

EMPLOYMENT NONDISCRIMINATION ACT OF 1996

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now begin consideration of S. 2056, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2056) to prohibit employment discrimination on the basis of sexual orientation.

The Senate proceeded to consider the bill.

The ACTING PRESIDENT pro tempore. Time for debate on the bill will be limited to 3 hours to be divided equally in the usual form.

The Chair recognizes the Senator from Massachusetts.

Mr. KENNEDY. Thank you, Madam President. I yield myself such time as I might use.

Madam President, this legislation is introduced by myself, Senator LIEBERMAN, Senator JEFFORDS, Senator AKAKA, Senator BINGAMAN, Senator BOXER, Senator BRADLEY, Senator CHAFEE, Senator DODD, Senator FEINGOLD, Senator FEINSTEIN, Senator GLENN, Senator HARKIN, Senator INOUE, Senator KERREY, Senator KERRY, Senator KOHL, Senator LAUTENBERG, Senator LEAHY, Senator LEVIN, Senator MIKULSKI, Senator MOSELEY-BRAUN, Senator MOYNIHAN, Senator MURRAY, Senator PELL, Senator REID, Senator ROBB, Senator SARBANES, Senator SIMON, Senator WELLSTONE, and Senator WYDEN.

Madam President, I am pleased to bring before the U.S. Senate this morning the Employment Nondiscrimination Act. This act will eliminate job discrimination against gays and lesbians, and it represents the next major chapter in the American struggle to secure civil rights for all of our citizens.

Our progress on civil rights and against discrimination has been one of the finest chapters in the Nation's modern history. The civil rights revolution that began in the 1950's is an unfinished revolution, and we all know the major milestones along the way in Congress: the Civil Rights Act of 1957; the Civil Rights Act of 1964; the Voting Rights Act of 1965 and subsequent extensions; the Fair Housing Act of 1968; the Americans With Disabilities Act of 1990; and the Civil Rights Act of 1991.

I might also mention the Immigration Act of 1965 which addressed the problem of national origin quotas and barriers to people coming into the United States from the Pacific basin and the Pacific rim countries.

Madam President, we remember as well the battles that have taken place—the painful history that includes slavery, the Jim Crow laws, the Japanese internment camps, the Chinese exclusion laws, the Bracero program, and shameful policies and attitudes directed against women, against racial and religious minorities, and against the disabled. Each bill is an acknowledgment that America can rise above its prejudice to be a better, more tolerant society.

Our country has a respected tradition of enacting antidiscrimination legislation to deal with discrimination against recognized groups of people. Time and again Congress has chosen justice over injustice and fairness over bigotry. The time has come to take the next important step in our ongoing battle against prejudice. After decades of discrimination against gays and lesbians, the Senate can send a strong signal that merit and hard work—not bias and stereotypes—are what counts in job opportunities and the workplace in America in 1996.

Faced with irrefutable and compelling evidence of employment discrimination, the choice is clear. The Employment Nondiscrimination Act must become law.

Half a century ago the Senate itself was the instigator of such discrimination. In 1950, the Senate directed the Senate Investigations Subcommittee to make an investigation into employment by the Government of homosexuals. The subcommittee recommended the dismissal of all homosexuals in Government. In 1953, President Eisenhower issued Executive Order 10450 requiring dismissal of all homosexual Government employees. As a result, during the period of 1947 through mid-1950, 1,700 individuals were denied employment by the Federal Government because of their alleged homosexuality. In those times, Government discrimination was matched by flagrant discrimination by private employers.

Government has changed. The private employers often have not. Many gays and lesbians still choose to hide their sexual orientation and live in daily fear that their employers will discover their homosexuality, terminate their jobs, and ruin their careers.

A 1992 survey of 1,400 gays and lesbians in Philadelphia showed that 76 percent of the men and 81 percent of the women concealed their sexual orientation at work. Openly homosexual people often suffer overt job discrimination.

A review of 20 surveys conducted across the country between 1980 and 1991 indicated that many gays and lesbians endured discrimination at work. Whether an employer has a written policy or simply allows discrimination to occur, it is clear that the underlying motivation is bigotry against men and women because of their sexual orientation.

Take the case of Cheryl Summer-ville, who worked as a cook at a suburban Atlanta restaurant for 4 years and received excellent performance evaluations, awards, and promotions. In 1991, the company adopted a policy refusing to employ anyone "whose sexual preferences fail to demonstrate normal heterosexual values." As a result, she was fired. Her official separation notice read: "This employee is being terminated due to violation of company policy. The employee is gay."

Dan Miller worked for a Pennsylvania management consulting com-

pany. He was fired, based on a clause in his employment contract that specifically made homosexuality a just cause for dismissal. Dan went to court, but to no avail. One of the jurors who heard the evidence stated, "It was outrageous to hear intolerance like that in a court of law, where people come to seek protection from intolerance. But the law was silent."

There are too many more examples of unacceptable job discrimination suffered by gays and lesbians. There are too many other cases of hard-working men and women losing their jobs or unable to get work due to their sexual orientation. In each case, the law offers no protection or recourse. That is why we need Federal legislation.

The Employment Nondiscrimination Act is modeled after title VII of the Civil Rights Act of 1964. It prohibits employers from using sexual orientation as a basis for hiring, firing, promotion, or compensation. It's predicated upon the American ideal of equal opportunity. It gives gays and lesbians a fair chance in the workplace.

It also includes broad exemptions. Despite the fact that over 150 companies—including Levi Strauss, Microsoft, and Walt Disney—choose to provide health and other benefits to the same-sex partners of their employees, our legislation does not require an employer to provide domestic partnership benefits. That is a battle for another day.

Our legislation also does not provide for disparate impact claims—cases brought because an apparently neutral practice of an employer disproportionately and adversely affects members of a protected class.

Quotas and preferential treatment are also prohibited under our proposal. Although employers may choose to reach out to members of the gay and lesbian community, they may not give preferential treatment in hiring, firing, promotion, or compensation based on sexual orientation.

Many opponents of this legislation choose to ignore this plain prohibition. They argue that this bill will somehow lead to quotas. That result is not possible. No quotas means no quotas. Neither an employer nor a court can misinterpret Congress' plain meaning.

Our legislation also contains a broad exemption for religious organizations. In fact, it is broader than the exemption for religious institutions in title VII of current law. Religious organizations are exempted entirely from the prohibition of discrimination based on sexual orientation, except for profit-making activities taxed by the Internal Revenue Service.

Finally, our legislation does not apply to the Armed Services. The current "Don't ask, Don't tell" policy will remain in effect.

The Employment Nondiscrimination Act is simple and straight forward. It is not a Government power grab in the workplace. It is not sweeping legislation advancing the gay agenda. This

act is about the American agenda. It is a carefully drafted proposal to end job discrimination, and nothing else.

Of course, clear language will not stop opponents from misleading the public about the bill's intent. Many statements against it defy common sense and logic. The Employment Nondiscrimination Act will not undermine business decisions as long as employers are not discriminating. Recourse against sexual harassment will still exist.

Opponents also express an unnecessary concern about the definition of "sexual orientation." As defined in our proposal, "sexual orientation" means homosexuality, bisexuality, or heterosexuality, whether such orientation is real or perceived. This definition serves the same function as the definition in the Americans With Disabilities Act—it identifies the group of people covered by the law. As with the ADA, a person in the protected class cannot engage in bizarre behavior, must be qualified for the job, and must abide by workplace rules.

Nothing in this legislation will prevent employers from disciplining homosexuals or heterosexuals whose behavior is illegal or unsafe, or compromises their ability to perform their job. Our proposal simply states that such policies must be applied fairly to all employees.

This legislation has broad bipartisan support. Coretta Scott King supports it. Former Republican Senator Barry Goldwater supports this legislation. As Senator Goldwater has said,

Employment discrimination based on sexual orientation is a real problem in our society. From coast to coast and throughout the heartland, regular hardworking Americans are being denied the right to roll up their sleeves and earn a living. That is just plain wrong.

Many Americans—84 percent—agree that employers should not discriminate based upon sexual orientation. In fact, over 600 small and large private businesses already have antidiscrimination policies that include sexual orientation.

Nine States and one hundred sixty-six cities and counties around the country have laws that prohibit employment discrimination against homosexuals. In the Senate itself, 66 Senators have joined in pledging not to discriminate on the basis of sexual orientation in employment in Senate offices.

These are admirable steps toward eradicating discrimination. They are not enough. American workers deserve more than a patchwork of protections from discrimination. That is why the Employment Nondiscrimination Act is so clearly needed.

I urge the Senate to stand with Coretta Scott King and Barry Goldwater in support of this legislation. It is also supported by Gov. Christine Todd Whitman and Gov. William Weld.

It is supported by numerous religious organizations, including the General

Assembly of the Presbyterian Church, the Union of American Hebrew Congregations, the General Convention of the Episcopal Church, the United Methodist Church, the Central Conference of American Rabbis, the United Church of Christ, and the Lutheran Church in America.

It is supported by business and civic leaders around the country. And it should be supported by the Senate, too. It is time to end job discrimination wherever it exists.

Madam President, I will just mention the statements made by distinguished church leaders. Edmond L. Browning, who is the presiding bishop of the Episcopal Church, wrote recently to me:

On behalf of the Episcopal Church, I am pleased to join with so many distinguished figures in the religious and civil rights communities in enthusiastic support of S. 932, the Employment Nondiscrimination Act of 1996. I offer my thanks to you.

Since 1976, the Episcopal Church has been committed publicly to the notion of guaranteeing equal protection for all citizens, including homosexual persons, under the law. In that year, the General Convention of the Episcopal Church, the church's highest policymaking body, expressed its conviction that homosexual persons are entitled to equal protection of the laws with all other citizens and called upon society to ensure that such protection is provided in actuality.

My warm embrace of this legislation, of course, reflects more than my standing as Presiding Bishop of the Episcopal Church. It represents my deep, personal belief in the intrinsic dignity of all God's children. That dignity demands that all citizens have a full and equal claim upon the promise of the American ideal, which includes equal civil rights protection against unfair employment discrimination.

The Reverend Riley, who is representing the Unitarian Universalist Association of Congregations, says:

We are happy that the Employment Nondiscrimination Act is being considered. . . . We feel this legislation would at least allow Senators to show that, whatever your personal convictions about the sanctity of marriage, you know that there is no sanctity in discrimination.

The letter continues on.

The Religious Action Center of Reform Judaism:

On behalf of the Union of American Hebrew Congregations and the Central Conference of American Rabbis, representing 1.5 million Reform Jews, 1800 Reform Rabbis and 850 congregations throughout the United States, I am writing to strongly urge you to vote for the Employment Nondiscrimination Act.

As a religious organization, the protection of religious liberty for all Americans is of paramount concern for us. ENDA gives proper regard to this concern. ENDA broadly exempts from its scope any religious organization, including religious educational institutions. Thus, ENDA will not require sectarian institutions to violate the religious precepts on which they are founded, whether or not we may agree with these precepts.

Evangelical Lutheran Church in America.

The Evangelical Lutheran Church in America has committed itself to participate in God's mission by "advocating dignity and justice for all people" and "joining with others to remove the obstacles of discrimination and indifference."

Therefore, the ELCA continues its support of the Employment Nondiscrimination Act and urges your support of this important initiative to extend employment discrimination protection to all people.

United Church of Christ. Rev. Jay Lintner points out:

Please support the Employment Nondiscrimination Act. The Employment Nondiscrimination Act, which addresses the daily discrimination against gays and lesbians in employment, has enormous support in our denomination.

The Presbyterian Church, their letter says:

The General Assembly of the Presbyterian Church . . . policy brings strong support to the passage of the Employment Nondiscrimination Act. Historically, U.S. society has tended to stigmatize and persecute gay men and lesbian and bisexuals. Employment is one of the principal areas where this population faces continuing discrimination. Gay persons have been fired, refused work, demoted, and harassed in the workplace. Persons who have experienced discrimination on the basis of sexual orientation often lack recourse . . . Such discrimination denies equal opportunity in the workplace . . . A yes vote on the Employment Nondiscrimination Act is a vote for fairness and equality.

Not only do we have these representations of many church leaders, I would say many companies support our position. I will just read a sample of those we have listed in our presentation from across this country that support our position.

The Kodak Co. says:

Kodak's clearly stated pro-ENDA position is based on the very positive results we have experienced with human resource policies and practices, which are completely in alignment with the intent of ENDA.

It is our belief that only with a diverse group of highly skilled people, working in a culture that enables them to apply their . . . talents, will we consistently deliver the greatest value to the customer . . .

For these reasons . . . Eastman Kodak Company believes that ENDA is good for American business, large and small. The bill is in step with trends in the nation's most successful business, and it is in tune with a fundamental sense of fairness valued by Americans.

From the Xerox Corp.:

Discrimination of any form, against any employees, does not belong in our work environment.

We view diversity awareness and acceptance as enablers to increase productivity.

We are pleased to see your effort to enact federal legislation that will prohibit employment discrimination . . .

From Microsoft:

Microsoft seeks to empower individuals to do the best possible job and to make a difference. . . .

We commend . . . your efforts and are pleased to endorse your Equal Employment Principles, which reflect our own corporate policies.

Honeywell:

Writing in support of your Equal Employment Principles and the Employment Nondiscrimination Act . . .

AT&T—the list goes on. Hill & Knowlton, a letter to Senator D'AMATO in strong support.

