time when we know this constitutional amendment will not be enacted by the Senate? Nobody believes it will receive the 67 votes that are necessary for final passage, and few believe it will even come close to the 60 votes necessary on a cloture motion. Yet we come today, as we have times before, to bring up this issue.

This debate is not about the preservation of marriage. This debate is about the preservation of a majority. The Republican majority believes that if they can bring these issues which fire up their political base to the floor, they will have better luck in the November election. So at the risk of dividing America, at the risk of putting language in the Constitution that could not stand the test of time, they will take the time of the Senate and engage us in this debate. That is unfortunate when you think of so many other things we should be dealing with.

Would this not have been a great week to deal with energy policy and reducing our dependence on foreign oil, to make America less dependent upon the Middle East and the foreign powers that push us around because we need their oil to propel our economy? Would this not have been a perfect week to debate affordable and accessible health care for every single American? Would this not have been a perfect week for us to decide what in the 21st century we need to do to make sure our schools prepare our citizens to continue to lead in this world? Would this not have been an important week for us to come together and have a meaningful debate on the war in Iraq which has claimed 2,476 of our best and bravest young men and women?

No. The Republican majority said no. They said this is a perfect week for us to come together and discuss a flawed amendment to the Constitution, for us to come together on an issue that, sadly, divides us rather than unites us as Americans, and to take that time off the Senate calendar. I think it is very clear that this is not a voter priority. It is not an American priority. When the American people were asked in a Gallup Poll in April, ''What do you think is the most important problem facing this country today,'' this issue came in at No. 33. But for Senator FRIST and the Republican majority, it is No. 1 this week. I think most people realize there is political motivation here and that is what it is all about.

We should also consider the reality that this is clearly a State issue. States have always established the standards for marriage. That has been the tradition in American law, a tradition which would be upset and voided by this amendment. Each State may have slightly different standards.

A few years ago, under a Democratic President, Congress passed the Defense of Marriage Act. The Defense of Marriage Act said that no State would be compelled to recognize the standards of another State when it came to same-sex marriage. Now, that means in the State of Massachusetts, where gay marriage is allowed, they can make that decision. The people in that State can validate that decision and courts can approve that decision, but they cannot impose that decision on Kansas, Colorado, Illinois, or Alabama.

The Defense of Marriage Act has never been successfully challenged, never been overturned, and it is the law of the land. But it is not good enough for those who propose this amendment. They want more. I believe that is unfortunate. It is unfortunate when we consider that we are taking the precious time of the Senate on an issue which we should not be considering at this moment. The Republican leadership ought to listen to First Lady Laura Bush. She was asked about this amendment last month on ''FOX News Sunday''—the fair and balanced FOX, remember that? This is what she said:

I don't think it should be used as a campaign tool, obviously.

That sentiment was echoed last month by the daughter of Vice President CHENEY. This is what she said:

I certainly don't know what conversations have gone on between Karl [Rove] and anybody up on the Hill, but . . . this amendment . . . is writing discrimination into the Constitution and . . . it is fundamentally wrong.

Now consider the wise words of another former Senator, a loyal Republican, John Danforth of Missouri—a conservative man, but he opposes this amendment. He said this in a recent speech:

Some historian should really look at all of the proposals that have been put forth throughout the history of our country for possible constitutional amendments. Maybe at some point in time there was one that was sillier than this one, but I don't know of one.

In fact, over 11,000 constitutional amendments have been proposed by Members of Congress throughout our history. Only 17 of them actually passed into the Bill of Rights. Why? Because amending our Constitution should take place under only the most extraordinary circumstances. We should amend it only when it is essential to protect the rights and liberties of the American people.

I am joined in this belief not only by Democrats but by Senator Danforth, the Vice President's daughter, the First Lady, and by many true conservatives.

Listen to what Steve Chapman, a libertarian writer from the Chicago Tribune, wrote:

If there is anything American conservatives should revere, it's the U.S. Constitution, a timeless work of political genius. Having provided the foundation for one of the freest societies and most durable democracies on Earth, it shouldn't be altered lightly or often.

As United States Senators, we take an oath. We solemnly swear to support and defend this Constitution. I believe part of that oath requires us to take care when it comes to changing the Constitution.

I have listened to some of the debate on the floor. The Presiding Officer from Kansas spoke yesterday about marriage in America. I think it is a legitimate concern. America's strength is its families. The family of Americans has been the model—the goal, really—and the leadership of our Nation. But to argue for this amendment, suggesting that the increase in births to unmarried women is somehow linked to gay marriage—I don't understand that connection in any way whatsoever. To suggest that lower income level people are less likely to marry and that has something to do with gay marriage—I don't understand that connection, either.

If we are truly going to strengthen the American family, would we not want to increase the minimum wage in America, which hasn't been increased by this Republican Congress in 9 years? Would we not want to provide basic health insurance to families so they can have peace of mind when their children get sick? Would that not strengthen families? Would we not want to make sure we have good-paying jobs in America that create opportunities so people can look ahead with optimism? Would that not strengthen families and our country? Instead, we have the gay marriage amendment.

In the State of Kansas, the former Republican State chairman has decided to become a Democrat. He said he was tired of the culture wars the Republican Party tended to always want to fight. We saw it here in the Congress last year when the House Republicans were in trouble and they brought up the tragic case of Terri Schiavo—an invasion of the Federal Government into the most personal, private decision a family could face. Now, again, facing political difficulty, they bring up this Federal marriage amendment. It will not pass today. We must set it behind us and move forward on the important agenda the American people sent us to Washington to work on. Let us do it in the spirit that President Bush reminded us of a few weeks ago—building a unified country, not inciting people to anger or playing on anyone's fears or exploiting an issue for political gain.

I hope my colleagues will join me in opposing amending the Constitution, despite the best efforts of those who bring this issue before us today in S.J. Res. 1. This does not merit inclusion in the most treasured and important document that guides America and its democracy.

Mr. LEVIN. Mr. President, the Senate is once again debating an amendment which proposes to establish a Federal definition of marriage in the U.S. Constitution. Only 2 years ago, the Senate rejected a similar effort.

One stated reason for considering this amendment is to protect States from having to honor the decisions of other States regarding marriage laws. This is unnecessary because 10 years ago this body overwhelmingly passed, and President Clinton signed into law, the Defense of Marriage Act, DOMA, which I supported, which states that ''No State . . . shall be required to give effect to any public act, record, or judicial proceeding of any other State . . . respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State . . . or a right or claim arising from such relationship.'' The Defense of Marriage Act has clearly already defined ''marriage'' as ''only a legal union between one man and one woman as husband and wife.''

Proponents of this amendment argue that it is only a matter of time before the Federal courts become involved with marriage law, and they raise the fear that the Defense of Marriage Act could be struck down by so-called ''activist'' judges and courts. However, this simply has not been the case. This same argument was made in the Senate in 2004, but the Defense of Marriage Act still stands and remains law.

Since 2004, DOMA has been upheld three times in Federal courts. In 2004, a Washington Federal judge upheld DOMA in a case where a couple had obtained a Canadian marriage license. In 2005, a Florida Federal district court upheld DOMA as constitutional in a case where a couple married in Massachusetts sought recognition of their marriage in Florida. And only last month, the Ninth Circuit Court of Appeals upheld a lower court decision dismissing a challenge to DOMA in California. There is no particular reason to believe that another pending challenge currently in district court or future challenges to DOMA will be successful.

I believe that the laws regarding marriage are matters to be dealt with by the States. My State of Michigan, for example, enacted a constitutional amendment in 2004 which provides that marriages and other similar unions shall only be recognized as being between one man and one woman. DOMA continues to protect each State's right to define marriage.

The language of the proposed constitutional amendment contains a number of other problems. The amendment reads ''Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman.''

The principal sponsor of this amendment, Senator ALLARD, states that this amendment will give ''State legislatures the freedom to address civil unions however they see fit,'' even though this is a power the States already possess. In fact, the very language of this constitutional amendment would make it unconstitutional for the States to create civil unions or domestic partnerships in their constitutions with any of the same legal benefits currently afforded to marriage.

Our Constitution should not be altered lightly. It has been amended only 17 times since the enactment of the Bill of Rights over 200 years ago. As former Republican Congressman Bob Barr, the author of the Defense of Marriage Act, stated in testimony before the House Judiciary Committee 2 years ago, ''We meddle with the Constitution to our own peril. If we begin to treat the Constitution as our personal sandbox, in which to build and destroy castles as we please, we risk diluting the grandeur of having a Constitution in the first place.''

The Constitution has been amended in the past to broaden and affirm the rights of Americans and never to narrow the rights of a group of Americans. Amendments to our Constitution have freed enslaved Americans and given women the right to vote. And it is the first 10 amendments, our Bill of Rights, which protect our most cherished freedoms like the freedom of speech.

For all these reasons, I will oppose the adoption of this constitutional amendment.

Mr. KERRY. Mr. President, for the past 3 days, the Senate has been bogged down debating a constitutional amendment on gay marriage.

You might ask yourself, why now? What's the constitutional crisis that needed to be addressed this week? Did the Republican leader bring this legislation to the floor in response to a marriage crisis in the United States?

States, which have had the responsibility of setting marriage laws for two centuries, have taken action on gay marriage as they've seen fit. No crisis there.

No, this amendment is front and center in the Senate in response to a political crisis: a crisis in the Republican Party.

What is most outrageous to Americans is the cost of this debate in opportunities lost to address very clear and present crises in our country. Debating the constitutional amendment to ban gay marriage displaces Americans' real priorities—dealing with gas prices and our dangerous dependence on foreign oil, providing health care to the 45 million uninsured, lowering health care costs, advancing stem cell research, securing our ports, bringing our troops home from Iraq, and ensuring our returning veterans have the support they need.

Why the sudden call from so-called conservatives to take the power to regulate marriage away from the States? The Federal Government does not even have the jurisdiction to regulate marriage. Since this country was founded, States have had the authority to regulate marriage and other family-related matters. Currently 49 States limit marriage licenses to heterosexual couples, and 18 States have adopted State constitutional amendments banning same-sex marriages. For over 200 years, this balance of power has worked.

The Federal Government is not in the business of issuing marriage licenses or dissolving marriages. Congress does not dictate the age at which people can get married or the grounds for seeking an annulment or divorce. I do not believe the Federal Government even has the power to legislate such things.

Should this amendment pass, it would be the first time that the Constitution is amended to deny rights to a particular group of Americans, singling them out for discrimination. The discrimination would not be limited to actual marriages either. The wording of the amendment could limit rights afforded under civil unions. When similar State amendments were adopted in Ohio, Michigan, and Utah, domestic violence laws and health care plans for couples—gay and straight—were taken away.

In the past, we have amended our Constitution to protect groups of citizens suffering from discrimination, to ensure that everyone enjoys the same

basic civil rights. I strongly oppose any effort by the Senate to change the course of history in such a dramatic way, and I particularly resent that this is being done for raw political purposes.

In 2004 when this amendment was brought up, only 48 Senators supported it. The outcome of today's vote is no surprise. Instead of spending 3 days debating a doomed constitutional amendment, we should have spent these 3 days guaranteeing all American children health care, addressing record-breaking gas prices, stimulating the economy after a month of sluggish job growth, or working out a real plan for dealing with the mess in Iraq. We should have been doing the work of the American people, but instead we debated a constitutional amendment that never had any hope of passing.

Mr. President, I hope that in the future the Senate can get its priorities straight, and I am confident that if it doesn't Americans will find their own way of holding the system accountable.

