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MR. MCCURRY: I don't have anything to add to what this spokesperson for the party said, or our campaign spokesman. They both sort of indicated that they are in the platform process, we would welcome contributions from people who would like to make the argument for that. I believe it is safe to say the Democratic Party will remain a party that advocates choice for women. But we also respect, on this very hard-to-resolve moral issue, we respect those that have different opinions.

Q Mike, is your view of this, the President's view of this mean that there will be no kind of legal recognition of same-sex relationships that he would find acceptable, the word marriage aside, or is it simply the concept of marriage with all the religious and moral overtones that it's always had that makes him believe that it can't be done?

MR. MCCURRY: Well, marriage is a union sanctioned under state laws. That's why we're dealing with the question of Hawaii and others. And the President believes that that sanction by the state ought to be reserved for unions between male and female.

Q Mike, yesterday when you were asked about this, when you were asked why he opposes same-sex marriages, said that you think we ought to be doing things to strengthen the family, thus implying same-sex marriage weakens the family. As you undoubtedly know, some gay rights activists took extreme umbrage at those remarks. Would you care to clarify them?

MR. MCCURRY: Well, I dispute the question. I think a lot of people called this for what it is -- it was an attempt to try to divide Americans on the controversial issue. That's what this is, and that's what I saw spokespeople for the gay and lesbian community correctly say this is an issue that is just designed to provoke hostility towards gays and lesbians, and the President believes that's about right.

Q But you're siding with the other side; you're siding with the side that is --

MR. MCCURRY: The President has a strong belief on this, and that's his belief.

Q What about the extension of rights that typically accrue to married couples, such as health care benefits, Social Security benefits --

Q Hospital visiting rights --

MR. MCCURRY: I'm not going to go -- there are a lot of things that you get into in the whole question of domestic partnerships and what spousal rights people might have. That's basically not much of an issue at a time when we're having trouble protecting those benefits that already exist. But the President, consistent with the view that he is against same-sex marriage sees no

opportunity here to expand federal benefits as they relate to spousal coverage. It would be contrary to his view that you -- contrary to his view against same-sex marriage.

Q So he doesn't have, for example, any plans under consideration to sign various executive orders granting rights to gays, for example, for hospital rights --

MR. MCCURRY: I've heard of no such plans.

MORE

#222-05/14



**FAMILY
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**Gary L. Bauer
President**

TALKING POINTS: DEFENSE OF MARRIAGE ACT (DOMA)

*by
Robert H. Knight*

- Marriage is universal. All cultures, all major religions honor marriage. Even though customs vary, it is always the bringing together of the two sexes to form families.
- Homosexual couples are not the same as a husband and wife. To say they are is to claim that men and women are the same, with no appreciable differences, which is absurd.
- Marriage has already been so cheapened and undervalued that homosexual activists now feel emboldened to deal the final indignity--separating the two sexes from each other. No-fault divorce, out-of-wedlock pregnancies and sexual promiscuity have weakened support for marriage in the law and culture, with dire social and economic consequences. The answer is not to stretch the institution further out of shape but to reassert support for the only model that really works.
- Homosexuals are free to hold their own ceremonies, but when they bring the law into it, they force everyone into it. Under the law, businesspeople would be forced to subsidize homosexual relationships; children would have to be taught that homosexuality is the moral equivalent of marital love, and anyone disagreeing with the policy would be denounced as a "bigot."

A Sample Dialogue

HOMOSEXUAL ACTIVISTS: "We just want the same things as you--commitment, love, etc. You say you believe in "family values," well why not encourage us to form committed relationships?"

ANSWER: You already can. But what you are asking us to do is to pretend that two men or two women are the same as a marriage, which they are not. And if you base these

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relationships on all the qualities you just mentioned, why not demand that three men and a woman be considered "married?" Or how about a man and a boy? Or two cousins?

ACTIVISTS: You know as well as we do that that is not what we're asking. We just want to let two people who love each other have the same rights as others.

ANSWER: You, like all citizens, already have the right to enter into marriage by meeting that unique institution's central requirement--joining the opposite sexes. Once you break the one-man, one-woman definition of marriage, there is no stopping point. Several homosexual activists have admitted that they wanted to redefine marriage so they could enact the rest of the gay agenda. And Andrew Sullivan says in his book Virtually Normal that gay male relationships may be superior to marriage because gays understand the need for outside sex. So we are not even talking about monogamy here.

ACTIVISTS: Right now, gay people can't visit their lovers in hospitals. They can't leave their property to their lover. They are denied a whole range of protections given to married couples. We need marriage to be equal.

ANSWER: That is extremely misleading. Like other citizens, homosexuals can draft any type of will that they want and leave their property to anyone they want. Family members do retain a higher standing in challenges to wills, but that is the case whenever a will is contested by anyone. The same goes for the powers of attorney. A homosexual can designate his lover or anyone else as the executor of his estate or as guardian of his health in the event of an untimely, debilitating illness. As far as hospital visitation, that is not a federal issue, nor should it be. Families have been given preference in visitation because family ties transcend other types of relationships--as well they should. Homosexuals are free to lobby individual hospitals as well as local authorities to change their rules regarding visitation. But they do not need to overturn the institution of marriage to do so.

ACTIVISTS: What about married couples who don't have children? Would you take away their licenses?

ANSWER: Marriage is a social good even without children, but it overwhelmingly is about forming families, preserving kinship and providing for future generations. Exceptions do not disprove the rule. Besides, those couples who are childless can either choose to conceive or to adopt to give a child a mother and a father. A homosexual couple by definition is motherless or fatherless, and it is not in the best interests of children to deliberately create motherless or fatherless families.

ACTIVISTS: Years ago, some groups supported laws preventing blacks and whites from marrying and also keeping blacks out of the military. They used all the same arguments then. But we overcame their prejudice and moved ahead.

ANSWER: Wrong on two counts: First, Family Research Council and other pro-family groups have always supported the civil rights movement, which is about eliminating discrimination. Second, skin color and sexual behavior are entirely different. We don't know any former African-Americans, but we do know some former homosexuals. Jim Crow laws were invented to keep blacks down, but marriage was not invented to keep homosexuals down. Equating the two is inaccurate and is merely a politically expedient tactic.

ACTIVISTS: The lives of lesbian and gay people are under attack all over the country by extremist groups. They are trying to shut down debate on gay marriage by passing unnecessary and mean-spirited laws.

ANSWER: Excuse me but WE didn't pick this fight. We are not radically trying to change marriage or force homosexuals to recognize a radical new institution. If anyone is extremist, it is homosexual activists who are trying to pretend that two homosexual men are the equivalent of a man and a woman, biologically, psychologically and socially. Two men cannot provide the same experience as a mother in a child's life; and a father cannot be replaced by two lesbians. No culture has sanctioned homosexual relationships as "marriage" because it is not marriage.

ACTIVISTS: DOMA and these state laws are not necessary. Full faith and credit has worked fine for many years. Extremist groups are reacting to something that hasn't even happened yet. This is an attempt to shut off debate.

ANSWER: Why should we wait until unelected judges in Hawaii impose their views on the rest of the American people? And what's to stop some other radical judge somewhere else from trying this?

ACTIVISTS: These are nothing but ugly attempts to use the federal government to discriminate against gay people..... Are you telling us that big government should be telling the states what to do?

ANSWER: Well let us mark this day that you've become state's rights advocates! But let's be clear: DOMA allows the states the freedom NOT to have another state's radical redefinition of marriage imposed on them. In no way does the federal government tell the states what to do.

ACTIVISTS: This is just an attempt to stop debate on the topic. It's an attempt to shut down the public dialogue on this issue.

ANSWER: Wait a minute: Who was trying to keep the issue off the ballot in Hawaii and elsewhere? Homosexual lawyers with the American Civil Liberties Union and the Lambda Legal Defense and Education Fund have tried to quash ballot measures in Maine, Colorado, Washington State and elsewhere. They are trying to force their agenda on America by judicial fiat.

ACTIVISTS: This is extremist!

ANSWER: Do you really think that name-calling can substitute for a sound argument? Polls show that about 70 percent of the American people oppose same-sex "marriage" and in Hawaii it is rising. At last count it was 74%. The more people know about it, the more people oppose it. Are all these people extremists?

5/15/96

Robert H. Knight is director of cultural studies at the Family Research Council, a Washington, D.C.-based research and educational organization.



**FAMILY
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Gary L. Bauer
President

ANSWERS TO QUESTIONS ABOUT THE DEFENSE OF MARRIAGE

by
Robert H. Knight

Q: In restricting marriage to one man and one woman, aren't you imposing your beliefs on others?

A: Marriage has been the foundation of civilization for thousands of years in cultures around the world. It is the single most important social institution, and it is the basis for the procreation of children and the heart of family life. Those who are trying to radically redefine it for their own purposes are the ones who are trying to impose their values on the rest of the population. Ordinary people did not pick this fight. They are not the aggressors. They are merely defending the basic morality that has sustained the culture for everyone against a radical attack.

Q: Oh, come on. Whom does it really hurt if a same-sex couple want to get married?

A: When homosexual couples seek state approval and all the benefits that the state reserves for married couples, they impose the law on everyone. According non-marital relationships the same status as marriage would mean that millions of people would be disenfranchised by their own governments. The state would be telling them that their beliefs are no longer valid, and would turn the civil rights laws into a battering ram against them:

- Business men and women would be required to provide "family" health benefits to homosexual couples.
- Children would be taught in schools that homosexual sex is the moral equivalent of marital love.
- Same-sex "marriage" would facilitate the adoption of children by homosexual couples.
- Sex-based distinctions in the law would be removed (as was proposed in the rejected Equal Rights Amendment).

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Law is not a suggestion, but, as George Washington observed, it is force. Official state sanction of same-sex relationships as "marriage" would bring the full apparatus of the state against those who believe that marriage is between one man and one woman. Traditional morality would, in effect, be outlawed.

Q: But if two people -- any two people -- love each other, why not let them marry?

A: Marriage is not just a matter of feelings. It is the specifically defined legal, social, economic and spiritual union of a man and a woman. The two sexes must be present for it to be marriage. If that definition is radically altered based on the "feelings" of those in other relationships, then the sky is the limit. There is no logical reason for not letting several people marry, or for gutting other requirements, such as minimum age, blood relative status or even the limitation of the relationship to human beings.

Q: Don't morals change? Haven't we heard all these tired phrases used in defense of not letting women vote or even in defense of slavery?

A: Various social movements have succeeded because they were in accord with natural law and the basic precepts of the moral code. Homosexuality has never been considered morally good, and it is a quantum leap from ending slavery to saying that homosexuality must now be considered good, healthy and worthy of state-protected benefits. Homosexuals enjoy all the rights every other citizen already has -- they can vote, own property, etc. -- but they cannot claim special treatment beyond those rights. Anytime they achieve that, they threaten the civil rights of those who disagree with them.

Q: For years, in some Southern states, blacks and whites were prevented from marrying by anti-miscegenation laws. Eventually, the courts overturned these laws. Aren't same-sex couples being similarly discriminated against? Isn't it only a matter of time before these repressive laws are also overturned?

A: As Colin Powell has observed, skin color and sexual behavior are entirely different. The first is a benign, inborn characteristic that has no bearing on conduct or character; the second is behaviorally-based and has everything to do with character, morality and society's basic rules of conduct. If the civil rights laws begin deviating into behavior and away from race, ethnic origin, place of birth or other immutable characteristics, there is no stopping point. New laws would have to be coined almost daily to accommodate the flood of claims based on behavior (smokers, compulsive gamblers, pornography fanatics, sex addicts and pedophiles could all claim new "rights" to protection against discrimination). One non-immutable characteristic that does get protection is religion, because that is enshrined in the Constitution. But there is no constitutional right to engage in sodomy (see *Bowers v. Hardwick*)¹ and demand that the state elevate it into protected status.

Q: But studies show that homosexuals are born that way. How then can you blame them for their condition?

A: Nobody is “blaming” anyone for having homosexual desires. The “genetic” studies that have been publicized have been conducted by self-styled homosexual activists or have been misrepresented in the media. The studies themselves typically have tiny sample sizes, biased selection, and other major methodological flaws, and are not replicated by reputable scientists.² By contrast, 70 years of therapeutic counseling and case studies show a remarkable consistency concerning the origins of the homosexual impulse as an uncompleted gender identity seeking after its own sex to replace what was not fully developed.³ Do homosexuals choose to be gay? Mostly, no, but they can choose their behavior, and they can change their orientation,⁴ as researchers Masters and Johnson showed in their landmark studies⁵ and as numerous examples of successful personal transformation testify.⁶

Q: Isn't the traditional view of marriage religious in nature? And if so, doesn't the restriction of marriage to one man and one woman violate the religious beliefs of those who disagree?

A: Although marriage does indeed arise from religious traditions, most notably the Bible, it is an independently quantifiable good for society. Hence, the state has an interest in preserving and protecting the special status of marriage, regardless of religious beliefs. A society can get along just fine without any homosexuality, but no society can get along without marriage. That is why the state encourages marriage. In 1885, the Supreme Court felt so strongly that marriage was to be protected that it declared it as a requirement for admission of new states to the Union. Any prospective state, the court said, had to have law resting “on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization, the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement.”⁷

Q: What about childless couples? Since you say that marriage must be protected partly because of its importance in forming families, does this mean that heterosexual couples who do not have children shouldn't get marriage licenses?

A: Of course not. Although most people marry with the intention of someday starting families, the married couples who do not have children still have the potential for becoming mothers and fathers, either biologically or through adoption. Marriage is a societal good even without children, as husbands and wives serve as role models for children in their neighborhoods. Procreation is an important aspect of society's high regard for marriage, but it is not the only reason marriage is protected. Children do not benefit when homosexuality is presented as a neutral or positive lifestyle choice.

Q: But with the threat of AIDS and other diseases among promiscuous, homosexual men, wouldn't it be a societal good to encourage homosexual monogamy?

A: In cities where homosexual monogamy is already being encouraged, AIDS and other sexually-transmitted diseases are skyrocketing.⁸ It is not "homophobia" that is causing this, but the behavior itself, which is destructive emotionally, physically and morally to individuals, families and societies. That is why it has been discouraged in all successful cultures. Socrates and Plato wrote that homosexuality was harmful to individuals and society and should be discouraged. Even in "steady" homosexual relationships, dangerous sex occurs, since the defining homosexual sex act is patently unhealthy by any standard. State sanction of homosexuality in any form is an invitation to the young to experiment with something that may prove deadly. Any public health benefits available by discouraging promiscuous homosexual activity can be achieved without redefining traditional marriage, which is per se a profoundly important public health measure.

Besides, homosexual literature acknowledges that homosexual "monogamy" is largely fictional. Most homosexual relationships are fleeting. Those that endure more than a few years do so because of an agreement to have outside partners. As *New Republic* editor Andrew Sullivan, a homosexual, writes in his book *Virtually Normal*, "the openness of the contract" of homosexual "marriage" reflects "greater understanding of the need for extramarital outlets between two men than between a man and a woman." In other words, the homosexual concept of "monogamy" is non-monogamous. Homosexual activist Michaelangelo Signorile frankly admits that the goal of homosexual activists is to "fight for same-sex marriage and its benefits and then, once granted, redefine the institution of marriage completely, to demand the right to marry not as a way of adhering to society's moral codes but rather to debunk a myth and radically alter an archaic institution...."⁹

Q: Don't most people want homosexuals to be treated fairly?

A: Yes. Most people have no ill will toward homosexuals, but this does not mean that a tiny segment of the population (less than 2 percent) should be allowed to radically redefine society's moral code. Even in liberal Hawaii, recent polls show that more than 70 percent of residents oppose same-sex "marriage," and national polls show that about two-thirds of respondents oppose same-sex "marriage." This is not about tolerance, but about a tiny group seeking to use the law to impose its version of morality on everyone else.

Q: Still, don't homosexuals suffer discrimination when they can't marry?

A: No. Homosexuals have precisely the same right to marry as anyone else. Marriage is the bringing together of the two sexes. That is the whole point. To enter marriage, you must meet its qualifications. Any attempt to get around the rules that everyone else plays by is an attempt to have special rights, not equal rights. Eliminating an entire sex from the picture and then calling it "marriage" is not a mere expansion of an institution, but rather the destruction of a principle.

Q: What about domestic partnerships? If you won't go along with same-sex "marriage," why not at least allow committed same-sex couples to get some benefits?

A: The state should never be in the business of encouraging unhealthy behavior by granting special benefits for it. A homosexual life does not offer the richness of the complementary relationship that men and women find in marriage and family life. People should not be written off as if they can do no better than be mired in an unhealthy, unnatural behavior. The more that homosexuality is encouraged, the more damage will be wreaked among individuals, families and society. This is not compassion but its opposite: a ruthless social Darwinism that devalues people as impulse-driven incorrigibles. Each human soul is of inestimable worth, and homosexuals are no different from anyone else. They deserve the truth, not an officially sanctioned lie.

3/22/96

Robert H. Knight is director of cultural studies at the Family Research Council, a Washington, D.C.-based research and educational organization.

ENDNOTES

¹ *Bowers v. Hardwick* 478 U.S. 186, 190 (1986). In rejecting the claim, the Court said, "Nor are we inclined to take a more expansive view of our authority to discover new fundamental rights imbedded in the Due Process Clause. The Court is most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution.... There should be, therefore, great resistance to expand the substantive reach of those Clauses, particularly if it requires redefining the category of rights deemed to be fundamental."

² See, for instance, William Byne and Bruce Parsons, "Human Sexual Orientation: The Biological Theories Reappraised," *Archives of General Psychiatry*, Vol. 50, March 1993, pp. 228-239.

³ See Elizabeth R. Moberly, *Psychogenesis: The Early Development of Gender Identity* (London: Routledge & Kegan Paul Limited, 1983); Joseph Nicolosi, Ph.D., *Reparative Therapy of Male Homosexuality* (Northvale, New Jersey: Jason Aronson Inc., 1991); and Charles W. Socarides, M.D., *Homosexuality: A Freedom Too Far* (Phoenix: Adam Margrave Books, 1995).

⁴ E. Mansell Pattison, M.D., and Myrna Loy Pattison, "Ex-Gays: Religiously Mediated Change in Homosexuals," *American Journal of Psychiatry*, 137:12, December 1980. "All subjects manifested major before-after changes. Corollary evidence suggests that the phenomenon of substantiated change in sexual orientation without explicit treatment and/or long-term psychotherapy may be much more common than previously thought." (P. 1553.)

⁵ Mark F. Schwartz and William H. Masters, "The Masters and Johnson Treatment Program for Dissatisfied Homosexual Men," *American Journal of Psychiatry*, 141, 1984, pp. 173-181.

⁶ For example, Starla Allen, "Uncovering the Real Me," *Exodus International Update*, February 1996. Richard A. Cohen, M.A., "TCM Testimony of the Month," *Transformation Press*, No. 19, February 1996, p. 3.

⁷ *Murphy v. Ramsey* 114 U.S. 15, 45 (1885).

⁸ Survey from the Centers for Disease Control reported by Associated Press, "HIV Found in 7 Percent of Gay Young Men: Education Fails to Halt Spread," *The Washington Times*, February 11, 1996, p. A-3; Michael Warner, "Why Gay Men Are Having Risky Sex," *Village Voice*, New York, January 31, 1995, Vol. XL, No. 5.

⁹ Quoted in *Out* magazine, December/January 1994, p. 161.

E X E C U T I V E O F F I C E O F T H E P R E S I D E

14-May-1996 02:17pm

TO: (See Below)

FROM: Margaret M. Suntum
Office of the Press Secretary

SUBJECT: 1996-5-14 McCurry Briefing

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release
1996

May 14,

PRESS BRIEFING

BY MIKE MCCURRY

The Briefing Room

12:47 P.M. EDT

MR. MCCURRY: Good afternoon, ladies and gentlemen.
Shall we?

Q Let's do it.

Q China.

MR. MCCURRY: China? I don't have anything that I can tell you, other than the talks in Beijing have concluded. Mr. Sands has been in contact with Acting Trade Representative Charlene Barshefsky and we're evaluating the results. I haven't heard anything that indicates that they made a lot of progress, but they will continue their evaluation and if there's anything further to say, Ambassador Barshefsky will say it tomorrow.

Q At her news conference.

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change in public access to the White House, and I would suggest in some respects there's more access because you can walk freely on the street in front of the White House. It makes it easier for tourists to take pictures and it's become kind of a nicer place out there.

Q For large periods of time it's shut down.

MR. MCCURRY: As to other issue, we will look at the other issues, look at the legislation. I'm not aware that we've taken any position on the legislation.

Q Grams says that no one has made a compelling case for closing Pennsylvania Avenue.

MR. MCCURRY: Well, that's just not true. I mean, the Secret Service made a pretty compelling case when they talked about the reason for closing it down in the first place. I think Oklahoma City was a pretty good argument, wasn't it?

Q Well, there was a review that was made public --

MR. MCCURRY: Okay.

Q In the context of the briefing that we're going to get later today on the Olympics and the role of the federal government, is the White House expecting and seeking some political benefit from identifying the President frequently this year with the Olympics and American --

MR. MCCURRY: I suspect like President Reagan did when we had the opportunity to host the Olympics before, we will be honored by the presence of the delegations, the athletes and we'll want to be a good host. And he will labor to be a good host.

Q The President, in addressing the law enforcement officers memorial tomorrow, does he have any particular point that he wants to make?