What this basically shows is the moral issues which are raised by this

legislation, the ethical issues, the issues of fairness and decency are embraced by the various representatives of the great religions and also many of America's leading companies that have already adopted this as a company policy and are in very, very broad support. We have mentioned a number of the larger companies. We could take the time for smaller companies as well.

In summary, we are saying that the problem of discrimination still exists today. We discuss the various studies that support that point—an excess of 20 studies that demonstrate that this type of discrimination is taking place in workplaces across this country. It is very clear what is happening.

Cheryl Summerville was told "This employee is being terminated due to violation of company policy. This employee is gay."

That states it, and that is taking place in companies all across this country.

Here is the statement of Barry Goldwater. Again:

It's time America realize that there were no gay exemptions in the right to "life, liberty, and the pursuit of happiness."

That says it all. There are no exemptions to the right to life, liberty, and the pursuit of happiness in the Declaration of Independence.

Anyone who cares about real moral values understands this is not about granting special rights. We will hear that argument over the course of this debate, that we are somehow providing special rights. This debate is about bigotry in the workplace and about prejudice in the workplace. This statement by Senator Goldwater captures that whole sense: "It's about protecting basic rights." That is what this debate is all about.

We know the status of similar State laws across country. There are nine States now that have passed laws prohibiting employment discrimination based on sexual orientation. They have been working, and working well in those nine States. But, as we say, 9 States have done it, 41 States have not. Some States have issued executive orders protecting gays and lesbians in public employment. Executive orders, as we all know, are here today and can be gone tomorrow.

We have seen, in reviewing whether there has been a proliferation of cases during this period of time—that will be another issue discussed by opponents of this bill and we will be glad to debate it—that a fair number of charges are filed, but few actually go to the courts. My own State of Massachusetts, which has had a law for some period of time, has had two reported cases. That is the situation in so many of these States that are now providing this kind of protection. The courts are not overburdened.

Madam President, 8 States have executive orders and 166 cities and counties in 37 States have passed laws prohibiting employment discrimination based on sexual orientation. And then we have the list of the various employers,

large and small, that extend protection to their employees. By and large, we have not discovered that these laws and policies are an undue burden.

Once again, to review what this does and does not do, what we are talking about is eliminating the discrimination and bigotry in the workplace, in employment. This provides there will be no quotas or preferential treatment. "A covered entity shall not adopt or implement a quota on the basis of sexual orientation." That is in the bill. "A covered entity shall not give preferential treatment to an individual on the basis of sexual orientation." That demonstrates that this is free from any affirmative action. So, no quotas, no affirmative action.

"No cases based merely on disparate impact claims." The fact that employment practices have a disparate impact, as the term "disparate impact" is used in section 708(k) of the Civil Rights Act of 1964, on the basis of sexual orientation, does not establish a prima facie violation of this title.

I will not take a great deal of time, but what that demonstrates is that individuals cannot bring disparate impact claims as they can under title VII. For example, the Supreme Court has held that there can be women firefighters as well as men. If 100 male firefighters are employed and a number of women have applied, but none has been hired, you can conclude that there is probably an employment practice that has a disparate impact on qualified women firefighters.

On the other hand, if there exists a construction company and workers must carry 100-pound bags of cement, and you are able to demonstrate the women cannot carry the 100 pounds of cement, the employer is probably not using an employment practice that has a disparate impact on women with regard to that particular job. But if you are talking about a computer company, women can use computers as well as men—in most instances, probably better. If you do not hire any female applicants, an individual may be able to establish a disparate impact charge. Those kinds of claims exist under title VII, but not under this bill. There will be some who will say it. We have expressed and explained it. We can spend more time during the course of the debate to get into greater detail, but that is the fact.

There is no coverage for the armed services:

For the purposes of this title, the term "employment or employment opportunities" does not apply to the relationship between the United States and the members of the Armed Forces.

There is no coverage for the not-for-profit religious organizations, except as provided in subsection (b), which is explained here. If they are in a for-profit business, as defined by the IRS, there will be coverage.

What we are interested in are secular, not the nonsecular, businesses.

Madam President, now, today, we have had 66 Senators and 241 Members

of the House of Representatives who have agreed with the following principle: The sexual orientation of an individual is not a consideration in the hiring, promoting, or terminating of an employee in my office. Those are signed by Republican and Democratic Members of the Senate.

Sixty-six—you would think we would be able to say, "Well, why are we having this debate on the floor of the U.S. Senate since Senators themselves understand that this is a problem and they agree that they are dealing with this by freeing their offices from hiring and firing practices on the basis of sexual orientation?"

You would think if they are prepared to do it and recognize it is a problem in their own offices, then why not lend their support to other American workplaces, particularly if we are able to demonstrate that this is a real problem. We have and we will present such evidence. We are glad to get into the various examples that demonstrate that this is a real problem in terms of our country.

So, Madam President, this is basically a preliminary presentation on this issue. The fact is, there is discrimination out there in the workplace. We have seen the studies and, most important, we have had the real testimony of men and women from across this country who continue to bear the bitter fruit of such discrimination.

There are not adequate existing laws to protect individuals who experience that kind of a discrimination. This legislation is a very measured, targeted piece of legislation to deal with bigotry and discrimination in the workplace, carefully drafted, carefully targeted to that issue. We know that there is a need.

We believe this is a reasonable response. It represents Republican and Democratic efforts to try and deal with it in the workplace of this country. I am very hopeful that when we have the opportunity to address this on the floor of the Senate with a vote on Tuesday next that we will be able to, once again, follow the very important and proud traditions of this country. Traditions rooted in the civil rights debates of the fifties, sixties, seventies, eighties, and nineties that led to laws freeing us from the pains of discrimination on race, on religion, on ethnicity, on national origin, on gender, on disability, and now on the issue of sexual orientation for gay men and lesbian women in our society.

I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. KEMPTHORNE). Who yields time? The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I rise in opposition to the Employment Nondiscrimination Act and would like to take just a few moments to explain my opposition to this and my concerns.

Let me say at the outset, I do not think there is a Senator in the entire body of the U.S. Senate who condones

discrimination of any kind that is based on unreasonable and unfounded prejudice. I think that is a given. How we address that discrimination is another matter, and it is one that we have debated many times through the years on various facets of discrimination.

I still recall the compelling testimony that was presented in the Labor Committee on this issue in the last Congress when we held a hearing. Nonetheless, we may still disagree on the best means of achieving our desired goal. Prejudice and discrimination can be fought in many different ways. Education and awareness are important means of eliminating prejudice, and so is the effort of individuals to lead by way of example.

Many employers, though certainly not all—and the ranking member of the Labor and Human Resources Committee, Senator KENNEDY, pointed out a number of businesses—have led the way by example. I salute those businesses that have already based their employment decisions not on the employee's personal life or preferences but on the merits and abilities of the individual to perform the job.

I share this view, but I do not believe, as I have said before, that we will promote greater tolerance in the workplace by relying on more lawsuits and litigation as this bill would require.

True, this is not sweeping legislation as, again, Senator KENNEDY pointed out. It is a version of the original bill that I think addresses some of the concerns that were originally raised. I agree that discrimination does exist. However, our courts are already clogged with cases which many times only lead to more divisiveness and disruption in the workplace. Relying on our legal system to resolve our differences can be not only counterproductive but fraught with unintended consequences as well.

For this reason, Mr. President, I oppose the legislation before us. I know there are those who will argue that education and outreach efforts are not enough. Supporters of this bill will argue that the law must have "teeth," that is, punishment for those who discriminate if it is ever to be effective.

I might be more inclined to agree if the remedy or punishment for violating the law were merely reinstatement of one's job or simply back pay, as the original Civil Rights Act of 1964 provided. But this legislation provides for compensatory and punitive damages as well.

I opposed the expansion of remedies under title VII of the Civil Rights Act for that very reason, and I oppose it in this case as well. I believe compensatory and punitive damages will only further encourage division and protracted lawsuits when the intent, as I see it, is to encourage the parties—employers and employees—to get along. I wish that we did not have to address this by these types of remedies. We all wish there was an environment in

which, as Senator Goldwater said in his statement quoted by Senator KENNEDY, everyone could be judged on their ability to perform their job with equal merit and equal recognition.

I do not believe that this bill is the answer, because I feel we have involved ourselves far too much in a litigious environment in our workplace today, which destroys the very kind of efforts that we are trying to address in non-discrimination with the legislation that is before us today.

I yield the floor, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield such time as my friend and cosponsor desires.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. JEFFORDS. Mr. President, I rise in strong support of the Employment Nondiscrimination Act (ENDA). I introduced a bill this Congress with Senator KENNEDY. We held a hearing in the previous Congress and came to the strong conclusion that the public support on the one hand is almost unanimous. Some 85 percent of the people support the concept, and second, that discrimination does go on and that it must have a remedy.

I differ with the feeling of my esteemed chairman that all that is needed is more education and that the remedies are not needed. I point out also that the remedies provided for in this act are the same remedies that apply to all of the other acts that we have to prevent discrimination.

I would like to first acknowledge the hard work of many Senators who have made it possible for us to debate, and next week vote on, this important piece of legislation. I commend the majority leader and minority leader for working out an arrangement which I think is fair. It does not give us what we had hoped for, to be very candid, that we could attach ENDA to the Defense of Marriage Act (DOMA) and, therefore, have a vehicle that might carry it on through to victory. But just having an opportunity to raise the issues on the Senate floor is an improvement over history and, thus, we must move on.

I am very hopeful we will have a sufficient number of votes to pass the bill. As stated by Senator KENNEDY, it also has been shown that 66 Senators already agree in their own offices that we should not have such discrimination.

I was involved with crafting this legislation during the past few years and was pleased to join with almost one-third of my colleagues in introducing ENDA in the 104th Congress. I believe this is one of the most important civil rights initiatives before this Congress.

This legislation will extend to sexual orientation the same Federal employment discrimination protections established for race, religion, gender, national origin, age, and disability.

The principles of equality and opportunity must apply to all Americans.

Like all other Americans, gays and lesbians deserve to be judged at work based on their ability to do the job. People who work hard and perform well should not be kept from leading productive and responsible lives, which includes paying taxes, meeting their mortgage payments, and otherwise contributing to the economic life of this Nation because of an irrational, nonwork-related prejudice.

Mr. President, many may be wondering if this legislation is necessary. Let me share with my colleagues a few examples that demonstrate the need for this legislation. Earlier this week at a press conference, I was joined by Ms. Nan Miguel, a woman who was forced to leave her job—not because she was a gay or lesbian—even though her department was short-staffed, simply because she defended her decision to hire another female employee who was considered by her fellow employees to be a lesbian. No proof. She still does not know.

Another example is John Howard, a student from Alabama who was giving tours of a regional paper company's large art collection in order to earn graduate school tuition. A coworker told his supervisor that he suspected that Mr. Howard was gay. The supervisor called him in, acknowledged that his work was "perfect," and asked him whether he was gay or belonged to any gay organizations. After learning that Mr. Howard was president of the University of Alabama Gay and Lesbian Alliance, the supervisor fired him. These examples and many others show that Congress must pass the Employment Nondiscrimination Act.

Mr. President, it is not only needed, it is supported by the American people. And in a recent poll, well over three-quarters of the respondents stated that there should be equal rights for Americans, including gays and lesbians, on the job. While ENDA will achieve this goal for job opportunity, it does not do so by creating any special rights for gays and lesbians.

Specifically, this legislation prohibits preferential treatment, including quotas, based on sexual orientation, and also does not require an employer to justify a neutral practice that may have a statistically disparate impact. This is a very complicated area of the law and one which is very difficult for employers to meet. It does not apply to this. Rather, it simply protects a right which should belong to every American, the right to be free from discrimination at work because of personal characteristics unrelated to successful performance on the job.

Securing this right benefits businesses as well as individuals. As Chad Gifford, CEO of the Bank of Boston, said recently:

... there are compelling business reasons why we support ENDA and the workforce diversity it will engender. We want to see ENDA approved because we believe that it will help us as we advance a competitive business strategy—a strategy that not only

embraces diversity, but also depends on it and takes full advantage of it.

Many other businesses have joined the Bank of Boston in adopting similar sexual orientation antidiscrimination policies. In fact, over half of the Fortune 500 companies have such policies.

Mr. President, I ask unanimous consent to have printed in the RECORD a list of employers with nondiscrimination policies that include sexual orientation.

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

EMPLOYERS WITH NON-DISCRIMINATION POLICIES THAT INCLUDE SEXUAL ORIENTATION—AS OF AUGUST 16, 1996

ALABAMA

Intergraph, *SCI Systems*, America West Airlines, Arizona State University, and Bashas' Incorporated.

ALASKA

University of Alaska.

