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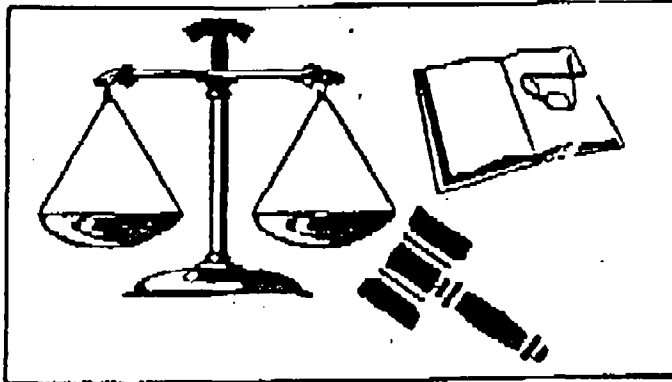
Position:

2

U.S. DEPARTMENT OF JUSTICE

OFFICE OF LEGISLATIVE AFFAIRS

FACSIMILE COVER SHEET



TO:

Steve Newman

FAX NO.:

456-1647

FROM:

Ellen Davis

PHONE:

(202) 514-7014 Fax: 514-5499

DATE:

NO. OF PAGES:

3

(EXCLUDING COVER)

COMMENTS:

As discussed

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ONE HUNDRED FOURTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

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WASHINGTON, DC 20515-0210

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May 9, 1996

The Honorable Janet Reno
Attorney General
U.S. Department of Justice
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Reno:

The House Subcommittee on the Constitution is planning to hold a hearing on H.R. 3396, the Defense of Marriage Act. The hearing will take place on Wednesday, May 22, 1996, at 1:00 p.m. in Room 2226 of the Rayburn House Office Building.

I would like to formally invite you or your representative to appear and testify at the hearing. Please forward one hundred (100) copies of your prepared statement no later than 5:00 p.m. on Monday, May 20, 1996. Please forward the testimony to:

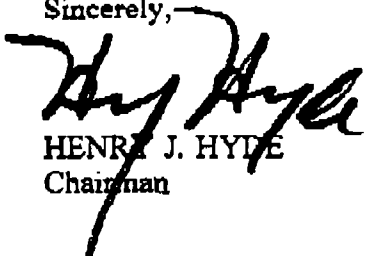
Subcommittee on the Constitution
362 Ford House Office Building
Washington, D.C. 20530

Also, the Subcommittee puts prepared statements for hearings on the Internet to allow greater access to the public. Accordingly, we would appreciate it if you could provide a diskette (Wordperfect 5.1, 3.5" diskette) containing the statement.

If you have any questions or comments, please do not hesitate to contact the Subcommittee at (202) 226-7680.

Acceptance of this invitation at your earliest opportunity is greatly appreciated.

Sincerely,


HENRY J. HYDE
Chairman

104th CONGRESS
2d Session

H. R. 3396

To define and protect the institution of marriage.

IN THE HOUSE OF REPRESENTATIVES

May 7, 1996

Mr. Barr of Georgia (for himself, Mr. Largent, Mr. Sensenbrenner, Mrs. Myrick, Mr. Volkmer, Mr. Skelton, Mr. Bryant of Tennessee, and Mr. Emerson) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To define and protect the institution of marriage.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. POWERS RESERVED TO THE STATES.

(a) In General.--Chapter 115 of title 28, United States Code, is amended by adding after section 1738B the following:

"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."

(b) Clerical Amendment.--The table of sections at the beginning of chapter 115 of title 28, United States Code, is amended by inserting after the item relating to section 1738B the following new item:

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

SEC. 3. DEFINITION OF MARRIAGE.

(a) In General.--Chapter 1 of title 1, United States Code, is amended by adding at the end the following:

"Sec. 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."

(b) Clerical Amendment.--The table of sections at the beginning of chapter 1 of title 1, United States Code, is amended by inserting after the item relating to section 6 the following new item:

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



U. S. Department of Justice

Office of the Associate Attorney General

The Associate Attorney General

Washington, D.C. 20530

FACSIMILE TRANSMITTAL COVER SHEET

DATE:

5/10/96

TO:

Steve Neuwirth

FACSIMILE NO.

456-1647

TELEPHONE NO.

456-7903

FROM:

John R. Schmidt

FACSIMILE NO.

202/514-0238

TELEPHONE NO.

202/514-9500

NUMBER OF PAGES INCLUDING COVER SHEET:

5

COMMENTS:



U. S. Department of Justice

Office of the Associate Attorney General

The Associate Attorney General

Washington, D.C. 20530

May 10, 1996

MEMORANDUM

TO: Jack Quinn
Counsel to the President

FROM: John R. Schmidt *(JRS)*

SUBJECT: Federal Same Sex Marriage Legislation

Attached is a copy of the federal same sex marriage statute introduced into the House this week. The statute has two components:

First, the statute provides that states shall not be obligated by the Full Faith and Credit Clause to give effect to a same sex marriage recognized by another state. As set forth in my earlier memo, it is well-established law that the Full Faith and Credit Clause does not require a state to give effect to the public act of another state if that act violates the first state's public policy. Thus, it is already clear that states which do not wish to do so will not be obligated to give recognition to a same sex marriage even if Hawaii (or some other state) recognizes such marriages. On this matter, therefore, the proposed federal statute is unnecessary, although also harmless.

Second, the statute provides that a same sex marriage will not be recognized as a marriage for purposes of any federal statute, rule, or regulation. This part of the statute does deal with a real issue. If Hawaii recognizes same sex marriages, the question will arise whether such marriages are to be recognized for the purposes of a range of federal statutes. Absent legislation like the proposed statute, it is conceivable that courts (or agencies) would determine that same sex marriages should be recognized for some or all of these federal purposes. Examples of federal statutes which make eligibility, benefits, or other matters dependent on the existence of a marriage include:

Income and estate tax laws -- under which various provisions are applicable solely to married couples;

Social security and other benefit programs -- under which the amount or eligibility for various benefits depends upon the status of being currently married or upon being the survivor of a marriage;

Family leave act -- which has various provisions specifically applicable to situations involving spouses or other family members;

ERISA -- which has various provisions for required coverage of surviving spouses under pension plans;

Student loan programs -- which provide for consolidation of loans to married couples under certain circumstances.

There are many other instances of federal statutes which utilize marriage (or married couples or spouses) as an applicable category.

Given the President's opposition to same sex marriage, it would seem to follow that he would support a federal statute denying recognition to such marriages for federal purposes. Put another way, it is hard to see how one could say one is against same sex marriages, but nevertheless support the recognition of such marriages for various federal purposes.

