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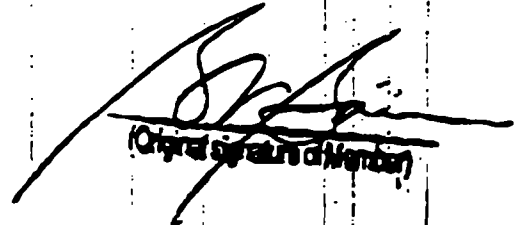
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5-08-1996 3:25PM FROM REP. BOB BARR-C. C.

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U.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 YOUNGER,*
4 AND JACQUELINE
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.

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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-
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-
24 tween one man and one woman as husband and wife, and

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RLC.

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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:

"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 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 ~~such~~ 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 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.

PAGE 84869

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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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 84069

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

PAGE 54870

THE DEFENSE OF MARRIAGE ACT

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

PAGE 54870

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 54870

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 54870

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 54870

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 54870

"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. 84671 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 84671

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 84671

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(o)) 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.

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)*

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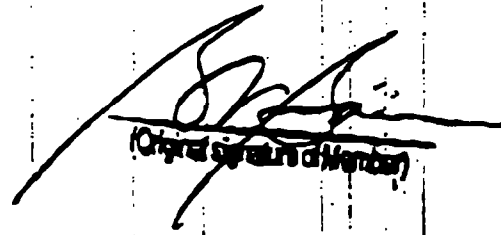
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|---|-------|
| 1. BY MR. NICKLES (FOR HIMSELF AND MR. DOLE): | 64869 |
| 2. THE DEFENSE OF MARRIAGE ACT | 64869 |
| 3. THE DEFENSE OF MARRIAGE ACT | 64870 |
| 4. THE DEFENSE OF MARRIAGE ACT IS NECESSARY NOW | 64871 |

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3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Defense of Marriage
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6 **SEC. 2. POWERS RESERVED TO THE STATES.**

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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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13 Code, is amended by inserting after the item relating to
14 section 1738B the following new item:

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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,
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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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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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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:

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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 -

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PAGE S4870

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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 84670

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. §4871 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 84671

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 84671

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).

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 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)*

PAGE 84871

OUTLINE

- | | |
|---|-------|
| 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 |

OPTIONS FOR RESPONDING TO GAY MARRIAGE BILL

I. ANNOUNCE THAT THE PRESIDENT WILL SIGN THE BILL

Principal Advantages

- the bill does little, if anything, to alter the legal status quo
- would undercut, if not eliminate, any political advantage to Bob Dole
- would show the Republicans that this type of tactic will not work
- would eliminate any opportunity to say the President's position is ambiguous

II. ANNOUNCE THAT THE PRESIDENT WILL SIGN THE BILL, BUT THAT HE OPPOSES GAY BASHING

Principal Advantages

- could provide some consolation to the gay/lesbian community

III. ANNOUNCE THAT THE PRESIDENT OPPOSES GAY MARRIAGE, BUT WILL VETO THIS BILL AS UNSOUND

Principal Advantages

- this bill appears nothing more than a political, gay-bashing tactic
- would allow the President to point out the hypocrisy of the Republicans, who in this bill would let the federal government intrude into defining who is married -- a subject that has always been left to the states
- would be perceived by the gay/lesbian community and others as a courageous act of principle, despite any political consequences (according to Marsha Scott, polls show that while a majority of Americans do not support gay marriage, a majority oppose discrimination against gays and lesbians)
- the gay/lesbian vote could be a determining factor in New York, California and Oregon

IV. ANNOUNCE THAT THE PRESIDENT OPPOSES GAY MARRIAGE, BUT HAS NOT YET HAD AN OPPORTUNITY TO REVIEW THIS BILL

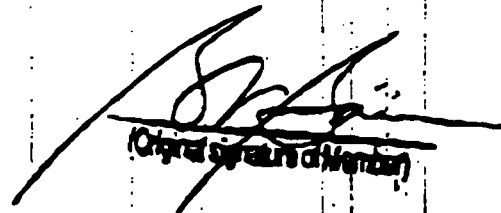
- could permit the bill to "die its own death" without Presidential involvement
- (It is unclear that there would be enough Congressional opposition for this option to be practicable)

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

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H.L.C.


(Original signed 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:

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

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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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ILLC.

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 84870 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 84869

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 84869

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 84869

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

PAGE 54870

THE DEFENSE OF MARRIAGE ACT

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

PAGE 54870

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 54870

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 54870

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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(Prepared by the Office of Senator Don Nickles)

PAGE 84871

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(Prepared by the Office of Senator Don Nickles)*

PAGE 84871

OUTLINE

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2. THE DEFENSE OF MARRIAGE ACT
3. THE DEFENSE OF MARRIAGE ACT
4. THE DEFENSE OF MARRIAGE ACT IS NECESSARY NOW

84869

84869

84870

84871

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I. ANNOUNCE THAT THE PRESIDENT WILL SIGN THE BILL

Principal Advantages

- the bill does little, if anything, to alter the legal status quo
- would undercut, if not eliminate, any political advantage to Bob Dole
- would show the Republicans that this type of tactic will not work
- would eliminate any opportunity to say the President's position is ambiguous

II. ANNOUNCE THAT THE PRESIDENT WILL SIGN THE BILL, BUT THAT HE OPPOSES GAY BASHING

Principal Advantages

- could provide some consolation to the gay/lesbian community

III. ANNOUNCE THAT THE PRESIDENT OPPOSES GAY MARRIAGE, BUT WILL VETO THIS BILL AS UNSOUND

Principal Advantages

- this bill appears nothing more than a political, gay-bashing tactic
- would allow the President to point out the hypocrisy of the Republicans, who in this bill would let the federal government intrude into defining who is married -- a subject that has always been left to the states
- would be perceived by the gay/lesbian community and others as a courageous act of principle, despite any political consequences (according to Marsha Scott, polls show that while a majority of Americans do not support gay marriage, a majority oppose discrimination against gays and lesbians)
- the gay/lesbian vote could be a determining factor in New York, California and Oregon

IV. ANNOUNCE THAT THE PRESIDENT OPPOSES GAY MARRIAGE, BUT HAS NOT YET HAD AN OPPORTUNITY TO REVIEW THIS BILL

- could permit the bill to "die its own death" without Presidential involvement

(It is unclear that there would be enough Congressional opposition for this option to be practicable)