CALIFORNIA

AST Research, Acuson, *Advanced Micro Devices*, Agouron Pharmaceuticals, Allergan, Amdahl, *American President*, Amgen, Antioch University (Southern California), *Apple Computer*, *Atlantic Richfield*, Autodesk, *Avery Dennison*, Bank of California, *Bay View Federal Bank*, Bergen Brunswig, Borland International, Brobeck, Phleger & Harrison, California Institute of Technology, California State University, Charles Schwab & Company, *Chevron*, Cisco Systems, Claremont McKenna College, Claris, Clorox, Cypress Semiconductor, *Del Monte Foods*, *Dole Food*, First Interstate Bancorp, *Fluor Daniel*, *Foundation Health*, Gap, Genentech, Glendale Federal Bank, *Golden West Financial*, Graham & James, *Great Western Financial*, *H.F. Ahmanson & Company*, Harvey Mudd College, Health Systems International, Heller, Ehrman, White & McAuliffe, *Hewlett-Packard*, Homestake Mining, *Intel*, International Technology, Kaiser-Permanente, LSI Logic, Latham & Watkins, *Levi Strauss & Company*, Los Angeles Times, MCA Universal Studios, McCutchen, Doyle, Brown & Enersen, *McKesson*, *Merisel*, Morrison & Foerster, National Center for Lesbian Rights, NeXT Computer, O'Melveny & Meyers, *Occidental Petroleum*, Oracle, Orrick, Herrington & Sutcliffe, *Pacific Enterprises*, *Pacific Mutual Life*, *Pacific Telesis Group*, Pacificare Health Systems, Paul, Hatings, Janofsky & Walker, Pillsbury, Madison & Sutro, Pitzer College, Pomona College, Qual Comm, *SCE*, *Safeco*, *Safeway*, San Diego Gas & Electric, San Diego State University, San Francisco Giants, Science Applications International, Scripps College, *Silicon Graphics*, *Southern Pacific Rail*, Stanford University, *Sun Microsystems*, Sybase, Tandem Computers, *Teledyne*, *Tenent HealthCare*, *Transamerica*, Ungermann-Bass, *Varian Associates*, *Walt Disney*, Watkins-Johnson, *Wells Fargo & Company*, Wilson, Sonsini, Goodrich & Rosati, Working Assets Funding Service, and Wynn's International.

COLORADO

Adolph Coors, Amrion, Celestial Seasonings, Colorado College, Compatible Systems, Quark, *Storage Technology Tenet Healthcare Systems*, and US West.

CONNECTICUT

Caldor, Deloitte and Touche, Dexter, Louis Dreyfus North American, *Northeast Utilities*, OLIN, People's Bank, *Perkin-Elmer*, *Pitney Bowes*, State Universities of Connecticut, *Union Carbide*, United States Surgical, *United Technologies*, University of Connecticut, University of Hartford, and Xerox.

DISTRICT OF COLUMBIA

AFL-CIO, American Civil Liberties Union, American Postal Workers Union AFL-CIO, American Psychological Association, American University, Catholic University of America, Covington & Burling, *GEICO*, Hogan & Hartson, Howrey & Simon, Human Rights Campaign, *MCI Communications*, *Mariotti*, McKenne & Cuneo, Mexican American Legal Defense and Education Fund, National Black Caucus of State Legislators, National Gay & Lesbian Task Force, National Public Radio, Presbyterian Church (USA), *Riggs National*, Skadden, Arps, Slate, Meagher & Flom, Southerland, Asbil & Breenan, *Washington Post*, Wilmer, Cutler & Pickering, and World Resources Institute.

DELAWARE

E.I. du Pont de Nemours and Company.

FLORIDA

AAA, Eckerd College, *Knight-Ridder*, *Office Depot*, *Ryder System*, *Tech Data*, and University of South Florida.

GEORGIA

AFLAC, BellSouth Telecommunications, *Coca-Cola*, Crawford and Company, Emory University, Georgia Southern University, Georgia Tech, *Home Depot*, *Turner Broadcasting System*, University of Georgia, and WORLDSPAN.

HAWAII

Hawaiian Electric Industries, Alexander and Baldwin, Bank of Hawaii, and University of Hawaii.

IDAHO

Albertson's and Morrison Knudsen.

ILLINOIS

Abbott Laboratories, Alberto-Culver, *Ameritech*, Amoco, Andersen Consulting, Aon, Baker & McKenzie, *Baxter International*, CNA, Chicago School of Professional Psychology, Columbia College, *Comdisco*, *Commerce Clearing House*, Commonwealth Edison, Datalogics Equipment, Fireman's Insurance, *First Chicago NBD*, Harrington Institute of Interior Design, Harris Trust & Savings Bank, Hinshaw & Culbertson, Illinois Eastern University, Illinois Northeastern University, Illinois Northern University, Illinois Southern University, Illinois State University, *Illinois Tool Works*, *Inland Steel Industries*, Jenner & Block, Katten, Muchin & Zavis, Keck, Mahin & Cate, Kirkland & Ellis, Mayer, Brown & Platt, *Motorola*, *Navistar International*, *Quaker Oats*, *R.R. Donnelley & Sons*, Sara Lee, Schiff, Hardin & Waite, School of the Arts Institute, *Sears, Roebuck & Company*, *Servicemaster*, Seyfarth, Shaw, Fairweather & Geraldson, Sidley & Austin, *Speigel*, UAL, *Unicom*, *United Airlines*, University of Chicago, *W.W. Grainger*, *Walgreen*, Winston & Strawn, and *Zenith*.

INDIANA

Anthem, Arvin Industries, *Eli Lilly & Company*, Goshen College, *Lincoln National*, and Methodist Hospital of Indianapolis.

IOWA

Drake University, Grinnell College, Pioneer Hi-Bred, and *Principal Mutual Life Insurance*.

KANSAS

University of Kansas and V.T.

KENTUCKY

Ashland Petroleum, Kentucky Fried Chicken, and *Providian*.

LOUISIANA

Hibernia National Bank.

MAINE

Bates College, Bowdoin College, Colby College, *Hannaford Brothers*, and UNUM.

MARYLAND

Baltimore Gas and Electric, *Giant Food*, Piper & Marbury, Prince George's Commu-

nity College, and Workmens Circle Branch 92/494E.

MASSACHUSETTS

Amherst College, Babson College, *Bank of Boston*, Banyan Systems, Boston Edison Company, Boston Scientific, Brandeis University, Children's Hospital of Boston, *Digital Equipment*, Eastern Enterprises, Eastern Utilities Associates, *Gillette*, Hale and Door, Hampshire College, Harvard University, Hotel Workers Union—Local 26, International Data, Keyport Life, Massachusetts Institute of Technology, *Massachusetts Mutual Life*, Millipore, *New England Electric Systems*, *Polaroid*, *Reebok*, Reebok International, Ropes & Gray, *Stop & Shop*, Stratus Computer, *TJ Maxx*, WGBH Public Television, and Wainwright Bank.

MICHIGAN

Alma College, *CMS Energy*, *Comerica*, *Dow Chemical*, Herman Miller, *Kellogg*, Pharmacia & Upjohn, and Tecumseh Products.

MINNESOTA

Apogee Enterprises, Bemis, Carleton College, Ceridan, Control Data Systems, *Cray Research*, *Dayton Hudson*, Faegre & Benson, *First Bank System*, Graco, H.B. Fuller, *Hormel Foods*, IDS Financial Services, *Medtronic*, *Minnesota Mining and Manufacturing (3M)*, Minnesota Public Radio, *Nash Finch*, *Northern States Power*, *Norwest*, Piper Jaffray Companies, *St. Paul Companies*, *Supervalu*, *United Healthcare*, and University of Minnesota.

MISSOURI

Boatmen's Bancares, *H & R Block*, *Payless Cashways*, and *Ralston Purina*.

NEW HAMPSHIRE

Antioch University (New England), Dartmouth University, Eastern Mountain Sports, Franklin Pierce Law Center, Hendrix Wire and Cable, Hubbard Farms, Huggins Hospital, Keene State College, Nashua, New England College, Plymouth State College, and University of New Hampshire.

NEW JERSEY

Allied Signal, *Becton Dickinson*, *Campbell Soup*, *Chubb*, *Johnson & Johnson*, *Merck & Co.*, *Midlantic Bank*, *Public Service Enterprise Group*, Sequent Computer Systems, *Supermarkets General*, *Toys R Us*, UJB Financial, and Warner-Lambert.

NEW MEXICO

University of New Mexico.

NEW YORK

AVENET, *Amerada Hess*, *American Express*, *American Telephone & Telegraph Company*, AnnTaylor Stores, Arrow Electronics, *Bank of New York Company*, *Bankers Trust New York*, Barnard College, *Bear Stearns*, *Bristol-Myers Squibb*, Brooklyn College, Brooklyn Union Gas, CBS, CMP Publications, Cadwalader, Wickersham & Taft, Capital Cities/ABC, Chadbourne & Parke, *Chase Manhattan*, *Chemical Banking*, *Citicorp*, Clarkson University, Cleary, Gottlieb, Steen & Hamilton, *Colgate Palmolive*, Columbia University, Cornell University, Cravath, Swaine & Moore, *Dean Witter*, Dewey Ballantine, Dow Jones, Fordham University School of Law, Hill & Knowlton, Hunter College, *ITT*, *International Business Machines*, *International Paper*, *J.P. Morgan*, Joseph E. Seagram & Sons, Kaye, Scholer, Fireman, Hays & Handler, Kelley, Dye & Warren, Lambda Legal Defense Fund, Lawyers Cooperative Publishing, LeBoeuf, Lamb, Greene & MacRae, Lesbian and Gay Labor Network, *Long Island Lighting*, *Metropolitan Life*, Milbank, Tweed, Hadley, & McCloy, Mutual of New York, National Audubon Society, *New York Life Insurance*, *New York Times*, New York University, *Niagara Mohawk Power*, OMI, Ogden, Paul, Weiss, Rifkind, Wharton & Garrison, *Philip Morris*, Planned Parenthood Federation of

America, Proskauer Rose Goetz & Mendelsohn L.L.P., *Republic NY*, Rogers & Wells, *Salomon Brothers*, Scholastic, Shearman & Sterling, Showtime Networks, Skadden, Arps, Slate, Meagher & Flom, Stanley H. Kaplan Educational Center, Stroock, Stroock & Lavan, Sullivan & Cromwell, *TIA-CREF*, *The Equitable Companies*, *Time Warner*, Towers Parrin, *Travelers Group*, University of Buffalo, *Viacom*, Village Voice, *Westvaco*, Whitman Breed Abbott & Morgan, *Woolworth*, and Ziff-Davis Publishing.

NEVADA

Showboat.

NORTH CAROLINA

Appalachian State University, Body Shop, Duke University, *First Union*, and Guilford College.

OHIO

American Electric Power, Antioch College, *Banc One*, Case Western Reserve University, *Cinergy*, *Federated Department Stores*, Macy's (formerly Jordan Marsh), Myers Industries, Oberlin College, *Procter & Gamble*, *Revco Drug Stores*, The Limited, University of Akron, University of Cincinnati, and Vorys, Sater, Seymour and Pease.

OREGON

Fred Meyer, *Pacificorp*, Portland Cable Access, Portland General, Stoel Rives L.L.P., Tektronix, and *US Bancorp*.

PENNSYLVANIA

Air Products & Chemicals, American Friends Service Committee, *Armstrong World Industries*, Ballard, Spahr, Andrews & Ingersoll, *Bell Atlantic*, Bloomsburg University, Bucknell University, Carnegie Group, Carnegie Mellon University, *Cigna*, Clarion University, *Conrail*, *Consolidated Natural Gas*, *CoreStates Financial*, *Crown Cork & Seal*, Dickinson College, Drew University, Drexel University, Edinboro University, Harsco, Haverford College, Kirkpatrick & Lockhart, Lehigh University, Lukens, *Mellon Bank*, *PECO Energy*, Penn Mutual Life Insurance, *Pennsylvania Power and Light*, Pennsylvania State University, Pepper, Hamilton & Scheetz, *Rite Aid*, SmithKline Beecham, State College, Swarthmore College, Temple University, *Unisys*, University of Pennsylvania, University of Pittsburgh, *VF*, and *York International*.

RHODE ISLAND

Brown University.

SOUTH CAROLINA

Flagstar.

SOUTH DAKOTA

Gateway 2000.

TENNESSEE

OrNda Health.

TEXAS

AMR, American Airlines, *Central & South West*, Dallas Area Rapid Transit, *Dell Computer*, *Exxon*, *Foxmeyer Health*, *Greyhound*, *SBC Communications*, Southwestern Bell, *Tandy*, and *Temple-Inland*.

VIRGINIA

Federal Home Loan Mortgage, First Virginia Bank, *Gannett*, *General Dynamics*, Hunton & Williams, *Mobil*, and *USAir Group*.

VERMONT

Ben and Jerry's Homemade and Gardener's Supply.

WASHINGTON

Antioch University (Seattle), Evergreen State College, Fred Hutchinson Cancer Research Center, Group Health Cooperative of Puget Sound, *Nordstrom*, *Paccar*, Perkins Coie, *Price/Costco*, Recreational Equipment Inc (REI), *SAFECO*, Seattle City Light, Seattle First National Bank, Seattle Mental

Health Institute, Seattle Public Library, Seattle Times, Starbucks Coffee, University of Washington, Washington Mutual, Washington State University, and *Weyerhaeuser*.

WISCONSIN

CUNA Mutual Insurance Group, Consolidated Papers, Harley Davidson, *Johnson Controls*, *Northwestern Mutual Life Insurance*, *Roundy's*, Wisconsin Energy, and YWCA of Greater Milwaukee.

Partial list; *Fortune 500* in *italic*.

Mr. JEFFORDS. In today's global economy our Nation must take full advantage of every resource that is at our disposal. We want U.S. companies to maintain their competitive advantage over their international competitors. This statement from Mr. Gifford, combined with the fact that a majority of the Fortune 500 companies have incorporated many of ENDA's policies, clearly indicates that these changes will not disrupt but improve the workplace. At this time in our country when we are short of skilled workers, we should not have anything that bars those skilled workers from an opportunity to have a job to assist us in our society.