Conceivably one could try to say one opposes same sex marriages but believes that the issue of recognition should be left to the states. However, the federal government inevitably must make a decision for itself on whether to recognize such marriages for various federal purposes. If one says that the federal government will recognize such marriages when they are validated by a particular state such as Hawaii, then one is saying that the federal government -- unlike the overwhelming majority (perhaps all) of the other states -- does not have a public policy against such marriages.

One might try to narrow any federal recognition down further by saying that the federal government would recognize such a marriage only for couples located within the particular state where it has been validated. However, that would still put the federal government in the position of recognizing such marriages, which it would not do if it has a public policy against them. Moreover, as a practical matter it would be unworkable for most federal purposes to have the recognition of married status depend upon where a couple (or a current member or the survivor of a marriage) is located -- that would mean, for example, that someone might be entitled to certain benefits as long as he was living in Hawaii, but lose them if he moved to Montana.

The second part of the statute, therefore, raises a real issue which cannot be evaded. Given the President's opposition to same sex marriage, it would seem to me to make sense to make clear as quickly as possible that, in light of that opposition, he supports enactment of the proposed statute.

Attachment

To define and protect the institution of marriage.

IN THE HOUSE OF REPRESENTATIVES

May 7, 1996

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A BILL

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"Sec. 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.".

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°7. Definition of 'marriage' and 'spouse'.'.all¢

Gay Marriage Talking Points

- The President has long opposed gay marriage based on his personal belief that the institution of marriage should be reserved for unions between one man and one woman.
- The President strongly believes that the federal government should not discriminate against gay and lesbian individuals, which is why he has endorsed legislation outlawing discrimination against gays and lesbians in the workplace. But he does not believe that the federal government should promote gay marriages by granting them legal recognition.

[If asked about domestic partnerships or providing federal benefits to partners in gay and lesbian partnerships --

- These decisions are best left to state and local governments and private institutions. But the President does not believe that ~~scarce~~ federal government ~~resources should be devoted to providing spousal benefits to partners in gay and lesbian relationships.~~

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To: Steve Neuwirth 6-1647
From: George R. Stephanopoulos 6-7128
Re: Gay Marriage Talking Points

Please respond with comments ASAP.

Thank you.

Gay Marriage Talking Points

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[If asked about domestic partnerships or providing federal benefits to partners in gay and lesbian partnerships --

-- These decisions are best left to state and local governments and private institutions. But the President does not believe that scarce federal resources should be devoted to providing spousal benefits to partners in gay and lesbian relationships.

*for + Steve M***DRAFT****MEMORANDUM FOR JACK QUINN**

FROM: KATHLEEN WALLMAN and STEPHEN NEUWIRTH
SUBJECT: GAY MARRIAGE
DATE: April 24, 1996

This was sent in response to the questions from Harold that were relayed to DOJ at the meeting with them last week.

We need to convey the information to Harold, and we also need to anticipate what to say when we are asked, as we soon may be, whether we oppose or support state legislative initiatives to stave off recognition of Hawaii marriages.

How do you want to convey this information to Harold? Should we just send him a copy of the memo?

Do you agree that we should start working with Marsha Scott and others to develop a position on state initiatives?



Office of the Associate Attorney General

The Associate Attorney General

Washington, D.C. 20530

April 24, 1996

MEMORANDUM

To: Jack Quinn
Counsel to the President

Kathleen Wallman
Deputy Counsel to the President

From: John R. Schmidt (JRS)

Re: Same-Sex Marriage/Full Faith and Credit Clause

You have asked us to take a quick look at whether the Full Faith and Credit Clause of Article IV of the Constitution would require states to recognize Hawaiian same-sex marriages (assuming that such relationships soon may be authorized under the laws of Hawaii).

The Full Faith and Credit Clause provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." Recognition by the courts and legislature of Hawaii of the validity of same-sex marriages would constitute "Acts, Records, and judicial Proceedings" within the meaning of the Full Faith and Credit Clause. However, applying basic principles set forth by the U.S. Supreme Court, the Full Faith and Credit Clause would not obligate the other 49 states to give effect to Hawaiian same-sex marriages if such action would contravene the public policy of those states.

A complete assessment of the Full Faith and Credit Clause implications of the recognition of same-sex marriages by Hawaii would require a state-by-state inquiry. Based on our limited research into the matter, it appears that a large number of states would be able to show an existing public policy against same-sex marriages. This would obviously be the case in states that, by statute, bar same-sex marriage -- either through an explicit statutory prohibition or through other provisions that limit the scope of permissible marital relationships. Even where the issue cannot be resolved through an analysis of relevant state statutes, a public policy against same-sex marriage might also be reflected in state administrative rules and practices and state court decisions refusing to recognize such relationships.

May-8-96 (SENATE) STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

Note: This document is the unofficial version of the Congressional Record.
The printed Congressional Record produced by the Government Printing
Office is the only official version.

PART CONGRESSIONAL RECORD (SENATE)
DATE May 8, 1996
TITLE STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS
(CONTINUED)
TEXT BY MR. NICKLES (FOR HIMSELF AND MR. DOLE):
S. 1740. A bill to define and protect the institution of
marriage; to the Committee on the Judiciary.

PAGE S4869

THE DEFENSE OF MARRIAGE ACT

* Mr. NICKLES. Mr. President, today I am introducing a bill called
the Defense of Marriage Act. It is a simple measure, limited in
scope and based on common sense. It does just two things.

PAGE S4869

The Defense of Marriage Act defines the words "marriage" and
"spouse" for purposes of Federal law and allows each State to
decide for itself with respect to same-sex marriages.

Most Americans will have a hard time understanding how our
country has come to the point where such simple and traditional
terms as "marriage" and "spouse" need to be defined ~~S4870~~ 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 says that marriage is the legal union between one man
and one woman as husband and wife, and spouse is a husband or wife
of the opposite sex. There is nothing earth-shattering there. No
breaking of new ground. No setting of new precedents. No
revocation of rights.

PAGE S4869

Indeed, these provisions simply reaffirm what is already known,
what is already in place, and what is already in practice from a
policy perspective. This legislation seems quite unexciting yet it
may still draw criticism. I do hope everyone will read and
understand the scope of the legislation before drawing any
conclusions.

The definitions are based on common understandings rooted in our
Nation's history, our statutes and our case law. They merely
reaffirm what Americans have meant for 200 years when using the
words "marriage" and "spouse." The current United States Code does
not contain a definition of marriage, presumably because most
Americans know what it means and never imagined challenges such as
those we are facing today.