MEMORANDUM TO GEORGE
cc: Steve Newirth
Jeremy Ben-Ami

130

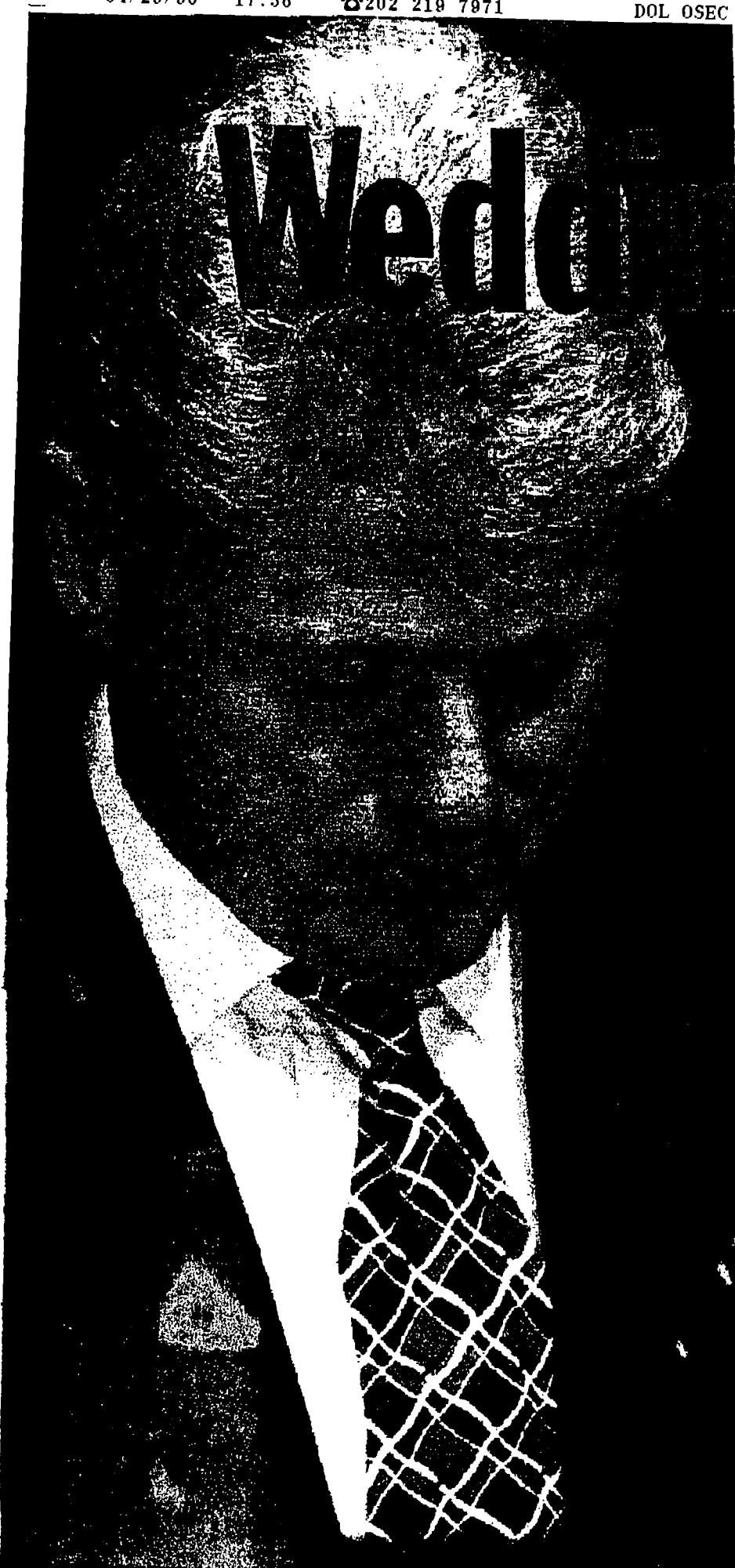
FROM: MARSHA
DATE: MAY 9, 1996

More thoughts: I believe that our strongest counter is around states rights. For 200 years the federal government has stayed out of this issue and left it up to individual states to define. Historically there is no need for a federal role on state driven issues unless it is to inspire the states to action. All states already have legislation dealing with marriage and many are adopting same sex legislation. There is no reason for the federal government to act. It can be said that as a former governor, the President has great respect for the right of individual states to define their issues and this issue falls clearly within their prerogative. In the 60's this same argument was proposed around interracial marriages. Some states passed laws others did not. The Congress stayed out and eventually all the regressive laws were thrown out.

Senators Kennedy and Wyden are going to come out in support of same sex marriage. Senator Wyden already did this on numerous occasions during his campaign. Kennedy's argument will be that Church law and State law are separate. One does not have to honor the other so no priest or minister has to marry someone if they don't believe in it. But he will also say that the same benefits should be available to all citizens and that is why he supports marriage.

TALKING POINTS ON GAY MARRIAGE

- The institutions of traditional marriage and family face tremendous pressures in today's society. We must do everything we can to support and strengthen these institutions. The President has previously said that he does not personally support same-sex marriages.
- The President is aware that many communities and institutions are considering whether certain basic benefits can be provided outside the context of traditional marriage. The challenge in addressing these issues is to remain sensitive to the traditional values of our communities while preserving the fundamental right to live free from unjustified discrimination.
- In our country's history we have, for good reason, looked first to state and local governments, as well as the private sector, to consider issues like these involving community values and matters of conscience. The President believes that these issues continue to be best resolved at this level of civil discourse.



Wedding bells

Campaign '96

Clinton's stated opposition to same-sex marriage places the president squarely on the horns of a political dilemma

By J. Jennings Moss

Back when he was Arkansas's governor as well as a presidential candidate, Bill Clinton went on record as being opposed to same-sex marriage. More than three years into his presidency, Administration officials repeat that Clinton remains convinced that marriage is an institution to be shared by a man and a woman. The White House is said, however, to be undertaking a sympathetic review of the legal problems encountered by same-sex couples.

The issue is a tricky and sensitive one for Clinton. Stick to a flat "Gay marriage is wrong" answer, and the gay and lesbian voters who proved a crucial force in his 1992 victory could stay home. Appease guys and lesbians by calling for changes in federal laws to help same-sex couples, and the religious right will scream in protest. Try to find a compromise, and risk another "gays in the military" fiasco where neither side is pleased and those in the middle see the president as waffling and weak.

"The gay and lesbian marriage issue is striking fear into the hearts of the political handlers at the White

GREGG NEWTON/HLJ/IFR

I blues

House," said Bob Hattoy, an openly gay Department of the Interior official who rose to national prominence through his 1992 Democratic convention speech as a gay man with AIDS. "This is a loser, politically."

Knowing that at some point Clinton will be forced to address the increasingly newsworthy subject, officials at the White House and the Justice Department are getting ready. At the White House, gay and lesbian political liaison Marsha Scott and others have looked at the options available to the president. Justice staffers in the office of policy development also have worked on the subject.

Hattoy described the debate as one between the "straight white boys," who consider any steps toward gay marriage as steps to the political gallows, and social progressives, who believe gays and lesbians in relationships face unfair discrimination. A small percentage within the White House support same-sex marriage, he said. "To me, the straight white boys always win at the White House," Hattoy added. "To me, the president will lessen their impact. He struggles with those kinds of profound issues, like hospital-visitation rights."

On the political front Scott has met with openly gay administration appointees and congressional staffers as well as others inside and outside government. The meetings have at times been hostile, especially when Scott has stated Clinton's opposition to same-sex marriage. "If this is the president's position, then I find it insulting," Jim Jones, an openly gay member of Sen. John Kerry's staff, recalled telling Scott during one such meeting.

Several sources said the Administration had initiated a probe of legal issues faced by same-sex couples and that the White House counsel's office was closely involved in the review. But the president's head counsel,

Jack Quinn, said his office was doing no work on the issue. "The president feels strongly that in these days of various and sundry stresses in society, the institutions of traditional marriage and the family face tremendous pressures and we need to do everything we can to strengthen those relationships," Quinn said—adding, however, that Clinton is well aware of what some governments, corporations, and institutions have done to acknowledge same-sex couples in providing some of the same benefits extended to married couples. Said Quinn: "He believes those are important issues that can be addressed in a way that remains sensitive to traditional values while preserving the federal right to live free from unjustifiable discrimination."

Quinn also argued that in modern times, issues surrounding marriage "have exclusively been the domain of other levels of government." Several sources, however, said that White House officials have been advised about a number of steps the federal government could take to help out gay couples. One would be to change immigration law so that same-sex relationships are treated the same as traditional families. Another would be to make tax laws the same for couples regardless of marital status. But none of these sources said they believe the Administration will come close to adopting such ideas.

"The Administration has made no commitments at all on this, and I think, quite frankly, none will be made," said one gay official who was consulted by the White House on the marriage issue but asked not to be identified. "They don't want to box themselves in." The main task for Administration staffers working on the issue is to find the right mix of words for Clinton to speak, said

the official: "He has to have an answer. He needs to be able to speak consistently when the issue comes up, and it will come up. If he shows any signs of waffling or inconsistency, it will become an issue."

Such a concern is very real in view of Clinton's track record on gay issues. He promised to open the military's doors to gays and lesbians but then fell back on a policy that keeps them nearly closed. He went on record opposing antigay initiatives that appeared in several states, yet his administration stayed out of the Supreme Court fight on a Colorado measure. "They don't want any hemorrhaging going on," Hattoy said. "They feel very nervous about this being another major mistake or rift with the gay community."