Mr. JEFFORDS. Mr. President, I am very troubled by the Senate leadership's decision, with limited days remaining in the session, to spend valuable time trying to amend the Constitution to define marriage. This issue should not be at the top of our priority list.

Unfortunately, it is a recurring theme here in the Senate during election years, to concentrate on issues that fuel partisan politics, rather than addressing our country's important needs. For the reasons I will lay out, I will once again oppose a Federal marriage amendment.

The Federal marriage amendment comes up at a time when many other critical issues face our Nation. We have soldiers in Iraq and Afghanistan fighting wars with no end in sight. Veterans are still not granted adequate medical support, and now have also been exposed to the threat of identity theft. Millions of Americans still have no health insurance, and gas prices are too high.

There are many pieces of pending legislation the Senate should be taking up other than the Federal marriage amendment, such as those addressing increased support for education, Head Start reauthorization, global warming, and a rapidly increasing deficit.

Some of my colleagues insist that the institution of marriage is under attack by the courts, and, therefore, passage of this constitutional amendment is critical. This argument is questionable at best.

In 1996, the Defense of Marriage Act was passed by the Congress and signed into law. This law gives each State the power to determine its own marriage laws and not be forced to accept another State's definition of marriage. I voted in favor of the Defense of Marriage Act because I believe in the importance of allowing States, including Vermont, the right to define marriage in a manner they deem appropriate.

As of this date, no court has overruled the Defense of Marriage Act. In fact, the court that many of my colleagues consider to be the most liberal, the Ninth Circuit, has upheld the Defense of Marriage Act. The proponents of a Federal marriage amendment also point to a case in Nebraska, Equal Protection Inc. v. Brunning, to prove their point. But that case only addressed the right of people to petition the government, it did not rule on the definition of marriage. Because the Defense of Marriage Act remains the law of the land, each State retains the right to define marriage as it sees fit, rather than have a definition forced upon it.

I am proud that in my State of Vermont, the legislature, in a bipartisan manner, was able to pass a law that affords same-sex couples the same legal rights as other married couples. Vermont's civil union legislation proved to the Nation that the rights of marriage do not have to be an exclusive privilege.

The Congress should be focusing on unity, not on exclusion and discrimination. I am proud that during my 32 years in Congress I have been a supporter of inclusive, unifying pieces of legislation. I have been a leading advocate of the Employment Non-Discrimination Act, the Permanent Partners Act, and of expanding the definition of hate crimes to include crimes motivated by gender and sexuality.

Here in the Senate, the leadership continues to insist on prioritizing a Federal marriage amendment. They insist on spending floor time on this amendment when other, more pressing issues remain in the shadows.

What message is the Senate sending to the American people? That real and pertinent issues can be swept aside so we can discuss a way to further exclude our fellow Americans? That we would rather spend time on a partisan fight than expanding our health care programs or increasing funding for education?

This is not a message I can support. We must change our focus from symbolic theoretical debates to concrete policy improvements that yield positive results for all Americans. I will vote against a Federal marriage amendment, and hope this issue will be laid to rest so the Senate can begin addressing the needs of the American people.

Mr. BURNS. Mr. President, I am generally hesitant to amend the Constitution; there are few things as permanent as a constitutional amendment, and it is something that clearly should not be done lightly. However, when activist judges repeatedly take steps to overrule the clear voice of a majority of the people, we are left with very few options. As we have seen over the past several years, Federal and State judges have time and time again struck down traditional marriage protections laws—laws overwhelmingly approved by voter ballot initiatives. This is simply unacceptable, and therefore I will vote in favor of the Marriage Protection Amendment in order to ensure that traditional marriage laws approved by the voters in a majority of the States are protected.

In my State of Montana, the people have overwhelmingly spoken on this issue on more than one occasion. In 1997, the Montana Legislature passed a State law defining marriage as between a man and a woman. Then in 2004, the people of Montana approved a ballot initiative by 67 percent which amended the Montana Constitution to state: ''Only a marriage between one man and one woman shall be valid or recognized as a marriage in this State.'' Nationally, 19 States have adopted similar State constitutional amendments, and 26 more have statutes designed to protect traditional marriage.

Unfortunately, the overwhelming consensus of the people is not good enough for some. As we have seen over the past several years, a handful of activist judges have taken it upon themselves to decide what should constitute marriage. By now, we are all well aware of the actions taken by the judges of the Supreme Judicial Court of Massachusetts. In that State, the court essentially mandated same-sex marriage. More recently, a Federal district court invalidated a Nebraska constitutional amendment protecting traditional marriage that had earlier been adopted with over 70 percent approval by Nebraska voters. As we debate this amendment, legal challenges are currently being brought against democratically approved traditional marriage laws in nine States. I fear it is only a matter of time before similar challenges are brought against the marriage protections approved by the voters of Montana.

Personally, I have always believed that marriage is between one man and one woman. However, the ultimate decision in an issue as important as what constitutes marriage must fully reflect the desire of the people, not just those of us in Washington and certainly not that of a handful of judges. Therefore, the solution is clear: we must send the States a constitutional amendment that protects traditional marriage laws, protects the will of the people, and prevents judicial activism. No other process is guaranteed to prevent the redefinition of marriage.

Mr. OBAMA. Mr. President, today, we take up the valuable time of the Senate with a proposed amendment to our Constitution that has absolutely no chance of passing.

We do this, allegedly, in an attempt to uphold the institution of marriage in this country. We do this despite the

fact that for over 200 years, Americans have been defining and defending marriage on the State and local level without any help from the U.S. Constitution at all.

And yet, we are here anyway because it is an election year—because the party in power has decided that the best way to get voters to the polls is not by talking about Iraq or health care or energy or education but about a constitutional ban on same-sex marriage that they have no chance of passing.

Now, I realize that for some Americans, this is an important issue. And I should say that, personally, I do believe that marriage is between a man and a woman.

But let's be honest. That is not what this debate is about. Not at this time.

This debate is an attempt to break a consensus that is quietly being forged in this country. It is a consensus between Democrats and Republicans, liberals and conservatives, red States and blue States, that it is time for new leadership in this country—leadership that will stop dividing us, stop disappointing us, and start addressing the problems facing most Americans.

It is a consensus between a majority of Americans who say: You know what, maybe some of us are comfortable with gay marriage right now and some of us are not. But most of us do believe that gay couples should be able to visit each other in the hospital and share health care benefits; most of us do believe that they should be treated with dignity and have their privacy respected by the federal government.

We all know that if this amendment were to pass, it would close the door on much of this—because we know that when similar amendments passed in places such as Ohio and Michigan and Utah, domestic partnership benefits were taken away from gay couples.

This is not what the majority of the American people want. And this is not about trying to build consensus in this country; it is not about trying to bring people together.

This is about winning an election. That is why the issue was last raised in July of 2004, and that is why we haven't heard about it again until now. And while this is supposedly a measure that the other party raised to appeal to some of its core supporters, I don't know how happy I would be if my party only talked about an issue I cared about right around election time—especially if they knew it had no chance of passing.

I agree with most Americans, with Democrats and Republicans, with Vice President CHENEY, with over 2,000 religious leaders of all different beliefs, that decisions about marriage, as they always have, should be left to the States.

Today, we should take this amendment only for what it is—a political ploy designed to rally a few supporters and draw the country's attention away from this leadership's past failures and America's future challenges.

There is plenty of work to be done in this country. There are millions without health care and skyrocketing gas prices and children in crumbling schools and thousands of young Americans risking their lives in Iraq.

So don't tell me that this is the best use of our time. Don't tell me that this is what people want to see talked about on TV and in the newspapers all day. We wonder why the American people have such a low opinion of Washington these days. This is why.

We are better than this, and we certainly owe the American people more than this. I know that this amendment will fail, and when it does, I hope we can start discussing issues and offering proposals that will actually improve the lives of most Americans.

Ms. COLLINS. Mr. President, I rise to speak on S.J. Res. 1, the Marriage Protection Amendment to the Constitution. Let me begin my remarks by stating my position on the issues raised by this amendment.

First, it is my strong personal belief that marriage is between a man and a woman. Second, principles of federalism dictate that the responsibility to define marriage belongs to the States. Third, the proper role of the Federal Government is to ensure that each State can exercise that right and responsibility by preventing, as the Defense of Marriage Act does, one State from imposing its view on others.

The constitutional amendment under consideration would potentially affect two types of relationships that are fundamental to our society. The first is the union between a man and a woman. The second is the compact between the States and the Federal Government. In our zeal to protect the former, we must not do unnecessary harm to the latter, as it is the bedrock principle of our country's highly successful Federal system.

When the Senate considered this amendment in July 2004, the Massachusetts Supreme Court had only recently issued its 4-to-3 decision in the Goodridge case. I urged that we should not overreact to the single decision of a State court and rush to amend the Constitution in such a way as to strip away from our States a power they have exercised, wisely for the most part, for more than 200 years. I also opposed efforts to amend the Constitution without evidence suggesting that States could not be trusted to make decisions in this area for themselves.

During the period since our last debate, many States have taken steps to define marriage within their borders. Currently, 45 States have enacted laws or constitutional amendments protecting marriage. Nineteen States have State constitutional amendments limiting marriage to a man and a woman, with 15 States passing State constitutional amendments since our last debate. Twenty-six other States, including Maine, have statutes limiting marriage in some manner. Maine law explicitly states that ''[p]ersons of the same sex may not contract marriage,'' and further provides that Maine will not recognize marriages performed in other jurisdictions that would violate the legal requirements in Maine. Thus, even if lawfully performed in another State, a same-sex marriage will not be valid in Maine.

Voters in at least seven States will consider State constitutional amendments in 2006 and another four State legislatures are considering sending constitutional amendments to voters in 2006 or 2008. And it is still the case, as it was 2 years ago, that no State law has been enacted to allow same-sex couples to marry. Nor has a popular referendum to that effect passed in any State.

I respect the right of the people of Maine and the citizens of other States to define marriage within their boundaries. Were I a member of the Maine Legislature, I would vote in favor of a law limiting marriage to the union of a man and a woman.

This does not mean that Congress can play no role in this area. To the contrary, Congress has two very important roles. The first is to protect the right of each State to define marriage within its own borders, and the second is to define marriage for Federal purposes.

To its credit, Congress did both of these when it enacted the Defense of Marriage Act, or DOMA, in 1996. Signed into law by President Clinton, DOMA enjoyed broad, bipartisan support in both Chambers of Congress, passing by a margin of 85 to 14 in the Senate and 342 to 67 in the House. The statute grants individual States autonomy in deciding how to recognize marriages and other unions within their borders, and ensures that no State can compel another to recognize marriages of same-sex couples. Of equal importance, DOMA defines marriage for Federal purposes as ''the legal union between one man and one woman as husband and wife.'' I strongly endorse both of the principles codified by DOMA.

Even though DOMA has not been successfully challenged during the nearly 10 years since its enactment, many supporters of the marriage amendment point to the Supreme Court's decision in Lawrence v. Texas as presaging DOMA's ultimate demise on constitutional grounds. They argue that DOMA's vulnerability necessitates approving the amendment under consideration.

I reject that argument. The conclusion that DOMA is inevitably destined to die a constitutional death is inconsistent with language in the Lawrence

decision. In striking down a Texas statute criminalizing certain private sexual acts between consenting adult homosexuals, the majority opinion written by Justice Kennedy was careful to note that the case before the Court ''does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter.''