Mr. President, some concerns have been raised by my colleagues that passing ENDA will create a new wave of litigation. I am proud to say that my home State of Vermont is one of several States and localities that have enacted a sexual orientation anti-discrimination law. It is no surprise to me that the sky has not fallen. Since the enactment of Vermont's law in 1991, 5 years ago, the Vermont attorney general has initiated only 14 investigations of alleged sexual orientation discrimination. Six are pending at this time. Four have been closed with determinations that unlawful discrimination cannot be proven to have occurred. Three have been closed for miscellaneous administrative reasons unrelated to the charge, and one resulted in a settlement.

There has been no huge litigation involved in Vermont. It has little or no burden when you figure how many that is per year, about three a year in the State. In addition, I am not aware of a single complaint from Vermont employers about the enforcement of the State law. However, I do know that thousands of Vermonters no longer need to live and work in the shadows. Vermont's experience is not unique. Other States and the District of Columbia have implemented policies similar to the one of my home State of Vermont with similar results.

As I have stated before, success at work should be related to one's ability to do the job and nothing else. The passage of ENDA would be one step toward ensuring the ability of all people, be they gay, lesbian or heterosexual, to be fairly judged on the work product, not on unrelated personal characteristics. Passage of ENDA could be perhaps one of the most important things this Senate could do this year.

Let me go back and summarize again and to straighten out some of the misconceptions regarding ENDA. First of

all, this legislation does not create any special rights. Specifically, this legislation prohibits preferential treatment, including quotas based on sexual orientation. It simply protects a right that should belong to every American, the right to be free from discrimination at work because of personal characteristics unrelated to successful performance in the job.

I also would like to point out that we have gone and looked at those areas which do create difficulties for business, areas which might lead to litigation. And for the reasons of those that hold a fear of that litigation, we have not provided all of the protections to sexual orientation that race, religion, gender and others have. ENDA, for instance, does provide for the same remedies—injunctive relief and damages—permitted under title VII and the Americans With Disabilities Act and also does apply to Congress with the same remedies as provided by the Congressional Accountability Act.

This last application is very important to me because I believe it is very important that Congress not only live with the laws we pass, but I feel it is very important that an example should be set by Congress that gays and lesbians should not only be allowed to contribute to the economic life of the Nation but the political one as well. I once again point out that we have 66 offices that have already accomplished this.

More importantly, for the specific areas that have created problems for employers, ENDA does not require an employer to justify a neutral practice that may have a substantial disparate impact based on sexual orientation. That means you do not have to prove by figures that you have hired enough gays and lesbians to show that you have complied with the law. Let me state again that ENDA does not require that. That requirement would be very difficult to meet. ENDA exempts small businesses, as do existing civil rights statutes. Thus, it does not apply to employers with fewer than 15 employees.

Finally, ENDA does not require an employer to provide benefits for the same-sex partner of an employee. This is a requirement which would be problematical for many.

So we have done everything we believe we can do to reduce the amount of litigation, to reduce the amount of concern of employers, and certainly small businesses, and as we do in other areas, to prevent any real burden on close working situations.

As I have stated before, a successful workplace should be directly related only to one's ability to do the job, period. The passage of ENDA would be one step toward ensuring the ability of gays, lesbians, and heterosexuals to be fairly judged on their work product, not on an unrelated personal characteristic. Passing ENDA could perhaps be one of the most important things this Congress could do.

Once again, I am pleased that we have this opportunity, and I want to

thank, again, the majority and minority leaders for the system that has been set up to allow us to get a straight vote on this issue, and I look toward the day we succeed in getting ENDA enacted into law. Mr. President, I yield the floor.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I yield as much time as the Senator from Utah would like to have.

Mr. HATCH. Mr. President, I oppose this legislation. The bill before the Senate has vast ramifications. This bill represents a massive increase in Federal power. For example, Federal bureaucrats, Federal courts, and plaintiffs' lawyers will be given enormous new sway over our Nation's private employers, as well as State and local governments. This bill will be, if it passes and becomes law, a litigation bonanza.

I think I have a reputation around here as supporting civil rights legislation. I do not want to see any discrimination against anybody in our society. As the coauthor of the AIDS bill, as the coauthor of the Hate Crimes Statistics Act, and other bills, I think my reputation is that of someone who decries discrimination in any form in our society. However, this bill, in my opinion, is the wrong way to go.

Moreover, notwithstanding ineffective language in the bill, Federal bureaucrats at the Equal Employment Opportunity Commission, lawyers at the Department of Justice, along with plaintiffs' lawyers in Federal courts, will open up an entirely new category of preferences and reverse discrimination. This new category, make no mistake about it, will be based on sexual orientation. The moral and religious sensibilities of millions of Americans will be overridden if this legislation comes to pass and is enacted into law.

Let me turn to each point, starting with the vast increase in Federal Government power created by this bill. Mr. President, I respectfully submit that a vote for this bill is a vote to give the Equal Employment Opportunity Commission the power to require employers to provide the Government with data on the sexual orientation of their employees. Today, under title VII, the EEOC asks numerous employers to provide statistics on the racial, ethnic, and gender composition of their work forces and new hires.

Let me stress, so that no one is misled by the bill's section on disparate impact, that statistics on the composition of a work force are not used just in disparate impact cases. These statistics are frequently used to prove cases of intentional discrimination on the basis of race, ethnicity, and gender, including pattern and practice cases.

Section 11 of the bill grants to the EEOC "with respect to the administration and enforcement of this act" the same power the EEOC has to administer and enforce title VII of the 1964

Civil Rights Act. The EEOC, the Department of Justice, and plaintiffs' lawyers, will be able to use such statistics on the sexual orientation of employees at a particular workplace in proving cases of intentional sexual orientation discrimination under this bill. As I mentioned earlier, these would include pattern and practice cases that the Federal Government is now able to bring against employers under title VII.

Here is what is authorized by this bill: someone alleges that he or she was denied a job because of the complainant's homosexuality. The Federal Government investigates. Perhaps there is evidence that a supervisor in the personnel office made statements expressing disapproval of homosexuality. Perhaps the Department of Justice or the EEOC received similar complaints from one or two other job applicants. The appropriate Federal agency could then turn to the statistical profile of that employer's work force and recent hires. If there are no homosexuals in that work force, or virtually none, if all or almost all recent homosexual job applicants were denied a job, those statistics can be used by the Government, or in a private lawsuit, as evidence of intentional discrimination.

I hope that no Senator is under the misimpression that the use of statistical evidence in so-called underrepresentation cases is forbidden by this bill. This bill authorizes, indeed invites, the use of statistics based on sexual orientation by its grant to the EEOC of authority that it now has under title VII. Now some might ask, would the EEOC really seek such statistics? My answer is that EEOC is part of the very same bureaucracy which presently makes heavy use of statistics under title VII, and which played so crucial a role in the creation of preferences and reverse discrimination under that statute.

Let me give one more example of the vast power this bill gives to the Federal bureaucracy and the Federal courts. Under title VII, harassment in the workplace on the basis of race, ethnicity, gender, and religion is forbidden, and properly so. If this bill becomes law, what is going to happen if a supervisor, based on religious or moral beliefs, expresses disapproval of homosexuality and there are homosexual employees in that workplace? What is going to happen if one or more employees express such views and supervisors are aware of those investigations and do nothing about them? The answer is there will likely be a lawsuit claiming a hostile work environment exists which adversely affects homosexual employees. However that lawsuit is resolved, think of the new costs imposed on our Nation's employers in dealing with these new lawsuits. It is bad enough under the current law.

Mr. President, it is also certain that reverse discrimination and preferences will result from this bill. Some will ask, how can that be? The bill says "a

covered entity shall not give preferential treatment to an individual on the basis of sexual orientation." That is in section 7. But the bill says something more. The bill gives Federal courts "The same jurisdiction and powers as such courts have to enforce title VII of the Civil Rights Act of 1964." That is in section 11(a)5. Further, "The procedures and remedies available for a title VII violation" are available under this bill, and that is section 11(b)1.

Now, let us take a look at section 706(g) of title VII. That provision of title VII says that if the court finds that an employer intentionally discriminated, the court may enjoin such discrimination "and order such affirmative action as may be appropriate or any other equitable relief as the court deems appropriate." Now, Mr. President, if you only read this bill, you will miss the powers this bill grants to the Federal Judiciary, including those pertaining to affirmative action are not evidence.

We all know, Mr. President, regretfully, that the Supreme Court has construed section 706(g) of title VII to permit Federal courts in limited circumstances of persistent egregious, intentional discrimination to impose preferences as remedies in title VII cases. I have said the preferences are never appropriate as a remedy. But the same remedies under title VII will be available under this bill. Preferences on the basis of sexual orientation will be imposed when Federal courts think that an employer has intentionally discriminated in a persistent and egregious way, and whether we agree with this view or not, many employers have very strong religiously based/morally based objections to homosexuality which they may reflect in their employment practices that could well give rise to remedial orders of a preferential way in a number exceeding that which we have seen under title VII.

Further, the Supreme Court has told us that a consent decree pursuant to a statute is part contract and part enforcement of the statute itself. The Federal agencies which bring the lawsuits under this bill have enormous leverage. These cases are very costly to defend, make no mistake. These agencies, as well as plaintiffs' lawyers in private cases, will also be able to extract consent decrees containing preferential relief from employers because the employers paid then because it is too expensive to fight them.

Section 7 of this bill does not order the analysis. It does not limit a court's remedial power. Title VII has a similar provision, yet the Supreme Court told us the remedial authority of the courts are governed by section 706(g).

The proponents of this bill can make the very same statement that our revered late colleague and dear friend of mine, Senator Hubert Humphrey, made during debate on the 1964 Civil Rights Act in response to concerns expressed about preferences and quotas. He said

he would eat the pages of the CONGRESSIONAL RECORD, one after the other, if someone could show him where these preferences are in title VII. Within 5 years after the enactment of that act, Federal agencies and courts had misused title VII to create preferences, something the prime sponsor of that bill said could not occur. The very same agencies will enforce this bill on sexual orientation, under virtually identical provisions. So if the proponents of this bill want to tell the Senate the same thing our dear colleague Senator Humphrey told the Senate in 1964, I have no doubt that someday I will be sending them a copy of today's CONGRESSIONAL RECORD, together with a knife and fork and something to wash down the pages.

I might add this, that a plaintiff's ability to use statistics to prove intentional discrimination is going to be a powerful silent incentive to employers to hire by the numbers on the basis of sexual orientation, in order to avoid these lawsuits.

Mr. President, let me make one more point on affirmative action under this bill. There are forms of remedial affirmative action under title VII that I do support. For example, I believe it is appropriate for employers to be required to recruit and advertise to increase the applicant pool for members of such groups.

This is a fairly routine remedy. Under this bill, an employer who discriminates on the basis of sexual orientation against homosexuals will likely be required to undertake such recruitment, such as by advertising among homosexual groups and media outlets. Should we be imposing this requirement on employers in the matter of sexual orientation? I do not think so.

Let me note, Mr. President, that many employers have honest moral, religious-based objections to hiring homosexuals. These are views that should not be dismissed. I will mention one example. The July 19, 1996, Washington Post reported that a Loudoun County teacher and coach had starred in gay pornographic videos. This person had a job teaching health and physical education at Farmwell Station Middle School in Ashburn, VA. He was also an assistant coach for boys football, baseball, and wrestling at a high school.

Loudoun School Superintendent Edgar B. Hatrick III said if the allegations were true, he would seek to fire the teacher. He noted, "We believe that teachers, as people who are chosen to be instructors as well as leaders of our young people, should be exemplary in their professional as well as personal lives. What we have here is an allegation of a lifestyle that is not in keeping with that. If the allegations are true, that is not conduct befitting a teacher."

I suspect that the principal would have taken the same attitude if it had been a pornographic movie starring a heterosexual teacher, and rightfully so.

One parent of a daughter who attended a school where this person

taught said she believed that what people do in their private lives is their business—unless they are teachers. "I want our teachers to have the highest moral fiber. I'm not comfortable with him doing both." A school board member said, "Here we have a teacher in a middle school working with children who are at that age where they are struggling with their * * * identity. This is obviously a person who has made bad choices. To give someone like this access to children at that stage of development would be irresponsible of us."

Mr. President, those views are overriden by this bill. And even if one disagrees with these school officials and parents, as the proponents of this bill may do, is it appropriate for this Senate to run roughshod over their concerns? I know the supporters of this bill, including President Clinton who has strongly endorsed it, are sincere.

In particular, I have worked very closely in the past with my friend, Senator KENNEDY, on these matters. I have tried to be with him where I believe he is correct, and he has tried to be with me where he believes I have been correct.

But the people in Loudoun County and millions of other Americans who agree with them are also sincere.

Mr. President, in the version of this bill introduced last night, section 10 states that a covered employer can enforce rules "regarding nonprivate sexual conduct, if such rules of conduct are designed for, and uniformly applied to, all individuals regardless of sexual orientation." This provision provides little help to the people of Loudoun County and across this country who have similar concerns. Its fundamental flaw is that in order to enforce rules under this section, homosexuality and heterosexuality must be treated entirely alike.