In Jones's view "the White House is very concerned that this is going to be an issue driven by the radical right. The White House is not going to be caught off guard, and the gay community ought not be caught off guard," he said. Even though he was upset by Clinton's position, Jones said he felt that gays and lesbians need to "pick our fights judiciously."

Gays and lesbians need to figure out how to divert public attention away from the image of homosexuals storming churches and toward the issue of benefit rights for same-sex spouses, said Brian Bond, lesbian and gay outreach director for the Democratic National Committee. "We have to figure out what we're going to do, what we're going to say about it," said Bond. "We can't make this a litmus-test issue."

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"The straight white boys always win at the White House."

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But some gay political leaders think that a crucial way of getting the public's support is to get the White House's backing. "Clinton has to say he backs gay marriage," said Helen Gonzales, public policy director for the National Gay and Lesbian Task Force. "It's an issue of 'Do you in fact feel that gays and lesbians should have any support if they want to have families?' This really comes down to gays and children."

Politically, the model President Clinton could follow is the one Colorado governor Roy Romer established when he became the first governor to veto a bill banning same-sex marriages. In his veto message Romer said that while he backed the idea of keeping marriage the way it is now, he described the legislative move as "mean-spirited and unnecessary" and called for a commission to look at the legal and policy issues that same-sex marriages raise. "Let's find out how we can live together with our differences rather than divide over the issue of sexual orientation," Romer wrote. Other governors, however, have gone the other way, with Governor Bill Graves making Kansas the fifth state to ban recognition of same-sex marriage.

Some of Clinton's opponents would like nothing more than to link him with gay marriage, a concept a vast majority of the public opposes. After a White House spokeswoman made the comment late last year that Clinton "doesn't think that same-sex marriages should be outlawed," some conservative groups concluded that Clinton eventually would endorse gay marriage. "Mark my words, if Bill Clinton is reelected, he will fight for this tooth and nail," said Martin Mawyer, president of the Christian Action Network, a conservative group that is heavily involved in efforts to stop gay marriage.

Mawyer is encouraging Sen. Bob Dole, who will be the Republican presidential nominee, to raise the issue in the coming debate with Clinton. In fact, Mawyer says that if Dole steers clear of the topic, he will lose the elec-

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Like Clinton, Dole opposes same-sex marriage. But unlike Clinton, Dole publicly supported a campaign to ban gay marriages across the United States. And he sent a letter to gay-marriage opponents saying the pledge "does not go far enough" to strengthen the family. Dole's point here had nothing to do with homosexuality—he went on to say, for example, that government should lower the tax burden for families with children—but gay rights leaders remain angry over his choice of words.

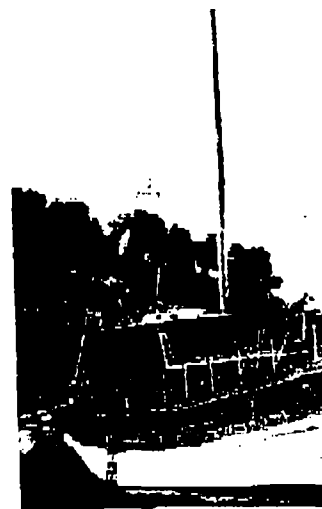
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"Fortunately, we've already won the nomination," said Vin Weber, a former Wisconsin congressman who is now a national cochairman of the Dole campaign, when asked if the party's socially conservative wing could push Dole to campaign against gay marriage. "Dole's history tells us that this is not the sort of issue he would like to elevate to high-profile status," Weber added that Dole does not want to see the Republican convention in San Diego be overwhelmed with divisive social matters such as gay rights or abortion.

James Pinkerton, a White House aide during the Reagan and Bush administrations who is a heterosexual Republican backing gay marriage, agreed. Pinkerton said Dole will leave the issue alone if it leaves him alone. "It's sort of like abortion," said Pinkerton. "Unprompted, you don't hear Dole say a lot about abortion"—or about gay marriage.

And if Dole won't talk about it, neither will Clinton—leaving gays and lesbians who want to support both Clinton and same-sex marriage wondering what to do next. Hattoy's answer: "Grab your boyfriend or girlfriend by the hand, run off to church, and 'get married.' But don't expect the president to come to the wedding." ●

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THE WHITE HOUSE
WASHINGTON

May 1, 1996

MEMORANDUM FOR HAROLD ICKES
GEORGE STEPHANOPOULOS

FROM: JACK QUINN
KATHLEEN WALLMAN

RE: SAME SEX MARRIAGE

You recently asked whether the Constitution required other states to recognize Hawaii's same sex marriages. The attached memorandum from the Department of Justice explains that it does not.

We will stay abreast of this issue and the various ways it may arise so that we may be prepared to respond appropriately.



Attachment

g:\data\samesex.mem



U. S. Department of Justice

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 *TRS*

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.

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TYPES OF STATUTES THAT MIGHT BE PROPOSED

Analog to Colorado constitutional provision:

Neither the United States, through any of its branches or departments, nor any of its agencies, shall enact, adopt or enforce any statute, regulation or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of, or entitle any person or class of persons to have, any claim of minority status, quota preferences, protected status or claim of discrimination.

Tie-in to federal funding:

Notwithstanding any other provision of federal or state law, no state or state agency that receives federal funds shall be required to expend such funds in a manner that recognizes gay marriage or same sex partnerships.

Precatory statute:

It shall be federal policy that a state may decline to recognize same-sex marriages.

THE PRESIDENT HAS SEEN

4/7/96

THE WHITE HOUSE

WASHINGTON

96 APR 8 P7:01

April 8, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: JACK QUINN *Jack Quinn*
COUNSEL TO THE PRESIDENT

SUBJECT: GAY MARRIAGE

The White House has received numerous inquiries concerning your position on gay marriage. In addition, The Advocate, a widely-read gay and lesbian newspaper, is planning to publish a story on this issue and would like to include a statement of your position. The deadline for that story is *tomorrow -- Tuesday, April 9.*

With input from Marsha Scott, we have prepared the attached talking points. George Stephanopoulos has reviewed and approved them.

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Recommendation

That you approve the talking points set forth above.

☒ AGREE☐ DISAGREE☐ DISCUSS

May __, 1996

The Editor
The Advocate

To the Editor:

In your May 14, 1996 issue, an article entitled "Wedding Bell Blues" implies that my position on gay marriage is under review.

To eliminate any ambiguity your article may have created on this point, let me clearly reiterate that I am opposed to gay marriage. I publicly expressed my opposition to gay marriage during the 1992 Presidential campaign, and this remains my position today. My position on this issue is not being reconsidered and has not been the subject of any review [that I have authorized].

The institutions of traditional marriage and family face tremendous pressures in today's society. We must do everything we can to support and strengthen these institutions, and I do not believe gay marriage is consistent with them.

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

of course,

first instance, however, striking this balance is most appropriately accomplished in our states, communities and the private sector.

Advocate questions for President Clinton. April 24, 1996.

1. In 1992, you said to gay people "I have a vision and you are part of it." What is that vision in 1996 and how do gays and lesbians figure into it?
2. You have been praised by gays and lesbians as the most "pro-gay" president in history. Yet there is also a profound sense of disappointment in the gay community because the expectations you set in 1992 were so high. What do you say to those gay voters who invested so much emotionally to your candidacy but who have felt let down?
3. What is your own personal comfort level with homosexuality? Is it one of tolerance or acceptance or something else?
4. What gay or lesbian person has had the biggest impact on your life and why?
5. As a strong Baptist, do you have problems reconciling your religion's views on homosexuality with your personal beliefs?
6. Jimmy Carter recently denounced how some religious and political leaders have embraced strong anti-gay views. And he said it must be made clear "that a platform of 'I hate gay men and women' is not a way to become president of the United States." Do you agree with Carter and do you intend to do anything to counter what he calls "obnoxious attitudes?"
7. Perhaps your biggest accomplishment in the area of gay rights has been with changes in the federal workplace. Federal departments have written non-discrimination policies. Gays and lesbians are no longer denied security clearances. What do you feel is the long-term impact of these changes?
8. People still debate what happened with the gays in the military issue. Given a second term, would you revisit this topic? Is there a chance you might issue the executive order you promised in 1992?
9. If you had the chance to start over, only this time knowing the extent of the opposition to opening the military's doors to gays and lesbians, how would you approach the issue? What lessons did you learn from the fight?