In her concurring opinion, Justice O'Connor was even more explicit when she observed that the invalidation of the Texas statute ''does not mean that other laws distinguishing between heterosexuals and homosexuals would similarly fail. . . . Unlike the moral disapproval of same-sex relations—the asserted State interest in this case—other reasons exist to promote the institution of marriage beyond mere moral disapproval of an excluded group.'' These statements persuade me that the Supreme Court is, in fact, unlikely to strike down DOMA. In fact, in August 2004, a Federal bankruptcy court in Washington State ruled to uphold the constitutionality of DOMA, finding that there was no fundamental constitutional right to marry someone of the same sex.

Let me end where I began. This amendment is not just about relationships between men and women but also about the relationship between the States and the Federal Government. I would not let a one-vote majority opinion of a single State court lead us to ascribe to Washington a power that rightfully belongs to the States. To the contrary, our role should be to safeguard the ability of each State to exercise that power within its own borders.

Ms. MIKULSKI. Mr. President, today I will vote against cloture on the motion to proceed to the Marriage Protection Amendment. This amendment is unneeded and unnecessary. It is divisive and it is a distraction from what the Senate should be doing, which is making families stronger and safer. First, I will vote against this amendment because it is unnecessary. Congress has already spoken on the issue. There is a Federal law and a State law in Maryland that defines marriage as between a man and a woman. I supported the Federal law because it allows each State to determine for itself what is considered marriage under its own State law. And no law—not a Federal law, not a State law—can force a church, temple, mosque, or any religious institution to marry a same-sex couple.

I am also opposing this amendment because I take amending the Constitution very seriously. In the entire history of the United States we have only amended the Constitution 17 times. Seventeen times in over 200 years—that's it. We have amended the Constitution to extend rights, not to restrict them. We have amended the Constitution to end slavery, to give women the right to vote, and to guarantee equal protection of the laws to all citizens. We have never used the Constitution as a weapon against a minority of the population, to condone discrimination, and we should not embark on that path today. It is wrong and it undermines the integrity of our Constitution.

This amendment is about politics; it is not about strengthening families. It is about helping Republicans get reelected. If Republicans were serious about helping families they would focus on jobs, health care, the raising cost of energy, and the cost of college tuition. This proposed amendment does not create one new job, pay for one bottle of prescription drugs, lower prices at the gas pump, or send one child to college. This amendment does not help a family pay for the health care of a sick child. It does not make sure that the parent of that child has a job with health care coverage. What it does is divide. Americans don't want to see this divisive debate as part of this year's elections. It is a dangerous distraction; it is an election year ploy.

What do the American people want? They want to see how the Congress is fighting to make families stronger and safer. They want to see how we are standing up for all families. Families are stronger when we create jobs, control the costs of health care, and when we make sure that kids and schools have the resources they need to learn and educate. Families are stronger when we make sure our children have the best education we can offer and when we put these values in the Federal lawbooks and the Federal checkbook. And families are safer and stronger when they have help raising healthy children, when we build communities where they can thrive and when we create a family friendly Tax Code. Those are the actions that help to strengthen families and family values, not this amendment.

Finally, I believe that we need to recognize the rights of gays and lesbians and their families. We should be focusing on helping to strengthen their families and all families. That is where we need to be putting our energy and devoting our attention, instead of on this divisive constitutional amendment.

Mr. BYRD. Mr President, today I voted to invoke cloture on the motion to proceed to debate the constitutional amendment to ban same-sex marriage. Let me be clear: I have always strongly opposed same-sex marriage. I believe that there is much confusion about the role of the Federal Government and the institution of marriage, and that the public should have the benefit of a debate on the matter. It is my belief that the State of ''marriage'' can exist only between a man and a woman. The Bible tells us that marriage must be defined this way, and that the marriage vow between a husband and wife, meaning between a man and a woman, is sacred. I believe it. I have lived it. My darling wife Erma and I were married for nearly 69 years.

I also believe that any substantive debate on this issue must examine not only the marriage relationship between a man and a woman but also the constitutional relationship between States and the Federal Government. It is the role of the Federal Government to preserve each State's prerogative to make laws concerning marriage and the family, since this is an area of the law traditionally left to the States. This is the essence of federalism. The job of the Congress is to preserve and protect the legislative authority of each State, so that, for example, unions legal in another State cannot be foisted onto the God-fearing people of West Virginia.

Largely because I believe so strongly in protecting West Virginia's ability to legislate in this area, I have been, and continue to be, an ardent advocate of the Defense of Marriage Act, DOMA. This law, which was passed by a bipartisan majority of the U.S. Congress and became law in September 1996, makes it clear that no State, including West Virginia, is required to give legal effect to any same-sex marriage approved by another State. DOMA also defines marriage for Federal purposes as being ''a legal union between one man and one woman as husband and wife,'' and a spouse as being only ''a person of the opposite sex who is a husband or a wife.''

I strongly endorse the principles codified by DOMA. Not surprisingly, in 2000, West Virginia enacted its own law against same-sex marriage, similar to DOMA. Thus, title 48 of the West Virginia Code now precludes the State of West Virginia from giving legal effect to unions of same-sex couples from other jurisdictions.

As a consequence, both State and Federal law now prevent same-sex marriage in West Virginia. With these laws on the books, I do not believe it is necessary to amend the U.S. Constitution to address this issue. States such as West Virginia already have the power to ban gay marriages. State marriage laws should not be undermined by the Federal Government. Thus, our goal should not be to lessen the power of the several States to define marriage, but to preserve that right by expressly validating the role that they have played in this arena for more than 200 years.

Mr. President, throughout the annals of human experience, the relationship of a man and woman joined in holy matrimony has been a keystone to the stability, strength, and health of human society. I believe in that sacred union to the core of my being.

Mr. ENZI. Mr. President, I rise in support of S.J. Res. 1, the Marriage Protection Amendment. This important legislation, which was introduced

by my distinguished colleague from Colorado, is simple and straightforward. It amends the U.S. Constitution to clearly define marriage as the union between one man and one woman.

It is important to have this debate because the institution of marriage is under attack by some rogue local officials and activist judges who wish to push their agenda onto the majority of Americans. We need to have this debate to give the American people the opportunity to define marriage as they see fit. We need to remove the definition of marriage from the courts and return the decision making power to the American people.

Marriage has traditionally been considered the union between a man and a woman. State common law practices have always assumed this to be the case. In addition to that, 45 States have some form of protection for the traditional marriage of a man and a woman. These States have done so with strong support from their citizens. Nineteen States have gone so far as to enact State constitutional amendments to define marriage as the union between one man and one woman. Those amendments have passed with support averaging more than 71 percent.

What do these statistics make clear? The vast majority of Americans want the institution of marriage to be protected. They want to keep it as it has been: a union between one man and one woman.

How can we be certain that the American people support defining marriage as the union between one man and one woman? By using the ultimate democratic tool: the constitutional amendment.

Amending the Constitution is a rigorous task, and when our Founding Fathers drafted the Constitution, they worked to ensure that any decision to alter it was a decision that would be made by the American people. In order to amend the Constitution, we must get a two-thirds vote in each body of Congress, which as my colleagues know, is no simple task. After that vote has taken place, the proposed amendment is sent to the States, where three-fourth's of State legislatures must vote to ratify the proposal. That means that 38 of the 50 States must support this amendment.

This is how the Framers of the Constitution intended our government to operate. A constitutional amendment places the final decision with the people, where it should be. Courts will no longer have the power to legislate the definition of marriage. Local officials will no longer have the ability to arbitrarily change the rules. The people will make the final call. Considering this amendment and sending it to the States for ratification is, in my opinion, the closest we can get to a truly democratic self-government.

Why is such an amendment necessary? Opponents of S.J. Res. 1 argue that this is a State issue and that our Nation is governed by the Defense of Marriage Act. According to the Defense of Marriage Act, no State can be forced to recognize the marriage laws of another State. Although this is true, the Defense of Marriage Act is not exempt from the Constitution, and therefore, is not exempt from the political rulings of activist judges.

The Defense of Marriage Act will not prevent an activist judge in State court from ignoring the will of that State's citizens if that judge forces them to redefine marriage. It does not prevent an activist judge in Federal court from ignoring the will of the people and forcing them to recognize a definition of marriage that is not their own.

The only way to ensure that the American people define marriage is to pass a constitutional amendment. If the definition of marriage is clearly laid out in the Constitution, neither an activist judge nor a rogue local official can ignore that definition and impose his or her will on the American people.

It is important to note that the Marriage Protection Amendment deals only with the institution of marriage. It does not alter a State's right to recognize civil unions or domestic partnerships. It does not deal with a State's ability to confer benefits upon same-sex couples, and so State governments can continue to grant those benefits if they so choose.

Congress must enact the Marriage Protection Amendment to stave off the fragmentation that is sure to happen if different definitions of marriage exist. Passage of the Marriage Protection Amendment is necessary to the end judicial activism that has surrounded the marriage debate. It is necessary so that the American people can define marriage for themselves. And so, in closing, I strongly urge my colleagues to vote in favor of the Marriage Protection Amendment.

Mr. MCCONNELL. Mr. President, I rise to support S.J. Res. 1, the Marriage Protection Act, because any change to an institution as fundamental to our society as marriage should be made by the people, not unelected judges. The constitutional amendment process, being the closest process we have to a national referendum, is the best way for the people to speak on this important issue.

By supporting this amendment, I in no way intend to question or slight the value and dignity of any American. Nor, in my judgment, do my colleagues who join me in supporting this amendment. Anyone who claims otherwise is wrong. The question that faces this Senate is a question of means—when something as profound as changing the institution of marriage arises, how should it be addressed?

I submit that a handful of judges in a few States are not empowered and should not be permitted to make this decision for the entire country. But if we do not pass the Marriage Protection Act, that is precisely what may happen.

Today, nine States face lawsuits challenging their traditional marriage laws. State supreme courts in New Jersey, Washington, and New York could decide same-sex marriage cases as early as this year. In California, Maryland, New York and Washington, State trial courts have already struck down marriage laws and found a right to same-sex marriage in their States' constitutions. Those decisions are awaiting appeal.

Same-sex marriage advocates also have made Federal constitutional claims. In Nebraska, a Federal district court struck down that State's popularly enacted State constitutional amendment protecting traditional marriage, and the case is on appeal to the U.S. Court of Appeals for the Eighth Circuit. Challenges to the Defense of Marriage Act—DOMA—are also pending in federal district courts in Oklahoma and Washington, and before the U.S. Court of Appeals for the Ninth Circuit.

These attempts to redefine marriage through the courts have not gone away since this body last voted on a constitutional amendment to protect marriage in 2004. Since then, state courts in Washington, New York, California, Maryland, and Oregon have found traditional marriage laws unconstitutional.

Every time they have been given the opportunity, the American people have strongly supported a traditional definition of marriage—the union of a man and a woman. Forty-five States currently have statutory protection for that very definition of marriage—all but Massachusetts, New Jersey, New Mexico, New York, and Rhode Island. Only four States had such statutory protection 12 years ago. The American people have made their wishes known to their State legislators: they are clearly and overwhelmingly for protecting marriage as we have always known it.

I believe that traditional marriage, the union between a man and a woman, is the cornerstone of our society and the best possible foundation for a family. I believe that traditional marriage, the union between a man and a woman, should be the only form of marriage recognized by law. And I believe most Americans agree with me. But if nothing else, they deserve a chance to be heard.

Mr. AKAKA. Mr. President, I rise today to oppose S.J. Res. 1, the Marriage Protection Amendment, which would bar same-sex marriages and prohibit the Federal Government and all

States from conferring ''the legal incidents'' of marriage on unmarried couples. I oppose this amendment on several grounds. First, if passed, this amendment would restrict the rights of an entire class of people. Second, the amendment would turn back the clock on the Supreme Court's decisions guaranteeing the right to privacy. Third, this amendment would abridge the traditional jurisdiction of State governments. Finally, the amendment would compromise the welfare of children currently being raised by same-sex parents.