Suppose a male teacher kisses his female spouse goodbye in front of the schoolchildren in the morning as she drops him off at school. Some might find such warmth and affection between husband and wife a good thing for the children to see. But Loudoun County would have to fire that male teacher before this bill would permit the county to fire a male teacher for kissing his male partner in front of the children at school. Or, suppose a single male teacher, during nonschool hours and in public, holds hands, walks arm in arm with his girlfriend, and engages in some kissing. I can well understand if the school authorities do not find that public behavior a matter for discipline. Under this bill, however, these same school authorities could not take action against a male teacher who engages in the very same public actions I just mentioned, with another male. I think that forcing Loudoun County to treat both situations the same, in terms of role models for schoolchildren and the other concerns parents and educators might have, is wrong.

Mr. President, let me note some of the other flaws in the bill. The bill says

it does not apply to the Armed Forces, defined as the Army, Navy, Air Force, Marine Corps, and Coast Guard. But the bill would apply to other elements of our military structure, such as the National Guard. Moreover, if the proponents of the bill think the military should be exempt, why didn't they exempt State and local police departments, and other law enforcement agencies at the local, State, and Federal levels? These are paramilitary organizations. They deal with domestic threats to the peace and our security. If some of the forces that deal with foreign threats to the peace and our security are exempted from the bill, why shouldn't the domestic law enforcement agencies be treated the same way? I might add that in many States homosexual conduct is illegal, by statute or common law, yet this bill would compel the law enforcement agencies in those States to hire individuals who are acknowledged to engage in such conduct.

Let me also say that my support for the Hate Crimes Statistics Act, which Senator SIMON and I have gotten through the Senate and enacted into law twice, is fully consistent with my position on this bill. My view that absolutely no one should be subjected to violence or vandalism because of who they are is, of course, widely shared. But it does not follow from the fact that while everyone, including homosexuals, should be free of violence, society must confer affirmative civil protections on the basis of sexual orientation not available, I might add, to everyone else.

I would urge President Clinton to reconsider his support of this bill. I don't think we would be taking it up today if he wasn't such a strong backer of the bill. I don't think it would have a chance of passage if he opposed the bill, a bill which has so many noticeable flaws.

Mr. President, those are just some of my feelings with regard to this bill. I have watched these EEOC applications of title VII and the court applications of title VII for many years. I believe that I have spoken the truth here about what really is happening, what has happened, and what will happen if this bill is passed. It would lead to a bonanza of litigation that would be second to none in the history of this country, and I think, frankly, that it is not in the best interest of the country, and would be used to trample right over the rights of many people who have sincerely held religious views about the matter.

Mr. President, I may have some more to say about this bill later.

I yield the floor at this time.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I know others want to speak, but I want to address briefly the issue of remedies that has been referred to by my colleagues who have

stated their opposition to this legislation—both their concern about the additional burden on the courts and also on the issues of remedies.

I think we can look at the nine States that currently have virtually the same kind of law that we are proposing. Most of them have some form of an equal employment commission in their various States.

I will include this in the RECORD.

To talk about the number of cases that have been brought in the State court system, in Wisconsin they passed a law similar to this in 1982. They have had one reported case between 1982 and 1993. In California, since 1992, they have had five reported cases. In my own State of Massachusetts, we have had two reported cases since 1989; Minnesota, since 1991, three reported cases; New Jersey, since 1991, zero reported cases; Vermont, since 1991, one reported case; Connecticut, since 1991, they have had four reported cases; Hawaii, since 1991, zero reported cases; Rhode Island, since 1991, zero reported cases.

What we have seen since this law was passed is not the kind of proliferation of cases. What we are seeing is compliance.

Finally, let me just say with regard to remedies, I remind our colleagues that in the remedies section, as has been pointed out by Senator JEFFORDS, we are basically tracking title VII of the Civil Rights Act, and we are talking about the 1991 Civil Rights Act. Therefore, the damages are capped. They do not cap them on the basis of race. They do not cap them in terms of religious discrimination or national origin. They cap them solely on gender—women—the disabled, and now on gay and lesbians. We put a cap on them.

I would like to believe, if we are talking about discrimination that is taking place against American citizens, we would apply remedies fairly to all victims of discrimination. But nonetheless, currently, women and the disabled and, when this legislation becomes law, gays and lesbians, are held to a second-class standard in terms of remedies. With all due respect to those who are complaining about remedies, we already included a cap to gain support. We are not altering or changing that.

Third, I advise my good friend from Utah to review the legislation. There is no requirement in this legislation that any company has to keep statistics—his admonition that we have to be concerned because of disparate impact claims is without merit. Disparate impact claims are specifically excluded. Statistics are not necessary. So I have difficulty in following the logic of his comment.

Basically, what we are talking about is this, Mr. President:

People like Cheryl Summerville who received a notice that said, "This employee is being terminated due to violation of company policy. This employee is gay."

That is what we are talking about. We are talking about blatant, flagrant

discrimination and bigotry that exists in our country that some States have identified. That is what is at issue. That is what we are addressing. We obviously welcome the opportunity to take various recommendations or suggestions about how to make it better.

The final point I make, Mr. President, is that I heard my colleague say that a lot of people have strong religious beliefs not to associate with homosexuals. We went through a period not long ago when a lot of people had moral beliefs, ethical beliefs not to associate with blacks, Latinos or Asian-Americans, and basically what civil rights laws have stood for is that individuals cannot use those beliefs in order to discriminate against fellow Americans. That is the basis of the civil rights laws that exist to address the issues of discrimination on race, on religion, on ethnicity, on national origin, on gender and disability. All we are attempting to do is to extend it.

For those reasons, Mr. President, and the others mentioned earlier, I hope we can move forward with the legislation.

I see my friend, the Senator from Nebraska.

Mr. HATCH. Mr. President, could I just answer the Senator?

If the distinguished chairman will yield 2 minutes to me, I would appreciate it.

Mrs. KASSEBAUM. I would be happy to yield to the Senator from Utah.

Mr. HATCH. I thank my colleague.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Keep in mind the Senator just got through equating homosexuality with race, which is exactly what is going to happen should this legislation pass.

Mr. President, I might add that the experience under State law that he refers to is largely irrelevant. Experience under State law cited by my friend from Massachusetts, in my opinion, is irrelevant. I cited the remedial provision of title VII, section 706(g), which gives Federal courts the power to award affirmative action relief. That is extremely different from the State statutes with regard to this.

The Supreme Court has said in some cases preferential relief can be granted. The Court said that consent decrees with preferential relief may be entered. Since the bill does incorporate section 706(g), the same thing is going to happen here. It opens up a massive Federal role in employment matters with regard to gay and lesbian people.

I have to say I am uncomfortable with both sides on the issue because I think the bill is not written well. I think it does not solve these problems. It will lead to tremendous Federal Government control over the employer workplace throughout the country, and I think it will lead to the same sort of sets of preferences that we see today under title VII that were said could never happen.

These are some of the things that bother me. On the other hand, I do not

want to see gay and lesbian people discriminated against. But I just heard my colleague from Massachusetts equate homosexuality with race by saying the churches have had to comply with the Civil Rights Act. That is true. On the other hand, he excludes churches in here but not the profit-making aspects of the church, of the particular churches involved, which may include publication, it may include running facilities for the benefit of their members, it may include any number of other situations that may be considered profitmaking. Yet the particular religious belief may be such that it condemns homosexual conduct and sincerely does so and does so as a right of that religious institution, longstanding religious institutions in some cases, highly recognized, mainstream churches that have doctrines and principles that condemn homosexual conduct, and yet it would require them to have to comply with this law as it is written, and I believe in ways that will be very similar, no question about it, in ways that will be exactly like the requisites of title VII today.

As Gen. Colin Powell so eloquently stated in a May 1992 letter to Representative PAT SCHROEDER defending restrictions on homosexuals in the military, he said:

Skin color is a benign nonbehavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument.

I think he makes a good point. I do not think there is any question about it.

This bill gives the EEOC the same power to administer and enforce this bill as the EEOC has under title VII. Under title VII, the EEOC collects statistics. It is in the regulations in 29 CFR, subpart A, B, and C. So to compare this with the States and the fact that there may be a dearth of suits under State law belies the fact that under Federal law there will be a proliferation of suits and I think testing of this matter all over the country, and I do not know that you will have any choice other than to apply the law as the Supreme Court has interpreted section 7 in bygone days and bygone ages. If that is the case, you are going to have, I think, an awful lot of difficulty in our society and especially among religious institutions and others that take highly moral views of these matters that I think will be very disruptive to our country.

Having said that, I would like to continue to explore a way, some way of encouraging people in our country to be fair to gays and lesbians in our society. I do not think anybody should be discriminated against. On the other hand, these Federal statutes have sometimes resulted in discrimination against people who have sincerely held beliefs, religious or otherwise, that I think are valid.

So having said that, I do not see the analogy, but I will accept the statements of the distinguished Senator from Massachusetts as said with regard to the dearth of cases in some of these States under State law. Under Federal law there will be a proliferation. I guarantee it. I do not think anybody doubts it. I think we have seen it and we will see it in the future if this bill passes.

Mr. KENNEDY. Mr. President, I will take the time. My colleagues are not here to respond in detail. But, with all respect to my friend, he has misstated the law and then differed with the misstatement. I will come back to that at a different time.

How much time does the Senator care for?

Mr. KERREY. Perhaps 5 minutes?

Mr. KENNEDY. I yield 8 minutes.

The PRESIDING OFFICER (Mr. INHOFE). The Senator from Nebraska is recognized for 8 minutes.

Mr. KERREY. Mr. President, it seems to me, for Members who are trying to decide on this piece of legislation, the Employment Nondiscrimination Act, there are really three questions that need to be asked and answered. The first is: Should the Federal Government intervene and preempt State laws? That really leads to the question: Do you support the underlying bill, the Defense of Marriage Act? I do not support the underlying bill, the Defense of Marriage Act, for a number of reasons including the fact it is the first time the Federal Government will be intervening, preempting State laws on family matters. Divorce, child support, all sorts of other things will now be opened up and legitimate objects of concern for new Federal legislation.

But for those who have answered that first question yes, then this amendment is, it seems to me, an appropriate remedy to 41 States that currently continue to permit discrimination on the basis of sexual orientation. So that is question No. 1: Do you think the Federal Government should intervene? If you support DOMA you already support intervention. You already support an act of intervention, which DOMA is. DOMA preempts State laws. So does ENDA.

The second question is a very difficult one. I think—I am not sure of this—I think the origin of some of the differing views between the Senator from Massachusetts and the Senator from Utah—I am not certain of it—is: Do you believe sexual orientation is a trait, a characteristic, or do you think it is behavior? Do you think you are born with a particular sexual orientation or do you think you choose it, that you decide you want to be gay? Apparently, I guess from the letter written by Colin Powell, he believes race is benign but sexual orientation is not benign. That is the implication one gets from the letter from Colin Powell. I disagree with that. I would say sexual orientation is also benign. I do not believe that because I am heterosexual I am not benign. I do not think my ori-

entation is an indication of what I intend to do, at least in regard to what Colin Powell is suggesting. But it is a very important question.

There are some who believe that sexual orientation is chosen, it is a behavior. If you believe that, then you say it is the same thing as smoking or the same thing as drinking or other things and you do not think you are discriminating. You think it is legitimate. But the overwhelming number of people who have looked at this say sexual orientation is a trait. You do not choose it. You do not wake up one morning and say, "I think I will be homosexual"—or heterosexual, for that matter. It is a very important question. Because, it seems to me, if you believe it is a characteristic, that it is a trait, if you do believe that, as I do, if that is your conclusion—and Members need to ask themselves that—if you believe it is a characteristic, if you believe it is a trait, if you believe that is the way you are born, then you do have to treat it, at least in some ways, the same as race. It is a benign thing. You do not go out and decide this is what you are going to do with your life. So that is question No. 2. I answer the question that it is a trait, it is a characteristic, you are born this way and you orient that way as a consequence.

Question No. 3 is: Is this the right solution to discrimination? If you want the Federal Government to intervene—as I said, I think it is a mistake to be intervening, at least in the fashion we are doing with DOMA. If you want the Federal Government to intervene, if you believe it is a characteristic you are born with, the next question is: Do you think this is the right solution? I must say, I think the sponsors of this legislation, the drafters of this legislation, have done a very good job of trying to draft it in a narrow way so it does solve the problem, because it is a relatively small problem, I will say, Mr. President. I do think that there is discrimination against gays and lesbians in America today. But I do believe employers are increasingly saying it is not a threat at all, it is not a problem, it is a trait, and that gay and lesbian employees are not a threat to their business, they are not a threat to the morale of that company and so forth.

But, nonetheless, discrimination is occurring. So the drafters of this legislation have gone through and said ENDA does not require an employer to recruit or advertise job offers. ENDA expressly states no disparate impact cases may be made, meaning that discrimination cases cannot be made based on statistics alone. ENDA specifically prohibits quotas that would compel employers to meet percentages of hiring and provides exemptions for nonprofit religious organizations and the military, and ENDA does not require that companies pay benefits for domestic partners.

I think this legislation, again, if you support DOMA and you have already reached the conclusion that it is OK to intervene in State family matters; if

you believe homosexuality is a trait that one is born with, it orients just like you do if you are heterosexual, if you believe it is a trait; and if you are looking for some way, as the Senator from Utah is, to narrowly draw a law that will prevent this kind of discrimination, I think you can vote no other way than yes on what I consider to be a very carefully drawn piece of legislation, a very targeted piece of legislation, one that should not provoke a great number of lawsuits, that does, it seems to me, treat homosexuality different from race.