10. Do you believe that gays and lesbians face the same kind of obstacles that other minority groups have confronted?
11. You have endorsed the Employment Non-Discrimination Act. Why do you feel this legislation is appropriate and necessary. Given a second term, will you actively push the Congress to pass it?
12. Why do you oppose same-sex marriage? Is there a chance you could reconsider?
13. What about the slate of proposed laws to limit marriage between a man and woman? Should Congress establish a national standard for marriage?
14. Are there steps, such as changing the tax code or immigration laws or creating domestic partnership benefits for federal workers, that you believe the federal government should take to help gay couples?
15. An increasing number of gays and lesbians are having children, either biologically or through adoption. Is this trend acceptable to you? Is there anything government should do to encourage or discourage gay child rearing?
16. Some parents object to teaching anything positive about homosexuality in the public schools. At the same time, some troubled teens kill themselves because of confusion over their sexuality. How far should the nation's schools go in discussing homosexuality?
17. You spoke out against the slate of anti-gay initiatives that were popular in past elections yet your administration decided to sit out of the Supreme Court fight on the issue. How can you justify speaking out in one instance and then staying silent later?
18. AIDS continues to be a crisis in America. How has AIDS affected you personally?
19. Some AIDS activists say in one breath that you've done more than either of the two most recent presidents to fight the disease and then in the next breath they criticize you for not doing enough or speaking out enough. Are both critiques accurate?
20. During the White House conference on AIDS, speaker after speaker called for explicit AIDS education programs in the nation's schools that

were honest about transmission and education. How explicit should the public schools be ?

21. Congress has stalled for many months on reauthorizing the Ryan White Care Act. One reason was the debate over a proposal to test newborns for HIV. Is this a provision you could live with? What are your thoughts on mandatory HIV testing?

22. What will a second Clinton term do to fight the war on AIDS?

23. Any final thoughts?

To: Steve

From: Eric Fanning



GEORGETOWN UNIVERSITY LAW CENTER

Chai R. Feldblum
Associate Professor of Law

THE "DEFENSE OF MARRIAGE ACT"

The Dole/Nickles "Defense of Marriage Act" has some *significant constitutional problems*.

The bill adds a section to the federal Full Faith and Credit statute (28 U.S.C. §1738) to allow states *not* to recognize the public acts of another State if they relate to that State's recognition of a same-sex marriage.

Senator Nickles asserts this provision is a constitutional "exercise of Congress' power" under the second sentence of the constitutional Full Faith and Credit Provision. Senator Nickles is way off the mark. His provision is *not* a constitutional exercise of Congress' power because the provision is directly *contrary* to the *first* sentence of the Full Faith and Credit clause.

Here's what the United States *Constitution* says:

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

Sentence one of this clause is very clear: **every State is required to recognize the official public acts and judicial proceedings of other States**. While we tend to take the concept of a *United* States of America for granted these days, an early Supreme Court case set forth clearly the *reason* for the Full Faith and Credit clause:

The "very purpose" of the clause was "to alter the status of the several states as independent foreign sovereignties, each free to ignore the obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation." *Williams v. North Carolina*, 317 U.S. 287, 295 (1942).

The second sentence of the Full Faith and Credit clause reads as follows:

"And the Congress may by general Laws prescribe the manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

There is *no* way this second sentence (which is what Senator Nickles is relying on) could be read to mean: States have to recognize the official acts of other States, *except* when *Congress* passes a statute to say they *don't* have to. That would effectively allow any Congressional statute to **amend** the Full Faith and Credit clause of Constitution -- without going through the bother of a constitutional amendment. That *cannot* be a correct reading of this sentence.

What the second sentence of the Full Faith and Credit clause does mean is actually pretty clear. It means Congress may pass *implementing* legislation to carry out, for practical purposes, the *logistics* of the constitutional mandate. Specifically, Congress may pass laws to establish the *manner* in which the acts or proceedings of a State may be proved, and the specific *effects* in the States the recognition of such acts or proceedings will have as a practical matter.

Indeed, every law Congress has passed in this area has been of this *implementing type*. The early laws it passed in 1790 and 1804 were basic ones: the 1790 law provided for ways to authenticate acts and judicial proceedings, and the 1804 law provided methods for authenticating non-judicial records.

The recent laws cited by Senator Nickles simply reflect the more **modern** types of acts and proceedings our States deal with these days. They all share a **basic, common denominator: they all implement the Full Faith and Credit mandate -- they do not restrict it.**

For example:

* The *Parental Kidnapping Prevention Act of 1990* provides that States must **enforce child custody determinations** made by other States;

* The *Full Faith and Credit for Child Support Orders of 1994* provides that States must **enforce child support determinations** made by other States;

* The *Safe Homes for Women Act of 1994* required States to **recognize protective orders** issued in other States with regard to domestic violence.

None of these Congressional statutes attempt to **restrict** States from recognizing the orders or proceedings of other States. Instead, they clarify the **types** of acts and proceedings the States **must** recognize. Those laws are, therefore, **constitutional exercises** of Congress' power to **implement** the Full Faith and Credit mandate of the Constitution. **In contrast, the Dole/Nickles "Defense of Marriage Act" is an unconstitutional attempt by Congress to restrict and undermine the basic mandate of the Full Faith and Credit clause of the federal Constitution.**



U. S. Department of Justice

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.

THE WHITE HOUSE
WASHINGTON

April 25, 1996

MEMORANDUM FOR JACK QUINN

FROM: KATHLEEN WALLMAN AND STEPHEN NEUWIRTH ^{hw}
SUBJECT: GAY MARRIAGE

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? *(Maybe to George, also - kw)*

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

*File: gay marriage
CC: Steven N. ✓*

THE WHITE HOUSE
WASHINGTON

March 29, 1996

*Kathy -
I called Marcia
about this. I was
out it was supposed
to be sent to you.
- Kathi*

MEMORANDUM

TO: Kathleen Whalen
FROM: Marcia L. Hale *MHB*
SUBJECT: Governor Romer

Please call me about the attached letter. Thank you.

Attachment

STATE OF COLORADO

EXECUTIVE CHAMBERS

136 State Capitol
Denver, Colorado 80203-1792
Phone (303) 866-2471



Roy Romer
Governor

March 25, 1996

The Honorable Colorado House
of Representatives
Sixtieth General Assembly
Second Regular Session
Denver, CO 80202

Ladies and Gentlemen:

I am returning to you House Bill 96-1291, "Concerning the Invalidity of Marriages Between Persons of the Same Sex", which I vetoed today at 12:41 P.M. This letter sets forth my reasoning for vetoing this bill.

I want the people of Colorado to clearly understand that my veto does not mean that same sex marriages will be legal in Colorado. It does not mean that a church or anyone else will be forced to perform or recognize same sex marriages. Colorado law is very clear that marriage is reserved for the union of a man and a woman. That is our policy. I support it. It does not change by my action today.

The expressed motive for this bill is to preserve the definition of marriage in Colorado from the actions of Hawaii, which may some day extend marriage to include persons of the same sex. This issue may arise because, under the Full Faith and Credit Clause of the U.S. Constitution, states honor and recognize certain actions of other states, marriage being one of the most obvious examples.

However, HB 1291 does not adequately resolve this issue. In fact it raises, but does not properly address, other important constitutional issues, including the possibility of discrimination against gays and lesbians.