MR. MCCURRY: He does. You may have noticed earlier that we've declared tomorrow Peace Officers Memorial Day in honor of those who have given their lives trying to keep our communities safer. And his remarks will appropriately reflect those sentiments.

Q Can I come back to a subject from yesterday on same-sex marriage? You reiterated the President's '92 statement that he personally opposes same-sex marriage. But has he decided what to do on this legislation in the Senate?

MR. MCCURRY: They are still going to look at that legislation. Let me just point out on that, that legislation involves, as near as I understand it, a court ruling in Hawaii. The court has referred back to lower courts for further adjudication the question of how you would recognize same-sex unions. The President just believes that's wrong. He doesn't believe in same-sex marriage.

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But, frankly, it's hard to see why they need this legislation at this point because there's no compelling argument right now that that -- there's no statute pending in Hawaii, so it's something that's going to clearly be adjudicated in lower courts. There's a sense here that what is driving the public debate on this issue is an attempt by some in Congress to force this as a wedge issue.

And the President, frankly, wishes that we would do a little more to bring Americans together and not hold out any community for punitive action. Now, there's a difference between sanctioning something and making sure that you prohibit discrimination. This President's record on ensuring that there's not discrimination against gay and lesbians is very clear, and he feels strongly on that, but just as a question of what he believes, he doesn't believe that same-sex marriage -- he just doesn't believe in it.

Q But would he sign the legislation or not? You know you've got your liaison out there saying that the President is outraged with this type of a proposal.

MR. MCCURRY: Well, it's not at all clear that this legislation, once you look into it, not at all clear what the purpose of the legislation is at this moment and not at all clear that it's going to advance in Congress.

Q Something like 33 states are considering legislation that would codify in their state laws that they wouldn't be like Hawaii, that a marriage is between a man and a woman. Eight of them have passed it. You can blame the Republicans in Congress for making hay of it and some of them have said they'd like to make hay of it. But when the Hawaii Supreme Court remanded it back to the court, there was an immediate reaction in all these states. And if the President thinks the bill is untimely or whatever, if it comes to him, could you get us an answer at some point whether he'll veto it or sign it?

MR. MCCURRY: Sure. I will, and I suspect his evaluation of the bill would be consistent with his personally stated bill that he opposes same-sex marriage.

Q And Mike, a follow question. Yesterday, you had made the point that the President opposes same-sex marriages because he wants to strengthen the American family, and there was a question from the floor here why same-sex marriage hurts the American family and you implied that you might get back to us on that. Is this the right day --

MR. MCCURRY: No, the only thing I have -- The President believes that marriage as an institution ought to be reserved for a union between one man and one woman. That's his view -- has long been his view. I haven't gone deeper into the moral philosophy behind it. And marriage as an institution is one that brings people

together, and thus is something that does strengthen the tradition of family life in this country.

Q Does that mean the President would not --

Q -- the anti-abortion Democrats who want to put that in the party plank -- change the party plank?

MORE

#222-05/14

PRESSRELEASE

Stonewall Democratic Club

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For Immediate Release

Date: May 23, 1996
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Stonewall Dismayed by White House Marriage Stance Cheered by President's Anti-Discrimination Statement

Los Angeles, CA— Today, President Clinton confirmed that he would sign the Defense of Marriage Act, if it is approved by Congress, but went on to strongly denounce anti-gay discrimination, and castigated Republicans for attempting to divert Americans from the real issues facing America. The President said "I will do everything I can to stop this election from degenerating into an attempt to pit one group of Americans against another group of Americans.

The President was asked what he would tell gay Americans who disagree with him on this issue, he said "Look at my record, there has never been a President so pilloried for standing up against discrimination toward gay Americans."

Stonewall Democratic Club President Eric Bauman said "Stonewall members are obviously not happy with the President's position on the Defense of Marriage Act, but his opposition to same-gender marriage is not news. While we had hoped the President would oppose this bill on the basis of it being a state's rights issue, we are clear as to why it has become an issue. The introduction of this bill is nothing more than a cynical attempt by Republicans to try and save the floundering campaign of GOP presidential candidate Bob Dole. Dole is so far behind in the polls, the only strategy the right-wing extremists running Dole's campaign could come up with is to make lesbians and gays the "Willie Hortons" of 1996.

Bauman continued "President Clinton's statement today condemning discrimination against gay Americans, and his forceful denunciation of Republican attempts to divide our nation with divisive social issues makes clear his refusal to allow right-wing extremists to make our community the whipping-boys of the year."

"Lesbians and gays must resist the urge to turn their backs on President Clinton, because that is exactly what the Republicans hope we will do. While our community is once again disappointed with the turn of events, Bill Clinton's record on gay issues exceeds that of all prior Presidents combined. We must remember that Clinton is the first American President to endorse legislation banning discrimination against gays in the workplace, the first to ban discrimination in executive branch employment, the first to appoint over 100 openly gay people to the executive branch, including two requiring Senate confirmation, the first to appoint openly gay Federal Judges, the first to make a commitment to fully funding Ryan-White and the first to make fighting AIDS an Administration priority."

Bauman concluded, "While some in our community have already begun a chorus of criticism, we must stand up and refuse to be sucked into the Republican plan of divide and conquer. If lesbians and gays choose not to vote or to sit on their hands during the upcoming campaign, we will be totally marginalized and will have no one to blame but ourselves. Our community's best hope is to stay the course while making clear our disappointment, and when we re-elect the President and retake the Congress from the right-wing ideologues currently in power this November, we must then demand aggressive action to establish our basic civil rights in Federal law."

Stonewall Democratic Club is California's oldest and largest lesbian and gay Democratic club. Its members hail from throughout California and a dozen other states. Stonewall was the first group in the nation to endorse President Clinton and Vice President Gore for reelection.

##end##

-Tear Sheet Requested-

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NEWS FROM U.S. REPRESENTATIVE BOB BARR

FOR IMMEDIATE RELEASE:
WEDNESDAY, MAY 8, 1996

CONTACT: CARTER CORNICK
202-225-2931

**BARR INTRODUCES DEFENSE OF MARRIAGE ACT,
EXPECTS QUICK JUDICIARY COMMITTEE ACTION**

At a news conference today, U.S. Representative Bob Barr (GA-7) announced he has introduced the Defense of Marriage Act (DOMA) that reserves to the states the power to decide whether they will recognize "same-sex marriages." It also defines marriage, for federal law purposes only, as "a legal union between one man and one woman..." The bill has bipartisan support and is jointly sponsored by Congressmen Steve Largent (OK-1), Jim Sensenbrenner (WI-9), Sue Myrick (NC-9), Bill Emerson (MO-8), Ed Bryant (TN-7), Harold Volkmer (MO-9), and Ike Skelton (MO-4).

"We expect this summer that Hawaii's courts will validate same-sex 'marriage' in Hawaii," stated Barr. "Once that happens, other states, including Georgia, may be required to give legal standing to such 'marriages' under the so-called full faith and credit clause of the Constitution. Frankly, I and others don't think that any state should be forced to accept same-sex 'marriage' just because the courts of Hawaii may require Hawaiians to do so."

Barr also emphasized the limited scope of his legislation. "The bill does not outlaw anything. It simply says that Georgia and all other states of the union cannot have a judicial decision with which they disagree forced on them. The truth is, poll after poll shows that the overwhelming majority of Americans, including the people of Hawaii, are opposed to legal recognition of same-sex 'marriage.'"

Barr noted that the legislation also defines marriage, for federal purposes, as the legal union of a man and a woman, "Marriage, as we have traditionally understood it means a legal union of one man and one woman, and the bill simply states it."

Barr is a member of the House Judiciary Committee which has jurisdiction over the bill. He said he expects quick action by the Committee with Subcommittee hearings on the bill possible as early as next week. Additionally, rapid floor action is also likely, given the time pressures the situation in Hawaii presents.

-- 30 --

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U. S. S E N A T O R
DON NICKLES
O K L A H O M A

FOR IMMEDIATE RELEASE

CONTACT: ERNIE SCHULTZ OR GAYLE OSTERBERG
202/224-5754

May 8, 1996

NICKLES SPONSORS BILL DEFENDING MARRIAGE

WASHINGTON--Oklahoma Senator Don Nickles announced today he will introduce legislation which defines the words "marriage" and "spouse" for purposes of federal law and allows each state to decide for itself with respect to so-called same-sex "marriages."

Nickles made the announcement at a news conference in Washington at which introduction of the Defense of Marriage Act was announced with House sponsors Rep. Steve Largent (R-OK) and Rep. Bob Barr (R-GA).

"This bill does two simple things," Nickles said. "First, the bill says marriage for federal purposes is the legal union between one man and one woman, and a spouse is a husband or wife of the opposite sex. Second, it allows each state to decide for itself about same-sex 'marriages' without other states' laws interfering.

"Most Americans will have a hard time understanding how our country has come to the point where such simple terms as 'marriage' and 'spouse' need to be defined in federal law. But under challenge from courts, lawsuits and an erosion of values, we find ourselves at the point today that this legislation is needed.

"This bill merely reaffirms what Americans have meant for more than 200 years when using the words 'marriage' and 'spouse'. This common sense legislation is important and timely because of actions currently underway at the state level to legalize marriages between persons of the same sex, which could have significant implications for other states and the federal government. This has extraordinary significance because the definition of the words 'marriage' and 'spouse' determine how hundreds of rules and regulations dealing with income taxes, immigration, and federal employee or health benefits are administered."

"This effort hardly seems to be news as it reaffirms current practice and policy. But surely somehow, somewhere, given today's climate, it will be. I believe the fact that it will be news -- that some may even consider this legislation controversial -- should make the average American stop and take stock of where we are as a country and where we want to go."

NEWS FROM . . .

CONGRESSMAN **JIM SENSENBRENNER** WISCONSIN - NINTH DISTRICT



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May 8, 1996
FOR IMMEDIATE RELEASE

Contact: Jeff Lungren
202-225-5101

SENSENBRENNER COSPONSORS BILL TO PROTECT STATES FROM SAME-SEX MARRIAGE RULING

(Washington, D.C.) -- Congressman JIM SENSENBRENNER (R-Menomonee Falls), an original cosponsor of the "Defense of Marriage Act," spoke today at a news conference introducing the bill, which liberates states from being required to recognize same-sex marriages licensed by other states. The bill is in reaction to a Hawaiian Supreme Court ruling that denying a marriage license to a same-sex couple violates the Hawaii State Constitution.

"This is an issue of states' rights. Individual states should remain able, free from constitutional compulsion, to determine whether they will legally recognize same-sex marriages. I don't think the State of Wisconsin should be forced to legally recognize same-sex marriages because a Hawaii State Court believes it violates the Hawaii State Constitution," stated Rep. Sensenbrenner.

The "Defense of Marriage Act" utilizes Congress's power to define the scope of the U.S. Constitution's Full Faith and Credit Clause by declaring individual states are not forced to recognize same-sex marriages from other states. Under the Full Faith and Credit Clause, states are generally required to grant binding legal status to other states' public records and judgments. Thus, a same-sex marriage recognized by Hawaii may have to be honored by all other states.

Without this bill, a federal court could force Wisconsin to recognize Hawaiian same-sex marriages and give marriage and spousal benefits to the couple as well.

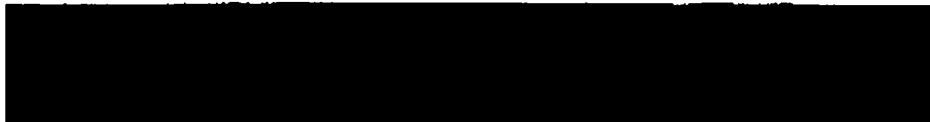
Furthermore, the federal government also could be forced to extend marriage and spousal benefits to same-sex couples. Although the word "marriage" appears hundreds of times in federal law, "marriage" is not defined. This bill, however, would define "marriage" for the purposes of federal law as a "legal union between one man and one woman as husband and wife," as Congress initially intended.

"If Wisconsin wants to change the traditional definition of marriage accepted for thousands of years, let the people and lawmakers of Wisconsin decide - not a judge in Hawaii," Rep. Sensenbrenner said.

...e withhold sanction of same-sex unions

.../ntr/nation/050896/nation13_18997.html

RETURN TO STATESIDE: NORMAL | LOW-GRAPHICS



Congressional bills withhold sanction of same-sex unions

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WASHINGTON (May 8, 1996 8:41 p.m. EDT) — State-by-state skirmishes over prospective marriage rights for lesbians and gay men escalated into a national battle Wednesday with the introduction in Congress of bills that would deny federal recognition of same-sex marriages if they were ever legalized.

The bills, introduced by Sen. Don Nickles, R-Okla., and Rep. Bob Barr, R-Ga., would also absolve states of the obligation to recognize same-sex marriages performed in other states.

That gets to the heart of conservatives' concern that if Hawaii sanctions same-sex marriage in the next few years -- which is considered a possibility because of a pending court case there -- gay couples from around the nation will fly to the islands to be wed legally and then return to their home states to claim the benefits of civil marriage.

"If some state wishes to recognize same-sex marriage, they can do so," Nickles said Wednesday before introducing the measure, known as the Defense of Marriage Act. But he said the bill would insure that "the 49 other states don't have to and the federal government does not have to."

Barr emphasized that the bill "does not outlaw same-sex marriage." But by withholding federal tax, welfare, pension, health, immigration and survivors' benefits, the bill would deny gay couples many of the civil advantages of marriage.

Critics of the legislation, including the American Civil Liberties Union, said Congress could not simply skirt Article 4 of the Constitution, which says that "full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state."

One opponent, Rep. Patricia Schroeder, D-Colo., said: "You can't amend the Constitution with a statute. Everybody knows that. This is just stirring the political waters and seeing what hate you can unleash."

But Barr said that Article 4 allowed Congress to prescribe "the effect" of the "full faith and credit" clause and that the article had never been interpreted as forcing one state to violate its own public policy in accommodating the laws of another. "Clearly, Congress has the jurisdiction to do what we're doing," he said.

Barr said he expected that the bill would move "very quickly" through the Judiciary Committee to the House floor for a vote. He said he anticipated strong bipartisan support, noting that the bill had two Democratic co-sponsors, Rep. Ike Skelton and Rep. Harold L. Volkmer, both of Missouri.

President Clinton is against same-sex marriage, his senior adviser, George Stephanopoulos, said Wednesday, but he could not say whether Clinton would sign the bill, since he has not seen it.

Even Mrs. Schroeder conceded that the bill's chances were "probably very good -- it's right before an election." But Daniel Zingale of the Human Rights Campaign, a national lesbian and gay political group, said he was "cautiously optimistic" that members of Congress would stand up against "this kind of gay bashing," even if they opposed same-sex marriage.

For several months, conservative lawmakers around the nation have been introducing bills to foreclose recognition of same-sex marriages. Alaska, Arizona, Georgia, Idaho, Kansas, Oklahoma, South Dakota and Utah have passed such measures, according to the Lambda Legal Defense and Education Fund, a lesbian and gay organization. Legislation has been defeated, withdrawn or vetoed in 15 states and is pending in eight others.

...s withhold sanction of same-sex unions

.../ntr/nation/050896/nation13_16997.html

In New York, state Sen. Serphin R. Maltese, R-Queens, introduced a bill on April 17 stating that "a marriage is absolutely void if contracted by two persons of the same sex, regardless of whether such marriage is recognized or solemnized in another jurisdiction." A companion bill in the Assembly was sponsored by Anthony S. Seminero, R-Queens.

In a memorandum, Maltese said: "Heterosexual relationships traditionally have worked best for the raising of healthy children. In this sense, homosexual relationships are unnatural unions in our society."

But Assemblywoman Deborah J. Glick, a Manhattan Democrat who is a lesbian, said: "We're entitled to the same access to civic institutions. We have not seen Senator Maltese or Assemblyman Seminero put forth a bill exempting gay men and lesbians in the state of New York from paying income taxes.

"Some people have been led to believe that their own marriage is somehow threatened if other people are allowed to marry," Ms. Glick said. "It's as if there's some finite pool of commitment and love in this world."

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Do you have some feedback for the Nando Times staff?

FOR - JOHN DIERKLE

Podlodowski resigns from Clinton campaign in protest as marriage battle escalates

by Tom Flint
Associate Editor

Seattle City Council member Tina Podlodowski resigned as co-chair of the Washington State Clinton campaign in protest when Clinton announced this week he intends to sign the Defense of Marriage Act (DOMA) to ban recognition of same-gender marriage in the United States.

The resignation is more than symbolic because Washington state is a critical state in Clinton's reelection, and the Clinton campaign was relying on Podlodowski to raise \$1 million for the campaign.

Podlodowski said she will still vote for Clinton in November because of the lack of alternatives, but that Gays and Lesbians can better use their time and energy in focusing on state races, taking back Olympia, and passing the Cal Anderson Gay/Lesbian Civil Rights bill in 1997.

Gay/Lesbian leaders across the country are furious with Clinton's endorsement of DOMA. The Human Rights Campaign canceled a scheduled appearance by Clinton staffer George Stephanopoulos in San Francisco. David Mixner, a long time friend and supporter of Bill Clinton, called the president's announcement "nauseating and appalling" and an "act of political cowardice."

John d'Entelle, National Gay and Lesbian Task Force policy director praised Podlodowski's action. "Tina's decision is a courageous and principled stand. Hon of the price Clinton will have to pay."

Gay/Lesbian Democrats are planning to raise the is-

sue of same-sex marriage on during floor debates at the Washington State Democratic Convention and the National Democratic Convention.

Last week White House spokesperson Mike McCurry announced that President Clinton is opposed to same-sex marriage and hinted the President would sign DOMA.

This week the White House confirmed that Clinton would indeed sign the bill into law saying: "The President would sign that bill if it was presented to him as it's currently written."

"The President doesn't have objections to the two things the bill does," McCurry said during a press conference on Wednesday.

"One, it says that no state is forced to recognize another state's codification of the union," McCurry said. "And then the second thing it does is it says that marriage is a union between a single man and a single woman."

Elizabeth Birch, Human Rights Campaign director said, "This is a capitulation to the religious political extremists. This bill is a ploy by the floundering Dole for President campaign to drive a wedge between the Gay community and President Clinton."

Birch called the bill "mean-spirited" and said "It is deeply disappointing that the president has chosen the politically expedient course of action rather than standing up to gratuitous Gay-baiting."

Melinda Paras, director of the Human Rights Campaign said Clinton's announcement is a slap in the face of Gay and Lesbian families" and that the President has "abandoned

his commitment to tolerance, compassion, and fairness and has also made a serious political misstep" in support of DOMA.

The following is an interview with Tina Podlodowski explaining her resignation from the Clinton campaign.

SGN: I understand you have resigned as the Co-chair of the Clinton Campaign?

TP: Yes. I've sent letters to the White House, to Marsha Scott, who is Deputy Assistant to the President on Gay/Lesbian affairs. I've sent letters to Chris Dodd, who's head of the Democratic National Committee, announcing my resignation.

Washington is a targeted state and is important to the Clinton campaign. They hope to sweep the state and raise about \$1 million here through the Democratic party.

The co-chairs were in charge of that. I was asked to be one of those people. I wanted to do that because I thought it was important to have a Gay/Lesbian seat at that table. But that seat doesn't mean very much, given the President's decision to sign the Defense of Marriage Act.

It is so discriminatory and so unnecessary, given the fact that Gay marriage isn't legal yet. This is just mean-spirited, and an obvious ploy to move the president to the right. I'm disgusted and disappointed with him.

SGN: Who have you communicated with?

TP: I've been talking to people in the Democratic National Committee and people in the White House, and people in the Human

Rights Campaign. Everyone is trying to sort-out what is going to happen, where do we go from here.

Mike McCurry's statement last week was a shock. The President did say in 1992 that he didn't support same-sex marriage. We said that's okay. We'll disagree on that issue. But there's a big difference when he comes out and actively supports discrimination against us.

SGN: Clinton originally said the federal government shouldn't interfere in marriage laws. He has changed his mind.

TP: This is dangerous because it violates the "full faith and credit" clause of the Constitution. Not only is this a mean-spirited federal bill that sets an extraordinary precedent, but it violates the constitution. The justice department is telling them DOMA does not violate the constitution, I think they're wrong.

The Supreme Court ruling this week said that Gays and Lesbians have equal protection under the law. I suspect that means the bans against same-sex marriage, like the one in Utah, are unconstitutional.

I think the DNC and the White House response is unacceptable. The DNC says they're sorry the President did this, and the White House is not answering our calls. They are just refusing to return calls.

SGN: As a leader in the Gay community, what is your resignation signaling to the community? Are you advising that we "abandon ship" and let Clinton sink? Should we set the election out of state and continue to support Clinton and pressure him to do the right thing?

TP: The message is what

REF. SEATTLE GAY NEWS 6/24

to give to people is call the White House and tell them to do the right thing. Call the Democratic party and demand they do the right thing.

I'm going to vote for President Clinton. Given the choice between Clinton and Dole—the choice is clear. But that doesn't mean I have to work for him and raise money for him, if he's not going to work for us.

I think we should focus our attention in the state of Washington where we can have a real effect with Hands Off Washington and the Privacy Fund. Instead of giving money to Clinton lets use that money to elect our people in Olympia and make sure we have a legislature that will pass the Gay/Lesbian civil rights bill in 1997, and that we will have a governor who will sign the bill.

That is the only choice we have right now, to turn our attention to the state races where we can make a real difference.