The proposed Marriage Protection Amendment directly contradicts one of the Constitution's fundamental principles—the guarantee of equal protection for all. Since the adoption of the Bill of Rights in 1791, the Constitution has been amended only 17 times and, with the exception of prohibition, each time it has been to expand the rights of the American people. Adoption of the Marriage Protection Amendment would tarnish that rich tradition by targeting a specific group for social, economic and civic discrimination. I believe that, as government leaders, it is our responsibility to protect individual liberties, not to take them away or restrict them.

The Marriage Protection Act also undermines the numerous Supreme Court decisions which ensure individuals' right to freedom from government interference with regard to their personal lives. The Supreme Court has repeatedly reaffirmed that the Constitution protects an individuals fundamental freedom to make decisions regarding private matters such as marriage and family. The Marriage Protection Act would go a long way toward eroding these constitutional guarantees to the right to privacy.

Customarily, marriage law has been left to the jurisdiction of the States. Passage of the Marriage Protection Amendment would define marriage at the Federal level and would prohibit States from exercising their authority over family law issues. As such, it would clearly violate the traditions of federalism and local control that have been a proud part of our national heritage. Allowing the Federal Government to co-opt what historically has been a prerogative of the States sets a dangerous precedent with regard to the erosion of States rights. My vote against the Marriage Protection Amendment is a vote for the preservation of State sovereignty.

Given the Marriage Protection Amendment's broad and ambiguous language, it would have a potentially devastating effect on existing same-sex families. In particular, I am concerned how this amendment would impact the children currently being raised by same-sex parents. Not only would it curtail States from granting equal marriage rights to same-sex couples, it could also, through their parents, deprive children of access to health insurance, life insurance benefits and inheritance rights. According to the 2000 Census, more than one-half of the same-sex households in the United States have children under the age of 18. Passage of the Marriage Protection Amendment could place the current well-being and future security of these children at risk. This is a chance I am unwilling to take.

I urge my colleagues in the Senate to reject this divisive bill. With so many problems currently facing our Nation such as the ongoing threat of terrorism, soaring gas prices and the high cost of medical care, now, more than ever, we need to work together as an ohana—a family. This amendment will only serve to segregate a portion of our population and prevent them from participating as full citizens. Instead I urge us all to work together to ensure that the freedoms enumerated by the Constitution can be equally enjoyed by all.

Mr. SANTORUM. Mr. President, the Catholic Charities case in Boston, just 2 years after the introduction of same-sex marriage in America, highlights the growing concerns and indicates that the impact of this development on religious freedom has ceased to be a hypothetical discussion.

As Maggie Gallagher wrote in her Weekly Standard piece ''Banned in Boston,'' ''[w]hen religious-right leaders prophesy negative consequences from gay marriage, they are often seen as overwrought . . . [and that the] First Amendment . . . will protect religious groups from persecution for their views about marriage.''

So who is right? Is the fate of Catholic Charities of Boston an aberration or a sign of things to come? Some say we are overreacting, but the truth is that while the ramifications in the battle for social policy, procreation, and even protecting children may be clear, the real—but hidden—battlelines are for the religious liberty of all faiths. Recently the Becket Fund convened a group of scholars to discuss the implications of same-sex marriage on religious liberty. This group was from all parts of the political spectrum and had varying viewpoints, but all agreed on one thing—the legalization of same-sex marriage posed a real threat to the free exercise of religion.

As I mentioned before, one of the participants, Maggie Gallagher, went on to write a prescient account of the participants' views on this issue, and I admit it was disturbing to read.

In times past, it would have been unthinkable for a Christian or Jewish organization that was opposed to same-sex marriage to be treated as racists or bigots. But today the unthinkable may have become the inevitable. As Anthony Picarello summarizes, ''All the scholars we got together see a problem; they all see a conflict coming. They differ on how it should be resolved and who should win, but they all see a conflict coming.'' Why? Because of cases like that of Catholic Charities in Boston.

As I discussed a little bit on the floor yesterday before I ran out of time, Catholic Charities in Boston has been the adoption provider in Massachusetts for many of the hardest to place children, including children with special needs. Following the legalization of same-sex marriage in Massachusetts, the Boston Globe reported that Catholic Charities of Boston had placed a small number of children with same-sex couples. Cardinal O'Malley of Boston responded that Catholic Charities would adhere to the Vatican statement prohibiting such placements in the future. That produced a hubbub with the Catholic Charities Board that was later quelled, but if Catholic Charities thought that was the end of the issue it was wrong.

Like many States, Massachusetts requires that an entity be ''licensed'' by the State in order to do adoptions. And to get the State license, the entity must agree to obey State laws barring discrimination—including in Massachusetts the prohibition on discrimination based on sexual orientation. When the Massachusetts Supreme Court legalized same-sex marriage, discrimination against same-sex couples was also prohibited. These requirements juxtaposed with Catholic doctrine put the Catholic Church-affiliated Catholic Charities into a bind—one that legislatures, including this one, have often solved by allowing faith-based and religious organizations to maintain their integrity.

Knowing that, Cardinal O'Malley and Governor Romney tried to get a religious exemption for Catholic Charities from the Massachusetts legislature. The silence from the politicians in that State was deafening. Without that protection, the bottom line is that the legislators in Massachusetts chose to put Catholic Charities out of the adoption business.

Some say that the rightwing is pushing to pass this amendment, but I take you back to the scholars from the Becket Fund conference. Marc Stern, the general counsel for the center-left American Jewish Congress can hardly be called a rightwinger, but when asked what he would say to people who dismiss the threat to free exercise of religion as evangelical hysteria his quote was—''It's not hysteria, this is very real . . . Boston Catholic Charities shows that.'' He went on to say that ''in Massachusetts I'd be very worried.'' Stern noted that while the churches themselves might have a first amendment defense if a State government or State courts tried to withdraw their exemption, ''the parachurch institutions [affiliated organizations

such as Catholic Charities and United Jewish Communities] are very much at risk and may be put out of business because of the licensing issues, or for these other reasons—it's very unclear. None of us nonprofits can function without [state] tax exemption. As a practical matter, any large charity needs that real estate tax exemption.''

Anthony Picarello of the Becket Fund sounded a more ominous note, that this change could fundamentally alter our view of religious liberty. ''The impact will be severe and pervasive,'' Picarello says flatly. ''This is going to affect every aspect of church-state relations.'' Recent years, he predicts, will be looked back on as a time of relative peace between church and state, one where people had the luxury of litigating cases about things like the Ten Commandments in courthouses.''

Picarello points out something I discussed yesterday—that the church is surrounded on all sides by the government, and often the boundaries are hidden because of the ease with which they are navigated. However, as he notes, ''because marriage affects just about every area of the law, gay marriage is going to create a point of conflict at every point around the perimeter.''

But not all of these scholars agree on the intensity or imminence of these consequences. Doug Kmiec of Pepperdine law school argued that the public could tell the difference between racial discrimination and the differentiation of traditional and same-sex marriage, saying that racial discrimination is ''irrational, and morally repugnant'' and the issue of same-sex marriage is ''at least morally debatable.'' Doug Laycock, a religious liberty expert at the University of Texas law school, noted that the legal situation is a long way away from equating sexual orientation with race in the law. However, Stern and Feldblurn were much more clear on the coming legal issues that religious organizations will face in the wake of same-sex marriage.

And it is that distinction that is important—if sexual orientation is like race, then anyone, religious or otherwise, who opposes same-sex marriage will be viewed as and likely treated in the same way as the bigots who opposed interracial marriage. It is the political pressure—and in some cases the legal pressure—that will ''punish'' those of differing opinions.

For Chai Feldblum, a Georgetown law professor who refers to herself as a leader in the movement to advance LGBT—lesbian, gay, bisexual, transsexual—rights, the emerging conflicts between free exercise of religion and sexual liberty are real. ''''When we pass a law that says you may not discriminate on the basis of sexual orientation, we are burdening those who have an alternative moral assessment of gay men and lesbians.'' Raised an Orthodox Jew, Feldblum argues that ''the need to protect the dignity of gay people will justify burdening religious belief, [b]ut that does not make it right to pretend these burdens do not exist in the first place, or that the religious people the law is burdening don't matter.''

What effects could this ''sea change'' have on religious liberty? Let's consider a few examples.

A religious educational institution could have its admissions policies, employment practices, housing rules, and regulation of clubs challenged. For example, Marc Stern is concerned about a California case where a private Christian high school expelled two girls who according to the school announced they were in a lesbian relationship. Will the schools be forced to tolerate both conduct and proclamations by students they believe to be acting in a sinful manner?

Public accommodation laws can be used to force commercial enterprises to serve all comers, which begs the question of whether religious camps, retreats, or homeless shelters are considered places of public accommodation. Could a religious summer camp operated in strict conformity with religious principles refuse to accept children coming from same-sex marriages? What of a church-affiliated community center, with a gym and a Little League, that offers family programs? Must a religious-affiliated family services provider offer marriage counseling to same-sex couples designed to facilitate or preserve their relationships?

Licensing issues will continue to be a bone of contention in not only adoption but psychological clinics, social workers, and marital counselors. We had to face this issue already in the Access to Recovery Program where program administrators were interpreting language in a way that sought to penalize faith-based providers such as Teen Challenge.

And there are probably a plethora of other areas of friction that will emerge.

Will speech against same-sex marriage be allowed to continue unfettered?

Will anyone be able to again say that marriage should be between a man and a woman without being branded a bigot?

Will a minister be able to preach from I Corinthians 6:9 that the unjust and immoral such as adulterers, prostitutes and sodomites will not inherit the earth?

Will our local Catholic Charities lose their tax-exempt status if they do not bend their religious faith to the new norm?

Will a rabbi or priest be forced to preside over same-sex marriages in order to continue to be able to consecrate traditional marriages?

The scope of the ramifications of this debate are unclear, but there is no doubt that very serious issues arise. As Maggie Gallagher noted in her article, ''Marc Stern is looking more and more like a reluctant prophet: 'It's going to be a train wreck,' he said 'A very dangerous train wreck.' ''

I urge my colleagues to think carefully about the implications of doing nothing to protect the sanctity of marriage. If we do not act, then not only are we leaving this important issue in the hands of unelected judges, we are leaving the fate of all of these faith-based organizations in their hands as well. I urge my colleagues to support this amendment. Let's move forward in the democratic process and let the people decide.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Colorado is recognized.

Mr. ALLARD. Mr. President, how much time do I have?

The ACTING PRESIDENT pro tempore. One minute 43 seconds.

Mr. ALLARD. Mr. President, I yield 1 minute 15 seconds to the Senator from Alabama.

The ACTING PRESIDENT pro tempore. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, the people of the United States do care about marriage. Marriage is important. Our culture and the quality of life of our people in this Nation are important.

Just yesterday, the people of my State, by an 81-percent majority, approved a constitutional amendment to the Alabama Constitution which said that no marriage license shall be issued in Alabama to parties of the same sex and the State shall not recognize a marriage of parties of the same sex that occurred as a result of the law of any other jurisdiction. But that amendment is in jeopardy by the court rulings in the United States, and a ruling that the U.S. Constitution requires that same-sex marriage be recognized just like other marriages will trump Alabama's constitution and that of the 19 other States which passed such resolutions by a vote of 71 percent.

The only reason to oppose this amendment would be to deny the States the right to make this decision without having it overruled by the Supreme Court.