Three principles underlie my action today:

First, I believe that marriage in Colorado should be reserved for the union of a man and woman. That is our current law and I think it should remain our law. There is a long standing, historic, cultural, religious and civil tradition for the institution of marriage. We should continue that tradition, preserving the institution of marriage for the union of a man and a woman.

Second, I believe that decisions on this subject should be made by Coloradans and not by people in other states. We should not permit our law to be altered by the action of

The Honorable House of Representatives
March 25, 1996
Page 2

another state. We should take whatever appropriate steps may be necessary to protect our policy.

Third, I believe that those members of our society who join in a long-term, committed relationship with a person of the same sex should be acknowledged as fellow human beings and fellow citizens. I believe, for example, that they should have access to each other in a hospital room when one partner is dying. We need a discussion on how our law should evolve to give stability and protection to their relationship in situations like this.

I believe these principles are shared by most Coloradans. What are we to do when we look across the church congregation, our service clubs, or our workplace and see a gay or lesbian person, a human being who wants to live his or her life in the most responsible and caring way possible, and commits to sharing life with a person of the same sex? What are we to say as a society about that relationship? Do we condemn them? Shouldn't they be able to live their lives to the fullest, in a responsible and caring way?

These are the questions I am putting on the table. They don't readily lead to simple or bumper sticker solutions, but life is not always simple, and complex problems are rarely solved by bumper sticker slogans.

It is one thing to believe -- as I do -- that marriage is for the union of a man and woman. It is quite another to believe that committed same sex relationships do not exist and should not be recognized by society. We cannot prohibit or ban these relationships, and we shouldn't use our law to attempt to do so.

Let's find out how we can live together with our differences, rather than divide over the issue of sexual orientation.

I'm making this simple appeal to the Legislature and the people of Colorado: let's come to terms with this issue, as elected officials, as friends, as neighbors, as members of a community, as members of a church, as Coloradans.

There is a right way to proceed, and a wrong way. There is a unifying way, and a divisive way. There is a thoughtful way, and a simplistic way.

I believe HB 1291 fails on all these counts.

HB 1291 does not adequately do the job. I know some support this bill because they believe it deals with the constitutional issues raised by the courts in Hawaii. Some support it because they view it as a re-affirmation of our traditional structure of

The Honorable House of Representatives
March 25, 1996
Page 3

marriage. But let's be honest: some support this bill because it is a way to single out and condemn the lifestyle of gay and lesbian people.

Regardless of motivation, the bill I have before me now is simplistic and divisive. It is simplistic because it ignores important legal and constitutional questions and addresses only one part of the issue. It is divisive because it singles out a group of Coloradans for condemnation, equating their relationships with incest and bigamy. That is hurtful, and it is counter to Colorado's rich tradition of tolerance and freedom.

We can be pro-family, without being unfair to gay and lesbian people.

We can re-affirm our commitment to marriage between a man and a woman without condemning those who have different relationships.

The proponents of this bill say they want to ensure that same sex marriages from Hawaii or some other state are not recognized in Colorado under the Full Faith and Credit Clause of the U.S. Constitution. But the way the bill is drafted is to ban same sex marriages in the "prohibited marriages" section of our marriage statute, alongside bigamy and incest. This is mean-spirited and unnecessary. We do not need to forbid or "ban" same sex relationships to protect ourselves under the Full Faith and Credit Clause. Moreover, structuring legislation this way may invite lawsuits against Colorado based on discrimination and the Equal Protection Clause.

In fact, I am not entirely convinced we need any new statutory language. Colorado law already clearly states that marriage is between a man and a woman. But if some believe we need to reaffirm and strengthen our current law to make it absolutely clear that marriage is between a man and a woman, we can do just that. To preserve our law as it is, the Full Faith and Credit Clause only requires us to indicate that our "strong public policy" is that marriage is between a man and a woman. To strengthen that posture, we may want to specify that conflicting out-of-state marriages will not be recognized as against this public policy.

I would sign legislation that does two things: (1) States that "It is the strong public policy of Colorado that marriage shall only be between a man and a woman. It is the policy of Colorado only to recognize marriages from other states that are between a man and a woman." This will give us more than enough protection against a Full Faith and Credit challenge from Hawaii or any other state. And it does so with language that is constructive and not discriminatory.

(2) The second change I would require before I sign legislation is language based on an amendment introduced by State Senator Dottie Wham, which would provide a commission to review and evaluate the legal and policy issues involved in recognizing same-sex relationships. This commission, which would be composed of members

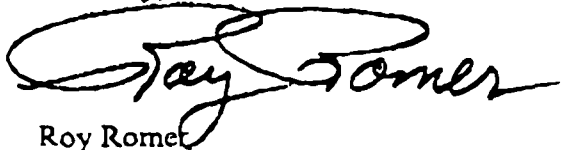
The Honorable House of Representatives
March 25, 1996
Page 4

appointed by the Legislature and myself, would report back to Colorado on its findings by a date certain. I am open to working with the Legislature on when such a report would be issued.

Why do I think a commission is important? Because this is a serious issue, and it requires a thoughtful and thorough debate. We have not yet had such a debate. We must come together as a community to have a rational discussion about these issues and attempt to find some common ground upon which we can agree.

Send me a bill with the two changes I've outlined and I will sign it. The approach I have outlined will strengthen our legal posture against challenges under the Full Faith and Credit clause and other constitutional challenges. Most important of all, it will allow us to act on reason and not out of fear. That is in the best tradition of Colorado and our people. It is an approach that will unite, and not divide us.

Sincerely,

A handwritten signature in black ink, appearing to read "Roy Romer", with a large, stylized flourish at the end.

Roy Romer
Governor

to Steve N

Gay Marriage Talking Points

- The President ^{strong} 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. This is ~~inconsistent with~~ the President's values and the values of most Americans.

(Query: he shouldn't let his "personal" beliefs guide policy, should he?)

- The President ^{also} 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.

should not be subject to unfair discrimination, which is why he has

[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.~~

need not

note - feds don't do the discriminating.

Since the President does not believe that the federal government should recognize gay marriage, it also seems to him



GOP: Gay Weds Not An Issue

Monday, May 13, 1996 0143EDT

© The Associated Press

WASHINGTON (AP) -- Republican activists have called opposition to same-sex marriages a "sleeper" election-year issue, but some GOP leaders are rebuffing efforts to make it a presidential campaign topic.

"I don't think that should be in the (party) platform," Sen. Alfonse D'Amato, R-N.Y., said Sunday on NBC's "Meet the Press." "That's exactly the kind of thing that sends the wrong message and it slams the door on faces."

And commentator Pat Buchanan, a strong social conservative who remains nominally in the Republican presidential race, said the party shouldn't emphasize the issue.

"We should probably speak out against it (same-sex marriage) and say 'no' to that, definitely," Buchanan said on NBC. "But I don't look upon this, as someone suggested, as a national campaign issue."

That contradicts advice given recently by William Kristol, editor of The Weekly Standard conservative magazine, and GOP activist William Bennett, who have urged certain Republican presidential nominee Bob Dole to use the issue to gain support.

Last week, Dole co-sponsored a Senate measure to define "marriage" in federal law as a "legal union between one man and one woman." The legislation, which also was introduced in the House, is a reaction to a Hawaii Supreme Court ruling favoring marriage rights for gay men and lesbians. If it stands, that decision could require other states to recognize homosexual marriages from Hawaii.

Dole didn't trumpet the measure, however.

Rep. Barney Frank, D-Mass., called the legislation "a desperate Republican ploy" to use the same-sex marriage issue to tar Democrats as radical liberals and to deflect attention from serious topics, including attempts to balance the budget.

In an effort to close the gap on Clinton's lead over Dole in polls, Republicans are using conservative issues -- including abortion and judicial appointments -- to emphasize differences between the candidates.

→ President Clinton has said he is opposed to same-sex marriages but is not ready to sign a federal bill specifically outlawing such unions.