It is within our power. We have to get the people out to vote and raise money for our candidates. I am going to personally get involved with the Privacy Fund and Hands Off Washington.

I am also part of the Women's Leadership Forum of the Democratic National Committee and I will keep up my mantra between now and election day, reminding that what the President did is wrong.

SGN: The Democrats are taking the Gay/Lesbian vote for granted, as though they can count on our vote because we don't have any place else to go. The Republicans certainly aren't very friendly right now. Is your resignation a statement that the Democrats have to stop taking us for granted, that they have to deliver?

TP: It seems that we have to become more active than ever. We have to make sure

they pass the bill. We have to become even more involved. We have to get this done through party politics, by electing people who have made these commitments. I do think they're taking us for granted.

I'm trying to go to the Democratic National Convention if that works out. I want to be part of the floor fight over same-gender marriage to get that issue out there.

SGN: On another issue, do you have anything to say about the *Seattle Times* editorial against same-gender marriage?

TP: Yes I do. I've been complaining to the editorial board telling them how patronizing I thought it was—telling us to wait for twenty years for our civil rights. They have not responded to me. Nobody is answering their phones!

Follow Podlodowski's example and protest!

Contact The White House and/or the Democratic National Committee to express your views on President's support of DOMA:

- President Bill Clinton
Attn: Ray Martinez, fax: 202-456-7929.

Marsh Scott, Deputy Assistant to the President: phone (202) 456-6257; fax (202) 456-5558.

- Democratic National Committee—Donald Fowler, national chair, or Christopher Dodd, general chair; phone 202-863-8000; fax 202-863-8174. ▼

The Defense of Marriage Act Is Necessary Now

(May 7, 1996)

The Defense of Marriage Act (DOMA) is a modest proposal. In large measure, it merely restates current law. Some may ask, therefore, if it is necessary. The correct answer is . . . it's essential, and it's essential now. A couple of examples will illustrate why:

Same-Sex "Marriages" in Hawaii. Prompted by a decision of its State Supreme Court, *Baehr v. Lewin*, 852 P.2d 44, *reconsideration granted in part*, 875 P.2d 225 (Haw. 1993), the people of Hawaii are in the process of deciding if their State is going to sanction the legal union of persons of the same sex. After Hawaii's high court acted, the legislature amended Hawaii's law to make it unmistakably clear that marriage is available only between a man and a woman, Act of June 22, 1994 (Act 217, §3), amending Hawaii Revised Statutes §572-1, but the issue still thrives in the courts, and a lower court may hand down a decision later this year.

If Hawaii sanctions same-sex "marriage", the implications will be felt far beyond Hawaii. Because Article IV of the U.S. Constitution requires every State to give "full faith and credit" to the "public Acts, Records, and judicial Proceedings" of each State, the other 49 States will be faced with recognizing Hawaii's same-sex "marriages" even though no State now sanctions such relationships. The Federal Government will have similar concerns because it extends benefits and privileges to persons who are married, and generally it uses a State's definition of marriage.

DOMA. The Defense of Marriage Act does not affect the Hawaii situation. It does not tell Hawaii what it must do, and it does not tell the other 49 States what they must do. If Hawaii or another State decides to sanction same-sex "marriage", DOMA will not stand in the way.

The Defense of Marriage Act does two things: First, it allows each State to decide for itself what legal effect it will give to another State's same-sex "marriages". This initiative is based on Congress' power under Article IV, section 1 of the Constitution to say what "effect" one State's acts, records, and judicial proceedings shall have in another State. Second, DOMA defines the words "marriage" and "spouse" for purposes of Federal law. Since the word "marriage" appears in more than 800 sections of Federal statutes and regulations, and since the word "spouse" appears more than 3,100 times, a redefinition of "marriage" or "spouse" could have enormous implication for Federal law.

The following examples illustrating DOMA's importance are from Federal law, but similar situations can be found in every State.

Veterans' Benefits. In the 1970s, Richard Baker, a male, demanded increased veterans' educational benefits because he claimed James McConnell, another male, as his dependent spouse. When the Veterans Administration turned him down, he sued, and the outcome turned on a Federal statute (38 U.S.C. §103(c)) that made eligibility for the benefits

contingent on his State's definition of "spouse" and "marriage". The Federal courts rejected the claim for added benefits, *McConnell v. Nooner*, 547 F.2d 54 (8th Cir. 1976), because the Minnesota supreme court had already determined that marriage (which it defined as "the state of union between persons of the opposite sex") was not available to persons of the same sex. *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971), *dismissed for want of a substantial federal question*, 409 U.S. 810 (1972).

If Hawaii changes its law, a *Baker v. Nelson*-type case based on Hawaiian law will create genuine risks to the Federal Government's consistent policy. The Defense of Marriage Act anticipates future demands such as that made in the veterans' benefits case, and it reasserts that the words "marriage" and "spouse" will continue to mean what they have traditionally meant.

Family and Medical Leave Act. The Family and Medical Leave Act of 1993 (FMLA), Pub. L. 103-3, 107 Stat. 6, requires that employees be given unpaid leave to care for a "spouse" who is ill.

Shortly before passage of the Act in the Senate, Senator Nickles attached an amendment defining "spouse" as "a husband or wife, as the case may be." That amendment proved essential when the regulations were written.

When the Secretary of Labor published his proposed regulations, he noted that a "considerable number of comments" were received urging that the definition of "spouse" "be broadened to include domestic partners in committed relationships, including same-sex relationships." However, the Nickles amendment precluded him from adopting an expansive definition of "spouse". The Secretary then quoted the Senator's remarks on the floor:

"* * * This is the same definition [of 'spouse'] that appears in Title 10 of the United States Code (10 U.S.C. 101). Under this amendment, an employer would be required to give an eligible female employee unpaid leave to care for her husband and an eligible male employee unpaid leave to care for his wife. No employer would be required to grant an eligible employee unpaid leave to care for an unmarried domestic partner. This simple definition will spare us a great deal of costly and unnecessary litigation. Without this amendment, the bill would invite lawsuits by workers who unsuccessfully seek leave on the basis of the illness of their unmarried adult companions."

"Accordingly," continued the Secretary, "given this legislative history, the recommendations that the definition of 'spouse' be broadened cannot be adopted." 60 Federal Register 2180, 2191-92 (Jan. 6, 1995) (emphasis added).

The Family and Medical Leave Act is an excellent example of how a little anticipation in the Legislative Branch can prevent a far-reaching, even revolutionary, change in American law.

[Prepared by the Office of Senator Don Nickles]

SUMMARY AND ANALYSIS
DEFENSE OF MARRIAGE ACT
AS INTRODUCED ON MAY 7, 1996
BY

REPS. BOB BARR (GA), STEVE LARGENT (OK), JIM SENSENBRENNER (WI), SUE
MYRICK (NC), ED BRYANT (TN), BILL EMERSON (MO), HAROLD VOLKMER (MO),
IKE SKELTON (MO)

The Defense of Marriage Act (DOMA) does two things. First, it provides that no State shall be required to give effect to a law of any other State with respect to a same-sex "marriage." Second, it defines the words "marriage" and "spouse" for purposes of Federal law.

The first substantive section of the bill is an exercise of Congress' power under the "Effect" clause of Article IV, section 1 of the Constitution (the Full Faith and Credit Clause) to allow each State (or other political jurisdiction) to decide for itself whether it wants to grant legal status to same-sex "marriage." This provision is necessary in light of the possibility of Hawaii giving sanction to same-sex "marriage" under its state law, as interpreted by its state courts, and other states being placed in the position of having to give "full faith and credit" to Hawaii's interpretation of what constitutes "marriage." Although so-called "conflicts of law" principles do not necessarily compel such a result, approximately 30 states of the union are sufficiently alarmed by such a prospect to have initiated legislative efforts to defend themselves against any compulsion to acknowledge same-sex "marriage."

This is a problem most properly resolved by invoking Congress' authority under the Constitution to declare what "effect" one State's acts, records, and judicial proceedings shall have in another State. Congress has invoked this authority recently on two other occasions: in the Parental Kidnaping Prevention Act of 1980, which required each State to enforce child custody determinations made by the home State if made consistently with the provisions of the Act; and in the Full Faith and Credit for Child Support Order Act of 1994, which required each State to enforce child support orders made by the child's State if made consistently with the provisions of the Act.

The second substantive section of the bill amends the U. S. Code to make explicit what has been understood under federal law for over 200 years: that a marriage is the legal union of a man and a woman as husband and wife, and a spouse is a husband or wife of the opposite sex. The DOMA definition of marriage is derived most immediately from a Washington state case from 1974, Singer v. Hara, which is included in the 1990 edition of Black's Law Dictionary. More than a century ago, the U. S. Supreme Court spoke of the "union for life of one man and one woman in the holy estate of matrimony." Murphy v. Ramsey, 114 U.S. 15, 45 (1885).

DOMA is not meant to affect the definition of "spouse" (which under the Social Security law, for example, runs to dozens of lines). It ensures that whatever definition of "spouse" may be used in Federal law, the word refers only to a person of the opposite sex.



FAX from the office of
CONGRESSMAN GERRY E. STUDDS
237 Cannon Building
Washington, D.C.

Date: 5-9-96

To: Eric Fanning

From: Mark Agnew

Number of pages which follow:

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[DISCUSSION DRAFT]

May 2, 1998

104TH CONGRESS
2D Session**H. R. _____**

IN THE HOUSE OF REPRESENTATIVES

Mr. BARR of Georgia (for himself, Mr. LARGENT, Mr. SCHWARTZ, and
) introduced the following bill, which was referred to the Committee
on _____

A BILL

To define and protect the institution of marriage.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 **SECTION 1. SHORT TITLE.**
- 4 This Act may be cited as the "Defense of Marriage
- 5 Act".

May 2, 1998 (8:35 a.m.)

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H.L.C.

2

1 **SEC. 2. DEFINITION OF MARRIAGE.**

2 (a) **IN GENERAL.**—Chapter 1 of title 1, United
3 States Code, is amended by adding at the end the follow-
4 ing:

5 **"§ 7. Definition of 'marriage' and 'spouse'**

6 "In determining the meaning of any Act of Congress,
7 or of any ruling, regulation, or interpretation of the var-
8 ious administrative bureaus and agencies of the United
9 States, the word 'marriage' means only a legal union be-
10 tween one man and one woman as husband and wife, and
11 the word 'spouse' refers only to a person of the opposite
12 sex who is a husband or a wife."

13 (b) **CLERICAL AMENDMENT.**—The table of sections
14 at the beginning of chapter 1 of title 1, United States
15 Code, is amended by inserting after the item relating to
16 section 6 the following new item:

"7. Definition of 'marriage' and 'spouse'."

17 **SEC. 3. POWERS RESERVED TO THE STATES.**

18 (a) **IN GENERAL.**—Chapter 115 of title 28, United
19 States Code, is amended by adding after section 1798B
20 the following:

21 **"§ 1798C. Certain acts, records, and proceedings and**
22 **the effect thereof**

23 "No State, territory, or possession of the United
24 States, or Indian tribe, shall be required to give effect to
25 any public act, record, or [judicial proceeding] of any other

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HLC

§

1 State, territory, possession, or tribe respecting a relation-
2 ship between persons of the same sex that is treated as
3 a marriage under the laws of such other State, territory,
4 possession, or tribe, or a right or claim arising from such
5 relationship."

6 (b) CLERICAL AMENDMENT.—The table of sections
7 at the beginning of chapter 115 of title 28, United States
8 Code, is amended by inserting after the item relating to
9 section 1738B the following new item:

"1738C. Certain acts, records, and proceedings and the effect thereof."

May 2, 1996 (4:00 p.m.)

The Defense of Marriage Act

(May 7, 1996)

The Defense of Marriage Act (DOMA) is short, and it does just two things:

- It provides that no State *shall be required* to give effect to a law of any other State with respect to a same-sex "marriage".
- It defines the words "marriage" and "spouse" for purposes of Federal law.

Section 1 of the bill gives its title, the "Defense of Marriage Act".

Section 2 allows each State (or other political jurisdiction) to *decide for itself* with respect to same-sex "marriage". Section 2 of the bill will add a new section to Title 28, United States Code, as follows:

"Sec. 1738C. Certain acts, records, and proceedings and the effect thereof

"No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship."

This section of the bill is an exercise of Congress' powers under the "Effect" clause of Article IV, section 1 of the Constitution, which reads, "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, *and the Effect thereof.*" [Emphasis added.]

Precedents. Congress has legislated before with respect to full faith and credit. The general provisions, 28 U.S.C. §§1738 & 1739, go back to the earliest days of the Republic. Act of May 26, 1790, 1 Statutes at Large, chap. XI. More recently, Congress has reinvigorated its powers under Article IV of the Constitution by enacting—

- the Parental Kidnaping Prevention Act of 1980, Public Law 96-611, 94 Stat. 3569, codified at 28 U.S.C. §1738A (each State required to enforce child custody determinations made by home State if made consistently with the provisions of the Act);
- the Full Faith and Credit for Child Support Orders Act [of 1994], Pub. L. 103-383, 108 Stat. 4064, codified at 28 U.S.C. §1738B (each State required to enforce child support orders made by the child's State if made consistently with the provisions of the Act); and

- the Safe Homes for Women Act of 1994, Pub. L. 103-322, title IV, §40221(a), 108 Stat. 1930, codified at 18 U.S.C. §2265 (full faith and credit to be given to protective orders issued against a spouse or intimate partner with respect to domestic violence).

Section 3 contains definitions. It will amend Chapter 1 of Title 1 of the United States Code by adding the following new section:

"§7. Definition of 'marriage' and 'spouse'

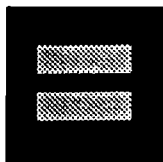
"In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."

Section 3 merely restates the current understanding. The text reaffirms what Congress and the executive agencies have meant for 200 years when using the words "marriage" and "spouse" — a marriage is the legal union of a man and a woman as husband and wife, and a spouse is a husband or wife of the opposite sex.

Most of section 3 borrows directly from the current United States Code. The introductory phrases are taken from sections 1 and 6 of Title 1, and the definition of spouse is taken from paragraph 31 of section 101, Title 31. The current Code does not contain a definition of marriage, presumably because Americans have known what it means. Therefore, the definition of marriage in DOMA is derived most immediately from a Washington State case, *Singer v. Hara*, 522 P.2d 1187, 1191-92 (Wash. App. 1974), and this definition has now found its way into *Black's Law Dictionary* (6th ed. 1990). There are many similar definitions, both in the dictionaries and in the cases. For example, more than a century ago the U.S. Supreme Court spoke of the "union for life of one man and one woman in the holy estate of matrimony." *Murphy v. Ramsey*, 114 U.S. 15, 45 (1885).

Note that "marriage" is *defined*, but the word "spouse" is not *defined* but *refers to*. This distinction is used because the word "spouse" is *defined* at several places in the Code to include substantive meaning (e.g., Title II of the Social Security Act, 42 U.S.C. §§416(a), (b), & (f), contains a definition of "spouse" that runs to dozens of lines), and DOMA is not meant to affect such substantive *definitions*. DOMA is meant to ensure that whatever substantive definition of "spouse" may be used in Federal law, the word *refers only to* a person of the opposite sex.

[Prepared by the Office of Senator Don Nickles]



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News

FOR IMMEDIATE RELEASE
Wednesday, May 8, 1996

REPORT EXPOSES EXTREMISTS' ORCHESTRATION OF ANTI-GAY MARRIAGE LEGISLATION

'An Election-Year Strategy to Score Points Against Gay Men and Lesbians,' HRC Says

WASHINGTON -- Religious political extremists have orchestrated the introduction of anti-gay marriage bills in at least 33 state legislatures and the U.S. Congress in an election-year strategy to score political points against gay men and lesbians, according to the Human Rights Campaign.

HRC, the largest national lesbian and gay political organization, issued a report today on gay marriage to coincide with the unveiling of the first federal bill to ban same-sex marriage. That measure is being sponsored by Reps. Bob Barr, R-Ga., and Steve Largent, R-Okla.

"This is a calculated national assault on the lives of lesbian and gay people," HRC Executive Director Elizabeth Birch said at a news conference today. "Religious political extremists are using this issue as an election year baseball bat to bash gay Americans and score political points. These elected leaders are supposed to be focusing on the business of the country. Don't they have anything better to do than fixate on divisive social issues?"

Daniel Zingale, HRC's political director, noted that the bills are unnecessary and may be unconstitutional.

"All these bills are being positioned as pre-emptive strikes against the possibility that

the state of Hawaii may soon legalize same-sex marriage," Zingale said. "However, Hawaii is unlikely to approve same-sex marriage for at least two years, so these states are legislating against a non-existent institution. Plus, they may violate the 'full faith and credit clause' of the U.S. Constitution."

HRC released copies of its report, "Wedded to Intolerance," which exposes the false and defamatory rhetoric being used by religious political organizations as they spread these bills from statehouse to statehouse, and attempt to inject this issue into the presidential campaign. To date, eight states have passed laws that would ban marriage between people of the same sex. They are: Alaska, Arizona, Georgia, Idaho, Kansas, Oklahoma, South Dakota and Utah. Anti-gay marriage legislation remains pending in eight states, and measures were defeated, withdrawn or killed in 17 states.

Among the report's key findings is that the overall anti-gay marriage strategy was hatched at a meeting in January of religious political extremists. That meeting included many of the same religious political leaders who were involved in crafting and introducing anti-gay ballot initiatives.

"Since most of the discriminatory ballot

initiatives failed, these extremists went hunting for a new way to scapegoat gay men and lesbians," Birch said. "This is just a new manifestation of the same hateful tactics they have used in the past."

Also, Jay Sekulow, an attorney affiliated with Pat Robertson's Christian Coalition, has admitted in several public forums that his mission this year is to see anti-gay marriage bills introduced in all 50 state legislatures, according to the report.

Finally, HRC found that coordinated messages have emerged in the nationwide campaign to pass laws restricting marriage.

A primary tactic is to mischaracterize gay marriage as an attack on heterosexuals and on traditional marriage and family.

A secondary message is to claim that legalizing gay marriage opens the door to absurd pairings or multi-person unions.

A third line of argument tries to link gay marriage to the spread of HIV and AIDS and plays upon the unfounded stereotype that gay people are incapable of long-term relationships.

The Human Rights Campaign is the largest national lesbian and gay political organization, with members throughout the country. It effectively lobbies Congress, provides campaign support and educates the public to ensure that lesbian and gay Americans can be open, honest and safe at home, at work and in the community.

the Charleston Gazette

The State Newspaper

An Independent Newspaper Founded in 1873

Hating gays Dole seeking votes

AS A SURE-FIRE way to grab votes in the November election, GOP presidential contender Bob Dole is pandering to the hostility millions of Americans feel toward homosexuals.

Sen. Dole, R-Kansas, introduced a bill in the U.S. Senate to outlaw gay marriages — one of his final acts before his surprise resignation from the U.S. Senate. It was a clear attempt to cash in on America's prejudice against "deviates."

Appealing to bigotry is a tried-and-true way to gain political power. In segregation days, Dixie politicians won election by playing upon white hostility to blacks. In Germany in the 1930s, Hitler rose by exploiting popular dislike for Jews. Denouncing minorities to get votes is known as demagoguery.

Human rights evolve slowly. Society takes a while to accept changes. Centuries ago, homosexuals were put to death. A generation ago, they were locked in prison. Gradually, grudgingly, society came to tolerate the notion of consenting gay adults living together as committed couples, without marriage.

A generation from now, gay marriages probably will be common and hardly noticed. By then, courts likely will have established that all people have a right to marry — not just "straight" people. But today, old prejudice remains strong, especially in the so-called "religious right."

Dole is far behind in campaign polls. He knows that his only chance for election will be to capitalize on an emotional topic that makes him seem the champion of the majority, and ranks President Clinton with a hated minority.

"Dole intends to wage cultural war on Bill Clinton, and to use homophobia as one of his main weapons," says John Helleman, a columnist for *Wired* mag-

It's disheartening to watch Republicans try to win the November election by demonizing the small ratio of Americans who have a different sexual orientation.

azine.

Other right-wingers in Congress are joining the fray. Rep. Robert Dornan, R-Calif. — who once came to Charleston to help lead the historic fundamentalist uprising against "godless" textbooks — has introduced another bill to ban gays from the military.

Candace Gingrich, the gay half-sister of Rep. Newt Gingrich, R-Ga., held a news conference Tuesday and said:

"I am here today to simply call on my brother to stop this congressional gay-bashing — before intolerance becomes the legacy of the 104th Congress."

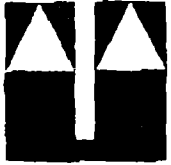
She added:

"Sen. Dole is taking the bait of religious political extremists who are trying to inject this anti-marriage issue into the heat of the presidential campaign."

White House press secretary Mike McCurry said Tuesday that Republicans hope to create a "wedge issue" that will "provoke hostility toward gays and lesbians" in the 1996 campaign.

It's disheartening to watch Republicans try to win the November election by demonizing the small ratio of Americans who didn't ask to be different, but somehow acquired a variant sexual orientation.

We wish this issue could be left to courts to decide — but that's too much to ask in an election year, when prejudice can swing many votes.