It does not provide disparate impact cases be filed. I think it is a reasonable piece of legislation. Especially for those who support the underlying bill, it seems to me an easy thing to support, an easy thing to vote "aye" on. I urge my colleagues to do so.

The PRESIDING OFFICER. Who yields time?

Mr. SIMON addressed the Chair.

Mr. KENNEDY. I yield 8 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, first let me acknowledge the leadership of Senator KENNEDY. Senator KENNEDY has really been, in all these areas of human rights, a distinguished leader. I really appreciate that leadership.

I attended a meeting of the Illinois Society last night, people from Illinois who live in the Washington, DC, area. We started that meeting by saying the Pledge of Allegiance to the flag.

One of the things that has interested me is how rarely we do something like that anymore.

As part of that Pledge of Allegiance, we said, "one Nation, under God, indivisible * * *" Some people want to make it "one Nation, under God, indivisible," except for African-Americans.

Some want to make it "one Nation, under God, indivisible," except for Hispanic-Americans.

Some people want to make it "one Nation, under God, indivisible," except for Asian-Americans.

Some people want to make it "one Nation, under God, indivisible," except for people with disabilities.

And some people want to make it "one Nation, under God, indivisible," except for gays.

I think there are a great many people who feel uncomfortable in this area. It is a word that Senator HATCH used.

Let me comment first on the Defense of Marriage Act and then on the legislation that Senator KENNEDY has introduced, of which I am pleased to be a co-sponsor.

The hate crimes bill that I introduced a few years ago, that is now law, has the FBI keeping track of hate crimes. The greatest number of hate crimes are against African-Americans, but if you look at the numbers of people proportionately, the greatest number of hate crimes are against gays in our society.

The last thing we need to do is to divide America more, and the Defense of Marriage Act does that.

A great many people do feel uncomfortable, and it is a hidden problem. I grew up in a family where my parents were active in what we then called race relations. I was not aware of this problem at all until I went into the Army.

When I went into the Army, I was assigned to the counterintelligence corps. One of our jobs was to screen people for classified material.

Let me add for those who argue about this today, people who were gay were drafted into the Army just as much as anybody who was not gay. For those who do not want to accept gays into the military, if you have a draft and you can be exempt if you are gay, I think we are going to have a lot of gays in our country, people who are going to list that.

But I became aware that people could be blackmailed very easily who were homosexual. I gradually became more aware of the problem.

I can remember in the House—the Presiding Officer may not have been here at that point—we had a House Member who used to introduce gay-bashing legislation, amendments, by the name of Bob Bauman, a Republican Member from Maryland. Then it turned out he was homosexual himself, but he felt compelled to do this.

The number of crimes not only against gays, but the number of suicides in this country is a very real problem.

I had an experience not too many months ago where a college classmate, a friend I had not seen for some years, stopped by, and as you do when you get together with a college classmate, we talked about our families. And he said, "We had a very emotional experience." I asked him what it was. He said, "Our daughter told us she was lesbian." In the course of it, he said, "My daughter told me, 'You don't think I would choose this.' She said, 'I was born this way.'"

Senator KERREY's comments are apologies. We know now from scientific evidence that there is a genetic basis, at least among men—and the assumption is this is probably true for women, too—for homosexuality.

When I grew up, my father did not take me aside and say, "Paul, you have to be interested in girls." He had to give me other warnings. But there are people who by orientation are interested in people in the same sex. Genetically, they are built that way.

If, in this Defense of Marriage Act, we start defining marriage, who is to stop the Senator from Massachusetts or the Senator from Kansas or the Senator from Washington from introducing Federal legislation on divorce, for adoptions or other areas? We simply should not be getting into this area.

Let me comment on Senator KENNEDY's legislation. The statement Senator KENNEDY put up there that was

put out—I am going to mention the company's name, Cracker Barrel—I have not been into a Cracker Barrel restaurant since that woman testified, and I am not going to go into one until we pass legislation like this. But her separation notice read—let me repeat it again—"This employee is being terminated due to a violation of company policy. The employee is gay." That was a woman who worked as a cook, very low wages. When she testified before our committee, she was working part time cutting firewood.

What kind of a society are we building? We have to have opportunity for people. I can remember when we first started talking way back when I was in the State legislature, the Fair Employment Practices Commission, "Let's not discriminate against African-Americans or Jewish-Americans and others," and people said, "Oh." They thought, "My job is going to be taken away." And they were worried about a lot of things.

It turns out we passed that and we lifted the economy of this Nation because people were not discriminated against anymore. I notice that among the statements that were signed in terms of our practice, Bob Dole, on April 14, 1994, signed a statement: "The sexual orientation of an individual is not a consideration in the hiring, promoting or terminating of an employee in my congressional office." What is good enough for Bob Dole ought to be good enough for the country.

The religious organizations—and I ask unanimous consent, Mr. President, to have printed in the RECORD the statement of the United Methodist Church, the National Council of the Churches of Christ, The American Jewish Community, and the Evangelical Lutheran Church in America.

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

GENERAL BOARD OF CHURCH AND SOCIETY OF THE UNITED METHODIST CHURCH,

Washington, DC, September 3, 1996.

DEAR SENATOR: On behalf of the General Board of Church and Society, the social justice advocacy agency of the 9.5 million member United Methodist Church, I strongly urge you support the Employment Non-Discrimination Act (S. 932) (ENDA) introduced by Sen. John Chafee (R-RI) and Sen. Ted Kennedy (D-MA).

The Senate may soon vote on ENDA as an amendment to the Defense of Marriage Act (DOMA). Though the United Methodist Church does not presently have an official position on DOMA, The General Board of Church and Society has consistently and very strongly endorsed the passage of the Employment Non-Discrimination Act into law since its introduction in the U.S. Senate.

The Social Principles, the official policy doctrine of the United Methodist Church states, "Homosexual persons, no less than heterosexual persons are individuals of sacred worth . . . Certain basic human rights and civil liberties are due all persons. We are committed to support those rights and liberties for homosexual persons. We see a clear issue of simple justice in protecting their rightful claims where they have shared ma-

terial resources, pensions, guardian relationships, mutual powers of attorney, and other such lawful claims typically attendant to contractual relationships which involve shared contributions, responsibilities, and liabilities, and equal protection under law."

If there is anything our agency can do to assist you in securing passage of the Employment Non-Discrimination Act into law, please don't hesitate to call on me personally or Hilary Shelton the Program Director working on this issue at (202) 488-5658.

Sincerely yours,

THOM WHITE WOLF FASSETT,
General Secretary.

NATIONAL COUNCIL OF THE CHURCHES
OF CHRIST IN THE U.S.A.,
Washington, DC, August 23, 1996.

DEAR SENATOR: On behalf of the National Council of Churches, I am writing to endorse S. 932, the Employment Non-Discrimination Act of 1996.

The National Council of the Churches of Christ in the U.S.A. is the preeminent expression in the United States of the movement for Christian unity. Its 33 Protestant and Orthodox member communions, to which 52 million people belong, work together and with other church bodies, to build a wide sense of Christian community and to deepen the experience of unity. Our position on this matter is based on policy approved by our General Assembly, whose 400 members are selected by our member communions in numbers proportionate to their size.

The National Council of Churches has always held that, as a child of God, every person is endowed with worth and dignity that human judgment cannot set aside. Therefore, every person is entitled to equal treatment under the law. Discrimination based on any criteria such as race, class, sex, creed, place of national origin, or sexual orientation is morally wrong.

Accordingly, the Council would urge you to support the prompt passage of the Employment Non-Discrimination Act as a manner to protect against such discrimination.

Sincerely,

(REV. DR.) ALBERT M. PENNYBACKER,
Associate General Secretary for Public Policy.

THE AMERICAN JEWISH COMMITTEE,
Washington, DC, July 22, 1996.

DEAR SENATOR: While the American Jewish Committee has taken no position on the Defense of Marriage Act, AJC fully supports the Employment Non-Discrimination Act as an important protection of basic civil rights. We urge you to vote for ENDA as an amendment to the Defense of Marriage Act.

ENDA is simple justice. It ensures that employment decisions are based on one's performance and abilities and not on perceptions of an employee's sexual orientation. No "special rights" are created. ENDA simply extends the same legal protections from employment discrimination provided to other individuals who have historically been denied equal employment opportunities.

The protection of religious liberty is of central importance to the American Jewish Committee. ENDA's broad exemption for religious organizations gives proper regard to this concern. No sectarian institution will be required to violate the religious precepts on which it was founded.

ENDA is a crucial protection of civil rights. We urge you to support the amendment that would incorporate ENDA into the Defense of Marriage Act.

Sincerely,

RICHARD T. FOLTIN,
Legislative Director and Counsel.

EVANGELICAL LUTHERAN
CHURCH IN AMERICA,
Washington, DC, July 30, 1996.

DEAR SENATOR: The Evangelical Lutheran Church in America (ELCA) has committed itself to participate in God's mission by "advocating dignity and justice for all people" and "joining with others to remove obstacles of discrimination and indifference".

With these core commitments, the ELCA has affirmed its historical position of "strong opposition to all forms of verbal or physical harassment or assault of persons because of their sexual orientation and support for legislation, referendums, and policies to protect the civil rights of all persons, regardless of their sexual orientation, and to prohibit discrimination in housing, employment, and public services and accommodations."

The Employment Non-Discrimination Act (ENDA) would be one step toward fulfilling these commitments. ENDA would extend Federal employment discrimination protections currently provided based on race, religion, gender, national origin, age and disability to sexual orientation.

Therefore, the ELCA continues its support of the Employment Non-Discrimination Act and urges your support of this important initiative to extend employment discrimination protection to all people.

Sincerely,

KAY S. DOWHOWER,
Director.

Mr. SIMON. We have to make sure that ours is a society that gives opportunity to everyone. I want every page here—I do not care what your sexual orientation or race or religion or what your background is—I want you to have every opportunity. I have four grandchildren. I want them to have every opportunity. That is what America is all about, and that is what this legislation is about.

We need an education. I still need an education. I am not as fully familiar—in the hearing that we had, I used the phrase "sexual preference," and I was told by leaders of the community they prefer the phrase "sexual orientation" because "preference" indicates choice. And so I am learning.

People were not made by God all the same. Some of us have brown hair, some of us red hair, some of us black hair, some blonde. Some were made with a different sexual orientation than most of us have, and we should not deny them employment opportunities. What happened to that cook in that Cracker Barrel restaurant should not happen to any American. That is what this legislation is all about, and I support it.

The PRESIDING OFFICER (Mr. GORTON). Who yields time?

Mrs. KASSEBAUM. Mr. President, I yield as much time as the Senator from Oklahoma would like to use.

Mr. NICKLES. Ten minutes.

Mrs. KASSEBAUM. I yield 10 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 10 minutes.

Mr. NICKLES. First, I wish to compliment the Senator from Kansas for her statement and also Senator HATCH for his statement as well.

Mr. President, No. 1, I did not expect this debate this morning. This debate

is the result of the unanimous-consent agreement that was entered into last night. I supported that agreement. So we will be voting on this bill and we will be voting on the Defense of Marriage Act on Tuesday. So at least we will be able to bring up and dispose of two pieces of legislation.

I believe the legislation that we are debating this morning called ENDA, Employment Nondiscrimination Act, introduced by Senator KENNEDY and others, is a very significant piece of legislation. I happen to disagree with it. I happen to think it is a very dangerous piece of legislation. I am pleased it is not going to be offered as an amendment to the Defense of Marriage Act. I perceived it as a killer amendment. In all likelihood, if it had been adopted on the Defense of Marriage Act, it would have killed it. So I viewed it as an attempt to defeat the Defense of Marriage Act. So I am pleased that we are at least reviewing it or considering it separately.

Mr. President, this is not an easy subject to talk about, not an easy subject for most of us, because we do not talk about it very often. We are talking about amending the Civil Rights Act and adding sexual orientation to the list of items now under the Civil Rights Act which have protection.

We state under the Civil Rights Act there should be no discrimination on account of gender, on account of race, on account of your ethnic background, or disabilities or age or religion, and now if this amendment becomes law, we would add sexual orientation, and "sexual orientation" would be defined as homosexuality and bisexuality and heterosexuality. It actually would elevate homosexuality and bisexuality as a protected class under the Civil Rights Act.

Many, many people across America, because of their backgrounds—and maybe that background is a Jewish background or Christian background or Muslim background—have religious beliefs that homosexuality or bisexuality or promiscuity is immoral. To elevate that type of conduct into a protected status or class under the Civil Rights Act I think would be offensive. What would be the result?

Senator KASSEBAUM and Senator HATCH mentioned the fact that it would certainly bring about a lot of litigation. There is no question about that. A lot of individuals and a lot of firms would be sued based on sexual orientation claims if this bill becomes law.

There are exemptions under the bill, and appropriately so. Do we really want to say that people should be sued because they have religious convictions that go back to the Bible, or go back to their Muslim tenets or beliefs or their Koran, all of which say that this behavior is wrong? If they believe that in their hearts, and they do not want to have that conduct in their office or in their place of employment, should they be sued? Now, we are talk-

ing about real life situations. I do not doubt that there has been some discrimination, unwarranted, in many cases. I do not find that right.