Buchanan said Republicans view legal recognition of same-sex marriages as another threat to America's traditional family values and thus "a country that is not decadent ought to reject" the idea.

But Frank, who is openly gay, objected to the notion that homosexuals are anti-family or harmful to American society.

"Many people will also say Elvis is alive and the Earth is flat and somehow I am a threat to the culture," Frank said on ABC's "This Week With David Brinkley." "It's nonsense. Most gay men and women grew up in heterosexual households."

Gary Bauer, president of the conservative Family Research Council, called the movement to legalize

same-sex marriages "one of the most radical ideas to come down the pike in a number of years." He said endorsing marriages other than between men and women goes against societal norms.

"Healthy societies endorse heterosexual relationships between men and women," Bauer said on ABC. "It's not just Americans in the 1990s. It's every major culture on the face of the Earth. ... I believe that Bob Dole ought to make an issue of this."

But San Francisco Mayor Willie Brown, who presided over a "commitment ceremony" for 200 gay couples this spring, said the only issue is equal rights and respect. "I don't understand what the problem is with two people of the same sex being treated the same as heterosexuals," Brown said on the ABC program.

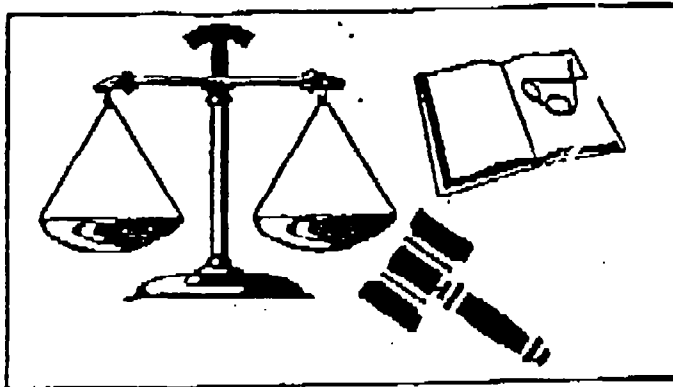
No states recognize same-sex marriages, although cities such as San Francisco allow homosexuals to register as "domestic partners," giving them certain marriage-like legal rights regarding health insurance and benefits.

Since the 1993 Hawaii court decision, 33 states have taken up bills attacking same-sex marriage, but only eight have outlawed them so far. Under the Constitution, other states must recognize any Hawaii marriage as legal -- unless specifically outlawed in their states.

U.S. DEPARTMENT OF JUSTICE

OFFICE OF LEGISLATIVE AFFAIRS

FACSIMILE COVER SHEET



TO:

Steve Neuwirth

FAX NO.:

456-1647

FROM:

Ellen Davis

PHONE:

(202) 514-7014 Fax: 514-5499

DATE:

NO. OF PAGES:

(EXCLUDING COVER)

COMMENTS:

James asked me to
send you this

104TH CONGRESS
2ND SESSION

H. R. 3396

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To define and protect the institution of marriage.

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

3 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

11 (b) CLERICAL AMENDMENT.—The table of sections
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14 section 1738B the following new item:

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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

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H.L.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
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5 Code, is amended by inserting after the item relating to
6 section 6 the following new item:

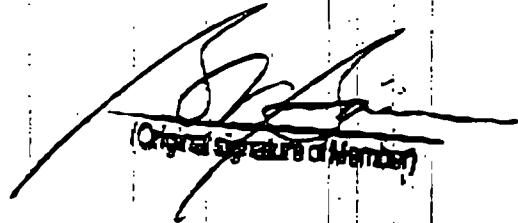
"7. Definition of 'marriage' and 'spouse'."

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

P. 2

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H.L.C.



(Original signature of Member)

104TH CONGRESS
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5-08-1996 3:26PM

FROM REP. BOB BARR-D. C.

P. 4

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RLC.

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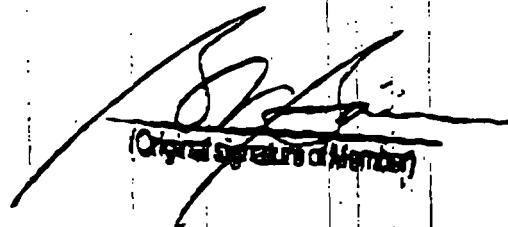
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5-08-1996 3:25PM FROM REP. BOB BARR-D. C.

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H.L.C.



(Original Signature of Member)

104TH CONGRESS
2D SESSION

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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-D. C.

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ILLC.

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'."

THE WHITE HOUSE
WASHINGTON

May 9, 1996

MEMORANDUM FOR LEON PANETTA
GEORGE STEPHANOPOULOS
MIKE MCCURRY

FROM: JACK QUINN *JQ*
STEVE NEUWIRTH *SN*

SUBJECT: GAY MARRIAGE LEGISLATION

Yesterday, a bill was introduced in the House that would alter the definitions of "marriage" and "spouse" under federal law to cover only heterosexual marriage. Although we have not yet received a copy of the bill itself, we understand that the purpose of the bill would be to ensure that federal funds, including federal funds distributed by states, are not made available to same sex couples, regardless of whether those couples are recognized as "married" under state law. We understand that the bill also would provide that states need not give "full faith and credit" to other states' recognition of gay marriage -- although DOJ has already opined to us, internally, that the Constitution does not require states to recognize gay marriages granted by other states.

The House bill was sponsored by six Republicans, including Bob Barr, and two Democrats. We understand that Bob Dole and Don Nickles will be introducing a Senate version of the bill **today**.

We think the President may be asked about the gay marriage bill at his press conference this afternoon. One option would be for the President to say that he has not yet had an opportunity to review this legislation, but that he has long made clear that he is opposed to gay marriage.

phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in such subsection.

(B) NONINCORPORATED PERSONS UNDER COMMON CONTROL. Under regulations prescribed by the Secretary, principles similar to the principles of subparagraph (A) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

(g) OTHER LAW APPLICABLE. All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code in the case of gasoline and diesel fuel and section 4091 of such Code in the case of aviation fuel shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by subsection (a) to the same extent as if such taxes were imposed by such section 4081 or 4091.

SEC. 5. BENEFITS OF TAX REPEAL SHOULD BE PASSED ON TO CONSUMERS.

(a) PASSTHROUGH TO CONSUMERS. D

(1) SENSE OF CONGRESS. D It is the sense of Congress that D

(A) consumers immediately receive the benefit of the repeal of the 4.3-cent increase in the transportation motor fuels excise tax rates enacted by the Omnibus Budget Reconciliation Act of 1993, and

(B) transportation motor fuels producers and other dealers take such actions as necessary to reduce transportation motor fuels prices to reflect the repeal of such tax increase, including immediate credits to customer accounts representing tax refunds allowed as credits against excise tax deposit payments under the floor stocks refund provisions of this Act.

(2) STUDY. D

(A) IN GENERAL. D The Comptroller General of the United States shall conduct a study of the repeal of the 4.3-cent increase in the fuel tax imposed by the Omnibus Budget Reconciliation Act of 1993 to determine whether there has been a passthrough of such repeal.

(B) REPORT. D Not later than January 31, 1997, the Comptroller General of the United States shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives the results of the study conducted under subparagraph (A).

SEC. 6. AUTHORIZATION OF APPROPRIATIONS FOR EXPENSES OF ADMINISTRATION OF THE DEPARTMENT OF ENERGY.

Section 660 of the Department of energy Organization Act (42 U.S.C. 7270) is amended D

(1) by inserting "(a) IN GENERAL. D" before "APPROPRIATIONS"; and

(2) by adding at the end the following:

"(b) FISCAL YEARS 1997 THROUGH 2002. D There are authorized to be appropriated for salaries and expenses of the Department of Energy for departmental administration and other activities in carrying out the purposes of this Act D

"(1) \$104,000,000 for fiscal year 1997;

"(2) \$104,000,000 for fiscal year 1998;

"(3) \$100,000,000 for fiscal year 1999;

"(4) \$90,000,000 for fiscal year 2000;

"(5) \$90,000,000 for fiscal year 2001; and

"(6) \$90,000,000,000 for fiscal year 2002."