This bill does not change State law, but allows each State to
decide for itself with respect to same-sex marriage. It does this
by exercising Congress's powers under the Constitution to legislate
with respect to the full faith and credit clause. It provides that
no State shall be required to give effect to any public act of any
other State respecting a relationship between persons of the same
sex that is treated as a marriage under the laws of such other
State.

PAGE S4869

The Defense of Marriage Act is necessary for several reasons.

In May 1993, the Hawaii Supreme Court rendered a preliminary
ruling in favor of three same-sex couples applying for marriage
licenses. The court said the marriage law was discriminatory and

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violated their rights under the equal-rights clause of the State constitution.

Many States are concerned that another State's recognition of same-sex marriages will compromise their own law prohibiting such marriages. According to a March 11, 1996, Washington Times article, "legislators in 24 States have introduced bills to deny recognition of same-sex marriage. Two States - Utah and South Dakota - have already approved such laws, and 17 other states are now grappling with the issue - including Hawaii, where legislative leaders are fighting to block their own supreme court from sanctioning such marriages." Several other States have passed such laws since this article was written. This bill would address this issue head on and allow States to make the final determination concerning same-sex marriages without other States' law interfering.

PAGE 34069

Another reason this bill is needed now, concerns Federal benefits. The Federal Government extends benefits, rights, and privileges to persons who are married, and generally accepts a State's definition of marriage. This bill will help the Federal Government defend its own traditional and common-sense definitions of "marriage" and "spouse." If, for example, Hawaii gives new meaning to the words "marriage" and "spouse," the reverberations may be felt throughout the Federal Code unless this bill is enacted.

Another example of why we need a Federal definition of the terms "marriage" and "spouse" stems from experience during debate on the Family and Medical Leave Act of 1993. Shortly before passage of this act, I attached an amendment that defined "spouse" as "a husband or wife, as the case may be." When the Secretary of Labor published his proposed regulations, 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. When the secretary issued the final rules he stated that the definition of "spouse" and the legislative history precluded such a broadening of the definition. This amendment, which was unanimously adopted, spared a great deal of costly and unnecessary litigation over the definition of spouse.

These are just a few reasons for why we need to enact the Defense of Marriage Act. Enactment of this bill will allow States to give full and fair consideration of how they wish to address the issue of same-sex marriages instead of rushing to legislate because of fear that another State's laws may be imposed upon them. It also will eliminate legal uncertainty concerning Federal benefits, and make it clear what is meant when the words "marriage" and "spouse" are used in the Federal Code.

PAGE 34069

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. Apathy and indifference among the American people is one of the great threats to our Nation's future.

This legislation is important. It is about the defense of marriage as an institution and as the backbone of the American family. I urge my colleagues and fellow Americans to join me in support of the Defense of Marriage Act.

I ask unanimous consent that the following two factsheets be included in the Record.

PAGE 34069

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

PAGE S4870

THE DEFENSE OF MARRIAGE ACT

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

PAGE S4870

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".

PAGE S4870

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."

PAGE S4870

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. Sec. 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. Sec. 1738A (each State required to enforce child custody determinations made by home State if made consistently with the provisions of the Act);

PAGE S4870

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. Sec. 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, Sec. 40221(a), 108 Stat. 1930, codified at 18 U.S.C. Sec. 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:

PAGE S4870

"Sec. 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.

PAGE 84870

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. 94871 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. Sec. 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)

PAGE 84871

THE DEFENSE OF MARRIAGE ACT IS NECESSARY NOW

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:

PAGE 84871

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, Sec. 3), amending Hawaii Revised Statutes Sec. 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.

PAGE 84871

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. Sec. 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).

PAGE 84871

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.

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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.

PAGE 84871

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:

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PAGE 84871

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1. BY MR. NICKLES (FOR HIMSELF AND MR. DOLE):
2. THE DEFENSE OF MARRIAGE ACT
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84869

84870

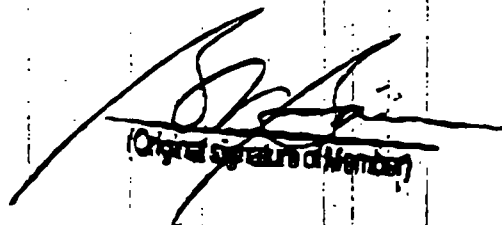
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5-08-1996 3:25PM FROM REP. BOB BARR-D. C.

P.2

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H.L.C.


(Original signed Member)

104TH CONGRESS
2D SESSION

H. R. 3396

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5-08-1996 3:25PM FROM REP. BOB BARR-D.C.

P. 3

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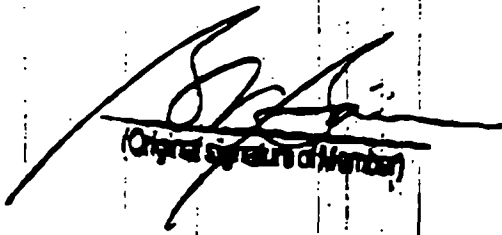
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May-8-96 (SENATE) STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

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PART CONGRESSIONAL RECORD (SENATE)

DATE May 8, 1996

TITLE STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS
(CONTINUED)

TEXT BY MR. NICKLES (FOR HIMSELF AND MR. DOLE):

S. 1740. A bill to define and protect the institution of marriage; to the Committee on the Judiciary.

PAGE S4869

THE DEFENSE OF MARRIAGE ACT

* Mr. NICKLES. Mr. President, today I am introducing a bill called the Defense of Marriage Act. It is a simple measure, limited in scope and based on common sense. It does just two things.

PAGE S4869

The Defense of Marriage Act defines the words "marriage" and "spouse" for purposes of Federal law and allows each State to decide for itself with respect to same-sex marriages.

Most Americans will have a hard time understanding how our country has come to the point where such simple and traditional terms as "marriage" and "spouse" need to be defined ~~sex~~ 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 says that marriage is the legal union between one man and one woman as husband and wife, and spouse is a husband or wife of the opposite sex. There is nothing earth-shattering there. No breaking of new ground. No setting of new precedents. No revocation of rights.

PAGE S4869

Indeed, these provisions simply reaffirm what is already known, what is already in place, and what is already in practice from a policy perspective. This legislation seems quite unexciting yet it may still draw criticism. I do hope everyone will read and understand the scope of the legislation before drawing any conclusions.

The definitions are based on common understandings rooted in our Nation's history, our statutes and our case law. They merely reaffirm what Americans have meant for 200 years when using the words "marriage" and "spouse." The current United States Code does not contain a definition of marriage, presumably because most Americans know what it means and never imagined challenges such as those we are facing today.