I heard somebody say nine States, including the State of Massachusetts, have laws that prohibit discrimination on account of sexual orientation. Fine, I do not care if each and every State does, if that is that State's choice. If 9 States have done it that means 41 States have not. Maybe those 41 States will. They have the right to enact such laws. I would not step in their way one iota if the State wishes to make that decision. They can reverse it if they do not like that decision. That is their right. To elevate discrimination on account of sexual orientation and make it national and to make it a protected class under the Civil Rights Act I think would be a serious, serious mistake and one that we should not do.

What would be the result? I mentioned the litigation. What would be the practical result? I think if some organizations said they did not want to have openly gay or homosexual people as role models or mentors for young people—Boy Scouts come to mind; maybe other organizations, churches, then they should not have to hire them. I guess there is an exemption for churches and religious organizations that are nonprofit. Where do you draw the line at a church? If you leave church on a Sunday morning at noon, does that mean you are no longer affiliated with the church? A lot of us think of church as a body of believers and we do not believe it is just a building you attend once a week. If you have heartfelt convictions and beliefs should you, once you step out of church, be forced to hire someone whose sexual orientation offends you? What about somebody that believes they are part of a body of followers of Christ, or maybe of Jewish belief, and tenets that they believe in, 7 days a week 24 hours a day? Do you have to leave those beliefs at home? Do you have to check those beliefs at the door when you leave church?

There is an exemption for churches. What about a Christian bookstore, for example? A Christian bookstore for profit does not fall under the exemption. So here you have a business with very strongly felt convictions, but it is a for-profit Christian bookstore, Jewish bookstore, or Muslim bookstore they would be liable to be sued if they did not hire somebody who was openly gay. That may be very reprehensible to them and their basic beliefs, yet they can be sued.

What about the Boy Scouts? They have had a policy not to have homosexual Scoutmasters and they have been sued—they have been sued even without having sexual orientation included under the Civil Rights Act, and yet they are in court and have been in court, have spent hundreds of thousands of dollars trying to maintain their policy. They do not want to have openly gay homosexuals as their

Scoutmasters and leaders and employees in their organization. Now, sexual orientation is not even included in the Civil Rights Act and yet they still have been sued. They have spent hundreds of thousands of dollars defending their right to maintain their policy. Under at least the original Kennedy legislation that was introduced that policy would have to be changed or they would be sued.

Somebody informed me there was an amendment added in the last couple of days to try to correct this. I am not sure it would correct this. They were being sued before consideration of this legislation. My guess is they will be sued after this legislation, should it become law. I am hopeful and optimistic it will not become law.

I ask unanimous consent for an additional 10 minutes

Mrs. KASSEBAUM. I am happy to yield 10 minutes.

Mr. NICKLES. What about a public school? They have contact with kids. They are not exempt under this legislation, as I understand it.

Say you have kids, and a homosexual or bisexual grade school teacher, maybe that is fine in some schools in some districts, because it is very acceptable, but in some areas it might not be.

Take, for example, a school board in rural Alabama finds out their fifth grade teacher is an open homosexual, or it is well-known that this person is a homosexual, he admitted it to the school board. They inquired and he said that he has had relations with lots of people. Maybe he is bisexual. This bill covers or protects bisexuals. Maybe he had relations not only with his wife but has several boyfriends or something like that. The school board says that is not really the type of leadership mentor that they want to have in a school official, coach, or somebody who is working with kids. So that is not acceptable behavior.

Under this bill, as I see it, the school board could be sued. Maybe just the threat of the suit would prohibit the school board from taking such action. Do we really want to do that? Do we want to interfere with the school boards in rural Alabama, West Virginia, Montana, or Iowa? Do we really want to mandate it? If those States want to do it, more power to them, let them do it. But do we really want to give the level of protection, special protection, under the Civil Rights Act—I do not think that is wise—and open that school board up to unbelievable litigation or open that Christian bookstore up to litigation and say, "Sorry, you did not fall under the exemptions. You are a for-profit Christian bookstore." Therefore, tough luck if you do not hire this person even though they might be wearing a T-shirt that says "I am gay and proud of it and let's make love," you would have to hire them. You are subjected to unbelievable litigation, punitive damages—not just compensatory damage, but punitive damages.

Then I heard my colleagues say this bill has no quotas. I read that section. It says there is no quotas. Wait a minute. Under the Civil Rights Act, the EEOC is charged with enforcing it and they are able to collect data. Senator HATCH mentioned this and he is far more knowledgeable than I. They have to collect data. If someone files a suit against a company and says, "You did not hire me because I was openly gay," and that company says, "Well, that was not the real reason why we did not, and we have hired gays in the past." And they say, "Well, how do I prove it?" You have to prove it. How do you prove it? You have to survey your employees to make sure you can stand up on your argument and say we do not have that policy, we have never discriminated against gays. The employer has never asked anybody but all of a sudden now somebody came in that was openly gay and you did not hire them and they say that is the reason why you did not hire them, so for your defense you have to prove that you have hired gays in the past.

Now you have to survey your employees. You never had to do that before. Now you have to survey every employee. What is your sexual orientation? None of your business. Employers do not want to ask that question. I have employed a lot of people. I have never asked that question, would not dream of asking that question. Yet now for a defense to prove that you were not discriminating if this should become law, to prove you were not discriminating on account of sexual orientation, you are going to have to defend yourself. So now you have to prove that you have hired some homosexuals or bisexuals even though you did not even know it, it was not your business, you did not care, you do not want to get involved in their private lives. But to protect yourself from this litigation you would have to make those decisions.

Let me give you a couple of other examples. In my days as an employer, I had a sales force. Sales people spend a lot of time together. They go on the road together. They travel together. They go to conventions together. They spend weeks together. What if an employer found out this person is a good salesman, has a good reputation, but he openly admits that he is bisexual. Now, that may be fine in some sales organizations but in some other sales organizations it will not be very popular. It will not be very popular. It will not be very popular with some of the spouses, maybe male and female. If an employer says, "Well, no, that person really will not fit into our organization. We do not think we should have promiscuous people in our sales team because of the time spent away from home, the time and travel, so I think that as a policy we will not do that."

You say, wait a minute, this bill does not protect that. Wait a minute, this bill protects homosexuals and bisexuals. The very definition of bisex-

ual means you are promiscuous. You are having sex with males and females. Bisexuals are protected under this bill. That employer, if you decided not to hire that person because they were bisexual, you are on very thin ice. You are going to be sued, and not only sued and required to give the person their job back, but sued for punitive damages as well—unbelievable litigation expenses. You could go on. I have a daughter that is a cheerleader. She attends cheerleading camp. Now, I thought, wait a minute, that is not school and it is for profit, they make money off of it. I actually have a daughter that worked for such a camp, the National Cheerleaders Association, this summer. A bunch of youngsters worked with a bunch of high school kids. These kids and their teachers and coaches are mentors. Now, maybe the person who owns this company is a Christian, maybe they are not, or maybe they are Jewish. Maybe they have religious beliefs that they would rather not hire openly gay, lesbian, or bisexual people as coaches or leaders. Fine. If they have that policy, that personal conviction from their religious background or their beliefs, and they don't want to hire somebody who is openly gay or bisexual, or lesbian, so they don't hire them, then somebody might say, "Wait a minute, you didn't hire me because I was bisexual; therefore, I am going to sue you."

What about the individuals sending those kids to that camp? I think they would have a very legitimate complaint. That employer should not be forced to hire somebody that is bisexual if they feel like they don't want to, and if it would interfere with the role model or image they are trying to portray in their company.

What about a day care center? What about that? If somebody says, well—I guess if it is a nonprofit religious-affiliated day care center, like the First Baptist Day Care Center in South Dakota, they will be exempt. But what if you have one that makes money and they are for profit, but maybe they have a religious affiliation and want to have a real positive family image, and they really don't want to have activist gay, lesbian, or bisexual teachers or employees teaching the kids? I am afraid, under this legislation, they could be sued. As a matter of fact, they could be sued. People need to know that.

I know a lot of people, when they think of gays and lesbians, they think of individuals they know that are monogamous, and they are great employees, super people to work with, very productive. I know that. But there are also a lot of very active people, who work to pursue an activist agenda, and they would like to use the courts, as they have in many ways, to pursue their agenda. That is the reason why they are suing the Boy Scouts. That is the reason why they have sued in the State of Hawaii. We will talk about

that on Tuesday, to try to define marriage, and about allowing same-sex partners.

So there are many people who are very active who use the courts and, in some cases, abuse the courts, to pursue a very radical agenda.

I am afraid this legislation, if we add sexual orientation to the Civil Rights Act, will help them a lot. We have elevated what many, many people believe, because of their religious convictions in their heart, to be immoral acts—we will have elevated that to a protected special status under the Civil Rights Act if we add sexual orientation defined as homosexual, heterosexual, and bisexual. If we add that to the Civil Rights Act, Mr. President, I think we are making a serious mistake. I urge my colleagues to vote no on this amendment on Tuesday.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, how much time could I have?

The PRESIDING OFFICER. The Senator from Massachusetts has 27 minutes 17 seconds.

Mrs. FEINSTEIN. Would it be possible to have about 10 minutes?

Mr. KENNEDY. Yes. I yield 10 minutes to the Senator from California.

Mrs. FEINSTEIN. I thank the Senator from Massachusetts and the Chair.

Mr. President, I rise in strong support of this legislation. It might be useful for this body to know a little bit of my background with this kind of legislation.

Twenty-five years ago, I was a new president of the San Francisco Board of Supervisors, and I drafted legislation to amend the human rights ordinance of that city and county to prohibit discrimination in both housing and employment on the basis of sexual orientation. To my knowledge, it was the first such legislation ever introduced in a major city and county anywhere in the United States.

Well, I served as supervisor for 9 years, and then as mayor for 9 years. During that period of time, I never, ever had a single complaint about that legislation—not one. It was the first in the Nation, and it was difficult to pass; people did not understand it. Some said, “Is this special treatment?” Answer: No. “Does this convey some additional right that no one else has?” Answer: No. It’s pure and simple, as this legislation is pure and simple.

What this legislation says is that you cannot be denied employment because you may be gay or straight. It does not say you are protected against inappropriate conduct in any way, shape, or form. I think this is a key point. Is it inappropriate conduct for anybody to be kissing on their job as a waiter or waitress? The answer is, yes, it is inappropriate conduct, regardless of whether they are gay or straight. The same thing goes for clothing. If it is inappropriate to wear certain things in the workplace, this is true whether you are gay or whether you are straight.

So a lot of the hobgoblins that are expressed by the other side that this will open the world to all kinds of inappropriate activity, in my view, based on 25 years of watching a piece of legislation that I authored, which was passed, which I presided over as mayor of the city, is simply not correct.

There was not one complaint from any major corporation or minor corporation, major business or minor business, major employer or minor employer in the city and county of San Francisco, to my knowledge, in the last 25 years. These are major corporations like Bechtel, major corporations like McKesson, major corporations like Wells Fargo Bank, major corporations like the Bank of America, who have operated with this legislation intact in the city and county of San Francisco for the past 25 years, without a problem.

I believe that will be true for the rest of the Nation. This bestows no quota, no special privilege, no exemption from any law or rule or code of conduct anywhere. It simply says, based on the fact that you may be gay or lesbian, you cannot be denied employment.

But act inappropriately and it all changes. Do something that is improper conduct, and it all changes. But just because of who you may be, you simply cannot be denied employment. It seems to me that that is a pretty basic right that everybody has, regardless of their race, their religion, their creed, their color. Just because I am black, don’t deny me employment. Just because I am Hispanic, don’t deny me employment. But if I act inappropriately for the job, if I dress inappropriately for the job, or if I, in any way, create problems, then it is a different story. But not just because of who I am, because I can’t help who I am. That is the message of this legislation.

Let me give you two cases, two specific cases. William Ballou began working as a waiter in a Fremont, CA, restaurant in September 1991. Within 6 months, he had received both a promotion to assistant manager and a glowing letter of recommendation by the franchise owners of the restaurant.

But other waiters, some bartenders, and the restaurant manager frequently made antigay remarks, even urging servers to rush gay patrons, because, they were told, “this is a family restaurant.” After one particularly hurtful confrontation with the manager, Ballou told the franchise owners about this harassment. He was then fired due to “personality conflicts.” We see this pattern of harassment followed by firing all too often.

Sometimes the discriminatory firing is even more blatant. One woman, Tracie Cleverly, worked for many months at a Salt Lake City franchise of a well-known restaurant chain. Her coworkers and manager were aware that she was a lesbian, but this didn’t affect her prospects or her work environment. She received good work reviews, and her manager soon started her in training to be a supervisor.

Unfortunately, her understanding manager resigned, and a new person came to work his first day with a list of people to be fired, including all of the gay and lesbian workers in the restaurant. And he simply said, “I don’t want these kinds of people working here.”

We are not asking for special rights in this legislation. All we are saying is that simply because someone may be gay or straight, no more than someone may be black or Catholic or Jewish or Spanish or American Indian, or anything else, just because of who they are they should not be discriminated against.

I have listened to some of the comments on this floor about inappropriate action and special privilege, and none of this is encompassed in this legislation. It is clean, it is pure, and it is simple. And it is just directed at persons themselves. Once that person begins to do certain things, it may be a different story. Inappropriate conduct, once again, is inappropriate conduct, whether you be gay or straight. I think that is a very important point to get across.