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FROM: Evan Wolfson
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Lambda Legal Defense & Education Fund

Michael F. Melcher
Cooperating Attorney¹

RE: Constitutional and Legal Defects in H.R.
3396 and S. 1740, the Proposed Federal
Legislation on Marriage and the
Constitution

DATE: May 13, 1996

This is a preliminary memorandum on the possible legal ramifications of current proposals to have the federal government bar and subvert the recognition of selected lawful marriages, something never done before in U.S. history.²

SUMMARY

The proposed bills (H.R. 3396 and S.1740) have two key provisions: (1) exempting interstate recognition of selected lawful marriages from the constitutional command of full faith and credit, and (2) creating a federal definition of marriage so as to distinguish among lawful marriages. The attempt to circumvent the Constitution's provision for interstate full faith and credit, and the unprecedented federal intrusion into the law of marriage, get the role of the federal government wrong in both directions. If passed, the bills would create a "house divided" in which many Americans would not know from day to day, state to state, or agency to agency, whether they are legally married or not. The Constitution does not permit this violence to its federal-state balance, or the injury these bills would inflict upon real-life, lawfully married couples.

¹ Associate, Davis Polk & Wardwell.

² This memorandum should be read together with the Lambda Legal Defense & Education Fund "Summary of Legal Issues" (March 20, 1996) (available from Lambda).

I. THE ATTEMPT TO CIRCUMVENT FULL FAITH AND CREDIT IS UNPRECEDENTED, UNWISE, AND UNCONSTITUTIONAL.

"No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship".

- H.R. 3396

The Constitution contains several federalist provisions intended to make the United States one nation. One such provision is Article IV, section 1, the "full faith and credit" clause.³ The "very purpose" of the full faith and credit clause was "to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation."⁴ As the Supreme Court has explained, it is a Constitution we are expounding -- a constitution which in no small measure brings separate sovereign states into an integrated whole through the medium of the full faith and credit clause."⁵

The full faith and credit clause is intended to promote national unity, to assure that people (including lawfully married couples) can move throughout the country without being stripped of their legal rights, and to help Americans avoid repeated and burdensome litigation and relitigation of settled issues or established legal status.⁶ As Supreme Court Justice Robert Jackson stated in 1945, "the policy ultimately to be served in application of

³ Article IV, section 1 of the Constitution states that "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

⁴ Williams v. North Carolina, 317 U.S. 287, 295 (1942), quoting Milwaukee County v. White Co., 296 U.S. 268, 276-277.

⁵ Williams, 317 U.S. at 302-303.

⁶ Sutton v. Lieb, 342 U.S. 402 (1952).

the clause is the federal policy of 'a more perfect union' of our legal systems."⁷

- A. Because Congress does not have the power to limit full faith and credit, the proposed statutes are unconstitutional.

The Constitution provides a role for Congress in assuring the full faith and credit to be granted by states to the acts, records and judicial proceedings of sister states.⁸ Although legal commentators and Supreme Court justices have occasionally mentioned this power in passing, Congress has rarely -- indeed, virtually never -- acted on its authority. In fact, the two principal pieces of implementing legislation date back to 1790 and 1804.

The first provides for ways to authenticate acts, records and judicial proceedings, and repeats the constitutional injunction that such acts, records and judicial proceedings of the states are entitled to full faith and credit in other states, as well as by the federal government.⁹ The second provides methods of authenticating non-judicial records.¹⁰ Each served a true "full faith and credit" purpose, i.e., promoting and facilitating uniformity.¹¹

⁷ Justice Robert Jackson, "Full Faith and Credit -- the Lawyer's Clause of the Constitution," 45 Columbia L. Rev. 1, 27 (1945).

⁸ "Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof." Art. IV, section 1.

⁹ 28 U.S.C.A. § 1738. Prior to a 1948 amendment, the statute addressed full faith and credit only as regards records and judicial proceedings.

¹⁰ 28 U.S.C.A. § 1739.

¹¹ Professor Lea Brilmayer explains that the proper analysis is not whether a bill in any respect limits "faith and credit," but whether the purpose is to promote faith and credit. In her words, if the result of an enactment would be to leave only a "proper subset" of acts, records, and judgments receiving full faith and credit (rather than having the effect of according faith and credit to X, while leaving out Y), then it is unconstitutional; such an enactment would not serve the purpose of giving effect to full faith and credit, but rather would be an attempt to erode full faith and credit without a net gain in uniformity. Such an enactment -- and the proposed statutes

Since 1804, Congress has passed only two pieces of implementing legislation: 28 U.S.C.A. § 1739A, the Parental Kidnapping Prevention Act of 1980 ("PKPA"), which provides that custody determinations of a state shall be enforced in different states, and 28 U.S.C.A. § 1738B, "Full Faith and Credit for Child Support Orders" (1994). Although Senator Nickles, the sponsor of S.1740, suggests that the PKPA gives a precedent for his bill, neither the 1980 and 1994 laws, nor the original enactments, purported to limit full faith and credit; to the contrary, each of these statutes reinforced or expanded the faith and credit given to state law.¹²

The plain meaning of the constitutional provision itself is that Congress can enact "supplementary and enforcing" legislation, but only where it has an actual and legitimate "full faith and credit" purpose as a whole.¹³ Congress has never before sought to abridge the mandate of the full faith and credit clause, and, in fact, lacks the power to do so. Congress can neither circumvent full faith and credit, nor attempt to make the second sentence of Article IV, section 1 swallow the clear and central mandate of the first sentence.¹⁴

are the perfect example -- would be an improper attempt by Congress to poach on another substantive area of law (i.e. domestic relations) in the guise of enforcing full faith and credit.

¹² Subsequent case law has established that the PKPA neither limits full faith and credit, nor establishes any kind of federal cause of action in child custody; rather, the PKPA facilitates parties' enforcement of judgments from state to state. Senator Nickles's ability to cite only the PKPA as a "precedent" for his proposed legislation thus in fact further underscores its unconstitutionality.

¹³ Corwin, "The Full Faith and Credit Clause," 81 U. Penn. L. Rev. 371, 373-74 (1933).

¹⁴ See Freund, "Chief Justice Stone and the Conflict of Laws," 59 Harv. L. Rev. 1210, 1229-30 (1946). See also Thomas v. Washington Gas Light Co., 448 U.S. 261, 272 n.18 (1980) ("while Congress clearly has the power to increase the measure of faith and credit that a State must accord to the laws or judgments of another State, there is at least some question whether Congress may cut back on the measure of faith and credit required by a decision of this Court.").

Moreover, even under Brilmayer's more limited, less stringent formulation, it is clear that Congress lacks power to do what it is seeking to do here: arbitrarily abolish

Prior to the bills introduced last week, nearly all proposals for applying the powers authorized in the Constitution have focused on expanding or assuring faith and credit.¹⁵ The occasional political effort to introduce legislation that would have limited full faith and credit (arising, historically, most often during past controversy over civil divorce) have consistently failed.¹⁶

Because of this clear understanding throughout our history, and thanks to Congress's proper constitutional restraint (at least prior to the proposed bills), the Supreme Court has never had to scrutinize Congress's power under the clause.¹⁷ Called upon to review the constitutionality of legislation such as that proposed here, the Supreme Court would undoubtedly strike it down as inconsistent with the spirit, plain meaning, intent, and history of the Constitution.

In short, the proposed statute represents an attempt to subvert the requirements of the full faith and credit clause. Any such change in the meaning of the Constitution requires a constitutional amendment, not an abrupt election-year act of Congress.¹⁸

faith and credit for a subset of lawful acts, records, and judicial proceedings, without any legitimate federalist purpose of uniformity.

¹⁵ See, e.g., Cook, "Powers of Congress under the Full Faith and Credit Clause," 28 Yale L.J. 421 (1918-19). As outlined by Professor Cook, Congress has the potential power to provide (i) service in other states of state process in civil suits; (ii) the direct enforcement of state judgments in other states; (iii) for legislation compelling states to enforce judgments of other states by rendering new judgments; and (iv) compulsory recognition by the states of rights created by legislative acts of other states. *Id.* at 428-434.

¹⁶ See note 27, *infra*.

¹⁷ See, e.g., *Williams*, 317 U.S. at 303; *Scherrer v. Scherrer*, 334 U.S. 343 (1948).

¹⁸ The bills also run afoul of the requirement that Congress's enactments in furtherance of the full faith and credit command be in the form of "general" laws. The fact that the bills single out marriage, their facial discrimination based on sex, and their impact and purpose in creating a disadvantaged caste of lawfully-married people based on their sexual orientation all make them far from "general." An additional constitutional defects arises from

- B. Because the Supreme Court has already clarified that the mandate of full faith and credit extends beyond the scope of the proposed statutes, they are unconstitutional.

The full faith and credit clause is self-executing.¹⁹ Congress obviously may not rewrite the clause and its reach without a constitutional amendment, nor is its power exclusive; it is shared with the Supreme Court, and bounded by Court holdings.²⁰ Although the Supreme Court has not yet passed on the manner in which marriages per se are entitled to full faith and credit,²¹ the proposed

the the vagueness of the proposals, targeting any "act, record, or judicial proceeding ... respecting a relationship between persons of same sex that is treated as a marriage... or a right or claim arising from such relationship." Yet another defect lies in their potential interference with rights of Indian tribes and native Hawaiians established by treaty and customary law.

¹⁹ Justice Jackson, 45 Columbia L. Rev. at 11.

²⁰ See, e.g. Thomas, 448 U.S. at 272 n.18 ("it is quite clear that Congress' power in this area is not exclusive, for this Court has given effect to the Clause beyond that required by implementing legislation").

²¹ Lawfully-performed civil marriages qualify for recognition under each prong of the Full Faith and Credit Clause, partaking as they do of each of elements of the three enumerated categories (public acts, records, and judicial proceedings):

(1) The creation of a marriage is a "public Act" both because it occurs pursuant to a statutory scheme, and is performed in most states by a public or legally-designated official, and because the marriage is itself an act -- a res, a thing or status itself created by a state (which thus acts);

(2) The marriage certificate is the "Record" of that res, recording (with delineated legal effect) that a marriage has been validly contracted, that the spouses have met the qualifications of the applicable marriage statutes, that they have lawfully consented, and that they have duly become legally "married." (Along with marriage certificates, analogous public records of even lesser consequence, ranging from birth certificates to automobile titles, have been accorded full faith and credit); and

statutes would contradict standards set by a host of Supreme Court rulings on the reach of the full faith and credit clause.²²

For example, the bills subvert the Court's longstanding holdings on faith and credit for judgments, the most frequent context for issues of faith and credit in matrimonial relations. The Supreme Court first recognized full faith and credit for judgments in 1813, Mills v. Duryee, 7 Cranch 481 (U.S. 1813), and in the succeeding 183 years has regularly restated its position. States have virtually no discretion to deny full faith and credit to judgments. Restatement Second Conflict of Laws, § 103. Cases have established that even judgments arising from causes of action that could not be brought in the forum state must be recognized.²³ The Court has again and again clarified that the clause has this reach.

And yet, even in terms of judgments alone, the proposed statute would upset the rule of law, repeated in scores of decisions, that judgments are valid everywhere. The proposed statute, therefore, is unconstitutional because, in this case, the Congress is not simply seeking to reverse a Supreme Court interpretation of a statute, but rather the Supreme Court's long-settled interpretation of the Constitution itself, which can only be changed by amendment.

Furthermore, the Court has made clear that, when asked to recognize an unfulfilled or general right or duty

(3) Finally, celebrating a marriage is arguably a "judicial proceeding" in at least those sixteen states in which judges, court clerks, or justices of the peace officiate. Perhaps more important, marriage partakes of important elements of a "judgment," the state "act" or "judicial Proceeding" that has received with least question the greatest "full faith and credit" from the Supreme Court.

No court, including the Supreme Court, has held to the contrary; several courts have so held. For a fuller discussion and underlying authorities, see Lambda Legal Defense & Education Fund "Summary of Legal Issues" (March 20, 1996) (available from Lambda).

²² See, e.g., Thomas, 448 U.S. at 258 n. 18. See also Reynolds, "The Iron Law of Full Faith and Credit," 53 Maryland L.Rev. 412 (1994).

²³ See, e.g., Fauntleroy v. Lum, 210 U.S. 230, 237 (1908); Williams, 317 U.S. at 294; Scherrer, 334 U.S. at 354. See also Restatement Second Conflicts of Laws, § 117.

based on another state's statute or case law, states may weigh competing interests before deciding which rule of law to apply. But, when state acts, records, or judicial proceedings have been applied to the facts of a particular case to determine the rights, obligations, or status of specific parties, the other states must give those acts, records, or proceedings the same effect they would have at home. Once the status has been created, the judgment rendered, the record recorded, and rights established, the full faith and credit clause makes other state's legal regimes immaterial (because they are not at issue). What is then at stake is the protection of the partners, their expectations, their res, and the acts taken in reliance on state law by third parties.²⁴

Since a civil marriage -- whether as a certificate, an act, or a judgment-like res -- falls into the category of such adjudications or creations, there is no appropriate policy "balancing" regarding recognition. Full faith and credit must be granted under the clause itself, and Congress may not vitiate that central command, short of an amendment to the Constitution itself.²⁵

²⁴ See, e.g., *Hughes v. Fetter*, 341 U.S. 609, 611 (1951). The issue in *Hughes* was whether Wisconsin could under its wrongful death statute deny a cause of action to the estate of an Illinois descendant, where Illinois law would have permitted the suit. The court noted that "if the same cause of action had previously been reduced to judgment, the full faith and credit clause would compel the courts of Wisconsin to entertain an action to enforce it" without balancing any policy interests. 341 U.S. at 612 n.4.

²⁵ Even were the Supreme Court ultimately to conclude that civil marriages do not constitute acts, records, or judicial proceedings, and are not otherwise subject to full faith and credit, it is clear that Congress cannot unilaterally attempt to usurp that determination by an end-run around the full faith and credit clause (especially not through a selective measure that on its face discriminates between lawful marriages).

Ironically, the religious-political extremist groups behind these bills are busily pushing anti-marriage-recognition legislation in state legislatures, presumably believing that they already have all the authority they need under current faith and credit law. See "Wedded to Intolerance: Extremists Lead Nationwide Assault on the Lives of Lesbian and Gay People," Human Rights Campaign, May 8, 1996 (documenting organized effort behind the anti-marriage backlash legislation proposed in Congress and the states).

- C. Because the proposed statutes would nationalize domestic relations, shattering historical precedent, they are unconstitutional.

Without exception, domestic relations has been a matter of state, not federal, concern and control since the founding of the Republic.²⁶ It is well established that "there is no federal law of domestic relations." De Sylva v. Ballentine, 351 U.S. 570, 580 (1956). See also In re Burrus, 136 U.S. 586 (1890) ("The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States."). See also Section II (1), infra.

As a result, Congress has never before passed legislation dealing purely with domestic relations issues, especially marriage. Federal courts maintain no jurisdiction over domestic relations issues. For example, despite similar political agitation and congressional grandstanding at other points in our nation's history, there is no federal divorce law. Nor, even with the PKPA cited by Senator Nickles as a "precedent" for his proposed bill, has there been any attempt to create federal jurisdiction over child custody.

In fact, prior to this election year, every attempt to nationalize domestic relations, whether through constitutional amendment or act of Congress, has been rebuffed as an unconstitutional or ill-advised intrusion of the federal government into an area left to the states.²⁷

To date, bills purporting to deny recognition to prospective lawful marriages of same-sex couples have been adopted in eight states, and rejected in seventeen, with several more still pending.

²⁶ Scherrer, 334 U.S. at 362, (Frankfurter, J., dissenting); Ankenbrandt v. Richards, 112 S.Ct. 2206 (1992) (no subject matter jurisdiction in federal courts for domestic relations cases).

²⁷ As former Justice Frankfurter explained in his Scherrer dissent, 334 U.S. 343, the first constitutional amendment to allow Congress to have authority over domestic relations was proposed (and rejected) in 1884. Through 1948, seventy similar amendments were proposed, prompted by an analogous national controversy over whether to allow civil divorce. Supra, at note 16. All such proposals failed, and, after a period of needless (and untenable) uncertainty, in which Americans literally did not know from

In this area, the proper role of the federal government is simply to permit people and their families to travel, and businesses and others to function, throughout the country - with certainty and respect, and without discrimination.

The proposed statutes thus have radical implications far more vast even than stymieing interstate recognition of same-sex couples' lawful civil marriages. Under the guise of protecting states' interests, the proposed statutes would infringe upon state sovereignty and effectively transfer broad power to the federal government. Departing from the restraint it has shown since its last significant full faith and credit legislation in 1804, Congress would be setting a precedent; it could easily act again to disregard the interest of particular states by setting forth criteria for full faith and credit that would have implications in any number of areas -- e.g., divorce, child custody, adoption, gambling and abortion.

There is no guarantee that such future statutes would have effects that are either "conservative" or "liberal;" rather, they would be inherently political and would effectively transfer power from the states to Congress.²⁹ This unprecedented transfer of power to the federal government would be a dangerous, and especially ironic, legacy of the self-proclaimed "pro-local-control" 104th Congress.

- D. The proposed statutes would make existing law inconsistent and disorderly, creating an untenable legal and practical situation for lawfully-married couples and others.

The proposed statutes would clash with and contradict existing legislation. Although the existing statutes that implement full faith and credit do not refer directly to marriage, marriage and the incidents thereof are entitled to full faith and credit as acts, records or as a

state to state whether they were legally married (or divorced) or not, the U.S. Supreme Court clarified that lawful determinations as to marital status, through divorce, must be respected throughout the country. E.g., *Cook v. Cook*, 342 U.S. 126 (1951).

²⁹ Faith and credit is a two-way street. Where faith and credit is weak, states are not required to recognize the law of other states but at the same time find it difficult to have their own laws respected elsewhere. Where faith and credit is strong, states must recognize the law of other states but are also more likely to have their own law respected.

judgment-like res. For example, if Pat and Chris are married in Hawaii, they can be divorced in Hawaii, but also in any other state. Divorce is a judgment that is already granted full faith and credit.²⁹ Determinations on adoption, child custody and child support, all of which are as relevant to same-sex married couples as to other married couples, are also judgments that are already granted full faith in credit. Inheritance law adjudicates judgments. Authenticated birth certificates are considered public records to which full faith and credit must be given. The proposed statutes would call all of these into question.

The result of limiting full faith and credit pursuant to the proposed statutes would thus be a legal and practical nightmare, whereby at least some Americans would in effect have to get a "marriage visa" stamped when they cross a state border, or where they (or their parents) would be simultaneously married and unmarried in different reaches of the country. Such a situation is simply untenable, both in terms of federalism and the meaning and expectations around marriage, itself a fundamental right.

For example, imagine if married couples had to worry if their right to inherit from each other remained valid, or their right to make medical decisions for each other (or their children) would be respected, or their family health plan was in force -- merely because they chose to move to or visit another state. Imagine the difficulty for a bank in their home state that had loaned money based on a spousal guarantee that was enforceable in that state, only to learn it would not be enforced by a sister state. How could a company maintain coherent personnel policies if its offices were required by conflicting state laws to treat the same employee differently depending on the office in which he or she is working? How could a couple be sure their expectations for social security or veterans' benefits, child or spousal support, property and insurance rates would be honored? The full faith and credit clause, the constitutional right to interstate travel, and other federalist provisions prohibit a state from putting individuals (and their families, employers, and creditors) in such dilemmas.

Furthermore, not only are the proposed statutes inconsistent with both implementing acts of Congress passed nearly two centuries ago, they directly clash with the PKPA, which, as stated, seeks to assure enforcement of custody determinations and prevent "parental kidnapping" (protections which, presumably should apply to the children

²⁹ See, e.g., Williams, 317 U.S. 287; Scherrer, 334 U.S. 343; Dunham v. Dunham, 44 N.E. 641, 847-48 (Ill. 1896).

of same-sex couples, but which, under the proposed bills, would not). The result of this proposal, a slipshod, politically motivated congressional act, would be a mishmash of contradictory law giving rise to multiple, long, confusing, and costly lawsuits. Marriage, the legitimacy of children, the security of inheritance, the validity of wills, the guarantee of loans, the obligation of contracts - all would be up for grabs in every state.

As Justice Robert Jackson wrote during similar political controversy long ago, "If there is one thing that the people are entitled to expect from their lawmakers, it is rules of law that will enable individuals to tell whether they are married and, if so, to whom."³⁰ America is not a country where people can be legally married in one state, then forcibly unmarried when they cross into the "wrong" state.

E. The Proposed Statutes Run Afoul of Other Constitutional Protections, Including the Right to Marry and the Right to Travel.

By attempting to eliminate the constitutional means of assuring interstate recognition of lawful marriages, the proposed statutes would place a direct and tangible obstacle in the path of interstate travel, and thus severely burden people's right to marry, a fundamental constitutional right in itself. Licensing such a national "free for all" would also implicate other constitutional provisions relating to due process, the right to travel and move freely throughout the nation, equal protection (sex discrimination as well as sexual orientation discrimination), interstate commerce, the freedom of intimate association, the privileges and immunities clause, as well as the fundamental right to marry itself.

The rights to marry and to have that marriage recognized are of fundamental importance, both in and of themselves, and in part because marital status includes substantial economic and practical protections and benefits, upon which may depend the couple's ability to live as they want, raise children as they want, contract with others or even subsist.³¹ A couple lawfully married in Hawaii who

³⁰ Estin v. Estin, 334 U.S. 541, 553 (1948) (Jackson, J., dissenting) (emphasis added).