This bill does not change State law, but allows each State to decide for itself with respect to same-sex marriage. It does this by exercising Congress's powers under the Constitution to legislate with respect to the full faith and credit clause. It provides that no State shall be required to give effect to any public act of any other State respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State.

PAGE S4869

The Defense of Marriage Act is necessary for several reasons.

In May 1993, the Hawaii Supreme Court rendered a preliminary ruling in favor of three same-sex couples applying for marriage licenses. The court said the marriage law was discriminatory and

violated their rights under the equal-rights clause of the State constitution.

Many States are concerned that another State's recognition of same-sex marriages will compromise their own law prohibiting such marriages. According to a March 11, 1996, Washington Times article, "legislators in 24 States have introduced bills to deny recognition of same-sex marriage. Two States - Utah and South Dakota - have already approved such laws, and 17 other states are now grappling with the issue - including Hawaii, where legislative leaders are fighting to block their own supreme court from sanctioning such marriages." Several other States have passed such laws since this article was written. This bill would address this issue head on and allow States to make the final determination concerning same-sex marriages without other States' law interfering.

PAGE 84069

Another reason this bill is needed now, concerns Federal benefits. The Federal Government extends benefits, rights, and privileges to persons who are married, and generally accepts a State's definition of marriage. This bill will help the Federal Government defend its own traditional and common-sense definitions of "marriage" and "spouse." If, for example, Hawaii gives new meaning to the words "marriage" and "spouse," the reverberations may be felt throughout the Federal Code unless this bill is enacted.

Another example of why we need a Federal definition of the terms "marriage" and "spouse" stems from experience during debate on the Family and Medical Leave Act of 1993. Shortly before passage of this act, I attached an amendment that defined "spouse" as "a husband or wife, as the case may be." When the Secretary of Labor published his proposed regulations, 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." When the Secretary issued the final rules he stated that the definition of "spouse" and the legislative history precluded such a broadening of the definition. This amendment, which was unanimously adopted, spared a great deal of costly and unnecessary litigation over the definition of spouse.

These are just a few reasons for why we need to enact the Defense of Marriage Act. Enactment of this bill will allow States to give full and fair consideration of how they wish to address the issue of same-sex marriages instead of rushing to legislate because of fear that another State's laws may be imposed upon them. It also will eliminate legal uncertainty concerning Federal benefits, and make it clear what is meant when the words "marriage" and "spouse" are used in the Federal Code.

PAGE 84069

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. Apathy and indifference among the American people is one of the great threats to our Nation's future.

This legislation is important. It is about the defense of marriage as an institution and as the backbone of the American family. I urge my colleagues and fellow Americans to join me in support of the Defense of Marriage Act.

I ask unanimous consent that the following two factsheets be included in the Record.

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

PAGE S4870

THE DEFENSE OF MARRIAGE ACT

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

PAGE S4870

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".

PAGE S4870

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."

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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. Sec. 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. Sec. 1738A (each State required to enforce child custody determinations made by home State if made consistently with the provisions of the Act);

PAGE S4870

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. Sec. 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, Sec. 40221(a), 108 Stat. 1930, codified at 18 U.S.C. Sec. 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:

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"Sec. 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.

PAGE 84870

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. 84871 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. Sec. 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)

PAGE 84871

THE DEFENSE OF MARRIAGE ACT IS NECESSARY NOW

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:

PAGE 84871

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, Sec. 3), amending Hawaii Revised Statutes Sec. 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.

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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.

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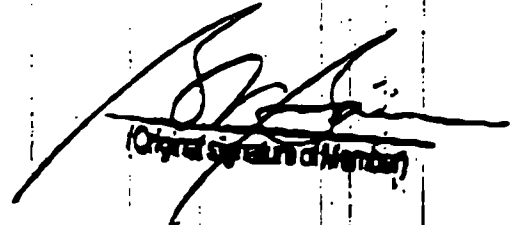
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PAGE 84869

THE DEFENSE OF MARRIAGE ACT

* Mr. NICKLES. Mr. President, today I am introducing a bill called the Defense of Marriage Act. It is a simple measure, limited in scope and based on common sense. It does just two things.

PAGE 84869

The Defense of Marriage Act defines the words "marriage" and "spouse" for purposes of Federal law and allows each State to decide for itself with respect to same-sex marriages.

Most Americans will have a hard time understanding how our country has come to the point where such simple and traditional terms as "marriage" and "spouse" need to be defined under 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 says that marriage is the legal union between one man and one woman as husband and wife, and spouse is a husband or wife of the opposite sex. There is nothing earth-shattering there. No breaking of new ground. No setting of new precedents. No revocation of rights.

PAGE 84869

Indeed, these provisions simply reaffirm what is already known, what is already in place, and what is already in practice from a policy perspective. This legislation seems quite unexciting yet it may still draw criticism. I do hope everyone will read and understand the scope of the legislation before drawing any conclusions.

The definitions are based on common understandings rooted in our Nation's history, our statutes and our case law. They merely reaffirm what Americans have meant for 200 years when using the words "marriage" and "spouse." The current United States Code does not contain a definition of marriage, presumably because most Americans know what it means and never imagined challenges such as those we are facing today.

This bill does not change State law, but allows each State to decide for itself with respect to same-sex marriage. It does this by exercising Congress's powers under the Constitution to legislate with respect to the full faith and credit clause. It provides that no State shall be required to give effect to any public act of any other State respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State.

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The Defense of Marriage Act is necessary for several reasons.

In May 1993, the Hawaii Supreme Court rendered a preliminary ruling in favor of three same-sex couples applying for marriage licenses. The court said the marriage law was discriminatory and

violated their rights under the equal-rights clause of the State constitution.

Many States are concerned that another State's recognition of same-sex marriages will compromise their own law prohibiting such marriages. According to a March 11, 1996, Washington Times article, "legislators in 24 States have introduced bills to deny recognition of same-sex marriage. Two States - Utah and South Dakota - have already approved such laws, and 17 other states are now grappling with the issue - including Hawaii, where legislative leaders are fighting to block their own supreme court from sanctioning such marriages." Several other States have passed such laws since this article was written. This bill would address this issue head on and allow States to make the final determination concerning same-sex marriages without other States' law interfering.

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Another reason this bill is needed now, concerns Federal benefits. The Federal Government extends benefits, rights, and privileges to persons who are married, and generally accepts a State's definition of marriage. This bill will help the Federal Government defend its own traditional and common-sense definitions of "marriage" and "spouse." If, for example, Hawaii gives new meaning to the words "marriage" and "spouse," the reverberations may be felt throughout the Federal Code unless this bill is enacted.