SPECTRUM AUCTION

SEC. 7. SPECTRUM AUCTIONS.

(a) COMMISSION OBLIGATION TO MAKE ADDITIONAL SPECTRUM AVAILABLE BY AUCTION. D

(1) IN GENERAL. D The Federal communications Commission shall complete all actions necessary to permit the assignment, by March 31, 1998, by competitive bidding pursuant to section 309(j) of licenses for the use of bands of frequencies that D

(A) individually span not less than 12.5 megahertz, unless a combination of smaller

bands can, notwithstanding the provisions of paragraph (7) of such section, reasonably be expected to produce greater receipts;

(B) in the aggregate span not less than 25 megahertz;

(C) are located below 3 gigahertz; and

(D) have not, as of the date of enactment of this Act D

(i) been assigned or designated by Commission regulation for assignment pursuant to such section;

(ii) been identified by the Secretary of Commerce pursuant to section 113 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923); or

(iii) reserved for Federal Government use pursuant to section 305 of the Communications Act of 1934 (47 U.S.C. 305).

(2) CRITERIA FOR REASSIGNMENT. D In making available bands of frequencies for competitive bidding pursuant to paragraph (1), the Commission shall D

(A) seek to promote the most efficient use of the spectrum;

(B) take into account the cost to incumbent licensees of relocating existing uses to other bands of frequencies or other means of communication;

(C) take into account the needs of public safety radio services;

(D) comply with the requirements of international agreements concerning spectrum allocations; and

(E) take into account the costs to satellite service providers that could result from multiple auctions of like spectrum internationally for global satellite systems.

(b) FEDERAL COMMUNICATIONS COMMISSION MAY NOT TREAT THIS SECTION AS CONGRESSIONAL ACTION FOR CERTAIN PURPOSES. D The Federal Communication Commission may not treat the enactment of this Act or the inclusion of this section in this Act as an expression of the intent of Congress with respect to the award of initial licenses of construction permits for Advanced Television Services, as described by the Commission in its letter of February 1, 1996, to the Chairman of the Senate Committee on Commerce, Science, and Transportation.

TECHNICAL EXPLANATION OF S. 1739

1. Repeal of Transportation Motor Fuels Excise Tax

PRESENT LAW

The Omnibus Budget Reconciliation Act of 1993 imposed a permanent 4.3-cents-per-gallon excise tax on transportation motor fuels. Revenues from this tax are retained in the General Fund of the Treasury. This excise tax applies to fuels used in all transportation sectors: highway, aviation, rail, inland waterway shipping, and recreational boating. All fuels used in those transportation sectors (gasoline, diesel fuel, special motor fuels, compressed natural gas, jet fuel, and barge fuel) are subject to tax.

Statutorily, the 4.3-cents-per-gallon transportation motor fuels excise tax is imposed as an additional component of the rates of other motor fuels excise taxes.¹ Those other excise taxes typically are imposed as a financing source for Federal environmental and public works programs administered through Federal trust funds. The other excise taxes have scheduled expiration dates, which generally coincide with expiration of authorizing legislation for those Federal programs.

EXPLANATION OF PROVISION

The bill would repeal the 4.3-cents-per-gallon General Fund transportation motor fuels

¹ Because compressed natural gas ("CNG") is a gaseous fuel rather than a liquid, the rate of tax is stated as 48.54 cents per MCF, which was the statutory equivalent for CNG of the 4.3-cents-per-gallon tax rate enacted in 1993. The 48.54-cents-per-gallon rate is the only excise tax imposed on CNG.

excise tax on fuel used in all transportation sectors currently subject to the tax during the period beginning seven days after enactment and ending after December 31, 1996. Statutorily this is accomplished by reducing the aggregate tax rate that otherwise would be imposed by 4.3 cents per gallon, or removing the denial of an exemption. The bill does not affect any of the motor fuels excise taxes that are dedicated funding sources for Federal environmental or public works trust fund programs.

Because the 4.3-cents-per-gallon transportation motor fuels excise tax (along with other applicable excise taxes on the same motor fuels) is imposed on certain motor fuels before the fuels reach the consumer level, the bill includes rules comparable to present-law "floor stocks refund" provisions that allow refunds to producers and dealers for fuel held for sale on the effective date of the tax reduction when the excise tax already has been paid. These refunds must be claimed by persons liable for payment of the tax, based on amounts of tax-paid fuel they own on the tax-reduction date and on documented claims from dealers that purchased tax-paid fuel from them and hold the fuel for sale on the tax-reduction date. These refunds are intended to be allowable either as refund claims filed with the Internal Revenue Service or as credits against required deposits and payments of other excise taxes owed by the claimants.

The bill further would impose floor stocks taxes, identical to those imposed in 1993, on taxable fuels held on January 1, 1997, when the tax-reduction period expires.

EFFECTIVE DATE

These provisions of the bill would be effective on the date of enactment for taxable fuels removed, entered, sold or used more than six days after that date and before January 1, 1997.

2. Sense of the Congress on Benefit to Ultimate Consumers

The bill includes a statement that it is the Sense of the Congress that the full benefit of repeal of the 4.3-cents-per-gallon transportation motor fuels excise tax be flowed through to consumers, and that persons receiving floor stocks refunds from the Internal Revenue Service immediately credit their customers' accounts to reflect those refunds.

3. Study

The bill directs the General Accounting Office to study the impact of repeal of the 4.3-cents-per-gallon transportation motor fuels excise tax and to report its findings to the Congress no later than January 31, 1997.

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.

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.

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 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.

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.

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.

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.

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.

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

THE DEFENSE OF MARRIAGE ACT

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

It provides that no State shall be required to give effect to a law of any other State with respect to a same-sex "marriage".

It defines the words "marriage" and "spouse" for purposes of Federal law.

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

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

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

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

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

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

The Parental Kidnaping Prevention Act of 1980, Public Law 96-611, 94 Stat. 3569, codified at 28 U.S.C. §1738A (each State required to enforce child custody determinations made by home State if made consistently with the provisions of the Act);

The Full Faith and Credit for Child Support Orders Act [of 1994], Pub. L. 103-383, 108 Stat. 4064, codified at 28 U.S.C. §1738B (each State required to enforce child support orders made by the child's State if made consistently with the provisions of the Act); and

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

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

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

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

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

Most of section 3 borrows directly from the current United States Code. The introductory phrases are taken from sections 1 and 6 of Title 1, and the definition of spouse is taken from paragraph 31 of section 101, Title 31. The current Code does not contain a definition of marriage, presumably because Americans have known what it means.

Therefore, the definition of marriage in DOMA is derived most immediately from a Washington State case, *Singer v. Hara*, 522 P.2d 1187, 1191-92 (Wash. App. 1974), and this definition has now found its way into Black's Law Dictionary (6th ed. 1990). There are many similar definitions, both in the dictionaries and in the cases. For example, more than a century ago the U.S. Supreme Court spoke of the "union for life of one man and one woman in the holy estate of matrimony." *Murphy v. Ramsey*, 114 U.S. 15, 45 (1885).

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

[Prepared by the Office of Senator Don Nickles]

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:

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

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

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

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

"spouse" appears more than 3,100 times, a redefinition of "marriage" or "spouse" could have enormous implication for Federal law.

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

Veterans' Benefits. In the 1970s, Richard Baker, a male, demanded increased veterans' educational benefits because he claimed James McConnell, another male, as his dependent spouse. When the Veterans Administration turned him down, he sued, and the outcome turned on a Federal statute (38 U.S.C. §103(c)) that made eligibility for the benefits contingent on his State's definition of "spouse" and "marriage". The Federal courts rejected the claim for added benefits, *McConnell v. Nooner*, 547 F.2d 54 (8th Cir. 1976), because the Minnesota supreme court had already determined that marriage (which it defined as "the state of union between persons of the opposite sex") was not available to persons of the same sex. *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971), dismissed for want of a substantial federal question, 409 U.S. 810 (1972).