³¹ Shapiro v. Thompson, 394 U.S. 618, 629 (1969) (unconstitutional to "unduly interfere with the right to 'migrate, resettle, find a new job, and start a new life'"); see also Edwards v. California 314 U.S. 160 (1941); Crandall v. Nevada, 73 U.S. 35 (1867).

wished to travel in or to another state should not to choose between their marriage and their right to travel.

The Constitution should not be used as an election-year soapbox. The political effort to target gay and lesbian couples in fact would drive gaping holes through the Constitution, and radically alter the proper balance of federal-state relations. The proposed statutes are radical rather than conservative, seeking to trump 200 years of established precedent and history -- all to serve a transitory political (and extraordinarily discriminatory) agenda.

Whatever one's stand on equal marriage rights for all Americans, as former Justice Jackson said, "the [full faith and credit] clause would not seem to lend itself to sociological, ethical or economic ends or implications, other than certainty and order."³² All lawfully married couples are entitled to that certainty and order, and to protection of their lawful marriage throughout the country.

II. THE UNPRECEDENTED FEDERAL INTRUSION INTO DECISIONS ABOUT CIVIL MARRIAGE, TRADITIONALLY LEFT TO THE STATES AND TO INDIVIDUAL COUPLES, IS UNCONSTITUTIONAL, UNWISE, AND UNFAIR.

"In determining the meaning of any Act of Congress, or of any ruling, regulation or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."

- H.R. 3396

- A. The Constitution and U.S. history place the definition and regulation of civil marriages with the states, not the federal government.

The Tenth Amendment, federalism, the absence of enumerated congressional power, and history all make clear that states, not the federal government, define and regulate civil marriage, subject only to U.S. constitutional constraints.³³ As the court stated in United Ass'n of

³² 45 Columbia L. Rev. at 25.

³³ Senator Dole, S.1740's original co-sponsor, often extols the Tenth Amendment while campaigning, and frequently reads it in full from a laminated palmcard: "The powers not

Journeyman Local 198 AFL-CIO Pension Plan v. Myers, 488 F. Supp. 704, 707 (M.D. Louis. 1980):

We start with the proposition that the delicate relationships of husband-wife, parent-child and family-property arrangements are traditionally matters of exclusive state concern. No provision of Article I of the Constitution confers power on the Congress to legislate in these sensitive state fields. Any general federal law attempting to regulate such relationships would be constitutionally infirm. (emphasis added)

"The power to regulate marriage is a sovereign function retained by the states; it has not been granted to the federal government." Salisbury v. List, 501 F. Supp. 105, 107 (D. Nev. 1980) (striking down a Nevada prison regulation denying inmates the ability to marry). Over a hundred years ago, the Supreme Court held that "[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States." In re Burrus, 136 U.S. 586, 593-94 (1890).³⁴

More recently, in Hisquierdo v. Hisquierdo, 439 U.S. 572, 581 (1979), the Court reaffirmed that "[i]nsofar as marriage is within temporal control, the States lay on the guiding hand (emphasis added)." Direct regulation of the validity, formation, and dissolution of civil marriages is emphatically a matter of state, not federal, prerogative and jurisdiction.

Even a purported desire of the federal government to achieve its most legitimate concern in this area,

delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const., Amend. X. And as the Courts have made clear, "[i]f the Tenth Amendment reserved any power to the states, it must be the power to legislate rules applicable to marriage, separation and divorce, community property and succession." United Ass'n of Journeymen, 488 F. Supp. at 707; see also Neustein v. Orbach, 130 F.R.D. 12, 14 (E.D.N.Y. 1990); In re Knabe, 8 B.R. 53, 56 (Bankr. S.D. Ind. 1980).

³⁴ See also Pennoyer v. Neff, 95 U.S. 714 (1877) ("The State, for example, has absolute right to prescribe the conditions upon which the marriage relation between its own citizens shall be created, and the causes for which it may be dissolved."); Ohio ex rel. Popovici v. Agler, 280 U.S. 379, 383 (1930).

uniformity in the effect of federal legislation (a motivation clearly not present in these proposed statutes³⁵), cannot alter the status of preexisting rights. For example, in Ensminger v. Commissioner of Internal Revenue, 610 F.2d 189, 191 (4th Cir. 1979), the court held:

The regulation of marriage, family life and domestic affairs "has long been regarded as a virtually exclusive province of the States." In its application of the tax laws there has been a consistent deference by Congress to state laws in such matters.³⁶

Status and interests in domestic relations are determined by state law. Although federal law may (subject to other constitutional limitations) then decide how that lawfully-determined status or that state-created interest is treated, for example in taxation, it cannot create or destroy the underlying status itself. See Burnet v. Harmel, 287 U.S. 103, 110 (1932) ("state law creates legal interest but the federal statute determines when and how they shall be taxed."). As the Supreme Court explained in DeSylva, 351 U.S. 580:

The scope of a federal right is, of course, a federal question, but that does not means its content is not to be determined by state, rather than federal law.... This is especially true when a statute deals with a familial relationship; there is no federal law of domestic relations, which is primarily a matter of state concern.

This is particularly true of civil marriage -- an act that, once having occurred, creates a res, an actual ongoing status that remains unless abrogated by legal adjudication,

³⁵ The proposed statutes do not embody a federal promotion of uniformity; indeed, in an affirmative congressional act without precedent, they expressly license a "free-for-all" amongst the states. Similarly, with regard to federal status, they give new meaning to the phrase "house divided," literally making a couple sitting in their home, their children at their feet (and maybe their employers, or creditors, at the door) simultaneously married and "unmarried" depending on whether a state or federal agency is making the determination.

³⁶ Id. at 191 (quoting Sosna v. Iowa, 419 U.S. 393, 404 (1975)) (emphasis added); see also Boyer v. Commissioner of Internal Revenue, 732 F.2d 191, 194 (D.C. Cir. 1984).

i.e., divorce, by the proper legal authority (i.e., the states, not the federal government).

The proposed statutes would, for the first time in U.S. history, purport to declare that as a general matter (and not just for a particular purpose), Congress and every federal agency will not recognize a whole group of people's marriages -- marriages that are fully, equally, and lawfully valid under applicable state law. The proposed statutes in effect define marriage itself and thus unconstitutionally usurp state control of domestic relations, while placing couples and others in an untenable situation.

- B. Recognizing federalist imperatives, Congress has historically deferred questions of defining domestic relations to state law.

Even were Congress somehow to thread its way around these constitutional and historical boundaries, perhaps invoking its power over federal programs,³⁷ most federal statutes do not define domestic relations terms (especially terms such as "spouse", "husband," or "wife"), and courts generally found that Congress intended such terms to be defined by reference to state law (even with

³⁷ Although Congress indisputably has significant power to legislate within its own spheres of competence, when a law interferes with an area outside congressional power, it must in the first instance at least be "reasonably adapted" to a permitted end. *United States v. Darby*, 312 U.S. 100, 121 (1941). Here, for the first time ever, Congress would be sweepingly rejecting an entire group of marriages, not because of any specific, legitimate statutory purpose, but because it does not like the sexual orientation of the people marrying or the sex of the spouses they marry. Aside from being discriminatory, this is in essence an ultra vires regulation of marriage rather than treatment of a matter "reasonably adapted to a permitted end," and is therefore unconstitutional.

For instance, in *United States v. Parker*, 911 F.Supp. 830 (E.D. Pa. 1995), Judge Bechtel dismissed an indictment under the Child Support Recovery Act, holding that Congress has no power to regulate or govern payment of child support. Following the approach taken in *United States v. Lopez*, 115 S.Ct. 1624 (1995), the court held that the regulation of family relationships has insufficient connection to the regulation of enterprise permitted Congress under the Constitution's commerce clause. There are limits to what Congress can do, even in the exercise of its enumerated powers, powers it lacks in the area of marriage.

disparities from state to state).³⁸ This policy --

³⁸ See, e.g., Ryan-Walsh Stevedoring Co, Inc. v. Trainer, 601 F.2d 1306, 1313 (9th Cir. 1964) ("To determine whether a claimant is decedent's 'wife,' state law is dispositive because the [federal act] does not define this operative term"); Yarbrough v. United States, 341 F.2d 621, 623 (Ct. Cl. 1965) (in enacting the statute in question, Congress undoubtedly left the determination of whether or not an employee was married up to individual state law); Seaboard Air Line Ry. v. Kenney, 240 U.S. 489, 494-96 (1916) (in construing the Federal Employers' Liability Act, the words "next of kin" should take their meaning from applicable state law); Lembecke v. United States, 181 F.2d 703, 706 (2d. Cir 1950) (definition of "widow" for Federal employee life insurance statute determined by reference to state law); Prudential Insurance Co. v. Dulek, 504 F.Supp 1015 (D. Neb. 1980) (definition of "widow" for purposes of Federal statute governing serviceman's group life insurance policy determined by reference to state law); Albina Engine & Machine Works v. O'Leary, 328 F.2d 877, 878 (9th Cir. 1964) (definition of "surviving wife" for Longshoremen's and Harbor Workers Act determined by reference to state law); Nott v. Folsom, 161 F.Supp. 905, 907 (S.D.N.Y. 1958) (definition of "remarriage" for Social Security Act benefits determined by reference to state law); Huff v. Director, United States Office of Personnel Management, 40 F.3d 35, 36-7 (3rd Cir. 1994) (definition of "spouse" for federal survivor benefits determined by reference to state law); Bell v. Tug Shrike, 215 F. Supp. 377 (E.D. Va. 1963) (determination of valid legal status for merchant marine benefits is question of state law); Davis V. College Suppliers Co., 813 F. Supp. 1234, 1237 (S.D. Miss. 1993) ("For purposes of ERISA, 'spouse' means the person to whom one is lawfully married").

These and other cases reflect the historical deference and restraint heretofore shown by Congress with regard to civil marriage, and thus do not themselves directly resolve whether Congress could under certain circumstances seek to impose a definition other than those legally established under state law; many, in fact, suggest that "when the Congress exercises the legislative powers vested in it by the Constitution, it may prescribe the rules which will apply." E.g., United Ass'n of Journeyman, 488 F. Supp. at 707.

The defect in the proposed statutes, however, lies in the degree to which Congress is exceeding its proper powers, transgressing Tenth Amendment and other federalist constraints, and violating other constitutional provisions such as the prohibition against discrimination. As such,

followed by Congress for more than two hundred years -- is not simply a result of deference, but rather is part of our system of federalism. As the Fourth Circuit wrote in Ensminger, 610 F.2d at 191, "Federal deference in matters within the state police power reflects more than a policy of comity. In fact, it represents a constitutionally derived recognition of the essential character of state government within our federal system."

Legislation in which Congress has, accordingly, left the definition of domestic relations to state law covers a vast range of topics and familial relationships.³⁹

even cases supporting congressional latitude cannot be relied on to support such a flagrantly ultra vires abuse.

³⁹ See note 37. One case bears additional discussion. In Adams v. Howerton, 673 F.2d 1036 (9th Cir. 1982), an Australian man in a long-term committed relationship with an American man applied for American citizenship, claiming status as a "spouse" under the Immigration Act. The INS rejected his application with a letter that stated, "You have failed to establish a bona fide marital relationship can exist between two faggots." Bill Jordan, "Boulder Vows of Homosexuals Termed Invalid," Boulder Daily Camera, Dec. 4, 1975, p.1.

With linguistic alteration, the Ninth Circuit agreed, holding that "[s]o long as Congress acts within constitutional constraints, it may determine the conditions under which immigration visas are issued." Id. at 1039-40. The court asserted that its decision was based "primarily on the [Immigration and Nationality] Act itself," id. at 1040, and was seemingly influenced by Congress's singularly "broad power over immigration and naturalization [in the exercise of which] Congress regularly makes rules that would be unacceptable if applied to citizens." Id. at 1042 (citations omitted). The court concluded that whatever the validity of the couple's marriage under state law, and despite the silence of the federal statute, Congress did not intend "spouse" to include a same-sex spouse.

This part of Adams is distinguishable today based on changes in both federal and state law. Whatever the "ordinary, contemporary, common meaning" that civil marriage or spouse may have seemed to have then, developments in Hawaii and other states make clear that "marriage" no longer automatically excludes same-sex couples. Moreover, claiming it should "strive to interpret language in one section of a statute consistently with the language of other sections," id. at 1040, the Adams court placed great weight on the

Despite disparities in state law regarding marriage, and historical periods of disagreement among the states, however, this consistent approach of congressional deference has served the states, the couples, and the nation well. It is ironic that the first such congressional proposal in decades to depart from this historic respect for federalism and states' power would come from this purportedly pro-"devolution" Congress. And it is telling that the proposal comes in an election year.

- C. Congress is bound by additional constitutional provisions that preclude its meddling with the definition of marriage, or interposing its own discriminatory selection among lawfully married couples.

Congress is bound not just by the Tenth Amendment and the federalist imperative of not encroaching upon the lawful domain of the states, but also by other constitutional constraints. These include the fundamental right to marry, equal protection, the right to intimate association, and the privileges and immunities clause.⁴⁰ The proposed statutes burden lawful marriages and discriminate among married people, and thus violate each of these constitutional guarantees.

To give just a few brief examples, consider the burden these anti-marriage bills impose on the fundamental right to marry itself. Marriage is not just a most important personal choice, but also a fundamental

infamous "homosexual exclusion" provision in the immigration statute, since repealed. Pub.L.No. 101-649, 194 Stat. 4978 (1990). According to the House Report for the Immigration Reform Act of 1990, the repeal demonstrated that "the United States does not view personal decisions about sexual orientation as a danger to other people in our society." H.R. Rep. No. 723, at 56.

Moreover, the bulk of the Adams opinion can fairly be regarded as dicta, since at the time, same-sex couples were unable to marry under Colorado law, and thus did not qualify for federal immigration protection. Indeed, the statute itself provided that for a marriage to be valid, it had to be "entered into in accordance with the laws of the place where the marriage took place." 8 U.S.C. Section 1186a(d)(1)(A)(i)(I).

⁴⁰ U.S. Const., art. IV § 2. See, e.g., Supreme Court of New Hampshire v. Piper, 470 U.S. 274 (1985); see also Evans v. Romer, 882 P.2d 1335, 1351 (Colo. 1994) (Scott, J., concurring).

constitutional right.⁴¹ Any laws that infringe upon a fundamental right, including a law that allows the federal government to exclude a class of people from the definition of marriage, are subject to strict scrutiny. Strict scrutiny is nearly always fatal to the law in question.

Courts will strike down federal regulations which burden the freedom to marry and marriage itself.⁴² Moreover, the Supreme Court has identified "the receipt of government benefits..., property rights, ... and other less tangible benefits," for which, as it noted "marital status is often a precondition," as one of the four defining and "important attributes of marriage."⁴³ Burdening such access across the board is literally one of the most massive burdens on marriage ever proposed.

Likewise, the proposed bills violate the constitutional guarantee of equal protection, as they would deny federal protections and entitlements to a discrete group of people, and authorize federal agencies across-the-board to pick and choose among lawfully married couples, discriminating against same-sex married couples for any and all purposes. The bills flagrantly discriminate on the basis of sex and sexual orientation, and violate the "fundamental rights" prong of the Equal Protection Clause.

⁴¹ Loving v. Virginia, 388 U.S. 1 (1967); Griswold v. Connecticut, 381 U.S. 438 (1965); Zablocki v. Redhail, 434 U.S. 374 (1978); Turner v. Safley, 482 U.S. 78 (1987). See also Evan Wolfson, "Crossing the Threshold: Equal Marriage Rights for Lesbians and Gay Men, and the Intra-Community Critique," 21 N.Y.U. Rev. of L. & Soc. Change 567, 568 n.2, 571-81 (1994).

⁴² See, e.g., O'Neill v. Dent, 364 F. Supp. 565, 569 (E.D.N.Y. 1973) (federal regulations of the U.S. Merchant Marine Academy prohibiting attendance by married cadets unduly restricts the fundamental right to marry guaranteed by the First, Fifth, Ninth and Fourteenth Amendments). The court noted, "[t]he Government does not deny that the power to regulate marriage is a sovereign function retained by the states, and not vested in Congress. Thus, subject to constitutional limitations, the ... States are authorized to regulate the qualifications of the contracting parties[.]" Id.

⁴³ Turner v. Safley, 482 U.S. 78, 95-96 (1987) (holding that even convicted murderers share important interests in exercising the freedom to marry, without arbitrary restriction).

While "fundamental rights" analysis requires strict scrutiny, and sex discrimination triggers at least heightened scrutiny, it is clear that the government "interest" in this extraordinary, across-the-board discrimination against selected married people cannot meet even the lowest level of scrutiny, so-called "rational basis" review. The only government "interest" is the sponsors's dislike of gay men and lesbians, and disapproval of women and men who fall in love with, choose to marry, and undertake the responsibilities and commitment of civil marriage with, a person of the "wrong" (that is, their same) sex. As former U.S. Solicitor General Rex E. Lee has written, despite his own personal disapproval, "[l]aws prohibiting homosexual marriages are the classic case of discrimination based on sex."⁴⁴

Moreover, since the proposed statutes would with one stroke alter the content of hundreds of federal laws addressing a myriad of purposes and contexts, it cannot be argued that the legislation is even rationally related to any legislative end, let alone all the ends reflected in the statutes affected. Whatever the stated intention, the result would be an irrational system of conflicting and incomplete rights, and indeterminate obligations.

For example, imagine a same-sex couple who are lawfully married in Hawaii, but where both spouses work for the federal government. The couple will be simultaneously married for state purposes, but not married for federal purposes. For state taxes, they would file as "married," but for federal they would have to file single returns. Benefits from state worker's compensation and disability insurance would accrue on the basis of their married status, but the federal taxation of those benefits would be determined on the basis of single status. Since state and federal statutes frequently intertwine, the couple would perpetually be in a paradoxical state of being married and not married at the same time in the same place. This hardly serves any "rational" end as to the couple, let alone to the states, the couple's children and dependents, their employers, creditors, or others, including the United States (of which we, too, are citizens).⁴⁵

⁴⁴ Rex E. Lee, A Lawyer Looks At the Equal Rights Amendment, p. 65 (Brigham Young University Press 1980).

⁴⁵ Similarly, the proposed statutes define marriage as solely a "legal union" between one man and one woman. Since it does not, and indeed cannot, define what a "legal union" is, courts will have to turn to the states for guidance. And, because the hundreds of federal statutes that would be covered deal with a variety of familial

Denying social security benefits to lesbians and gay men who retire after decades of marriage has nothing to do with the intent of the social security laws; preventing pension benefits of senior same-sex couples from vesting has nothing to do with the purposes of ERISA; preventing custodial parents from enforcing child custody decrees has nothing to do with the legislative intent of the Parental Kidnapping Prevention Act; preventing a lesbian or gay man to be at a same-sex spouse's hospital bedside furthers no legitimate Veterans Administration policy; nor do any such discriminatory exclusions and burdens fairly reflect the married couple's interest in equal participation in, or contribution to, society.

The proposed statutes's wholesale exclusion of lawfully married same-sex couples from literally every "Act of Congress, [and] any ruling, regulation or interpretation of the various administrative bureaus and agencies of the United States" would be perhaps the most sweeping and radical revision of federal law in history -- drawing a caste-line through each and every federal law or action that touches upon marriage.

- D. The proposed bills set a new low for Congress, an abdication of Congress's historic role in the federal system enforcing private rights.

The radical nature of the proposed statutes is underscored by recalling what Congress's role is supposed to be in the area of individual rights. Since the Civil War, Congress has, at its finest, used its powers to ensure that states and others do not infringe on the established rights of Americans, beginning especially with those protected by the Thirteenth, Fourteenth, and Fifteenth amendments to the Constitution. The Civil Rights Acts, the Religious Freedom Restoration Act, the Equal Access Act all are examples where Congress moved to ensure that Americans -- even minority Americans, even unpopular Americans -- are protected in their individual freedoms at least as much as, if not more than, is guaranteed by the Constitution.

relationships that are not defined (including "children," "survivor," "next-of-kin," "widow," "beneficiary" -- to name a few), courts would have to examine state law for those meanings as well. Thus, for instance, courts or agencies may find themselves compelled not to accept a Hawaii wife as a "wife" for "federal purposes," while acknowledging that woman's son as the couple's "child" for federal as well as state purposes. The result would be a legal and administrative mess, and a true stigma and hardship to the families involved.

Indeed, the Supreme Court has ruled that where Congress has constitutionally-based enforcement power it is to strengthen protection of individual rights. In Katzenbach v. Morgan, 384 U.S. 641, 651n.10 (1966), the Court considered the scope of congressional power in the context of its enforcement powers under the Fourteenth Amendment, and explained that:

Section 5 [of the Fourteenth Amendment] does not grant Congress the power to exercise discretion in the other direction and enact 'statutes so as in effect to dilute equal protection and due process decisions of this Court.' (emphasis added)

By contrast, the proposed legislation harkens back to the shameful chapters of our history where the federal government targeted and took action against vulnerable minorities, reinforcing, or, in the worst cases, creating, their second-class citizenship. The legislation sets a new standard for federal discrimination, and overtly invites states to discriminate as well.

Moreover, the proposed statutes potentially set the federal government in direct opposition to many states, not just civil rights leaders such as Hawaii. For example, the demise of the "different-sex restriction" on marriage now being challenged in Hawaii will likely be based on the Hawaii state constitutional guarantee of freedom from discrimination on the basis of sex.⁴⁶ At least fifteen other state constitutions have such an explicit guarantee as well; all states have some requirement of equal protection. Over time, more and more states are likely to end sex discrimination in marriage.