Another example of why we need a Federal definition of the terms "marriage" and "spouse" stems from experience during debate on the Family and Medical Leave Act of 1993. Shortly before passage of this act, I attached an amendment that defined "spouse" as "a husband or wife, as the case may be." When the Secretary of Labor published his proposed regulations, 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." When the secretary issued the final rules he stated that the definition of "spouse" and the legislative history precluded such a broadening of the definition. This amendment, which was unanimously adopted, spared a great deal of costly and unnecessary litigation over the definition of spouse.

These are just a few reasons for why we need to enact the Defense of Marriage Act. Enactment of this bill will allow States to give full and fair consideration of how they wish to address the issue of same-sex marriages instead of rushing to legislate because of fear that another State's laws may be imposed upon them. It also will eliminate legal uncertainty concerning Federal benefits, and make it clear what is meant when the words "marriage" and "spouse" are used in the Federal Code.

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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. Apathy and indifference among the American people is one of the great threats to our Nation's future.

This legislation is important. It is about the defense of marriage as an institution and as the backbone of the American family. I urge my colleagues and fellow Americans to join me in support of the Defense of Marriage Act.

I ask unanimous consent that the following two factsheets be included in the Record.

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PAGE S4870

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

PAGE S4870

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".

PAGE S4870

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."

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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. Sec. 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. Sec. 1738A (each State required to enforce child custody determinations made by home State if made consistently with the provisions of the Act);

PAGE S4870

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

PAGE S4870

"Sec. 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.

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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. 84871 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 XI of the Social Security Act, 42 U.S.C. Sec. 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)

PAGE 84871

THE DEFENSE OF MARRIAGE ACT IS NECESSARY NOW

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:

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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, Sec. 3), amending Hawaii Revised Statutes Sec. 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.

PAGE 84871

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. Sec. 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. Noonan*, 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).

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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.

PAGE 84871

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 2160, 2191-92 (Jan. 6, 1995) (emphasis added).

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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)*

PAGE 84871

OUTLINE

1. BY MR. NICKLES (FOR HIMSELF AND MR. DOLE):
2. THE DEFENSE OF MARRIAGE ACT
3. THE DEFENSE OF MARRIAGE ACT
4. THE DEFENSE OF MARRIAGE ACT IS NECESSARY NOW

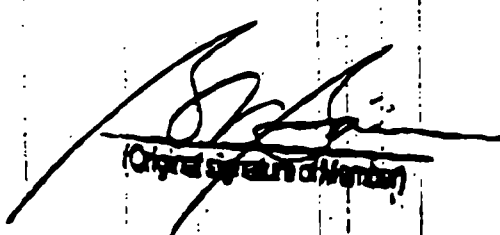
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5-08-1996 3:25PM FROM REP. BOB BARR-C. C.

P.2

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U.L.C.


(Original signed by Member)

104TH CONGRESS
2D SESSION

H. R. 3396

IN THE HOUSE OF REPRESENTATIVES

Mr. BARR of Georgia (for himself, Mr. LARGENT, and Mr. SENSENBRENNER) *SUE MYRIK,*
introduced the following bill; which was referred to the Committee on *HAROLD VOLLMER,*
4 AND JAMES GENT,
7 ED BRYANT,
8 BILL EMERSON

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:

5-08-1996 3:25PM FROM REP. BOB BARR-D.C.

P. 3

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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-
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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

5-08-1996 3:26PM FROM REP. BOB BARR-C. C.

P. 4

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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:

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May-8-96 (SENATE) STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

Note: This document is the unofficial version of the Congressional Record. The printed Congressional Record produced by the Government Printing Office is the only official version.

PART CONGRESSIONAL RECORD (SENATE)

DATE May 8, 1996

TITLE STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS
(CONTINUED)

TEXT BY MR. NICKLES (FOR HIMSELF AND MR. DOLE):

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These are just a few reasons for why we need to enact the Defense of Marriage Act. Enactment of this bill will allow States to give full and fair consideration of how they wish to address the issue of same-sex marriages instead of rushing to legislate because of fear that another State's laws may be imposed upon them. It also will eliminate legal uncertainty concerning Federal benefits, and make it clear what is meant when the words "marriage" and "spouse" are used in the Federal Code.

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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. Sec. 103(a)) 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. Noonan*, 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).

PAGE 84871

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.

PAGE 84871

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." 50 Federal Register 2180, 2191-92 (Jan. 6, 1995) (emphasis added).

PAGE 54871

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)*

PAGE 84871

OUTLINE

1. BY MR. NICKLES (FOR HIMSELF AND MR. DOLE):
2. THE DEFENSE OF MARRIAGE ACT
3. THE DEFENSE OF MARRIAGE ACT
4. THE DEFENSE OF MARRIAGE ACT IS NECESSARY NOW

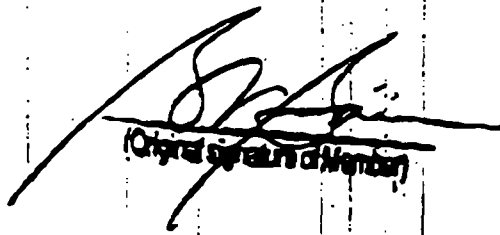
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5-08-1996 3:25PM FROM REP. BOB BARR-C.C.

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H.L.C.


(Original signature of Member)

104TH CONGRESS
2D SESSION

H. R. 3396

IN THE HOUSE OF REPRESENTATIVES

Mr. BARR of Georgia (for himself, Mr. LARGENT, and Mr. SENSENBRENNER) *SUE MYRICK,*
introduced the following bill; which was referred to the Committee on *HAROLD VOLKMER,*
4 AND 22 SENATE
7 ED BRYANT
8 BILL EMERSON

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:

5-08-1996 3:25PM FROM REP. BOB BARR-D.C.

P. 3

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ILL.C.

2

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. 1. 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-
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3

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6 section 6 the following new item:

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

May-8-96 (SENATE) STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

Note: This document is the unofficial version of the Congressional Record. The printed Congressional Record produced by the Government Printing Office is the only official version.

PART CONGRESSIONAL RECORD (SENATE)

DATE May 8, 1996

TITLE STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS
(CONTINUED)

TEXT BY MR. NICKLES (FOR HIMSELF AND MR. DOLE):

S. 1740. A bill to define and protect the institution of marriage; to the Committee on the Judiciary.

PAGE S4869

THE DEFENSE OF MARRIAGE ACT

* Mr. NICKLES. Mr. President, today I am introducing a bill called the Defense of Marriage Act. It is a simple measure, limited in scope and based on common sense. It does just two things.