The ACTING PRESIDENT pro tempore. The Senator from Colorado is recognized.

Mr. ALLARD. Mr. President, you just heard the latest report from Alabama, a state constitutional amendment protecting marriage just passed with 81 percent of the vote. That is what my amendment is all about—to protect that vote conducted in Alabama from being subverted by a minority of activists going to court to try to overturn a vote like we just saw in Alabama.

I ask my colleagues to join me in voting for S.J. Res. 1.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. ALLARD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, the ranking member of the Judiciary Committee, Senator LEAHY, is on his way to the Chamber. I know the time is running. I will speak until he arrives. I wanted to make a point or two based on arguments used in this debate.

Mr. President, 45 of 50 States passed either a constitutional amendment or a law defining marriage as between a man and a woman—45 of 50 States. There is only one State in America where same-sex marriage is legal, and that is Massachusetts. No other State, county, city, or anyplace in America permits same-sex marriage.

Incidentally, it is ironic that the State with the lowest divorce rate in America happens to also be Massachusetts. There is simply no crisis or controversy before us today that requires amending the Constitution.

Another reason I oppose this amendment, as I indicated earlier, is that the language is vague and overbroad. The reference to ''legal incidents'' of marriage is troubling. The Senate Judiciary Committee held hearings on the meaning of the term ''legal incidents'' of marriage. I attended those hearings and questioned witnesses. There was simply no consensus on how the courts might interpret that.

Some of the witnesses predicted courts would read it to ban civil unions. Some even think this amendment would be read by the courts to prohibit other efforts to equalize benefits, such as domestic partner benefits, adoption rights, and even hospital visitation rights.

Is that what we want to do in the Senate, ban those who have a loving relationship from visiting their partners who are sick in a hospital? Passage of the Federal marriage amendment may well have that effect. We don't know.

It is also a bad idea because it exemplifies the excessive overreaching by Congress into the personal lives and privacy of American citizens. How many times will the Republican majority march us into this question as to whether we can protect and defend the privacy of our rights as individuals and families?

As I mentioned earlier, it is a sad reminder of the debate over the tragedy of Terri Schiavo, a woman who was sustained with medical care for some 15 years, and when the decision was made not to provide additional care for her through the courts, there was an effort made by the Republican leadership in Congress to bring the Federal courts into the picture to overturn the family's personal decision and the decision of the Florida courts. Congress tried to impose its own morality and its own will over the most personal, private, and painful decision any family can face. This amendment would impose the morality of some on the lives of all.

A few months ago, this Nation lost one of its most famous and foremost civil rights leaders, Coretta Scott King. Upon Mrs. King's death, Majority Leader FRIST submitted a Senate resolution to honor her life and commitment to social justice, and it was adopted unanimously.

I wonder if the majority leader is aware of what Mrs. King had to say about the constitutional amendment that Senator FRIST has brought to the floor this week. Here is what she said in 2004:

> A constitutional amendment banning same-sex marriages is a form of gay-bashing and it will do nothing at all to protect traditional marriages.

I hope the Republican leadership, I hope every Senator, takes to heart the words of the civil rights hero they were so quick to honor a few months ago.

It has been my experience in life that some members of my family, many of my acquaintances and friends are people of different sexual orientation. Most of them want to be left alone. They want the privacy of their own lives. They want to make their own decisions. And here we have an effort to impose in our Constitution a standard which reaches into the legal incidents of marriage, a standard which could deny to them some of the most basic things which we treasure, such as access to health insurance, access to visitation in hospitals, and the common decency of the social relationship which is all they are asking.

Under those circumstances, I think it is important for us to reflect on the fact that when it comes to amending this Constitution, we should be ever so careful because a change in a few words in the Constitution can have a dramatic long-term negative impact on this great Nation.

I see that my colleague, Senator LEAHY, has arrived. I yield the floor to him.

The ACTING PRESIDENT pro tempore. The Senator has 1 minute 15 seconds remaining.

Mr. LEAHY. Mr. President, I thank my distinguished colleague from Illinois.

This morning we will be voting on whether to proceed to a proposed amendment to the Constitution. I strongly oppose this divisive exercise.

At a time when the Senate should be addressing Americans' top priorities, including ways to make America safer, the war in Iraq, rising gas prices, health care and health insurance costs, stem cell research, the erosion of Americans' privacy and the reauthorization of the Voting Rights Act, the President's political strategists and the Republican Senate leadership, instead, try to divide and distract from fixing real problems by pressing forward with this controversial proposed constitutional amendment.

Rather than seek to divide and diminish, the Senate could be working against discrimination. I was honored to sponsor the Mychal Judge Police and Fire Chaplains Public Safety Officers' Benefit Act of 2002 to ensure that the survivors of 9/11 were treated fairly regardless of sexual orientation. If we really want to do something that the Senate can do, we should join together in a bipartisan way to pass the hate crimes bill that would help stamp out and punish violent crimes against those attacked because of the color of their skin or their nationality or sexual orientation. If we really want to do something worthy of the Senate we should debate and pass legislation to end discrimination in employment based on sexual orientation. If we want to recognize the dignity and worth of others we should consider S. 1278, the Uniting American Families Act, a bill I introduced to bring fairness to our immigration laws.

The Constitution is too important to be used for partisan political purposes. It is not a billboard on which to hang political posters or slogans seeking to stir public passions for political ends.

I want all Americans to appreciate that if this proposed amendment became part of our Constitution, it would represent a dramatic departure from this Nation's history of expanding freedom and individual rights. We have only amended the Constitution seventeen times since the Bill of Rights was ratified in 1791. None of these amendments has served to limit the rights of an entire class of Americans. Furthermore, none of these amendments has dictated to the States how they should interpret their own constitutions. This proposal not only enshrines discrimination in the Constitution, it usurps what has always been the function of the States with regard to defining marriage. When each of us became Senators we swore an oath ''to support and defend the Constitution of the United States.'' I will honor that oath by opposing this effort to inject discrimination into the Constitution.

This attempt will once again fail to garner the necessary votes to proceed. But that should not excuse the Republican leadership's turning away from the legislative agenda of the Senate for this election year adventure. I hope that the American people will object to this misuse of the Senate's time and authority the way they did when the Senate injected itself into the Schiavo

matter not so long ago. The American people want their leaders to unite this country and to solve real problems that they face every day. This constitutional amendment is a divisive political effort to shore up sagging poll numbers. I believe the American people will not be fooled and will see through this exercise.

I look forward to moving on to the Nation's real priorities. The Senate should return to a place where we consider solutions to the problems that plague hardworking Americans, from soaring gas prices and high health care costs to corporate and Government corruption, from national security to effective fiscal and trade policies. We might consider taking action to preserve and improve rather than pollute the environment. Someday this Chamber might even debate the ongoing pandemic of AIDS or protect against the impending pandemic from bird flu. We might join in effective action seeking to halt the genocide in Darfur or oversight of the allegations of Government violations of the rights of Americans. I look forward to that time.

Mr. President, I mentioned Monday at the start of this debate that over the last several years I have repeatedly written to the President about this issue and have yet to receive a response. I have already included in the RECORD a copy of my most recent letter to him on this constitutional amendment in which I asked what precise language it is that he supports and what it means.

I noted that President Bush said in 2004 that ''States ought to be able to have the right to pass laws that enable people to be able to have rights like others,'' but no such thing is guaranteed by the proposed amendment that we are considering.

The appearance of the President this week, where he reread what appeared to be a longer draft of his Saturday radio address to a handpicked audience of those seeking to amend the Constitution to write discrimination into it and create a constitutional intrusion into family law issues that have always been left to the States, was troubling in so many ways. At least that event was moved out of the White House Rose Garden, for which I am grateful. Sadly, the audience, which the White House described as a diverse cross section of community leaders, scholars, family organizations and religious leaders, was selected apparently to exclude gays and lesbians. That is hardly the way to engender fair and open debate or to show tolerance or to honor the dignity of all Americans.

As this debate opened, I quoted the President's thoughtful words from the immigration debate. He said: ''We cannot build a unified country by inciting people to anger, or playing on anyone's fears, or exploiting the issue of immigration for political gain. We must always remember that real lives will be affected by our debates and decisions, and that every human being has dignity and value. . . .'' I wish that yesterday the President had honored that thought and merely substituted the issue of ''marriage'' for ''immigration''. The President is seeking to show leadership in the immigration debate and I have commended him for it. I cannot commend him for what he did yesterday.

Just before the last election, President Bush said that ''States ought to be able to have the right to pass laws that enable people to be able to have rights like others.'' He cannot square that position with his and his administration's recently announced support for a proposed constitutional amendment that prohibits States from conferring the ''legal incidents'' of marriage on same-sex couples. In January 2005, after he was reelected, President Bush himself recognized that this proposed constitutional amendment was not going to be adopted and that no good purpose was served by forcing more Senate debate on it. Yesterday, the President did not well serve this Nation or its diverse population. Our Nation would be better served if we refrained from divisiveness to score political and emotional points before an election.

Moreover, yesterday the President's activities demonstrated how the Republican leadership's misplaced priorities and politics have diverted the Senate from matters that concern and affect the American people. By way of contrast, the Democratic leader went to the Senate floor to urge that we proceed to conference on the recently passed immigration bill. Senate Republicans objected to a usual practice of taking of a House-passed bill and inserting the language passed by the Senate so that we can proceed to a House-Senate conference. Instead of spending time pandering to a segment of Republican's political base, the President could have worked with us to make progress on our bipartisan immigration initiative. Republicans and Democrats have said that we will need the President's help to make comprehensive immigration reform a reality. Yesterday the President was AWOL on the issue. He was not expending his efforts urging comprehensive immigration reform on the recalcitrant Republican House leadership or helping us in the Senate overcome threats of procedural objections to proceeding to conference.

Another consequence of the Republican leadership's misplaced priorities is that the Judiciary Committee has yet to complete hearings on reauthorization of the Voting Rights Act. This is bipartisan, bicameral legislation on which I had hoped hearings would be complete. The final hearing on the reauthorization of important minority language provisions was scheduled for tomorrow. It has been postponed, and the excuse is that the Senate debate on this proposed constitutional amendment takes precedence. So our efforts to enact meaningful, comprehensive immigration reform with strong border security and a path to earned citizenship and our efforts to reauthorize the protections of the Voting Rights Act have both been adversely affected as a consequence of the Republican leadership insisting on proceeding to this extended debate.

The demagoguery in the President's rally this week and the Statement of Administration Policy are sad to see. It is not the institution of marriage that is under attack but the Constitution and our system of federalism. They seek to justify their attack by demonizing judges. The comment the President added to his radio address was to ratchet up the rhetoric against judges by proclaiming that judges ''insist on imposing their arbitrary will on the people.'' This President just appointed Chief Justice Roberts to lead the U.S. Supreme Court and the judicial branch of the Federal Government. He has appointed approximately 250 Federal judges, including 2 Supreme Court Justices and 45 judges on the courts of appeals. The majority of Federal judges have been appointed by Republican Presidents. Any judicial decision that was a dramatic departure from the status quo on this issue would certainly be appealed to the U.S. Supreme Court where seven out of nine justices have been appointed by Republican Presidents. Does anyone really believe that Chief Justice Roberts is going to preside over a U.S. Supreme Court that imposes same-sex marriage as an act of ''arbitrary will''?