And meanwhile, even apart from full faith and credit, at least eight states have signed the Uniform Marriage and Divorce Act, and numerous states have already enacted their own statutes governing the recognition of out-of-state marriages that would not have been performed in-state. For Congress to define civil marriage as excluding large numbers of individuals lawfully married in many states goes against Congress's historic role, and constitutional obligation, to help unify the country, provide for clarity and certainty as people travel, and assure the equal rights, privileges, and immunities of all Americans.

⁴⁶ Baehr v. Miike, 852 P.2d 44, 74-75 (Haw. 1993) (formerly "Baehr v. Lewin"). A final result is still at least two years away, as the case is just now heading toward trial in the lower court, currently scheduled for September 1996.

uniformity in the effect of federal legislation (a motivation clearly not present in these proposed statutes³⁵), cannot alter the status of preexisting rights. For example, in Ensminger v. Commissioner of Internal Revenue, 610 F.2d 189, 191 (4th Cir. 1979), the court held:

The regulation of marriage, family life and domestic affairs "has long been regarded as a virtually exclusive province of the States." In its application of the tax laws there has been a consistent deference by Congress to state laws in such matters.³⁶

Status and interests in domestic relations are determined by state law. Although federal law may (subject to other constitutional limitations) then decide how that lawfully-determined status or that state-created interest is treated, for example in taxation, it cannot create or destroy the underlying status itself. See Burnet v. Harnel, 287 U.S. 103, 110 (1932) ("state law creates legal interest but the federal statute determines when and how they shall be taxed."). As the Supreme Court explained in DeSylva, 351 U.S. 580:

The scope of a federal right is, of course, a federal question, but that does not mean its content is not to be determined by state, rather than federal law.... This is especially true when a statute deals with a familial relationship; there is no federal law of domestic relations, which is primarily a matter of state concern.

This is particularly true of civil marriage -- an act that, once having occurred, creates a res, an actual ongoing status that remains unless abrogated by legal adjudication,

³⁵ The proposed statutes do not embody a federal promotion of uniformity; indeed, in an affirmative congressional act without precedent, they expressly license a "free-for-all" amongst the states. Similarly, with regard to federal status, they give new meaning to the phrase "house divided," literally making a couple sitting in their home, their children at their feet (and maybe their employers, or creditors, at the door) simultaneously married and "unmarried" depending on whether a state or federal agency is making the determination.

³⁶ Id. at 191 (quoting Sosna v. Iowa, 419 U.S. 393, 404 (1975)) (emphasis added); see also Boyer v. Commissioner of Internal Revenue, 732 F.2d 191, 194 (D.C. Cir. 1984).

CONCLUSION

Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects.

- Griswold v. Connecticut, 381 U.S. 479, 486 (1965)

Civil marriage -- with the responsibilities, privileges, protections, and commitment it entails -- is not a limited commodity. When same-sex couples finally partake of the same freedom to marry as other Americans, they will not "use up" or "harm" marriage, nor will they take anything away from non-gay married couples. Marriage and all its incidents will remain fully available for heterosexual couples.

Allowing lesbians and gay men to share in the commitment of civil marriage is not an attack on marriage; indeed, the instability, uncertainty, and radical discrimination introduced by this so-called "defense of marriage act" are themselves the real attack.

Whatever one's stand on equal marriage rights for same-sex couples, it should be clear that Congress would never even consider such a radical, unconstitutional, discriminatory, and impractical redefinition of marriage and the federal-state balance, were it not targeting a very vulnerable minority -- today, lesbian and gay Americans. If marriage needs "defense," it is not from same-sex couples in love; it is from politicians willing to subvert the Constitution to discriminatory or political ends, and from others unwilling to stand up for what is right.

E X E C U T I V E O F F I C E O F T H E P R E S I D E

13-May-1996 02:58pm

TO: (See Below)

FROM: Margaret M. Suntum
 Office of the Press Secretary

SUBJECT: 1996-5-13 McCurry Briefing

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release
1996

May 13,

PRESS BRIEFING
BY MIKE MCCURRY

The Briefing Room

1:37 P.M. EDT

MR. MCCURRY: Good afternoon, ladies and gentlemen. Welcome to the White House. After that rousing event I don't know that I have much to add.

Q Would you mind repeating some of your earlier comments about Floyd Brown and what it is you've got against that?

MR. MCCURRY: I'm not going to -- I said far -- more than enough this morning. He -- look, it's an individual who is widely credited with having poisoned our politics in 1988. And he just has no business trying to do it again in 1996. And we certainly hope Senator Dole will tell him to knock it off and to keep out of his campaign or keep out of the periphery of his campaign. Simple.

Q Why did the President think it was necessary to ask Transportation Secretary Federico Pena to come up with additional

measures -- recommendations for additional measures on aviation security?

MR. MCCURRY: Well, he wants -- obvious because of the incident in Miami, but also generally to do everything he can to scrub our system and make sure it remains the safest air transportation system in the world. We transport I think something like 1.5 million passengers per day in the U.S. air travel system, and the President wants to make sure we do everything, redouble and recheck everything, that it is absolutely the safest system on Earth. And to that end he's asking the Transportation Department and the FAA particularly to look at all of their safety procedures and see if there's more that can be done.

MORE

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Indeed, the Supreme Court has ruled that where Congress has constitutionally based enforcement power it is to strengthen protection of individual rights. In Katzenbach v. Morgan, 384 U.S. 641, 651n.20 (1966), the Court considered the scope of congressional power in the context of its enforcement powers under the Fourteenth Amendment, and explained that:

Section 5 [of the Fourteenth Amendment] does not grant Congress the power to exercise discretion in the other direction and enact statutes so as in effect to dilute equal protection and due process decisions of this Court. (emphasis added)

By contrast, the proposed legislation harkens back to the shameful chapters of our history where the federal government targeted and took action against vulnerable minorities, reinforcing, or, in the worst cases, creating, their second-class citizenship. The legislation sets a new standard for federal discrimination, and overtly invites states to discriminate as well.

Moreover, the proposed statutes potentially set the federal government in direct opposition to many states, not just civil rights leaders such as Hawaii. For example, the demise of the "different-sex restriction" on marriage now being challenged in Hawaii will likely be based on the Hawaii state constitutional guarantee of freedom from discrimination on the basis of sex.⁴⁶ At least fifteen other state constitutions have such an explicit guarantee as well; all states have some requirement of equal protection. Over time, more and more states are likely to end sex discrimination in marriage.

And meanwhile, even apart from full faith and credit, at least eight states have signed the Uniform Marriage and Divorce Act, and numerous states have already enacted their own statutes governing the recognition of out-of-state marriages that would not have been performed in-state. For Congress to define civil marriage as a union of large numbers of individuals lawfully married in other states goes against Congress's historic role, and constitutional obligation, to help unify the country, provide real clarity and certainty for people travel, and assure the equal rights, privileges, and immunities of all Americans.

⁴⁶ Baehr v. Miike, 352 P.2d 44, 74-75 (Haw. 1993) (formerly "Baehr v. Lewin"). A final result is still at least two years away, as the case is just now heading toward trial in the lower court, currently scheduled for September 1996.

Congress of the United States
House of Representatives
Washington, DC 20515-3601

NEWS RELEASE

May 8, 1995
Release.030

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**LARGENT CO-SPONSORS "THE DEFENSE OF MARRIAGE ACT":
SEEKS TO PRESERVE TRADITIONAL DEFINITION OF MARRIAGE**

WASHINGTON -- U.S. Representative Steve Largent (R-OK) released the following statement in support of H.R. 3396, the "Defense of Marriage Act":

"The most joyful experience of my life has been the birth of my four children. When I saw my children take their first breath in this world, my first thoughts were of the awesome responsibility and privilege it is to be called Dad. My children are the ultimate fulfillment of the marriage vows between my wife and me. We took the first step to becoming a family on our wedding day -- 21 years ago.

Studies, statistics, and basic common sense tell us that marriage between a man and a woman stabilizes sexuality and provides the best environment in which to procreate and raise children. This has been found true in research and in all of recorded history. The family, based on a committed man and woman, exists as the foundation of society. I've always tried to live my life with love and tolerance towards all individuals regardless. Sadly, the legal ramifications of what the state court of Hawaii is doing cannot be ignored. Destroying the exclusive territory of marriage to achieve a political end will not provide homosexuals with the real benefits of marriage -- but it may eventually be the final blow to the American family.

Is America willing to require businesses to have family benefits for homosexual couples, to have children taught in school that homosexual relationships are the moral equivalent of traditional marriage, and to endorse the adoption of children by homosexual couples? Is America willing to go down that road?

The Defense of Marriage Act is designed to defend the core of what families are -- one man and one woman united in marriage. The institution of the family and the institution of marriage have been under frontal assault for years. Society pays the consequences when the family unit is weakened through divorce, illegitimacy, abuse, economic hardship, or -- in the case of the pending decision of the Hawaii court -- redefinition. Now more than ever, the institution of the family needs to be protected, promoted and preserved. As the family goes, so goes the nation."

IN THE HOUSE OF REPRESENTATIVES

Mr. BARR of Georgia (for himself, Mr. LABARETTE, and Mr. KIDDERMAN) introduced the following bill, which was referred to the Committee on

A BILL

To define and protect the institution of marriage.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Defense of Marriage
5 Act".

6 **SEC. 2. POWERS RESERVED TO THE STATES.**

7 (a) IN GENERAL.—Chapter 115 of title 28, United
8 States Code, is amended by adding after section 1738B
9 the following:

1 "§ 1738C. Certain acts, records, and proceedings and
2 the effect thereof

3 "No State, territory, or possession of the United
4 States, or Indian tribe, shall be required to give effect to,
5 any public act, record, or judicial proceeding of any other
6 State, territory, possession, or tribe respecting a relation-
7 ship between persons of the same sex that is treated as
8 a marriage under the laws of such other State, territory,
9 possession, or tribe, or a right or claim arising from such
10 relationship."

11 (b) CLERICAL AMENDMENT.—The table of sections
12 at the beginning of chapter 115 of title 28, United States
13 Code, is amended by inserting after the item relating to
14 section 1738B the following new item:

"1738C. Certain acts, records, and proceedings and the effect thereof."

15 **SEC. 3. DEFINITION OF MARRIAGE.**

16 (a) IN GENERAL.—Chapter 1 of title 1, United
17 States Code, is amended by adding at the end the follow-
18 ing:

19 "§ 7. Definition of 'marriage' and 'spouse'

20 "In determining the meaning of any Act of Congress,
21 or of any ruling, regulation, or interpretation of the var-
22 ious administrative bureaus and agencies of the United
23 States, the word 'marriage' means only a legal union be-
24 tween one man and one woman as husband and wife, and
1 the word 'spouse' refers only to a person of the opposite
2 sex who is a husband or a wife."

3 (b) CLERICAL AMENDMENT.—The table of sections
4 at the beginning of chapter 1 of title 1, United States
5 Code, is amended by inserting after the item relating to
6 section 6 the following new item:

"7. Definition of 'marriage' and 'spouse'."

SUMMARY AND ANALYSIS
DEFENSE OF MARRIAGE ACT
AS INTRODUCED ON MAY 7, 1996
BY

REPS. BOB BARR (GA), STEVE LARGENT (OK), JIM SENSENBRENNER (WI), SUE
MYRICK (NC), ED BRYANT (TN), BILL EMERSON (MO), HAROLD VOLKMER (MO),
IKE SKELTON (MO)

The Defense of Marriage Act (DOMA) does two things. First, it provides that no State shall be required to give effect to a law of any other State with respect to a same-sex "marriage." Second, it defines the words "marriage" and "spouse" for purposes of Federal law.

The first substantive section of the bill is an exercise of Congress' power under the "Effect" clause of Article IV, section 1 of the Constitution (the Full Faith and Credit Clause) to allow each State (or other political jurisdiction) to decide for itself whether it wants to grant legal status to same-sex "marriage." This provision is necessary in light of the possibility of Hawaii giving sanction to same-sex "marriage" under its state law, as interpreted by its state courts, and other states being placed in the position of having to give "full faith and credit" to Hawaii's interpretation of what constitutes "marriage." Although so-called "conflicts of law" principles do not necessarily compel such a result, approximately 30 states of the union are sufficiently alarmed by such a prospect to have initiated legislative efforts to defend themselves against any compulsion to acknowledge same-sex "marriage."

This is a problem most properly resolved by invoking Congress' authority under the Constitution to declare what "effect" one State's acts, records, and judicial proceedings shall have in another State. Congress has invoked this authority recently on two other occasions: in the Parental Kidnaping Prevention Act of 1980, which required each State to enforce child custody determinations made by the home State if made consistently with the provisions of the Act; and in the Full Faith and Credit for Child Support Order Act of 1994, which required each State to enforce child support orders made by the child's State if made consistently with the provisions of the Act.

The second substantive section of the bill amends the U. S. Code to make explicit what has been understood under federal law for over 200 years: that a marriage is the legal union of a man and a woman as husband and wife, and a spouse is a husband or wife of the opposite sex. The DOMA definition of marriage is derived most immediately from a Washington state case from 1974, Singer v. Hara, which is included in the 1990 edition of Black's Law Dictionary. More than a century ago, the U. S. Supreme Court spoke of the "union for life of one man and one woman in the holy estate of matrimony." Murphy v. Ramsey, 114 U.S. 15, 45 (1885).

DOMA is not meant to affect the definition of "spouse" (which under the Social Security law, for example, runs to dozens of lines). It ensures that whatever definition of "spouse" may be used in Federal law, the word refers only to a person of the opposite sex.

TULSA WORLD

91st Year — No. 237 • Tulsa, Oklahoma, Wednesday, May 8, 1996 • Entire Contents ©1996 World Publishing Company

Lawmakers Craft Bill Against Gay Marriage

World Washington Bureau

WASHINGTON — U.S. Rep. Steve Largent, R-Okla., will join other Republicans Wednesday to unveil federal legislation to bar gay marriages.

Sponsored by Rep. Bob Barr, R-Ga., the bill is a direct response to a court case in Hawaii, where gays have petitioned a state court for a marriage license.

That case is expected to be heard in August.

Barr and Largent's bill, called the Defense of Marriage Act, defines marriage for federal purposes as a legal union between one man and one woman.

It also would protect states and other jurisdictions, including Indian tribes, from being compelled to honor a gay marriage performed in another state.

Other issues such as immigration, health benefits and income tax deductions also would be impacted.

The Hawaii case has triggered legislation in a number of states by lawmakers who do not want a gay marriage in Hawaii

to be honored in their states.

Barr and Largent believe a federal law is needed because the U.S. Constitution provides that states must honor the acts, records or judicial proceedings of other states.

It is unclear how a simple statute could overturn a provision in the Constitution.

Largent's office had hoped to keep a lid on details of the legislation until a press conference Wednesday, but The Associated Press published a story late Tuesday.

The AP reported a draft version of the legislation was being circulated among lawmakers.

It also reported that Rev. Lou Sheldon, chairman of the Traditional Values Coalition, took credit for helping to draft the bill.

"This is the beginning of a cultural meltdown if you have homosexual marriage sanctioned by the court," Sheldon said.

A spokesman for the Human Rights Campaign, a gay rights group, called the bill an "election-year assault on the lives of gay and lesbian Americans."

TULSA WORLD

91st Year — No. 238 • Tulsa, Oklahoma, Thursday, May 9, 1996 • Entire Contents © 1996 World Publishing Company

Largent Says Bill Protects Family

By Jim Myers

World Washington Bureau

WASHINGTON — U.S. Rep. Steve Largent, R-Okla., explaining his support of a bill to bar federal recognition of gay marriages, on Wednesday dismissed as a "fallacy" the adage that "you can't legislate morality."

"Destroying the exclusive territory of marriage to achieve a political end will not provide homosexuals with the real benefits of marriage, but it may eventually be the final blow to the American family," Largent said.

"Now more than ever, the institution of the family needs to be protected, promoted and preserved. As the family goes, so goes the nation."

A staunch opponent to providing legal recognition or protection to gays, Largent joined Sen. Don Nickles, R-Okla., and others in introducing their Defense of Marriage Act.

The proposal, expected to be put on the legislative fast track with the first hearing set next week in the House, is in direct response to a court case in Hawaii, where gay couples have petitioned the state for marriage licenses.

Sponsored by Rep. Bob Barr, R-Ga., it would clarify that states have the right to pass laws against honoring same-sex marriages performed in other states.

The "full faith and credit" clause of the U.S. Constitution requires states to honor each other's proceedings, but that same section also gives Congress the power to direct the manner for such actions.

Oklahoma and a handful of other states have passed laws against gay marriages in anticipation of the Hawaii decision, and similar legislation has been introduced in more than half of the 50 states.

In addition, the Barr-Largent-Nickles legislation would define marriage as a legal union between a man and a woman and would ban recognition of gay marriages for the purposes of Social Security and veteran benefits and other federal programs.

Expected to pass the House if it gets out of committee, the proposal drew a scathing attack from gay rights groups as well as two Democratic members.

Rep. Pat Schroeder, D-Colo., accused its Republican sponsors of trying to find a "wedge issue" to boost the chances of their party's presidential nominee, Sen-

ate Majority Leader Bob Dole, at the polls this November.

"That saddens me very much," said Schroeder, who told reporters that she has no problem with gay marriages.

Even if the Hawaii case is decided this year, she said, it would take at least two years before the issue is decided by the federal courts, so the legislation need not be rushed.

Marriage has always been a state issue, Schroeder said, and Congress should not make it a federal policy.

Rep. Marty Meehan, D-Mass., expressed "outrage" at the proposal.

"This bill denies a group of Americans a basic right, because they lead a different lifestyle," Meehan said.

"It feeds on fear and hate rather than tolerance and enlightenment."

Elizabeth Birch, executive of the Human Rights Campaign, a gay-rights group, said such legislation was orchestrated by "religious political extremists."

"Make no mistake," Birch said. "This is part of a calculated national assault on the lives of lesbian and gay people."

A Tulsa group also condemned the proposal.

"This legislation doesn't defend marriage," said Tom Neal, spokesman for Tulsa Oklahomans for Human Rights.

"It just uses that language to cover an attack on the rights of gay and lesbian citizens."

Largent specifically denied Schroeder's charge that the bill was politically motivated to help Dole's presidential campaign.

See Largent on A-11

He also said he opposed discrimination against gays.

At times before Largent was elected to Congress, he came across as anti-gay, especially in letters to the Tulsa World.

In one letter to the paper, he called homosexuality an "evil practice" and compared it to pornography and pedophilia.

Following the press conference Wednesday, Largent expressed regret for using those terms.

"Clearly, I admit I didn't say them with compassion and love," he said, adding that he since has learned that how an official says something is just as important sometimes as what he says.

In response to questions from a reporter, Largent said he does not think he would have a problem with hiring an openly gay staff member.

Nickles said the bill is based on "common sense," adding it is "shocking" that such a proposal should have to be considered.

Unlike his counterparts in the House, however, he conceded that the proposal has no Democratic sponsors so far in the Senate.

Senate procedures may make it more difficult to pass there.

Republicans Offer Bill to Restrict Gay Marriages

By MELISSA HEALY
TIMES STAFF WRITER

WASHINGTON—A group of Republican lawmakers, asserting a need to defend the institution of marriage against erosion by homosexual activists, proposed legislation Wednesday that would bar the federal government from honoring homosexual unions and limit the legal impact of a court decision sanctioning gay marriages in Hawaii.

Unveiling the Defense of Marriage Act, Rep. Steve Largent (R-Okla.), one of its authors, said that the institutions of family and marriage "have been under frontal assault for years." He suggested that broad recognition of homosexual marriages "may eventually be the final blow to the American family."

The bill also would ensure that states would not be forced to treat same-sex unions on a par with traditional marriages. If the bill passes, a state Legislature could act affirmatively to recognize same-sex unions.

Supporters said that House leaders probably would bring the bill to a vote this summer. While Senate action on the bill is harder to predict, Majority Leader Bob Dole (R-Kan.) has thrown his support behind the measure.

If adopted, the legislation would enshrine in federal law a definition of marriage as a union between a single man and a single woman. It would frustrate gay and lesbian couples who want the legal benefits of state and federal recognition—including Social Security and veterans' benefits for surviving spouses and recognition as next-of-kin for medical and inheritance purposes.

The bill is one of several measures touted as "family values" legislation that conservative Republicans expect to push over the next several months. Conservatives hope that the bills, which include a parental rights act and a bill relaxing bars on state aid to religious institutions, will be embraced by Dole and adopted as part of the Republican platform.

The legislation unveiled Wednesday addresses concerns by religious conservative groups that a decision by the Hawaii Supreme Court could force other states to honor homosexual marriages in Hawaii. That could happen

because under current law, states are obliged to recognize marriages performed legally in other states.

The groups also fear that the case could open the door to the federal government's sanctioning of gay marriages.

"Most Americans will have a hard time understanding how our country has come to the point where such simple terms as 'marriage' and 'spouse' need to be defined in federal law," Sen. Don Nickles (R-Okla.) said at a press conference Wednesday. "But under challenge from courts, lawsuits and an erosion of values, we find ourselves at the point today that this legislation is needed."