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

Family and Medical Leave Act. The Family and Medical Leave Act of 1993 (FMLA), Pub. L. 103-63, 107 Stat. 6, requires that employees be given unpaid leave to care for a "spouse" who is ill.

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

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

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

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

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

[Prepared by the Office of Senator Don Nickles]

ADDITIONAL COSPONSORS

S. 295

At the request of Mrs. KASSEBAUM, the name of the Senator from Utah [Mr. BENNETT] was added as a cosponsor of S. 295, a bill to permit labor management cooperative efforts that improve America's economic competitiveness to continue to thrive, and for other purposes.

S. 695

At the request of Mrs. KASSEBAUM, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of S. 695, a bill to provide for the establishment of the Tallgrass Prairie National Preserve in Kansas, and for other purposes.

S. 983

At the request of Mr. FEINGOLD, the name of the Senator from Arizona [Mr. KYL] was added as a cosponsor of S. 983, a bill to reduce the number of executive branch political appointees.

S. 1035

At the request of Mr. DASCHLE, the name of the Senator from Idaho [Mr. KEMPTHORNE] was added as a cosponsor of S. 1035, a bill to permit an individual to be treated by a health care practitioner with any method of medical treatment such individual requests, and for other purposes.

S. 1423

At the request of Mr. GREGG, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 1423, a bill to amend the Occupational Safety and Health Act of 1970 to make modifications to certain provisions, and for other purposes.

S. 1578

At the request of Mr. FRIST, the names of the Senator from Arizona [Mr. MCCAIN] and the Senator from Maryland [Ms. MIKULSKI] were added as cosponsors of S. 1578, a bill to amend the Individuals with Disabilities Education Act to authorize appropriations for fiscal years 1997 through 2002, and for other purposes.

S. 1596

At the request of Mr. MURKOWSKI, the names of the Senator from Alaska [Mr. STEVENS], the Senator from North Carolina [Mr. FAIRCLOTH], and the Senator from Idaho [Mr. KEMPTHORNE] were added as cosponsors of S. 1596, a bill to direct a property conveyance in the State of California.

S. 1610

At the request of Mr. BOND, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 1610, a bill to amend the Internal Revenue Code of 1986 to clarify the standards used for determining whether individuals are not employees.

S. 1623

At the request of Mr. WARNER, the name of the Senator from Georgia [Mr. COVERDELL] was added as a cosponsor of S. 1623, a bill to establish a National Tourism Board and a National Tourism Organization, and for other purposes.

leva

1 of 1 items

CQ's WASHINGTON ALERT 05/09/96

S1740

Nickles (R-OK)
Introduced in Senate

05/08/96

(76 lines)

To define and protect the institution of marriage.

Special typefaces used in this bill version:

// \\ Italic
!! !! Bold roman

Item Key: 9561

104TH CONGRESS
2D SESSION

S. 1740

To define and protect the institution of marriage.

=====

IN THE SENATE OF THE UNITED STATES

May 8, 1996

Mr. NICKLES (for himself and Mr. DOLE) introduced the following
bill; which was read twice and 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:

!!"S 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:

!!"S 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'."

There are no more items to read.

Enter one or more numbers or ALL to display item(s),
Enter another display command and one or more numbers or ALL,
Enter MARK or SAVE and one or more numbers to limit or save your set,
Enter SMARTMATCH and a number to find comparable items,
Or enter BACK, HELP, or STOP

To Steve

Thanks

May 6, 1996

Jan

DRAFT

MEMORANDUM FOR LEON PANETTA
HAROLD ICKES
GEORGE STEPHANOPOULOS

FROM: JACK QUINN

SUBJECT: SUPREME COURT CASE ON COLORADO'S "ANTI-GAY
RIGHTS" STATE CONSTITUTIONAL AMENDMENT

Rumors are circulating that the Supreme Court will soon announce its decision in the pending case on Colorado's state constitutional amendment precluding legal and other protections for gay people. After consultation with the Department of Justice and Marsha Scott, this office recommends that the White House's public response to any such ruling be short and take account of the Administration's determination last year not to submit a friend-of-the-Court brief in the case.

is bad public policy

In the event the Court *upholds* the Colorado constitutional provision, we recommend that the White House limit its comments to a statement along the following lines:

~~The President condemns the~~ Colorado provision because it is wrong to deny a group of citizens -- any group -- the right to participate effectively in the political process. The President has urged states and localities to reject such provisions. To ~~pick out one characteristic and use it as the basis to deny political participation~~ is inconsistent with the common values and principles that make our nation strong.

to any group of Americans

In the event the Court *invalidates* the Colorado constitutional provision, we recommend that the White House make a statement along the following lines:

The President is pleased by today's decision, ~~because he condemns the Colorado provision and other similar laws which deny a group of citizens -- any group -- the right to participate effectively in the political process.~~ The President has urged states and localities to reject such provisions. Such provisions are both unconstitutional, as the Court today held, and inconsistent with the common values and principles that make our nation strong.

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and that is bad public policy



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:

Jack Quinn

FACSIMILE NO.

456-2279

TELEPHONE NO.

456-2632

FROM:

John R. Schmidt

FACSIMILE NO.

202/514-0238

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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

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

May 10, 1996

MEMORANDUM FOR THE PRESIDENT

THROUGH: LEON PANETTA

FROM: JACK QUINN
 GEORGE STEPHANOPOULOS
 MARSHA SCOTT

SUBJECT: GAY MARRIAGE LEGISLATION

This week, legislation on gay marriage was introduced by Bob Dole and Don Nickles in the Senate, and by Bob Barr (plus five other Republicans and two Democrats) in the House. We understand that there will be joint Senate-House hearings on the gay marriage bills as early as next Wednesday.

The proposed legislation has two parts. The first provides that states need not give "full faith and credit" to other states' recognition of gay marriage -- a provision that appears to anticipate legalization of gay marriage in Hawaii. This provision is of no real substantive significance, however, since the Constitution's "full faith and credit" clause already would permit each state to choose whether to recognize a gay marriage granted by another state.

The second part of the legislation would set forth that under any federal statute, rule or regulation, the terms "marriage" and "spouse" shall only refer to heterosexual marriage. This provision would mean that any federal funds, privileges or protections, including those administered by states, could not be made available to same sex married partners, even if same sex marriages are recognized by the state where they reside. This provision does have substantive significance -- but, at least for now, it would not alter the status quo since no state recognizes same sex marriages and neither does the federal government. There are, of course, many difficult issues facing our communities related to what benefits and rights can be associated with same sex partnerships outside the context of marriage. But those difficult issues are not addressed by this bill.

Given your stated and longstanding opposition to gay marriage, we believe there would not be a substantive basis for you not to sign the proposed legislation if it were to be adopted by Congress. **It is therefore our recommendation that you should sign this legislation if it is enacted.**

over decision

At the same time, we believe that your willingness to sign this legislation should not be announced until it is absolutely necessary to do so. While it is critical that your position be unambiguous and unwavering, there is a risk that too early an announcement of a willingness to sign the bill could cause Republicans to add more provisions.

For this reason, we recommend that in the first instance, the White House should state that you are opposed to gay marriage, but that there has not yet been an opportunity to review this legislation. The legislation has not yet even been marked up by committee, and thus it is premature for the White House to comment. If and when this approach is no longer viable, the White House would state that you would be prepared to sign this bill if enacted by Congress.

Assuming your approval of this approach, Marsha, George and others will be talking to key leaders in the gay and lesbian community to explain your position and why it is necessary for you to take this action. We can expect that many gays and lesbians will be hurt, if not offended, by this approach to the proposed legislation.

_____ AGREE

_____ DISAGREE

_____ DISCUSS