I agree with the Senior Senator from Virginia who recently voiced his ''grave concerns'' about the proposed amendment because it fails to ''speak with the clarity to which the American People are entitled.'' I too have significant concerns about the vague prohibition of ''the legal incidents'' of marriage for same-sex couples. That ambiguity raises serious questions whether State laws allowing civil unions and civil partnerships would be overridden and rendered ''unconstitutional.'' Numerous witnesses at our committee hearings testified that the proposed language would or could invalidate civil unions or prevent States from enacting laws that closely mirrored the rights of marriage couples.

Although the President and some Senate supporters contend that this proposed amendment binds only judges and not State legislatures and that it prohibits only marriage but not civil unions or partnerships, that is not clear in the language of the proposed constitutional amendment. Ironically, it will be judges who have the last word in determining the meaning of words used in a constitutional amendment.

So the very ''boogeymen'' that the proponents of this proposed constitutional amendment seek to create by demonizing judges will be those who will be forced to decide the effect of its intentionally ambiguous wording.

I trust the American people will see through these escapades. I trust they will abhor the attack on the Constitution as I do. I believe they have bigger hearts and compassion of the families of committed same-sex couples. I hope they will hold accountable those who are expending the Senate's time on this futile exercise by denying them partisan gain.

I have previously noted that the news accounts and editorials characterizing this effort as crassly political are too numerous to include in the CONGRESSIONAL RECORD. On this occasion, I ask unanimous consent to have printed in the RECORD a sampling from a variety of newspapers and outlets from around the country including editorials from the Arkansas Democrat-Gazette from May 24, 2006, the Atlanta Journal-Constitution from May 28, 2006, the Berkshire Eagle from May 23, 2006, the Chicago Sun-Times from June 6, 2006, the Pittsburgh Post-Gazette from May 22, 2006, the Salt Lake Tribune from April 29, 2006, and a commentary by CNN's Jack Cafferty from June 2, 2006.

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

[From the (Little Rock) Arkansas Democrat-Gazette, May 24, 2006]

DEMOCRATS MUST CONFRONT GOP STRATEGY

(By Gene Lyons)

So here's the big Republican agenda for the 2006 elections: Other people's sex lives (a.k.a. gay marriage), flag-burning, illegal Mexican immigrants, tax cuts and Chicken Little.

There's no surprise about the first few. A GOP campaign resembles a traveling tent show. White House sideshow barker Karl Rove expects that the rubes who line up every two years to see the two-headed calf and the bearded lady will fall for flag-burning again. Never mind that Republicans have done nothing about it since President Bush's father visited a flag factory during his 1988 campaign. Flag burning as a protest all but disappeared after 9/11. Sen. Hillary Clinton, D–N.Y., also has joined this crusade, the surest sign that she's contemplating running for president in 2008.

Amending the Constitution to forbid gay marriage is another election-year shell game. Finessing it shouldn't be too hard for Democrats. If your church refuses to solemnize same-sex marriages, that's its undeniable First Amendment right. Forbidding people to enter into domestic partnership contracts due to sexual orientation, however, would be un-American.

No, that won't persuade obsessive homophobes, but they're fewer all the time. Illegal immigration's something else Republicans have ignored for six years. Ironically, Bush's stance reflects the ''compassionate conservatism'' he campaigned on in 2000 but abandoned, maybe because Mexican immigration is a very old story in Texas that he actually knows something about.

Ironically, that's got the GOP's Knothead faction all riled up, helping GOP congressmen in safe districts distance themselves from an increasingly unpopular White House, but also hurting Republicans among Hispanic voters in swing districts.

Ditto tax cuts. Even the most credulous are getting uneasy with the GOP's ongoing war on arithmetic and worried about spiraling debt caused by Bush's profligate spending.

Influential conservative author-activist Richard A. Viguerie recently wrote a Washington Post op-ed predicting that ''without a drastic change in direction, millions of conservatives will . . . stay home this November. And maybe they should. Conservatives are beginning to realize that nothing will change until there's a change in the GOP leadership. If congressional Republicans win this fall, they will see themselves as vindicated, and nothing will get better.'' Which brings us to the Chicken Little theme on which Republican hopes appear to hinge. Sen. Elizabeth Dole, R–N.C,, first raised it in a recent fund-raising letter on behalf of the party's Senatorial Campaign Committee. If Democrats regain Congress, see, they'll act the way Republicans acted toward Bill Clinton, calling for ''endless investigations, congressional censure and maybe even impeachment of President Bush.'' And then the terrorists would win!

Many pundits who helped publicize the 1,000-odd subpoenas that congressional Republicans dispatched to the Clinton White House find the prospect of Democrats issuing subpoenas terribly alarming. Slate's John Dickerson worries that a Democratic-led House might ''get bogged down with investigations and embrace the worst Bush-hating tendencies of its members.'' Time columnist Joe Klein, a.k.a. ''Anonymous,'' author of the novel'' Primary Colors,'' who's grown adept at advancing Gap themes while affecting to deplore them, laments that the likely succession of Rep. John Conyers, D-Mich., to chair the House Judiciary Committee if Democrats win in November gives Republicans a chance to play the race card.

Because Conyers is African American and has sometimes used the words ''Bush'' and ''impeachable offense'' in the same sentence, Klein fears that Rove will have a field day depicting the veteran Detroit congressman as Kenneth Starr in blackface.

The idea that irrational hatred of Bush motivates most Democrats is a favorite topic on the talkradio right. Psychologists call it ''projection,'' attributing to others motives that mirror your own.

The best way for Democrats to deal with this Chicken Little theme is straight on, as Conyers has attempted to do. In a recent Washington Post column, he correctly identified the ''straw-man'' logical fallacy that underlies it: attacking arguments your adversary has never actually made.

Years of one-party government, Conyers said, have left Americans with many unanswered questions, such as ''whether intelligence was mistaken or manipulated in the run-up to the Iraq war . . . the extent to which high-ranking officials approved of the use of torture . . . whether the leaking of the name of a covert CIA operative was deliberate or accidental'' and who did it.

Any alert citizen can add particulars: the legality of National Security Agency's warrantless wiretaps and the constitutionality of Bush's 740 ''signing statements,'' as reported by The Boston Globe, in which the president claims the power to ignore laws with which he disagrees.

Conyers wisely stresses that the GOP-led House impeachment of Clinton proved ''that partisan vendettas ultimately provoke a public backlash and are never viewed as legitimate.'' Nobody wants a government that does nothing but investigate itself. But the Republican Congress has completely abdicated its constitutional responsibilities. Our democracy cannot long survive a president who claims the prerogatives of a king.

That's an argument the Democrats must win.

[From the Atlanta Journal-Constitution, May 28, 2006]

ON GAY UNIONS, PANDERING RISES ABOVE PRINCIPLES

(By Cynthia Tucker)

In 1964, just one congressman from the Deep South, Atlanta's Charles Weltner, voted for the Civil Rights Act. For all practical purposes, his righteous leadership on civil rights—he also supported the Voting Rights Act—cost him his congressional career.

In 1966, he resigned his seat rather than sign an act of loyalty to the segregationist Lester Maddox, as Georgia Democrats insisted. But some analysts believe he would have lost the race for re-election.

Doing the right thing is difficult because it often means losing. And the typical politician is willing to lose anything—honor, integrity, dignity—but an election.

That helps explain why, during this election season, so few politicians have stepped forward to denounce initiatives against gay marriage as the cynical and opportunistic tactics that they are. They know that playing on prejudice and fear can rally a certain constituency and provide the winning margin in tight races.

It certainly worked two years ago. Republican tacticians maneuvered to add amendments against gay marriage to the ballots in 11 States, including Georgia. The result was to lure religious conservatives to the polls in large numbers, probably giving President Bush the boost he needed in the battleground state of Ohio.

This year, conservative Republicans—struggling against voter discontent over Iraq, health care and high gas prices, among other things—are desperate to bring those religious conservatives back to the polls. So they've resurrected the same tired tactic. Next month, the Senate is expected to vote on an amendment to the U.S. Constitution banning same-sex unions.

Senate leaders haven't made much of an effort to disguise the initiative as anything other than the base political ploy that it is. After a frenzy of gay-bashing during the 2004 campaign season—they thundered against gay marriage as a threat to just about every family tradition, from man-woman marriages to peanut-butter-and-jelly sandwiches—Republican leaders hadn't even mentioned the issue again. The threat disappeared for two years. Until now, when they're facing the prospect of losing control of Congress.

Given the stakes, prominent Republicans won't get in the way of a good wedge issue. Oh, first lady Laura Bush has pointed out the unfairness of a constitutional amendment. So has Mary Cheney, the vice president's gay daughter, who lives openly with her partner of 14 years, Heather Poe, and has recently published her memoirs. This month, Cheney told CNN that ''writing discrimination into the Constitution of the United States is fundamentally wrong.''

But it's unlikely you'll hear the vice president arguing against the amendment so pointedly on the campaign trial. While he

has said in the past that he opposes it, he'd rather remind his right-wing supporters of his staunch support for the invasion of Iraq. President Bush, for his part, has spent his last pennies of political capital trying to pass a humane policy on immigration. He may not fight for an amendment banning gay marriage, but he's unlikely to get in the way of it, either.

In Georgia, meanwhile, even progressive politicians have been cowed by the state's overwhelming consensus against gay marriage. Though 76 percent of Georgia voters approved the ban two years ago, a Superior Court judge recently struck down the amendment on technical grounds. After the ruling, Gov. Sonny Perdue, a Republican, quickly announced plans for a special session of the legislature to rewrite the ban and place it before voters again in November. His two Democratic opponents, Lt. Gov. Mark Taylor and Secretary of State Cathy Cox, rushed to support the move.

Cox's awkward leap onto the bandwagon was especially disappointing. While Taylor had supported the ban, Cox had pointed out two years ago that the amendment is ''unnecessary.'' Georgia law, like federal law, already bans same-sex unions. But many analysts have noted that Cox is desperate to draw black voters away from Taylor in the Democratic primary for governor; black Georgians, like their white neighbors, gave their unabashed support to enshrining bigotry in the stare Constitution.

Cox, like most other politicians, would rather pander to the prejudices of voters than stand by her principles. It's a perfectly human inclination—doing the safe thing, rather than the right thing.

There are never more than a handful like Wettner, who preferred losing a campaign to sacrificing his conscience. In his resignation speech, he declared, ''I love the Congress, but I will give up my office before I give up my principles . . . I cannot compromise with hate.''

His courage is as rare now as it was then.

[From the Berkshire Eagle, (Pittsfield, MA) May 23, 2006]

MORE AMENDMENT POLITICS

Senate Republicans want to make gay marriage an issue this election year, but the issue should be less gay marriage itself than a congressional leadership so hypocritical and devoid of real ideas that it must again resort to the politics of distraction out of desperation. Gays are not a threat to America, but congressmen who would tinker with the Constitution to protect their seats assuredly are.

By a 10–8 vote that fell strictly along party lines, the Senate Judiciary Committee last week approved a constitutional amendment that would ban gay marriage. The constitution has been amended 27 times, but always to protect civil liberties or to provide them to groups that didn't have them. This would be the first time that the Constitution was amended specifically to deprive a group of civil liberties, adding to the general assault by Washington on the rights of Americans.

The full Senate is expected to vote on the amendment when it returns from its Memorial Day recess, and while it will be difficult for the measure to win the necessary two-thirds majority required to begin the amendment process, passage is not the primary goal of the GOP. By simply proposing the amendment, it hopes to gain support of a religious right that puts social issues above all else. A party with nothing but domestic and foreign policy failures on its résumé can't afford to lose its rabid rightwingers if it hopes to maintain power in Congress this November. It's a strategy that for all its cynicism worked two years ago when gay marriage was on several state ballots.