Hawaii's Supreme Court ruled in 1993 that denying a marriage license to a same-sex couple would violate the equal rights clause of the state's constitution. The court returned the case to a lower court with instructions to find a compelling reason to justify discrimination. If that Hawaiian circuit court fails to do so—in a decision that could come as early as this summer—the state Supreme Court's ruling would govern marriages in the state.

Gary Bauer, president of the conservative Family Research Council, called the proposed act "a cultural watershed" that would indicate whether the nation would move "to protect marriage—the foundation of civilization"—or to destroy it.

"If the one-man, one-woman definition of marriage is broken, there is no logical stopping point for continuing the assault on marriage," Bauer said. "No civilization has ever introduced a counterfeit definition of marriage, and those who have allowed the family to be weakened have not survived."

Gay and lesbian groups charged that the measure proposed Wednesday was a product of "political-religious extremist groups" and would "codify unprecedented, federal-level blanket discrimination against lesbian and gay couples."

"This antigay attack is a throw-back to ugly, not-so-long-ago chapters of American history during which several states barred interracial marriages," said Evan Wolfson, director of the marriage project of the Lambda Legal Defense and Education Fund, a group advocating expansion of gay and lesbian rights.

The Washington Times

WASHINGTON, D.C., THURSDAY, MAY 9, 1996 **

Same-sex 'marriage' under fire on the Hill Bill anticipates Hawaii decision

By Cheryl Wetzstein
THE WASHINGTON TIMES

Senate and House members, seeking to pre-empt a Hawaii court decision that is expected to legalize same-sex "marriage," yesterday introduced a bill that defines marriage in the federal code and tells states they don't have to recognize homosexual "marriages."

"This bill does not outlaw same-sex 'marriages.' It does not outlaw anything," said Rep. Bob Barr, Georgia Republican, one of six Republicans and two Democrats sponsoring the Defense of Marriage Act.

"What it does do is stand up for states' rights" by saying that no state has to accept another state's or another state's courts' definition of marriage, Mr. Barr said.

Currently, states recognize one another's legal acts, including marriages, because of the "full faith and credit" clause in the U.S. Constitution.

The bill would alter the U.S. Code to define marriage as the "legal union between one man and one woman as husband and wife" and a spouse as "a person of the opposite sex who is a husband or a wife."

Definitions are important because they determine who can get federal benefits such as Social Security, said Sen. Don Nickles, Oklahoma Republican and sole sponsor of a companion bill in the Senate. "We don't want one court, maybe by a mixed decision, to be mandating a big change in who is eligible to receive federal benefits," he said.

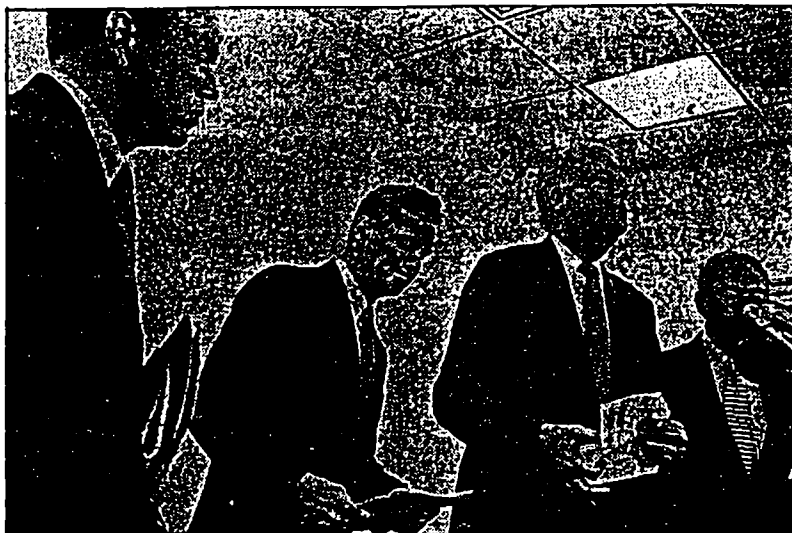


Photo by Tracy A. Woodward/The Washington Times

Sen. Don Nickles and Reps. Steve Largent and F. James Sensenbrenner Jr. (from left) attend a news conference on same-sex marriage yesterday.

GOP co-sponsors in the House include Reps. Steve Largent of Oklahoma, F. James Sensenbrenner Jr. of Wisconsin, Sue Myrick of North Carolina, Ed Bryant of Tennessee and Bill Emerson of Missouri.

The Democratic co-sponsors of the House bill are longtime Reps. Harold L. Volkmer and Ike Skelton of Missouri.

The bill, which will be handled by the House Judiciary subcommittee on the Constitution, was hailed by the Rev. Lou Sheldon, chairman of the Traditional Values Coalition, and Gary L. Bauer, president of the Family Research Council.

"This is a cultural watershed," Mr. Bauer said in a statement.

Evan Wolfson, director of the Marriage Project for the Lambda Legal Defense and Education Fund, said lawmakers are trying to enact "unprecedented federal-level blanket discrimination of lesbian and gay couples."

"If successful," Mr. Wolfson

see MARRIAGE, page A14

MARRIAGE

From page A1

said, referring to now-repealed laws against interracial marriage, "those sponsoring this attack bill would once again make America a house divided, in which couples who were lawfully married in one state literally would not know from day to day, state to state, whether they were married or not."

The American Civil Liberties Union condemned the bill for meddling in state affairs, while the Human Rights Campaign said it and similar bills in state legislatures have been part of "an election-year strategy to score political points against gay men and lesbians."

Mr. Barr said yesterday that the bill "has nothing to do with the presidential race" but was introduced "in anticipation" of a decision by the Hawaii courts this summer.

Seven states have passed laws exempting themselves from having to recognize same-sex "marriages" legalized in other states: Alaska, Georgia, Idaho, Kansas, Utah, South Dakota and Oklahoma.

But the other 42 states could face legal challenges from same-sex couples seeking to have Hawaiian "marriages" recognized in their home state.

GOP Bill Targets Same-Sex Marriages

Measure would affect
benefits, recognition

By Carolyn Lochhead

Chronicle Washington Bureau

Washington

Legislation was introduced in the House and Senate yesterday to define marriage as a heterosexual union, the opening salvo against an expected Hawaii court decision to permit same-sex marriage.

The bill, introduced by Republicans with some Democratic support, represents a turning point for gay marriage, marking the emergence of an explosive social issue on the national political stage.

Formally known as the Defense of Marriage Act, the legislation would define marriage as "only a legal union between one man and one woman as husband and wife." The word spouse, according to the legislation, "refers only to a person of the opposite sex who is a husband or wife."

Sponsors emphasized that the measure would not ban gay marriage in any state. But it would allow states to refuse to recognize the legality of same-sex marriages performed elsewhere — a provision intended to prevent the automatic legalization of same-sex unions outside Hawaii.

If passed, the bill would affect federal benefit programs such as Social Security and welfare as well as immigration and tax law.

The gay marriage issue came to the forefront in 1993 when the Hawaii Supreme Court ordered the

IN NATION

■ Clinton and Dole exchanged barbs over stalled legislation concerning the gas tax and the minimum wage

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MARRIAGE: GOP Definition

From Page 1

state to prove a "compelling interest" — a very high legal threshold — for denying marriage licenses to same-sex couples. The case was remanded to a lower court, where arguments are scheduled to begin in August.

Because a final decision is unlikely before the November election — and hence, there is little chance that another state would have to accept a Hawaiian gay marriage before then — the legislation's introduction now indicates a clear political motive, said Daniel Zingale, political director for the Human Rights Campaign, a leading gay and lesbian group.

Sponsors strongly denied that, however. "We're not here to manufacture issues — it's being presented to us," said Representative Bob Barr, a Georgia Republican and the primary sponsor of the bill. Barr asserted that Congress should act to forestall the inevitable confusion and litigation that would come after the Hawaii court hands down its decision.

Largent Presents GOP Case

Barr focused on the fiscal and legal rationale for the bill, but Representative Steve Largent, a first-term Republican from Oklahoma, openly cast the issue in moral terms.

Largent predicted that gay marriage "may eventually be the final blow to the American family."

"Society pays the consequences when the family unit is weakened through divorce, illegitimacy, abuse, economic hardship — or, in the case of the pending decision of the Hawaii court, redefinition," he said.

Conservative religious groups, including the Christian Coalition, the Traditional Values Coalition and Focus on the Family, pushed hard for the bill and were consulted in its drafting.

Gary Bauer, president of the Family Research Council, hailed it as "a cultural watershed."

"Will America move to protect marriage — the foundation of civilization — or will America become the first nation to destroy marriage?" Bauer asked. "At stake is nothing less than the future of the nation and the well-being of our children."

'Wedge Issue' Seen

Many gay and lesbian groups, although they strongly endorse gay marriage, concede that the country at large is not ready to embrace it. They condemned the bill as a "wedge issue" introduced by religious conservatives as a way to attract some moderates and energize supporters.

"We're not surprised, but we're incredibly saddened that the halls of Congress would be used to move forward a very narrow-minded and mean-spirited attack on our community," said Kerry Lobel, deputy director of the National Gay and Lesbian Task Force.

Lobel said religious conservatives see same-sex marriage "as an effective way to turn one member of the community against another by raising people's fears."

Eight states — Alaska, Arizona, Georgia, Idaho, Kansas, Oklahoma, South Dakota and Utah — already have moved to ban gay marriage. Fourteen states have defeated such moves: Washington, Wyoming, Colorado, New Mexico, Minnesota, Wisconsin, Iowa, Kentucky, West Virginia, Virginia, Mississippi, Florida, Maine and Maryland.

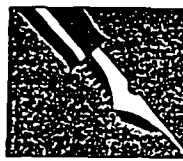
California's Position

Gay marriages are not legal in California and legislation has been proposed in Sacramento to specifically bar the recognition of such unions.

But in San Francisco, gay couples, along with unmarried straight couples, have been eligible to register since 1991 at the city clerk's office. So far, about 9,000 couples, mostly gay, have done so. The city and some private employers also extend medical benefits to gay employees' partners.

Many political analysts see the issue as a plus for Republicans, particularly among swing voters who may be generally sympathetic to liberal causes but who bristle at this one.

California senators Dianne Feinstein and Barbara Boxer could not be reached for comment. Hearings on the matter are scheduled in the House next week.



The Washington Blade

THE GAY WEEKLY OF THE NATION'S CAPITAL

Congress eyes Gay 'threat'

Dole signs on as a cosponsor of anti-marriage bill

by Lisa Keen

The prospects for legal recognition of same-sex marriage took another battering this week. Alaska's Democratic governor let that state's bill become law; South Carolina's legislature approved its measure; and, eight members of Congress introduced a bill hoping to change federal law so that both federal and state governments can ignore a same-sex marriage approved in any state.

The Congressional bill dominated the attention of activists and the media this week — with activists claiming that the bill is a Republican presidential campaign ploy and the bill's sponsors claiming that they're just trying to respond to an "imminent threat" that same-sex marriages might become legalized in Hawaii very soon.

Last week, the *Washington Times* reported that the Dole campaign was "preparing to use President Clinton's outreach to homosexuals as a wedge issue in the fall campaign" and that same-sex marriage would be the specific timber.

This week, six Republican and two Democratic members of Congress introduced a bill that seeks to enable the federal government and states to ignore any same-sex marriage recognized elsewhere; signing on as the sole cosponsor to the Senate version was Majority Leader and Republican presidential nominee apparent Bob Dole.



Sen. Don Nickles (at the microphone) introduced the anti-Gay marriage bill Wednesday with Reps. James Sensenbrenner (center) and Bob Barr (right).

But the four Republicans who held a press conference Wednesday to introduce their bill said their timing has nothing to do with the presidential campaign. Instead, said one of the sponsors, Rep. Bob Barr (R-Ga.), their timing has to do with the "imminent threat" that the Hawaii courts will issue a ruling "this summer" that will enable same-sex couples to obtain marriage licenses.

Barr was referring to *Baehr v. Hawaii*, a lawsuit which has been in the national spotlight since 1993, when the Hawaii Supreme Court made its preliminary ruling. That ruling said the state would have to issue licenses unless it could prove it has a "compelling" need to deny them to same-sex

Continued on page 25

Continued from page 1

couples. A trial giving the state a chance to demonstrate that "compelling" need has been postponed for more than a year now and is currently scheduled for August. It is expected to take at least three weeks. And only after the state district court issues its ruling does the case go back to the Hawaii Supreme Court for its definitive ruling. Meanwhile, the Hawaii state legislature just last month rejected an attempt by right-wing religious activists to put the issue on the November ballot.

The new Congressional bill, called the "Defense of Marriage Act," was introduced by Barr and seven other members of the House: Reps. James Sensenbrenner (R-Wis.), Steve Largent (R-Okla.), Sue Myrick (R-N.C.), Ed Bryant (R-Tenn.), Bill Emerson (R-Mo.), Harold Volkmer (D-Mo.), and Ike Skelton (D-Mo.). In the Senate, the bill was introduced by Don Nickles (R-Okla.).

The "Defense of Marriage Act" seeks to do two things: first, it seeks to exempt states from giving any "effect" to "a relationship between persons of the same sex that is treated as a marriage under the laws" of another state; and, second, it seeks to define, for federal law and benefits, that the word "marriage" means "only a legal union between one man and one woman as husband and wife" and that the word "spouse" refers "only to a person of the opposite sex who is a husband or a wife."

Officials with the Human Rights Campaign, a national Gay lobbying organization, said they believe the bill is a presidential campaign tactic by Republicans

bill in Congress.

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Bill Would Avert Recognizing Same-Sex Rites

By Chris Casteel
Washington Bureau

WASHINGTON — Saying they were concerned that Hawaii may soon sanction same-sex marriages, Sen. Don Nickles and Rep. Steve Largent announced Wednesday they were proposing legislation to prevent states from having to recognize those marriages.

The Oklahoma lawmakers and others sponsoring the legislation said they were not seeking to prevent states from allowing homosexual marriages. However, they said they were worried that a clause in the U.S. Constitution might require other states to give "full faith and credit" to other states' interpretations of what constitutes marriage.

"This legislation outlaws nothing," said Rep. Bob Barr, R-Ga. "It does not outlaw same-sex marriages."

Instead, Barr said, the bill says states don't have to recognize another state's law regarding a marriage between two people of the same sex.

Largent, R-Tulsa, said, "The Defense of Marriage Act is designed to defend the core of what families are — one man and one woman united in marriage. The institution of the family and the institution of marriage have been under frontal assault for years. Society pays the consequences when the family unit is weakened through divorce, illegitimacy, abuse, economic hardship or — in the case of the pending decision of the Hawaii court — redefinition."

Nickles, R-Ponca City, said he introduced a similar bill in the Senate on Wednesday that was "simple, limited in scope and based on common sense."

Gay rights groups attacked the legislation on Wednesday, saying it was the product of political extremists.

"This is a calculated national assault on the lives of lesbian and gay people," said Elizabeth Birch, of the Human Rights Campaign.

ON CAPITOL HILL

States Could Ignore Same-Sex Marriage

A bill to keep states from being forced to recognize marriages between people of the same sex was introduced in both chambers of Congress yesterday.

The bill was prompted by a pending legal case in Hawaii that may result in that state recognizing same-sex marriages. Under the Constitution, the 49 other states would have to accept those marriages as valid.

"I and others don't think that any state should be forced to accept same-sex marriage just because the courts of Hawaii may require Hawaiians to do so," Rep. Robert L. Barr Jr. (R-Ga.) said.

The bill says each state can decide for itself whether to recognize same-sex marriages. It also states that marriage as defined under federal law is the legal union between one man and one woman and that a spouse must be someone of the opposite sex.

"This bill merely reaffirms what Americans have meant for more than 200 years when using the words 'marriage' and 'spouse,'" said Sen. Don Nickles (R-Okla.). He said it was important to have a federal definition of marriage and spouse because of their use in hundreds of rules and regulations dealing with income taxes, immigration and government benefits.

But Rep. Patricia Schroeder (D-Colo.) said the bill was not necessary. "I think that each state has decided those kind of issues since

the Republic began. And I don't see any reason to rush out right now and decide we're going to take this away from the states," she said on CBS's "This Morning."

—Reuter

Clinton dangles promises to gays

Hints he'll push legal 'marriages'

By Paul Bedard
THE WASHINGTON TIMES

President Clinton is wooing homosexual voters and AIDS activists, who were angered by his handling of their issues earlier in his term, by making new promises to consider expanded civil rights — including same-sex "marriages."

Capitalizing on a top issue in the community, Marsha Scott, Mr. Clinton's liaison to homosexual activists, is seeking suggestions on what position the president should take on same-sex marriages.

In Boston recently, Miss Scott told a homosexual group, "We [need] to find ways to ensure that those of you in these loving, long-term and committed relationships can enjoy all the same benefits that [heterosexual couples] are entitled to under the law."

She added that using same-sex marriages may not be the right "vehicle" now but said, "I'm going to argue that we broaden the context and look at the rights that gays and lesbians have ... and where those rights are denied."

Asked about Miss Scott's little-noticed statements, a senior administration official said homosexual marriage is "not something we intend to espouse."

The official said that the White House will leave it to states to decide the issue, and that Mr. Clinton wants to do "everything we can to support" traditional marriages between heterosexuals.

GAYS

From page A1

But the aide added: "The president is aware that many communities and institutions are considering whether certain basic benefits can be provided outside the context of traditional marriage. The challenge in addressing these issues is to remain sensitive to the traditional values of our communities while preserving the fundamental right to live free from unjustified discrimination."

Mr. Clinton, said the official, is "personally" opposed to homosexual marriages.

Opponents of Mr. Clinton, however, noted that he also "objected" to late-term partial abortions but vetoed a ban on the procedure.

Conservative and liberal critics of the president complained about the aide's comments, which they said were designed merely to solicit support for the president. Miss Scott did not return a reporter's phone call.

Steve Michael, a third-party presidential candidate supported by ACT UP, the AIDS Coalition to Unleash Power, said "they're making more empty promises."

Robert Knight of the conservative Family Research Council said, "The president is between a rock and a hard place, because he knows embracing same-sex marriage would alienate most voters who view him as a moderate."

The administration is making its case to homosexuals at White House meetings and through aides tapped to energize members of their community, arguing that while Mr. Clinton hasn't fulfilled all his 1992 promises, a Dole administration won't be as helpful.

In an interview with *Windows*, New England's largest homosexual newspaper, Miss Scott said that in a Dole-Clinton race, "I think you have extremely clear choices.

You are either at the political table with a Clinton administration, or there is not even a door for you to get to the table."

The White House also has formed a special AIDS task force, which plans a two-day open session next week.

But the White House faces a skeptical audience, many of whom feel the president hasn't fulfilled his long list of promises to them.

For instance, Mr. Michael said his disappointment with Mr. Clinton's failure to start a "Manhattan Project"-style anti-AIDS program or to elevate the AIDS czar to a Cabinet-level post led to his third-party challenge.

"If I can win 1 or 2 or 3 percent of the vote in critical states, we could be the balance of power. If on the day after the election, established gay groups blame us for defeating the president, I will wear that as a badge of honor," he said.

"Sure there are some problems," said Susan Leal, an openly homosexual member of the San Francisco Board of Supervisors. But, she added, the administration remains open to homosexuals and it's not clear what approach Senate Majority Leader Bob Dole would take as president.

Elizabeth Birch, executive director of the dominant homosexual-rights group, the Human Rights Campaign, said Mr. Clinton should be supported because he reaches out and is integrating homosexuals into his administration.

"President Clinton sees gay America as whole and contributing citizens," she said. Her group plans to spend \$2.5 million to help Mr. Clinton's re-election and listed eight major areas in which the president has helped homosexuals.

The Clinton-Gore re-election campaign is confident of homosexual support. "We believe in the end the community will be with us," said campaign spokesman Joseph Lockhart.

The Washington Times

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Gay 'marriages' likely to become hot-button issue in presidential race

By Paul Bedard
THE WASHINGTON TIMES

Efforts in 31 states to outlaw same-sex "marriages" are pushing the explosive issue into the presidential race, where the two main candidates differ on a ban on such unions and on how to address the issue.

"We don't want to touch it," said a Clinton administration official.

Meanwhile, Senate Majority Leader Bob Dole is preparing to use President Clinton's outreach to homosexuals as a wedge issue in the fall campaign.

Dole campaign spokesman Nelson Warfield said the senator "might be doing something more on it in the future," thus taking conservative adviser William Bennett up on his challenge to make homosexual "marriages" a campaign issue.

As many homosexual-rights and family-values groups push to get the candidates to take a stand on the issue, the White House and Mr. Dole's campaign have begun to prepare for a debate on same-sex "marriages."

For example, Mr. Dole, the likely GOP presidential nominee, has endorsed the "National Campaign to Protect Marriage" and its crusade to stop Congress from legalizing same-sex "marriages."

Moreover, in his letter to a group that asked candidates to sign a pledge of support, the Kansas Republican said the effort "does not go far enough."

"Government at all levels must work to support and promote the institution of marriage that unites husband and wife," Mr. Dole said.

Mr. Clinton, who thinks the pledge is "outrageous," has refused to sign it and has dispatched Marsha Scott, his personal liaison to homosexuals, to seek ideas on how he can best satisfy their de-

mands for limited administration approval of same-sex "marriages."

Also, according to the latest issue of the Advocate, a magazine for homosexuals, the White House has tapped the Justice Department's office of policy development for proposals.

The magazine said the administration is considering:

- Changing immigration laws so that same-sex relationships are treated the same as traditional heterosexual marriages.