PAGE S4869

The Defense of Marriage Act defines the words "marriage" and "spouse" for purposes of Federal law and allows each State to decide for itself with respect to same-sex marriages.

Most Americans will have a hard time understanding how our country has come to the point where such simple and traditional terms as "marriage" and "spouse" need to be defined under 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 says that marriage is the legal union between one man and one woman as husband and wife, and spouse is a husband or wife of the opposite sex. There is nothing earth-shattering there. No breaking of new ground. No setting of new precedents. No revocation of rights.

PAGE S4869

Indeed, these provisions simply reaffirm what is already known, what is already in place, and what is already in practice from a policy perspective. This legislation seems quite unexciting yet it may still draw criticism. I do hope everyone will read and understand the scope of the legislation before drawing any conclusions.

The definitions are based on common understandings rooted in our Nation's history, our statutes and our case law. They merely reaffirm what Americans have meant for 200 years when using the words "marriage" and "spouse." The current United States Code does not contain a definition of marriage, presumably because most Americans know what it means and never imagined challenges such as those we are facing today.

This bill does not change State law, but allows each State to decide for itself with respect to same-sex marriage. It does this by exercising Congress's powers under the Constitution to legislate with respect to the full faith and credit clause. It provides that no State shall be required to give effect to any public act of any other State respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State.

PAGE S4869

The Defense of Marriage Act is necessary for several reasons.

In May 1993, the Hawaii Supreme Court rendered a preliminary ruling in favor of three same-sex couples applying for marriage licenses. The court said the marriage law was discriminatory and

violated their rights under the equal-rights clause of the State constitution.

Many States are concerned that another State's recognition of same-sex marriages will compromise their own law prohibiting such marriages. According to a March 11, 1996, Washington Times article, "legislators in 24 States have introduced bills to deny recognition of same-sex marriage. Two States - Utah and South Dakota - have already approved such laws, and 17 other states are now grappling with the issue - including Hawaii, where legislative leaders are fighting to block their own supreme court from sanctioning such marriages." Several other States have passed such laws since this article was written. This bill would address this issue head on and allow States to make the final determination concerning same-sex marriages without other States' law interfering.

PAGE 84069

Another reason this bill is needed now, concerns Federal benefits. The Federal Government extends benefits, rights, and privileges to persons who are married, and generally accepts a State's definition of marriage. This bill will help the Federal Government defend its own traditional and common-sense definitions of "marriage" and "spouse." If, for example, Hawaii gives new meaning to the words "marriage" and "spouse," the reverberations may be felt throughout the Federal Code unless this bill is enacted.

Another example of why we need a Federal definition of the terms "marriage" and "spouse" stems from experience during debate on the Family and Medical Leave Act of 1993. Shortly before passage of this act, I attached an amendment that defined "spouse" as "a husband or wife, as the case may be." When the Secretary of Labor published his proposed regulations, 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." When the Secretary issued the final rules he stated that the definition of "spouse" and the legislative history precluded such a broadening of the definition. This amendment, which was unanimously adopted, spared a great deal of costly and unnecessary litigation over the definition of spouse.

These are just a few reasons for why we need to enact the Defense of Marriage Act. Enactment of this bill will allow States to give full and fair consideration of how they wish to address the issue of same-sex marriages instead of rushing to legislate because of fear that another State's laws may be imposed upon them. It also will eliminate legal uncertainty concerning Federal benefits, and make it clear what is meant when the words "marriage" and "spouse" are used in the Federal Code.

PAGE 84069

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. Apathy and indifference among the American people is one of the great threats to our Nation's future.

This legislation is important. It is about the defense of marriage as an institution and as the backbone of the American family. I urge my colleagues and fellow Americans to join me in support of the Defense of Marriage Act.

I ask unanimous consent that the following two factsheets be included in the Record.

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

PAGE S4870

THE DEFENSE OF MARRIAGE ACT

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

PAGE S4870

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".

PAGE S4870

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."

PAGE S4870

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. Sec. 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. Sec. 1738A (each State required to enforce child custody determinations made by home State if made consistently with the provisions of the Act);

PAGE S4870

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. Sec. 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, Sec. 40221(a), 108 Stat. 1930, codified at 18 U.S.C. Sec. 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:

PAGE S4870

"Sec. 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.

PAGE 84870

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. 84871 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, 48 (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. Sec. 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)

PAGE 84871

THE DEFENSE OF MARRIAGE ACT IS NECESSARY NOW

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:

PAGE 84871

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, Sec. 3), amending Hawaii Revised Statutes Sec. 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.

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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. Sec. 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).

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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

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"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).

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PAGE 84871

OUTLINE

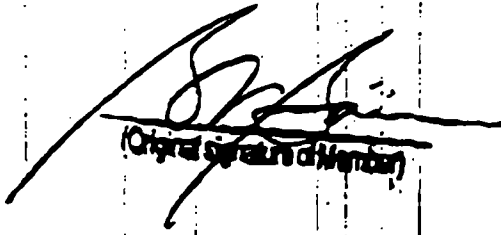
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|---|-------|
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5-08-1996 3:25PM FROM REP. BOB BARR-D. C.

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H.L.C.


(Original Signature of Member)

104TH CONGRESS
2D SESSION

H. R. 3396

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5-09-1996 3:25PM FROM REP. BOB BARR-D.C.

P. 3

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ILL.C.

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PART CONGRESSIONAL RECORD (SENATE)

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Another example of why we need a Federal definition of the terms "marriage" and "spouse" stems from experience during debate on the Family and Medical Leave Act of 1993. Shortly before passage of this act, I attached an amendment that defined "spouse" as "a husband or wife, as the case may be." When the Secretary of Labor published his proposed regulations, 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." When the Secretary issued the final rules he stated that the definition of "spouse" and the legislative history precluded such a broadening of the definition. This amendment, which was unanimously adopted, spared a great deal of costly and unnecessary litigation over the definition of spouse.

These are just a few reasons for why we need to enact the Defense of Marriage Act. Enactment of this bill will allow States to give full and fair consideration of how they wish to address the issue of same-sex marriages instead of rushing to legislate because of fear that another State's laws may be imposed upon them. It also will eliminate legal uncertainty concerning Federal benefits, and make it clear what is meant when the words "marriage" and "spouse" are used in the Federal Code.

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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. Apathy and indifference among the American people is one of the great threats to our Nation's future.

This legislation is important. It is about the defense of marriage as an institution and as the backbone of the American family. I urge my colleagues and fellow Americans to join me in support of the Defense of Marriage Act.

I ask unanimous consent that the following two factsheets be included in the Record.