First Lady Laura Bush, often the voice of reason in the White House, went on Fox News earlier this month to urge Congress to abandon these efforts on the grounds that the gay marriage issue is too complex to be handled legislatively and civil rights should not be deprived by a governmental body. Ms. Bush's stance is a traditional conservative one, but the ''conservatives'' who hold sway in the modern Republican Party are in fact radicals whose affection for big government and disregard for the civil rights of Americans should be abhorrent to true conservatives. A question to be answered Election Day is whether true Republicans will reclaim their party and principles.

[From the Chicago Sun Times, June 6, 2006]

SENATE SHOULD FOCUS ON REAL ISSUES

Even by Congress' smoke-blowing standards, the insistence of Republicans on debating a constitutional amendment to ban gay marriage reeks of politics—election-year politics, whatever White House press secretary Tony Snow's doubts about this not being ''a big driver among voters.'' You would think more pressing issues would command attention in the Senate. Such a ban has failed before there, with all but one Democrat opposing it. You would think its scant chance of passing—it would require a two-thirds majority in both chambers and then approval by three-quarters of the states—would take the hot wind out of the anti-gay-marriage faction's sails.

But with public approval of the president low, Republicans are convinced restirring the emotions of this issue will rally support for him and those GOP hopefuls looking to November. President Bush is right about not wanting judges, ''activist'' or not, to decide this issue. It should, as he said, be left ''where it belongs: in the hands of the American people.'' But the last time we looked, most Americans were more concerned about national security, immigration and the avian flu than they were the supposed threat of wedded gays. The federal government should honor states' rights and let them make this call.

[From the Pittsburgh Post-Gazette, May 22, 2006]

FAMILY FEUD; SPARKS FLY IN THE SENATE OVER GAY MARRIAGE

Something petty—a shouting match in the U.S. Senate Judiciary Committee last week—nevertheless echoes strongly with a warning for any thoughtful American concerned about the temper of the times. The spat occurred as the committee considered a constitutional amendment to ban same-sex marriage.

In part, the clash between Pennsylvania Republican Sen. Arlen Specter, the committee chairman, and Sen. Russ Feingold, a Democrat from Wisconsin, was about a change in venue for the committee meeting. But the overarching context was the Democratic belief—well-founded, as it happens—that this amendment is all about currying political favor with the Republicans' right-wing base and in the process painting Democrats as the defenders of gay marriage.

This worked a treat for those supporting President Bush in the 2004 presidential election, when 11 states had initiatives on gay marriage or civil unions to inflame the voters' prejudices at the polls.

The scene in the Judiciary Committee was childish and undignified, perhaps as befitting the nonsense before it. After Sen. Feingold declared his opposition to the amendment and his intention to walk out, Sen. Specter said: ''I don't need to be lectured by you. You are no more a protector of the Constitution than am I.'' He bid the Democrat ''good riddance.''

Actually, Sen. Feingold has a better claim to be a protector of the Constitution; he doesn't want to see it larded up with a piece of bigotry in which a majority motivated by religious belief seeks to deprive a small minority of the benefits of matrimony. Ironically, Sen. Specter is ''totally opposed'' to the bill but thinks it should go to a vote. And it will—probably in the week of June 5—as the result of the committee's 10–8 party-line vote.

As a practical matter, the amendment is not needed. A majority of conservative justices on the U.S. Supreme Court can be expected to support the existing federal Defense of Marriage Act of 1996—so states such as Pennsylvania do not have to recognize any same-sex marriages granted elsewhere. Indeed, if protecting the sanctity of marriage was the real goal, the amendment would ban divorce, or at least ban divorced people from marrying again. Of course, we don't propose that ourselves, but the backers of the gay marriage amendment would do so if they were consistent.

But consistency and logic are not the point. The political power of the amendment, like the proposed effort to do something similar in Pennsylvania, resides in its bullying and hypocrisy. This is about selecting convenient scapegoats and feeling righteous as the administration pursues a sort of anti-Gospel in which social programs are cut and policies are pushed to favor the rich over the poor.

Sadly, any shouting matches—as in the Senate Judiciary Committee—are to be expected because promoting rancor and division are the real point. We can only hope that wiser heads will prevail in Congress as this amendment proceeds.

[From the Salt Lake Tribune, April 29, 2006]

BILL OF WRONGS: NO NEED FOR FEDERAL MARRIAGE AMENDMENT

It's hard to claim you are campaigning for states' rights when the measure you are promoting would rewrite all 50 state constitutions in one stroke.

And it's hard to claim you are campaigning for individual rights, or for religious rights, when the proposal you back would impose a federalized definition for the very personal and, usually, religious institution of marriage.

The proposed ''Marriage Protection Amendment'' has drawn support from The Church of Jesus Christ of Latter-day Saints and a spectrum of other faiths, known collectively as the Religious Coalition for Marriage. That group argues, as unconvincingly as everyone else who makes the point, that the growing acceptance of same-sex unions threatens the institution of marriage.

This unwise move to amend the basic law of the United States follows successful campaigns to change a few state charters, including Utah's, to ban same-sex marriage. But, beyond being merely redundant to those state efforts, the proposed federal amendment also picks up a serious flaw that was part of 2004's Utah Amendment 3.

Utah's constitution does not merely bar same-sex couples from the legal institution of marriage. It prevents them from crafting

any ''other domestic union, however denominated,'' That, despite the misleading reassurances of the measure's supporters before the vote, has since been shown to be a useful tool for knocking the pins out from under simple and reasonable domestic partnership agreements that should be the right of any adult to enter, and within the purview of any religious order to sanctify, or not, as it chooses.

Likewise, the federal proposal would reasonably preserve the term ''marriage'' for the traditional arrangement of ''a man and a woman.'' But, again, it would unreasonably go on to dictate that every state read its own constitution to deny any constitutional protection to the notion that marriage ''or the legal incidents thereof' should be extended to same-sex relationships.

Such an overbroad, if not downright nasty, attack on domestic partnerships is not necessary to reserve the title of ''marriage'' to its traditional understanding. It doesn't belong in any state's constitution. And we certainly don't want it cluttering up the Constitution of the United States.

[From the Situation Room, June 2, 2006]

Jack Cafferty, CNN anchor: Hi, Wolf.

Guess what Monday is? Monday is the day President Bush will speak about an issue near and dear to his heart and the hearts of many conservatives. It's also the day before the Senate votes on the very same thing. Is it the war? Deficits? Health insurance? Immigration? Iran? North Korea?

Not even close. No, the president is going to talk about amending the Constitution in order to ban gay marriage. This is something that absolutely, positively has no chance of happening, nada, zippo, none. But that doesn't matter. Mr. Bush will take time to make a speech. The Senate will take time to talk and vote on it, because it's something that matters to the Republican base.

This is pure politics. If has nothing to do with whether or not you believe in gay marriage. It's blatant posturing by Republicans, who are increasingly desperate as the midterm elections approach. There's not a lot else to get people interested in voting on them, based on their record of the last five years.

But if you can appeal to the hatred, bigotry, or discrimination in some people, you might move them to the polls to vote against that big, bad gay married couple that one day might move in down the street.

Here's the question: Is now the time for President Bush to be backing a constitutional amendment to ban gay marriage?

In conclusion, Mr. President, we should be addressing America's top priorities, including ways to make America safer, the disastrous war in Iraq, rising gas prices, health care and health insurance costs, stem cell research, erosion of America's privacy, the reauthorization of the Voting Rights Act, but now we are going to talk about something that is here simply for politics. Rather than seeking to divide and diminish, the Senate could be working against discrimination.

Why are we amending the Constitution to do something the States can do? Every State can pass and has passed laws about what will be the marriage laws in their State. No State is able to pass a law that is going to force another State to accept something they do not want. We passed the Defense of Marriage Act in the Congress for that.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. LEAHY. Mr. President, I think we are doing what we did in the Schiavo matter: We are playing politics with the basic rights of people, and it is wrong.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The ACTING PRESIDENT pro tempore. The time until 10 o'clock is reserved for the majority leader or his designee.

Mr. LEAHY. Mr. President, obviously, I am not going to take the majority leader's time. Certainly, if anybody on the Republican side seeks recognition, I will immediately yield the floor to them. I was hoping they would be here.

I note the chairman of the Judiciary Committee and I are in an asbestos hearing. I was asked by somebody the other day if I felt that marriage would be threatened if we didn't pass this. I have been blessed to be married to the same woman for 44 years. I don't feel threatened by it.

Mr. President, I suggest the absence of a quorum.

Mr. REID. Mr. President, I rise once again to express my strong opposition to the motion to proceed to this constitutional amendment. There are so many other issues we should be debating instead of this divisive and deeply flawed proposal.

We should be debating the raging war in Iraq. We should be debating our staggering national debt. We should be debating global warming. We should be debating stem cell research.

But we should not be debating a vague and unnecessary proposal to amend the U.S. Constitution. This week's debate is a textbook illustration of misplaced priorities.

As Chairman SPECTER has said, the Federal Marriage Amendment is a solution in search of a problem. The 1996 Defense of Marriage Act, which I supported, remains the law of the land. It defines marriage for purposes of Federal benefits as the union of a man woman, and provides that no State shall be required to recognize same-sex marriages performed in any other.

DOMA has been challenged three times, including in the Ninth circuit, and each time it has been upheld.

DOMA is consistent with principles of federalism and the longstanding tradition in our system that matters of family law should be left to the States and not dictated by the Federal Government.

In my home State of Nevada, we passed a State constitutional amendment in 2002 making clear that only a marriage been a man and a woman can be recognized and given effect in Nevada. I supported that measure.

Supporters of the Federal Marriage Amendment say that State laws like Nevada's are under ''assault'' by ''activist judges.'' The Nevada law is not under ''assault'' by anyone. There are no court cases regarding marriage for same-sex couples in Nevada.

The decision about how to define marriage was made by the people of Nevada for themselves, and it wasn't dictated to them by politicians in Washington. That's how it should be.

In contrast, this Federal amendment would dictate to each State how to interpret its own State laws. This is an unwarranted intrusion into the autonomy of State legal systems.

In any event, this is not an appropriate subject for a constitutional amendment. For over 200 years, the Constitution has had no provision on marriage, and we have left this and other family law issues to the states and to this Nation's religious institutions.

Our Constitution has only been amended 17 times after the Bill of Rights was adopted in 1791. Only 17 times in 215 years.

Several years ago the nonpartisan Constitution Project convened a committee of constitutional scholars, civic leaders, and other prominent Americans to develop criteria for when a constitutional amendment is justified. They wrote that our Constitution should be ''amended only with the utmost care, and in a manner consistent with the spirit and meaning of the entire document.''

This amendment fails that test. It does not make our system more politically responsive. It does not protect individual rights. As James Madison wrote in Federalist No. 49, the Constitution should only be amended on ''Great and Extraordinary Occasions.'' This is not such an occasion.

Earlier this year, former Republican senator John Danforth of Missouri spoke about this amendment and this is what he had to say:

Maybe at some point in time there was one that was sillier than this one, but I don't know of one. . . . Once before the Constitution was amended to try to deal with matters of human behavior, that was prohibition, that was such a flop that that was repealed 13 years later.

I agree with my distinguished former colleague that this is not an appropriate subject for a constitutional amendment.

I hope the American people will see this amendment for what it is. This amendment is not about whether any of the Members in this body support or oppose same-sex marriage.

This amendment is about raw election year politics. It has zero chance of passing, and everybody knows that.

Those who would use the Constitution as a political bulletin board should be ashamed of themselves. Our Constitution deserves better. And the American people deserve better.