- Making tax laws the same for homosexual couples, regardless of marital status.

The White House has no immediate plans to implement these options, said spokeswoman Mary Ellen Glynn, adding that Mr. Clinton does not personally support full legal sanctioning of homosexual "marriages."

However, Miss Scott recently told Windows, a Boston newspaper for homosexuals, that Mr. Clinton is looking for a way to broaden civil rights for homosexuals.

"Gay men and lesbians deserve equal rights under law. Where there is discrimination ... that's wrong. Whether marriage is the vehicle to make those changes is something we are looking at," she said.

Promotion of same-sex "marriages" has split the homosexual community, while unifying traditional-values groups.

"It's a winner of an issue," said the Rev. Lou Sheldon, chairman of the Traditional Values Coalition.

"This is just absolutely left of field. There is no more-liberal position," said Kristi Hamrick of the Family Research Council.

Also, the Union of Orthodox Rabbis of the United States and Canada yesterday issued a state-

ment condemning "all attempts to legitimize same-sex 'marriages'."

Others, such as ACT UP (AIDS Coalition to Unleash Power), want Mr. Clinton to take a firm stand in support now — regardless of the political consequences.

"These issues are tough, but he can't be grabbing money out of our pocket, slapping us on the back and then forgetting us," said Steve Michael, who ran in Democratic presidential primaries on an ACT UP ticket. "The biggest threat to him isn't my campaign, it's that gays will stay home."

Representatives of the National Gay and Lesbian Task force also want action. A field organizer told Miss Scott during her recent visit to Boston to "please tell the president, 'Don't dump us on this one.'"

Larger homosexual groups, backed by Reps. Barney Frank and Gerry E. Studds, both Massachusetts Democrats and openly homosexual, are trying to silence others who want Mr. Clinton to move on the issue before the election.

Their fear: Republicans will use the issue to spotlight Mr. Clinton's liberal side.

"What they will try to do is taint President Clinton as someone out of touch with mainstream America," said Elizabeth Birch, executive director of the Human Rights Campaign, the nation's largest homosexual-rights group.

The GOP homosexual group, the Log Cabin Republicans, agrees that the issue should not be raised at the presidential level.

"It's not time yet," said Log Cabin spokesman David Greer, who explained that the issue is being handled on the state level and by corporations that provide spousal benefits to the partners of homosexual employees.

Dole Backs Bill to Restrict Gay Marriage

Measure would head off effect of Hawaii ruling

By Carolyn Lochhead
Chronicle Washington Bureau

Washington

Bob Dole, the presumed Republican presidential nominee, has signed on as the first Senate cosponsor of a new bill to define marriage as a heterosexual union.

Known as the Defense of Marriage Act, the bill would permit states to ignore a gay marriage from another state. It also defines marriage as a legal union between a man and a woman for federal purposes, including Social Security and other entitlement programs as well as immigration and tax law.

White House aides said President Clinton opposes gay marriage, but would not say whether he would sign the Defense of Marriage Act.

The Senate version was introduced Wednesday by Oklahoma Republican Don Nickles. A House version was introduced the same day. So far, Dole is the sole cosponsor in the Senate; the House measure has eight cosponsors, including two Missouri Democrats.

The bill does not ban gay marriage. But it is intended to head off an expected Hawaiian court decision that could legalize gay marriage

CALIFORNIA SENATORS' POSITIONS ON THE BILL

- Although Barbara Boxer has not gone on record as opposed, her spokesman said the senator "doesn't feel there's a need" for the bill.
- Dianne Feinstein has not yet taken a position on the legislation.

there and require other states to recognize the Hawaiian unions under the "full faith and credit" clause of the Constitution. Article 4 of the Constitution says that "full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state."

Senator Barbara Boxer, D-Calif., has not gone on record as opposing the bill. But her spokesman, David Sandretti, said yesterday that Boxer "right now doesn't feel there's a need for this bill."

"The republic has survived quite nicely by states extending the full faith and credit provision of the Constitution," Sandretti argued. "States have historically recognized other states' laws in this regard and (Senator Boxer) doesn't feel the need for any new law."

However, when asked whether Boxer

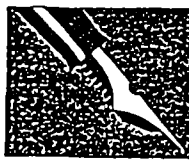
would support gay marital benefits under Social Security, Sandretti said, "She's not saying that."

Senator Dianne Feinstein, D-Calif., has not yet taken a position on the bill.

Elizabeth Birch, executive director of the Human Rights Campaign, a large gay rights group, blasted Dole's move as "pandering to extremists." Birch said moves in various states to ban gay marriage "propose to prohibit something that does not even exist. The anti-gay groups that are coordinating this flood of anti-marriage activity are shamelessly attempting to inject the issue into the heat of the presidential campaign, and Bob Dole is taking their bait."

GOP strategist William Kristol said gay marriage "could be the sleeper issue of 1996." He called it "a bridge too far for a huge chunk of the electorate," pointing to his "liberal Jewish mother-in-law, a totally reliable Democrat and liberal to boot, who is all for tolerance and dislikes gay bashing, but does not think the courts should suddenly overturn 2,000 years of tradition on the issue of gay marriage."

Human Rights Campaign political director Daniel Zingales acknowledged that the arrival of gay marriage in the national political arena may be premature. Although polls indicate strong public opposition to job discrimination against lesbians and gays, he said, the sentiment toward gay marriage is more ambivalent.



The Washington Blade

THE GAY WEEKLY OF THE NATION'S CAPITAL

Congress eyes Gay 'threat'

Dole signs on as a cosponsor of anti-marriage bill

by Lisa Keen

The prospects for legal recognition of same-sex marriage took another battering this week. Alaska's Democratic governor let that state's bill become law; South Carolina's legislature approved its measure; and, eight members of Congress introduced a bill hoping to change federal law so that both federal and state governments can ignore a same-sex marriage approved in any state.

The Congressional bill dominated the attention of activists and the media this week — with activists claiming that the bill is a Republican presidential campaign ploy and the bill's sponsors claiming that they're just trying to respond to an "imminent threat" that same-sex marriages might become legalized in Hawaii very soon.

Last week, the *Washington Times* reported that the Dole campaign was "preparing to use President Clinton's outreach to homosexuals as a wedge issue in the fall campaign" and that same-sex marriage would be the specific timber.

This week, six Republican and two Democratic members of Congress introduced a bill that seeks to enable the federal government and states to ignore any same-sex marriage recognized elsewhere; signing on as the sole cosponsor to the Senate version was Majority Leader and Republican presidential nominee apparent Bob Dole.



Sen. Don Nickles (at the microphone) introduced the anti-Gay marriage bill Wednesday with Reps. James Sensenbrenner (center) and Bob Barr (right).

But the four Republicans who held a press conference Wednesday to introduce their bill said their timing has nothing to do with the presidential campaign. Instead, said one of the sponsors, Rep. Bob Barr (R-Ga.), their timing has to do with the "imminent threat" that the Hawaii courts will issue a ruling "this summer" that will enable same-sex couples to obtain marriage licenses.

Barr was referring to *Baehr v. Hawaii*, a lawsuit which has been in the national spotlight since 1993, when the Hawaii Supreme Court made its preliminary ruling. That ruling said the state would have to issue licenses unless it could prove it has a "compelling" need to deny them to same-sex

Continued on page 25

Continued from page 1

couples. A trial giving the state a chance to demonstrate that "compelling" need has been postponed for more than a year now and is currently scheduled for August. It is expected to take at least three weeks. And only after the state district court issues its ruling does the case go back to the Hawaii Supreme Court for its definitive ruling. Meanwhile, the Hawaii state legislature just last month rejected an attempt by right-wing religious activists to put the issue on the November ballot.

The new Congressional bill, called the "Defense of Marriage Act," was introduced by Barr and seven other members of the House: Reps. James Sensenbrenner (R-Wis.), Steve Largent (R-Okla.), Sue Myrick (R-N.C.), Ed Bryant (R-Tenn.), Bill Emerson (R-Mo.), Harold Volkmer (D-Mo.), and Ike Skelton (D-Mo.). In the Senate, the bill was introduced by Don Nickles (R-Okla.).

The "Defense of Marriage Act" seeks to do two things: first, it seeks to exempt states from giving any "effect" to "a relationship between persons of the same sex that is treated as a marriage under the laws" of another state; and, second, it seeks to define, for federal law and benefits, that the word "marriage" means "only a legal union between one man and one woman as husband and wife" and that the word "spouse" refers "only to a person of the opposite sex who is a husband or a wife."

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"It's an election year assault on the lives of Gay men and Lesbians," said HRC press spokesperson Kim Mills. "It's an attempt to catapult this issue into the Clinton campaign." Mills said Republicans will use the bill to force Clinton and other Democrats seeking re-election to discuss an issue which is "uncomfortable for many Americans." And, because Clinton has already indicated that he opposes legal recognition for same-sex marriages, the discussion can force him to make statements which have the potential to alienate the Gay vote.

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'Male and female He created them'

It seems inevitable that this coming summer Hawaii's Supreme Court will rule on legalizing same-sex marriages. That fact has caused a great deal of concern among legislators and politicians across the country. Now, for the first time, the U.S. Congress is going to vote on a proposed bill to protect the traditional definition of marriage and to protect the right of any state to refuse to recognize gay marriages from Hawaii.

Rep. Bob Barr, a member of the House Judiciary Committee, has drafted a proposal entitled The Defense of Marriage Act (DOMA). The bill, co-sponsored by seven other members of Congress, declares "the right of each state to decide for itself whether it wants to grant legal status to same-sex 'marriage'"; it also "amends the U.S. Code to make explicit what has been understood under federal law for 200 years; that a marriage is the legal union of a man and a woman as husband and wife, and a spouse is a husband or wife of the opposite sex." According to Mr. Barr, "the bill does not outlaw

anything. It simply says that Georgia and all other states of the union cannot have a judicial decision with which they can disagree forced on them."

Currently, seven states have preemptively exempted themselves from recognizing gay marriages from other states: Alaska, Georgia, Idaho, Kansas, Utah, South Dakota and Oklahoma. And they are probably not going to be the last. Needless to say, gay marriage is a highly contentious issue, which threatens to turn traditional definitions of marriage and family on their heads completely. Those definitions, on which rest the foundation of American society, and indeed most other human societies as well, are what the eight sponsors of the House bill are trying to protect. "The truth is, poll after poll shows that the overwhelming majority of Americans, including the people of Hawaii, are opposed to legal recognition of same-sex 'marriage,'" declares Mr. Barr. This bill is a logical first step for supporters of the American family in what will likely become a long and drawn out battle.

MONA CHAREN

Mother's Day, marriage and gratitude

Taming of the shrill

Mother's Day 1996 finds America rediscovering marriage. A dozen or so states are considering legislation to restore the idea of fault in divorce. The New Republic devoted an entire recent issue to the case for homosexual marriage. The American Enterprise magazine chronicles the grass-roots movements based in churches and synagogues to prepare couples for marriage and to save the unions of those headed for the courts.

Everywhere, the message about the importance of marriage to a civilized society seems to be getting through. The worth of marriage for men, and the importance of fathers to children, has received particular attention. We've learned that married men live longer than single and divorced men, and have higher incomes, fewer illnesses, less depression and happier sex lives. The National Fatherhood Initiative, an effort to reconnect men to their children, has been hailed by one and all.

We've come a long way since then-Vice President Dan Quayle was almost universally ridiculed for being the first to stress "family values."

Still, Mother's Day is an appropriate moment to reflect it isn't just men who need marriage in fin de siècle America. It is women.

As the mother of a 4-year-old, a 2-year-old and a newborn, I am weary to the bone. The weeks of sleep deprivation with an infant and exhaustion caring for the older two gave me pneumonia. And that was with a loving husband and daytime help. What must it be like to raise children as a single parent?

The urge to become pregnant and give birth is probably the most powerful yearning a woman experiences in her life. If she is not constrained by custom and mores from indulging that desire at the wrong times, she will make a mess of her life and that of her child or children.

No matter how loving and well-intended a new mother may be, if she is forced to endure the hardships of pregnancy, childbirth and infancy alone, she will not be as good a parent as someone who is married. Sheer exhaustion will prevent it. What common sense suggests is supported by the data on child abuse. Single mothers are far more likely to harm their children than married mothers. And while only a minority will ever abuse their children, many of the rest will be too drained to provide the best care.

Even a Murphy Brown who can afford around-the-clock help will probably find that the lack of a loving, supportive husband — to say nothing of the accompanying lack of an extended family on the father's side — leaves her and her child emotionally isolated.

For centuries, women understood that their vulnerability around the time of childbirth and infancy cried out for stability and commitment from the father of their children — in short, for marriage. Since men are as eager for sex as women are for babies (and vice versa), a bargain was struck that worked pretty well for centuries. Oversimplified, it went like this: Women gave sex to get commitment, and men gave commitment to get sex.

But in our time, women have been deluded into thinking of childbearing, like so many other things, as a "right." Even bright, well-educated women (the only

group for whom the unwed parenthood statistics are continuing to rise) speak in terms of entitlement, saying, "Why should I miss out on having a child just because I couldn't find the right man?"

I have two woman friends, approaching or past 40, who've said that very thing. The answer I gave them, as tactfully as I could manage, went as follows: "If having a child is that important to you (and no one understands baby lust better than I), you need to make finding a husband your top priority. Children are the greatest blessing in the world, but they are not easy. Moreover, the child deserves a father. Being a good parent requires selflessness of a high order. Starting out by depriving a child of a dad because no male in the human race met your standards is not an auspicious beginning.

"If you want to be a mother, start thinking like one — think of your child's needs first."

Mona Charen is a nationally syndicated columnist.

Human Events

The National Conservative Weekly

2 • HUMAN EVENTS • MAY 17, 1996

★ **BARRING GAY MARRIAGE?** Seeking to thwart the potential impact of an impending Hawaii court decision that is expected to legalize same-sex marriage, Senate and House members last week introduced a bill that will modify the federal code so that states don't have to recognize such marital unions. "This bill does not outlaw same-sex marriages." It does not outlaw anything," said Georgia Rep. Bob Barr (R.), a sponsor of the Defense of Marriage Act. But while the bill may not formally ban such marriages, it will allow states not to recognize them.

"What it does do," stressed former U.S. attorney Barr, "is stand up for states' rights" by saying no state has to accept another state's or another state's courts' definition of marriage. The bill would also alter the U.S. code to define marriage as the "legal union between one man and one woman as husband and wife" and a spouse as "a person of the opposite sex who is a husband or a wife." This approach will permit states to block federal benefits to homosexual couples.

TELEVISION NEWS Activity Report

from Broadcast News of Mid-America, Inc.

Prepared for US Rep Steve Largent
 Date(s) May 8, 1996 - May 8, 1996

Date	Station	Pgm Time	Story No.	TRT	Time of Day	Reporter	Market
5/8/96	OETA	6:30 PM	A08	0:42	6:38:47 PM		Okla. Statewide

ANCHOR: And members of the Oklahoma Congressional delegation are sponsoring legislation allowing states to ban same-sex marriages. First District Congressman Steve Largent today held a news conference to unveil his proposed bill on the subject. The measure would protect states and other jurisdictions from being compelled to honor a gay marriage performed in another state. The bill is called the defense of marriage act by Congressmen Largent and Bob Barr of Georgia. A spokesman for the human rights campaign says the bill is an election year assault on homosexuals. But Oklahoma US Senator Don Nickles disagrees. He says court challenges have made the legislation necessary. Nickles is a senate sponsor of the Largent-Barr measure.

5/8/96	OETA	6:30 PM	B05	0:27	6:56:03 PM		Okla. Statewide
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ANCHOR: Checking world events tonight, Oklahoma's Congressional delegation has split along party lines on a house vote to investigate the Clinton administration. A measure passed to create a select subcommittee to investigate the administration's role in allowing Iranian arms shipments to Bosnia. Republican Representatives Coburn, Istook, Largent, Lucas and Watts voted for the subcommittee. Democratic representative Bill Brewster voted against it.

5/8/96	KJRH	6:00 PM	B02	0:23	6:10:07 PM		Tulsa
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ANCHOR: Congressman Steve Largent is one of several Republicans speaking against gay marriages today in Washington. The bill is being sponsored by a Georgia representative, and would define marriage for federal purposes as a legal union between one man and one woman. A spokesman for the Human Rights Campaign, a gay rights group, says the bill is an election year assault on homosexuals.

5/8/96	KTUL	10:00 PM	D01	0:19	10:23:54 PM		Tulsa
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ANCHOR: (vo) Making news tonight, Congressman Steve Largent wants to keep the ban on same-sex marriages in Oklahoma. This couple was denied a permit when they applied. Largent has introduced a federal bill defining legal marriages nationwide. The legislation says it is the union of one man and one woman.

Total No. of Stories 4

News Text in this report is derived from closed captioning or prompter scripts created by the broadcasters unless preceded by asterisk (*). Asterisk denotes text for this particular entry was not provided by the broadcaster but rather is a paraphrase of the text. REPORT KEY: TRT = total running time of particular news report; (vo) = voice over video begins here; (vbg) = voice over graphic begins here. Names of persons interviewed on-camera are provided in all capital letters.
 Broadcast News of Mid-America, Inc., 815 South Denver, Suite 102, Tulsa, Oklahoma 74119. Phone (918) 582-7575. Fax (918) 584-1129.

TELEVISION NEWS Activity Report*from Broadcast News of Mid-America, Inc.*

Prepared for US Rep Steve Largent
 Date(s) May 10, 1996 - May 12, 1996

Date	Station	Pgm Time	Story No.	TRT	Time of Day	Reporter	Market
5/12/96	KOCO	5:30 PM	A03	2:32	5:31:12 PM	Jerry Strickland	Oklahoma City

ANCHOR: In news, should gays and lesbians have the right to be legally married. On the surface, it sounds like a simple issue of civil rights, but the controversy is anything but a cinch to solve. Oklahoma Senator Don Nickles and Representative Steve Largent are leading a pack of Washington legislators vocally against same sex marriages. But a growing portion of our population isn't taking 'no' for an answer. 5 News Reporter Jerry Strickland talked to some people in the gay and lesbian community that have a far different idea.

PAUL THOMPSON, OKC Gay & Lesbian Caucus: "If gays and lesbians want both the positives and the negatives of being married, they should be able to have it."

GARY BAUER: "This is one of the most radical, bizarre idea to come down the pike in years."

ELIZABETH BIRCH, Human Rights Campaign: "A very synical election year ploy to divide the nation and scapegoat one group of Americans."

REPORTER: The battle lines have been drawn. Politicians are hitting the issue of gay and lesbian marriages head-on.

PAUL THOMPSON: "I really don't think most of the people who are leading the charge on this really care about gay and lesbian marriages."

SPEAKER NOT IDENTIFIED: "A male and a male walk in and want a license, and you won't give it to them. You are discriminating against them."

REPORTER: The case of same sex marriages is being argued in the Hawaii higher courts. And if they approve the measure, that will mean other states will have to recognize homosexual marriages. An idea that has sent a ripple through Congress.

GARY BAUER: "If you redefine marriage to mean anything, it will ultimately mean nothing."

SPEAKER NOT IDENTIFIED: "Whether or not the government condones it, that's another issue. It's important for us to celebrate our relationship. We're not going to wait for the government to condone it."

REPORTER: Mike Splitt and Steven Lazarus of Norman reaffirmed their love for each other a year a half ago. Their commitment ceremony was a way to share their feelings for one another with friends and family.

SPEAKER NOT IDENTIFIED: "We're going to celebrate our love and commitment openly. All of the heterosexuals do that anyway, right?"

REPORTER: Their commitment ceremony doesn't, however, give them the same rights and privileges of heterosexuals. That's because, by law, they're not recognized as being legally married. And if it's up to several politicians on Capitol Hill, gays and lesbians will have to continue to fight for what they consider their civil rights.

PAUL THOMPSON: "I think it's just a political football, and gays and lesbians are they ones to kick. 30 years ago, it would've been the blacks or the Jews."

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REPORTER: Jerry Strickland, 5 News.

ANCHOR: No word yet on when the Hawaii court system will decide on the same sex issue. Many lawmakers, though, want to beat the Hawaii courts and block the recognition of homosexual marriages in their states.

5/12/96	KOCO	10:00 PM	B01	1:10	10:12:33 PM		Oklahoma City
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ANCHOR: It's a controversial issue and people on both sides are turning up the heat on Capitol Hill. Oklahoma Senator Don Nickles and Representative Steve Largent are leading the fight against same sex marriages. (vog) Their push comes on the heels of Hawaii considering legalizing same sex marriages. If that happens, a couple from Oklahoma could go to Hawaii and get married. When they returned to Oklahoma, by law, the state would have to grant them the same rights and privileges as heterosexual couples.

PAUL THOMPSON, OKC Gay & Lesbian Caucus: "I think gays and lesbians who want that kind of affirmation, ought to have the legal right to have it."

ANCHOR: (vo) Paul Thompson is the President of the Oklahoma City Gay and Lesbian Political Caucus. He tells 5 News Reporter Jerry Strickland that contrary to popular belief, homosexuals aren't asking for special privileges.

PAUL THOMPSON: "I don't even personally ask them to accept me, or say that who I am or what I'm doing is wonderful. I'm just asking them to leave me alone and give me my rights. And that's what I think most gays and lesbians want."

ANCHOR: Oklahoma is one of several states which already has a law on the books prohibiting homosexual marriages.

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