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PAGE S4870

THE DEFENSE OF MARRIAGE ACT

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

PAGE S4870

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'.

PAGE S4870

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.'

PAGE S4870

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. Sec. 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. Sec. 1738A (each State required to enforce child custody determinations made by home State if made consistently with the provisions of the Act);

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

PAGE S4870

'Sec. 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.

PAGE 84870

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. 84871 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. Sec. 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)

PAGE 84871

THE DEFENSE OF MARRIAGE ACT IS NECESSARY NOW

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:

PAGE 84871

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, Sec. 3), amending Hawaii Revised Statutes Sec. 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.

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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. Sec. 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. Noonan*, 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).

PAGE 84871

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.

PAGE 84871

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).

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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)*

PAGE 84871

OUTLINE

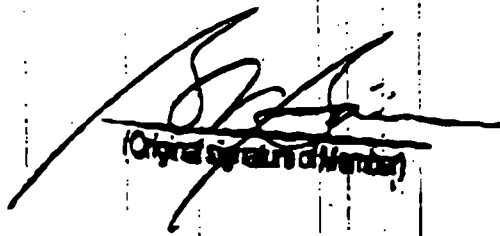
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|---|-------|
| 1. BY MR. NICKLES (FOR HIMSELF AND MR. DOLA): | 84869 |
| 2. THE DEFENSE OF MARRIAGE ACT | 84869 |
| 3. THE DEFENSE OF MARRIAGE ACT | 84870 |
| 4. THE DEFENSE OF MARRIAGE ACT IS NECESSARY NOW | 84871 |

5-08-1996 3:25PM FROM REP. BOB BARR-C.C.

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H.L.C.



(Original Member)

104TH CONGRESS
2D SESSION

H. R. 3396

IN THE HOUSE OF REPRESENTATIVES

Mr. BARR of Georgia (for himself, Mr. LARGENT, and Mr. SENSENBRENNER) *SUE MYRICK,*
introduced the following bill; which was referred to the Committee on *HAROLD VOLKMER,*

4 AND IRVING
7 ED BRYANT
8 BILL EMERSON

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:

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P. 3

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ILL.C.

2

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

5-08-1996 3:26PM FROM REP. BOB BARR-C. C.

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ILL.C.

3

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'."

May-8-96 (SENATE) STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

Note: This document is the unofficial version of the Congressional Record. The printed Congressional Record produced by the Government Printing Office is the only official version.

PART CONGRESSIONAL RECORD (SENATE)

DATE May 8, 1996

TITLE STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS
(CONTINUED)

TEXT BY MR. NICKLES (FOR HIMSELF AND MR. DOLE):

S. 1740. A bill to define and protect the institution of marriage; to the Committee on the Judiciary.

PAGE S4869

THE DEFENSE OF MARRIAGE ACT

* Mr. NICKLES. Mr. President, today I am introducing a bill called the Defense of Marriage Act. It is a simple measure, limited in scope and based on common sense. It does just two things.

PAGE S4869

The Defense of Marriage Act defines the words 'marriage' and 'spouse' for purposes of Federal law and allows each State to decide for itself with respect to same-sex marriages.

Most Americans will have a hard time understanding how our country has come to the point where such simple and traditional terms as 'marriage' and 'spouse' need to be defined ~~sex~~ 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 says that marriage is the legal union between one man and one woman as husband and wife, and spouse is a husband or wife of the opposite sex. There is nothing earth-shattering there. No breaking of new ground. No setting of new precedents. No revocation of rights.

PAGE S4869

Indeed, these provisions simply reaffirm what is already known, what is already in place, and what is already in practice from a policy perspective. This legislation seems quite unexciting yet it may still draw criticism. I do hope everyone will read and understand the scope of the legislation before drawing any conclusions.

The definitions are based on common understandings rooted in our Nation's history, our statutes and our case law. They merely reaffirm what Americans have meant for 200 years when using the words 'marriage' and 'spouse.' The current United States Code does not contain a definition of marriage, presumably because most Americans know what it means and never imagined challenges such as those we are facing today.

This bill does not change State law, but allows each State to decide for itself with respect to same-sex marriage. It does this by exercising Congress's powers under the Constitution to legislate with respect to the full faith and credit clause. It provides that no State shall be required to give effect to any public act of any other State respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State.

PAGE S4869

The Defense of Marriage Act is necessary for several reasons.

In May 1993, the Hawaii Supreme Court rendered a preliminary ruling in favor of three same-sex couples applying for marriage licenses. The court said the marriage law was discriminatory and

violated their rights under the equal-rights clause of the State constitution.

Many States are concerned that another State's recognition of same-sex marriages will compromise their own law prohibiting such marriages. According to a March 11, 1996, Washington Times article, "legislators in 24 States have introduced bills to deny recognition of same-sex marriage. Two States - Utah and South Dakota - have already approved such laws, and 17 other states are now grappling with the issue - including Hawaii, where legislative leaders are fighting to block their own supreme court from sanctioning such marriages." Several other States have passed such laws since this article was written. This bill would address this issue head on and allow States to make the final determination concerning same-sex marriages without other States' law interfering.

PAGE 84069

Another reason this bill is needed now, concerns Federal benefits. The Federal Government extends benefits, rights, and privileges to persons who are married, and generally accepts a State's definition of marriage. This bill will help the Federal Government defend its own traditional and common-sense definitions of "marriage" and "spouse." If, for example, Hawaii gives new meaning to the words "marriage" and "spouse," the reverberations may be felt throughout the Federal Code unless this bill is enacted.

Another example of why we need a Federal definition of the terms "marriage" and "spouse" stems from experience during debate on the Family and Medical Leave Act of 1993. Shortly before passage of this act, I attached an amendment that defined "spouse" as "a husband or wife, as the case may be." When the Secretary of Labor published his proposed regulations, 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." When the Secretary issued the final rules he stated that the definition of "spouse" and the legislative history precluded such a broadening of the definition. This amendment, which was unanimously adopted, spared a great deal of costly and unnecessary litigation over the definition of spouse.

These are just a few reasons for why we need to enact the Defense of Marriage Act. Enactment of this bill will allow States to give full and fair consideration of how they wish to address the issue of same-sex marriages instead of rushing to legislate because of fear that another State's laws may be imposed upon them. It also will eliminate legal uncertainty concerning Federal benefits, and make it clear what is meant when the words "marriage" and "spouse" are used in the Federal Code.

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"Accordingly," continued the Secretary, "given this legislative history, the recommendations that the definition of 'spouse' be broadened cannot be adopted." 60 Federal Register 2160, 2191-92 (Jan. 6, 1995) (emphasis added).