Mr. FRIST. Mr. President, over the past couple of days, we have had a good, rigorous debate on the future of marriage in America. I thank Senator ALLARD and Senator BROWNBACK for managing the debate and my colleagues who have come to the floor to very thoughtfully and thoroughly lay out the legal and cultural issues that are at stake.

Throughout human history and culture, the union between a man and a woman has been recognized as the cornerstone of society. Marriage serves a public act, a civil institution that binds men and women in the task of producing and nurturing children—husband and wife, father and mother—building a family in a community over a lifetime.

At its root, marriage is and always has been a public institution that formalizes that family bond. Some on the other side have said that the strength and stability of marriage is a distraction of little concern to the broader public. And I couldn't disagree more.

As it so happens, they used the very same argument 2 years ago. They said the States had little interest in preserving traditional marriage; voters didn't care; other issues were more important. That argument wasn't true then, and it is even less true now.

Marriage, as we know it, is under assault. Activist courts are attempting to redefine marriage against the expressed wishes of the American people. And if marriage is redefined for some, it will be redefined for all.

Last year, voters in 13 States passed by enormous margins State constitutional amendments to protect marriage. Mr. President, 19 States now have State constitutional amendments. Another 26 have statutes doing the same. Alabama voters, yesterday, endorsed an amendment to protect marriage. In total, 45 States have either State constitutional amendments or State laws to protect marriage.

Tennessee, which will give voters the opportunity to voice their opinion this November, is one of six States with similar amendments to its constitution that are pending. No State—no State—has ever rejected an effort to protect traditional marriage when it has been on the ballot.

Voters across the country, from red States to blue, have voted overwhelmingly to protect traditional marriage. But that has not stopped the same-sex marriage activists from taking their campaigns not to the American people but to the courts. Indeed, their losses at the ballot box have only fueled their judicial activism.

Currently, nine States have lawsuits pending. In five States, courts could redefine marriage by the end of the year. In California, Maryland, New York, and Washington, State trial courts have already followed Massachusetts and declared their State constitution's definition of marriage unconstitutional. All of these cases are on appeal.

A Federal judge in Nebraska overturned a democratically enacted State constitutional amendment protecting marriage. That ruling is now under appeal in the Eighth Circuit.

Another Federal court case in Washington challenges the constitutionality of the Federal Defense of Marriage Act. That case is stayed pending resolution of litigation in the Washington State Supreme Court. Court watchers are expecting a ruling soon.

With all of this litigation pending, there is little doubt that the Constitution will be amended. The only question is whether it will be amended by Congress working the will of the people or by judicial fiat. Will activist judges override the clear intention of the American people or will the people amend the Constitution to preserve marriage as it has always been understood?

In Massachusetts, the people have never had a say. The State's supreme judicial court demanded the State sanction same-sex marriage. A majority of the court substituted their personal policy preferences for that of the people, and the consequences of that activism spread far beyond same-sex marriage itself.

I wish to read from a letter from Governor Romney sent to me as we opened the debate on this issue. In it he warns us that Massachusetts is only just beginning to experience the full implication of their court's decision. He writes:

> Although the full impact of same-sex marriage may not be measured for decades or generations, we are beginning to see the effects of the new legal logic in Massachusetts just 2 years before our State's social experiment.

In the letter, Governor Romney relates the following account:

> In our schools, children are being taught that there is no difference between the same-sex marriage and traditional marriage.
>
> Recently, parents of a second grader in one public school complained when they were not notified that their son's teacher would read a fairy tale about same-sex marriage to the class.
>
> The parents asked for the opportunity to opt their child out of hearing such stories. In response, the school superintendent insisted on ''teaching children about the world they live in, and in Massachusetts same-sex marriage is legal.''

Now second graders are being indoctrinated to accept a radical redefinition of marriage against their parents' wishes. That is the reality today in Massachusetts.

It doesn't stop there. Already religious organizations in Massachusetts are feeling the pressure to conform their views as well. In March, the Catholic Charities of Boston discontinued their work placing foster children in adoptive homes. Why? Because they concluded the new same-sex marriage law would require them to place children—require them—to place children in same-sex homes. Clearly, this is an irreconcilable conflict.

So while we have advocates denying that same-sex marriage poses any conflict with religious expression or with traditional views, we are already seeing in Massachusetts that simply is not the case. We don't know yet the range and the extent of the religious liberty conflicts that would arise from the imposition of same-sex marriage laws, but we do know the implications are serious, that religious expression will be challenged, and that it is a matter of deep public concern. That is why we seek action in the Senate on this important issue.

As I have said before, it is only a matter of time before the Constitution will be amended. The only question is by whom. Is it going to be a small group of activist judges or by the people through a democratic process? I believe the people should make that decision.

We talked about the specific wording of the marriage protection amendment. Nothing in the amendment intrudes on individual privacy. Nothing stops States from passing civil union laws or curtails benefits that legislatures establish for same-sex couples.

It simply protects the States from having civil unions imposed on them from activist courts. It protects the legislative process by letting people speak and vote. It ensures that their voices are heard and their votes are respected.

My own views on marriage are clear. I believe that marriage is the union between a man and a woman for the purpose of creating and nurturing a family. We know that children do best in a home with a mom and a dad. Common sense and overwhelming research tell us so. Marriage between one man and one woman does a better job protecting our children—better than any other arrangement humankind has devised. I believe it is our duty to support this fundamental institution.

Now we will vote on proceeding on the marriage protection amendment. We will vote on whether we believe traditional marriage is worthy of protection, and we will vote on whether the courts or the people will decide its fate.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The bill clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 435, S.J. Res. 1, a joint resolution proposing an amendment to the Constitution of the United States relating to marriage.

Bill Frist, Wayne Allard, Jim Bunning, Conrad Burns, Richard Burr, Tom Coburn, Jon Kyl, Craig Thomas, George Allen, Judd Gregg, Johnny Isakson, David Vitter, John Thune, Mike Crapo, Jeff Sessions, John Ensign, Rick Santorum.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that the debate on the motion to proceed to S.J. Res. 1, an amendment to the Constitution of the United States related to marriage, shall be brought to a close?

The yeas and nays are mandatory under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Nebraska (Mr. HAGEL).

Mr. DURBIN. I announce that the Senator from Connecticut (Mr. DODD) and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

The yeas and nays resulted—yeas 49, nays 48, as follows:

[Rollcall Vote No. 163 Leg.]

YEAS—49

Alexander	DeMint	McConnell
Allard	DeWine	Murkowski
Allen	Dole	Nelson (NE)
Bennett	Domenici	Roberts
Bond	Ensign	Santorum
Brownback	Enzi	Sessions
Bunning	Frist	Shelby
Burns	Graham	Smith
Burr	Grassley	Stevens
Byrd	Hatch	Talent
Chambliss	Hutchison	Thomas
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Coleman	Kyl	Voinovich
Cornyn	Lott	Warner
Craig	Lugar	
Crapo	Martinez	

NAYS—48

Akaka	Feinstein	Menendez
Baucus	Gregg	Mikulski
Bayh	Harkin	Murray
Biden	Inouye	Nelson (FL)
Bingaman	Jeffords	Obama
Boxer	Johnson	Pryor
Cantwell	Kennedy	Reed
Carper	Kerry	Reid
Chafee	Kohl	Salazar
Clinton	Landrieu	Sarbanes
Collins	Lautenberg	Schumer
Conrad	Leahy	Snowe
Dayton	Levin	Specter
Dorgan	Lieberman	Stabenow
Durbin	Lincoln	Sununu
Feingold	McCain	Wyden

NOT VOTING—3

Dodd	Hagel	Rockefeller

The PRESIDING OFFICER (Mr. VITTER). On this vote, the yeas are 49, the nays are 48. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until 12 noon.

Thereupon, the Senate, at 10:33 a.m., took a recess, and the Senate, preceded by the Secretary of the Senate, Emily Reynolds, and the Sergeant at Arms, William H. Pickle, proceeded to the Hall of the House of Representatives to hear the address by Her Excellency Dr. Vaira Vike-Freitberga, President of the Republic of Latvia.

(The address delivered to the joint session of the two Houses of Congress is printed in the Proceedings of the House of Representatives in today's RECORD.)

Whereupon, at 12 noon, the Senate reassembled when called to order by the Presiding Officer (Ms. MURKOWSKI).

DEATH TAX REPEAL PERMANENCY ACT OF 2005—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the hour of 12 p.m. having arrived, the Senate will proceed to consideration of the motion to proceed to H.R. 8, which the clerk will report.

The bill clerk read as follows:

Motion to proceed to the consideration of H.R. 8, to make the repeal of the estate tax permanent.

The PRESIDING OFFICER. Under the previous order, the time from 12 p.m. to 3 p.m. shall be divided for debate as follows: From 12 to 12:30, the majority will have control; from 12:30 to 1 o'clock, the minority has control, alternating between the two sides every 30 minutes until 3 p.m.

The Senator from Arizona.

Mr. KYL. Madam President, today and tomorrow could be historic days in the Senate—indeed, in the history of our country—because we have an opportunity to eliminate what some have called the most unfair tax of all. I speak of what has been called the estate tax, or the inheritance tax, or more recently has become known as the death tax.

Just a word of the history of this tax would be interesting to my colleagues before I discuss the process by which this consideration will occur and some of the reasons why we need to proceed with it.

It is very interesting that the history of the estate tax actually can be traced back to ancient times and the Roman Empire, but the more relevant history for purposes of the United States, because we borrowed this concept from England, came from the Middle Ages when the sovereign or the state, of course, owned all of the assets—the land and even the personal property—within the country.

What would happen is, when the king owned all of the feudal property in England, he would grant the use of that property to the people within the kingdom. Certain individuals during their lifetimes—let's say a farmer—would have the land to till and the farm animals to take care of. When that farmer died, in effect, his family would have to buy back that property from the king in order to continue to farm that land, to raise those farm animals and so forth. When the king died, the king would let the estate retain the property on which the payment of an estate tax, called a relief, existed. That would then enable the family to continue to run the family farm or the family business, to put it in modern-day terms.

It seems very strange indeed in the 21st century we would retain this odd and clearly out-of-place custom of having to buy back our property from the king. We do not have a king anymore. There has never been a king in the United States of America. Our right to property is guaranteed in the Constitution. So it seems strange, indeed, that we should be following a custom which required us to buy back from the king our property when our father or our mother dies, for our children to have to buy it back when we die. Yet that is the etiology of the estate tax, that you pay the state to continue to enjoy the right to the property that you always thought was yours.

It is a very expensive price, indeed. In recent years, it has been 55 percent for the largest estates. Clearly, a lot of people could not afford this, people who put their life savings into their farm or their business.

I had a friend from Phoenix who owned a printing company. He started it himself, and after 40 years built it up to a prosperous printing company. He took a modest sum out for he and his family but basically plowed everything back into the company because to stay ahead in the printing business you had to buy the most modern printing equipment and technology.

On paper, his family had a lot of wealth. He had a lot of wealth when he died. But it was literally tied up in the company. His family looked at the estate tax. They had spent a lot of money buying insurance and so on. They found they were going to basically have to pay over half of the value of this company to the Government. They did not have that money. They did not have that liquid cash. So they had to sell this printing company in order to collect the money to pay the Government about half of it in the form of an estate tax.

What happened? This particular man was one of the most generous people in the city of Phoenix. He contributed millions of dollars. In fact, there is a Boys and Girls Club named after him. Every year his wife and his daughter would be involved in charitable activities. I know because my wife is one of the best friends of his daughter. They headed up charity events and raised millions of dollars for our community.