PAGE 84871

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)*

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OUTLINE

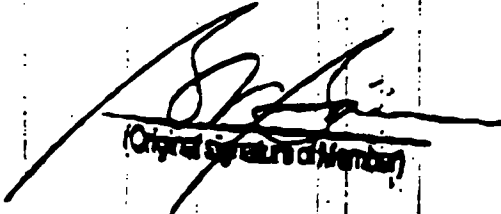
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|---|-------|
| 1. BY MR. NICKLES (FOR HIMSELF AND MR. DOLE): | 84869 |
| 2. THE DEFENSE OF MARRIAGE ACT | 84869 |
| 3. THE DEFENSE OF MARRIAGE ACT | 84870 |
| 4. THE DEFENSE OF MARRIAGE ACT IS NECESSARY NOW | 84871 |

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H.L.C.


(Original signature of Member)

104TH CONGRESS
2D SESSION

H. R. 3396

IN THE HOUSE OF REPRESENTATIVES

Mr. BARR of Georgia (for himself, Mr. LARGENT, and Mr. SENSENBRENNER) *SUEMYRICK,*
introduced the following bill; which was referred to the Committee on *HAROLD VOLLMER,*
4 AND IRVING
7 ED BRYANT
8 BILL EMERSON

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:

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ILL.C.

2

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

5-08-1996 3:26PM FROM REP. BOB BARR-C. C.

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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:

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

May-8-96 (SENATE) STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

Note: This document is the unofficial version of the Congressional Record. The printed Congressional Record produced by the Government Printing Office is the only official version.

PART CONGRESSIONAL RECORD (SENATE)
 DATE May 8, 1996
 TITLE STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS
 (CONTINUED)

TEXT BY MR. NICKLES (FOR HIMSELF AND MR. DOLE):
 S. 1740. A bill to define and protect the institution of marriage: to the Committee on the Judiciary.

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THE DEFENSE OF MARRIAGE ACT

* Mr. NICKLES. Mr. President, today I am introducing a bill called the Defense of Marriage Act. It is a simple measure, limited in scope and based on common sense. It does just two things.

PAGE S4869

The Defense of Marriage Act defines the words "marriage" and "spouse" for purposes of Federal law and allows each State to decide for itself with respect to same-sex marriages.

Most Americans will have a hard time understanding how our country has come to the point where such simple and traditional terms as "marriage" and "spouse" need to be defined ~~in~~ 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 says that marriage is the legal union between one man and one woman as husband and wife, and spouse is a husband or wife of the opposite sex. There is nothing earth-shattering there. No breaking of new ground. No setting of new precedents. No revocation of rights.

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Indeed, these provisions simply reaffirm what is already known, what is already in place, and what is already in practice from a policy perspective. This legislation seems quite unexciting yet it may still draw criticism. I do hope everyone will read and understand the scope of the legislation before drawing any conclusions.

The definitions are based on common understandings rooted in our Nation's history, our statutes and our case law. They merely reaffirm what Americans have meant for 200 years when using the words "marriage" and "spouse." The current United States Code does not contain a definition of marriage, presumably because most Americans know what it means and never imagined challenges such as those we are facing today.

This bill does not change State law, but allows each State to decide for itself with respect to same-sex marriage. It does this by exercising Congress's powers under the Constitution to legislate with respect to the full faith and credit clause. It provides that no State shall be required to give effect to any public act of any other State respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State.

PAGE S4869

The Defense of Marriage Act is necessary for several reasons.

In May 1993, the Hawaii Supreme Court rendered a preliminary ruling in favor of three same-sex couples applying for marriage licenses. The court said the marriage law was discriminatory and

violated their rights under the equal-rights clause of the State constitution.

Many States are concerned that another State's recognition of same-sex marriages will compromise their own law prohibiting such marriages. According to a March 11, 1996, Washington Times article, "legislators in 24 States have introduced bills to deny recognition of same-sex marriage. Two States - Utah and South Dakota - have already approved such laws, and 17 other states are now grappling with the issue - including Hawaii, where legislative leaders are fighting to block their own supreme court from sanctioning such marriages." Several other States have passed such laws since this article was written. This bill would address this issue head on and allow States to make the final determination concerning same-sex marriages without other States' law interfering.

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Another reason this bill is needed now, concerns Federal benefits. The Federal Government extends benefits, rights, and privileges to persons who are married, and generally accepts a State's definition of marriage. This bill will help the Federal Government defend its own traditional and common-sense definitions of "marriage" and "spouse." If, for example, Hawaii gives new meaning to the words "marriage" and "spouse," the reverberations may be felt throughout the Federal Code unless this bill is enacted.

Another example of why we need a Federal definition of the terms "marriage" and "spouse" stems from experience during debate on the Family and Medical Leave Act of 1993. Shortly before passage of this act, I attached an amendment that defined "spouse" as "a husband or wife, as the case may be." When the Secretary of Labor published his proposed regulations, 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." When the Secretary issued the final rules he stated that the definition of "spouse" and the legislative history precluded such a broadening of the definition. This amendment, which was unanimously adopted, spared a great deal of costly and unnecessary litigation over the definition of spouse.

These are just a few reasons for why we need to enact the Defense of Marriage Act. Enactment of this bill will allow States to give full and fair consideration of how they wish to address the issue of same-sex marriages instead of rushing to legislate because of fear that another State's laws may be imposed upon them. It also will eliminate legal uncertainty concerning Federal benefits, and make it clear what is meant when the words "marriage" and "spouse" are used in the Federal Code.

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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. Apathy and indifference among the American people is one of the great threats to our Nation's future.

This legislation is important. It is about the defense of marriage as an institution and as the backbone of the American family. I urge my colleagues and fellow Americans to join me in support of the Defense of Marriage Act.

I ask unanimous consent that the following two factsheets be included in the Record.

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

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THE DEFENSE OF MARRIAGE ACT

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

PAGE S4870

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'.

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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.'

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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. Sec. 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. Sec. 1738A (each State required to enforce child custody determinations made by home State if made consistently with the provisions of the Act);

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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. Sec. 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, Sec. 40221(a), 108 Stat. 1930, codified at 18 U.S.C. Sec. 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:

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'Sec. 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.

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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 11 of section 101, Title 31. The current Code does not contain a definition of marriage, presumably because Americans have known what it means. 84871 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. Sec. 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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THE DEFENSE OF MARRIAGE ACT IS NECESSARY NOW

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:

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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, Sec. 3), amending Hawaii Revised Statutes Sec. 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.

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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. Sec. 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).

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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.

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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).

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(Prepared by the Office of Senator Don Nickles)*

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