So I would like to commend the Senator from Massachusetts. It is my belief that this freestanding bill provides the same remedies permitted under title VII of the Civil Rights Act and the Americans With Disabilities Act.

This is a big country. It is a democratic country. I think every Member of this body believes that no one should be prevented from obtaining a job because of their race, creed, color, sex, and I hope sexual orientation will be added to that.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mrs. KASSEBAUM. Mr. President, I would like to yield 15 minutes to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. ASHCROFT. Thank you, very much, Mr. President, and I thank the Senator from Kansas for the opportunity to speak on this important issue. It is an important issue, and I think her remarks earlier about the legal difficulties that are encountered whenever you have the kind of potential for punitive damages and have the kind of framework that would allow legal challenges on decisions made by business people—those were very important points on this matter. I commend her for making those points.

I also want to commend Senator HATCH for his important discussion of these issues, and Senator NICKLES who raised components of consideration here which I think have yet to be raised and ought to be raised.

I would like to make a few observations about what it is we do when we seek to enact legislation like this and the kind of signals we send and what the public interest is in terms of this kind of legislation.

First of all, I have to say that I have no intention nor desire to inflict any

kind of burden or difficulty upon individuals in our culture who are homosexuals. I have worked with homosexuals in various responsibilities. When I served as Governor of the State of Missouri I learned that several of the individuals in the administration were homosexuals and had done outstanding work. Unfortunately, several of those individuals with whom I worked and whom I respected met a very early death, in part as a result of the practice, I believe, of their lifestyle, and it is a tragedy. My sympathy has always been for them and to their families. In one case we had to transfer a worker to be more proximate to medical attention and care because of the challenges that he faced.

So it is not a matter in terms of my own situation of wanting to increase the burden or otherwise make difficult the lives of individuals who have a homosexual lifestyle. As a matter of fact, that is already a real challenge.

I want to point out that in everything we do in government we teach. We send signals. We say what is good and what is bad. We encourage some things. We discourage others. President Clinton has decided to send a signal about cigarette smoking. He has basically said that, because smoking cigarettes can curtail your life expectancy anywhere between 2.1 and 12.2 years, that he is going to be aggressive in communicating to this culture that you should not start smoking. It is bad for you. It will hurt you. It will shorten your lifespan. There are some of us in this Chamber who would disagree with the way in which the President is trying to send that signal. Some of us would question whether or not we ought to assign to the FDA—the Food and Drug Administration, an agency which is already overburdened and which is struggling to do minimally acceptably its current task—the substantial new task of regulating tobacco. But I think all of us agree that the right signal is that smoking is bad for you and that it is injurious to your health. Smoking is obviously a choice. But we are trying to send a signal about what we believe and that this Government does not want to encourage you to smoke.

I believe when we consider enacting legislation that gives special standing to a particular category of conduct, that sends a signal that says that that conduct is to be elevated, it is to be approved, it is somehow to have special privilege, then we have to be careful about what we are doing.

There is a debate about whether or not people who are homosexuals are born that way or are genetically programmed that way or that it perhaps is a conduct which they acquire or which they develop. Frankly, I cannot say for sure from a personal perspective that there is no way that there could be individuals who are genetically predisposed. I can't make that determination. I do know that there are thousands of former homosexuals, individ-

uals who once were engaged in a homosexual lifestyle, who have changed that lifestyle and have repudiated it and find themselves to be engaged in heterosexual lifestyles.

So it is clear to me that, while there may be a genetic base for the activity in some respects, it is clear that it is an activity of choice in other respects and that that is a choice which can be made and unmade.

I think when we as a government are signaling an approval, or an elevation, of a lifestyle, we have to ask ourselves to what extent are we suggesting to individuals in the culture that they ought to adopt it.

I am worried about youngsters in our society. I think there are times when young men are unsure about themselves when they are in transition, when they have identified perhaps more with their mothers than with their fathers, and they move from boyhood to manhood. Those are critical times when role models are very important. I think Senator NICKLES was on target when he said that we have to be careful of who we have in the Boy Scouts. I commend the sponsors of this legislation for exempting the Boy Scouts. The sponsors also exempt the military, because I think they recognize the fact that there are sensitive positions where we understand that we wouldn't be confident in having this elevated standing for homosexuals in regard to positions in the military. Colin Powell made it clear when he stood by the gay ban in the military. He said, "Skin color is a benign, non-behavioral characteristic." He said that to distinguish it from homosexual activity. "Sexual orientation is perhaps the most profound of human behavioral characteristics." It is a matter of conduct. Sex is not a matter of conduct. It is a matter of configuration. It is the way in which we are made. Sexual orientation, according to Colin Powell, is a matter of conduct.

I think we ought to be careful of what we are supporting as a government. We should be wary of telling young people that you will have a higher standing, you will have a greater durability on the job, it will be more difficult to fire you, you are likely to have a cause of action if someone fails to hire you, you can sue someone for failing to hire you if you can allege that you are a homosexual—you will not be able to do that, if you have ordinary sexual orientation.

Senator NICKLES, in talking about young people, stated something which I believe; that is, in hiring schoolteachers, or camp counselors, or those who deal with young people, you never just hire a teacher.

You are always hiring more than a teacher. You are hiring a role model. I cannot think of a single teacher in my past who was simply a teacher to me. Whether he or she liked it or not, that teacher was a role model. And I think those who operate organizations that have situations like that are appro-

priately exempted in this legislation. But this exemption should be much broader in this bill. As a matter of fact, to deprive employers of the ability to make those kinds of judgments—as this bill does—in my view, is unwise. I think this bill sends a signal that this is an elevated status. I do not think that is the right signal to send to the next generation.

We all know that in practice, dismissal of individuals who are on the protected class lists in the civil rights laws is very, very difficult.

I believe we ought to have a civil rights law to protect against discrimination based upon race and sex. But I remember a situation when I was Governor of Missouri in which one man operating a laundry fired a black woman from the laundry. She was one of seven black women working in the laundry. She was replaced by a black woman. But she sued alleging that she was fired because she was discriminated against on the basis of both race and sex. I remember that the operator of that particular laundry spent a substantial amount of money defending against that kind of suit.

The truth of the matter is that the establishment of protected classes makes much more difficult the ability of anyone to even use good judgment in hiring and firing because there is always this threat of litigation. The threat of litigation here is not inconsequential. It is not minimal. It is not small. When you get to the place of offering the potential for punitive damages for violation of these kinds of items, you get into astronomical figures.

Shell Oil Co. had a company policy that said it would only use on-the-job activities as the basis for hiring and firing. That is kind of what this law really sets up, saying, we will not allow sexual orientation to be used as the basis for that. Shell found that one of its employees was using the company copier to produce and copy a flier advertising a safe sex party for homosexual men. It said that is not what we want our company to be standing for, that is not what we want to be doing. It fired the individual. A California court fined Shell Oil \$5.3 million for dismissing the executive. It provided that kind of a penalty.

This is the kind of intimidation that occurs, especially when you are in the universe of the macro damages that we frequently see in litigation these days.

This is not the kind of thing we want to invite into our businesses. Senator NICKLES has said very clearly it is not the kind of thing we want to invite into camps for children, into the schools. This law provides a distinction, saying that if schools are religious schools or nonprofit schools, they do not have to abide by it. I think that is right. They understand that there are many legitimate objectives of schools that would be impaired substantially by this. But is the objective of a profitmaking school different than

a nonprofit school? Are the children who go to the school that makes a profit providing the services any less to be protected than the children who go to a school that is nonprofit?

Are the role model considerations any different if the organization makes a profit than if the organization does not make a profit?

If it is my child, do I somehow feel differently because the executive director of the school is a nonprofit guy earning \$100,000 a year driving a nonprofit-provided vehicle, BMW, or a fledgling profit-seeking institution where the guy is barely eking out a living for his family and he is driving a Chevy?

The big distinction in the legislation is one of a profitmaking institution and one a nonprofit institution. For Heaven's sake, I do not care whether they are making a profit. What I care about is what is happening in the outcome. If it is a school that is dealing with young people, if there is a legitimate reason to say that the Boy Scouts should not have to abide by this and the nonprofits should not have to abide by this, why do we impose it on the rest of the world?

If there is a legitimate reason why the U.S. military in the national interest is exempted from this, why is it that it needs to be imposed on the rest of the world?

If it is a legitimate reason to protect the individuals who have the right resources and can send their kids to a nonprofit private school from this proposed law, why is it that the public schools cannot have these same kinds of opportunities to say that we want to send the right signals; we want to hire more than a teacher; we want to hire a role model, recognizing that there may be some who at a tender age would be directed by the role modeling that takes place by teachers and by leaders in scouts and informal organizations and activities. Maybe we would just like to say that even people in the public sector ought to be able to have that right, the school district ought to be able to have that right. It is not as if these things do not happen. And there are things that you wonder about.

Recently, here in the northern Virginia area, there was the young boys' gym teacher who had been making the gay pornographic videos and was discovered to be leading a dual life. On the west coast he was the gay porno video star; on the east coast he was the gym teacher. That is not activity that is perhaps relevant or particularly associated with his school duties, but if my children were in the school I would want to think we would have the opportunity to look carefully at that and perhaps make a judgment that this was not the right kind of role model.

In all that we do in Government, we teach. I believe when we say that something is to be preferred—

The PRESIDING OFFICER. The 15 minutes of the Senator from Missouri have expired.

Mrs. KASSEBAUM. I would be happy to yield 5 more minutes.

Mr. ASHCROFT. I do not think I need but about 2 minutes to close.

Mrs. KASSEBAUM. Whatever time.

Mr. ASHCROFT. I just believe there are areas in this bill that recognize there are legitimate concerns and they throw out a bone here and a bone there—a bone to the Boy Scouts if the Boy Scouts are covered. I am not sure they are. A bone to the religious schools or to the not-for-profit schools but not to the other schools, a bone to the Armed Forces because I guess we do not want to impair the defense of the country but maybe we are willing to put into jeopardy the future of the country. In my view, it is clear that the signal we send in this bill is the wrong signal. It contains seeds of real instability and inappropriate activity, seeds of litigation which could grow way out of hand and send the wrong signals to young people and provide a special standing and class—not based upon existence and construction but upon conduct. Not based upon sex but upon sexual activity.

I thank the Senator from Kansas for the time. I yield the floor.

The PRESIDING OFFICER (Mr. KYL). Who yields time?

Mr. KENNEDY. Mr. President, I yield 5 minutes to the Senator from New York.

Mr. MOYNIHAN. Mr. President, I rise in support of S. 2056, the Employment Nondiscrimination Act. It has been noted on the floor that we are in an honorable succession here, from legislation that has very much defined this period in American national life. We begin with the Civil Rights Act of 1964, in which the prohibition against discrimination based on color was extended to include discrimination based on sex. That was part of the calculation of opponents of the legislation. In the end, both prevailed, with large consequences to our society.

I should think each of us, or almost all of us in the Senate, have been to one or the other of the national conventions of our parties, and have seen an extraordinary range of persons, men and women, black and white, Hispanic and thus-and-so. I do not know how many would recall how strikingly different this would have been, say 40 years ago, when I had the opportunity to be part of the Democratic Convention in the city of Chicago. Seeing photographs and films of it today, you see a different world. It has been changed, and for the better, and agreeably, by legislation enacted on this Senate floor.

The time to extend the prohibition against discrimination based on sexual preference, as the usage is, is surely at hand. For my part, I introduced legislation that would address this matter in terms of employment in 1979. Then, in 1985, this legislation was first introduced. I was a cosponsor. It could scarcely have been said to come about precipitously. It is 11 years, if you like;

17 years, if you prefer, that we have been discussing it.

The simple proposition before us is that no person should be denied civil rights because of his or her affectional or sexual orientation. Federal guarantees against discriminatory practices in employment, housing, public accommodations, and federally funded programs should extend to all citizens. At least, that is how I read the due process clauses of the 5th and 14th amendments, the equal protection clause of the 14th amendment, and the right to privacy implied in the 4th and 5th amendments.

The legislation does not condone any particular course of conduct. It simply affords all American citizens equal protection under the law. It is narrowly drafted to prevent an explosion of litigation. The bill would not apply to the U.S. Armed Forces or to religious organizations. The bill would not affect marriage, adoption, or child custody laws, all of which are determined individually by the States. And the legislation makes clear that preferential treatment and quotas are prohibited, and that no claims will be permitted based upon underrepresentation in a particular work force.

That randomness is to be expected in our society and encouraged, in the sense that people seek what they feel to be the best outlet for their opportunities. It is discrimination that we oppose, which we have legislated against for a generation now. And, as we look about us, we look at the consequences: a degree of acceptance such that you would never know the resistance of a generation ago. You would never know how fierce the opposition was to that which we could not imagine doing without today.

I think this will be the case with the legislation before us. I am proud to cosponsor it.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. How much time do we have?

The PRESIDING OFFICER. The Senator has 12 minutes and 40 seconds remaining.

Mr. KENNEDY. Then I yield 6 minutes to the Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair and I thank my friend from Massachusetts.

Mr. President, If I might begin with what may seem like an elevated, but I think is an accurate, vision of what our work here is as lawmakers, I was trained to believe the law is the expression of our values. It is the way we take our values as a society and put them into a code. It is, in some sense, an expression of our aspirations, our hopes for ourselves and our society. Because we are imperfect beings and we are an imperfect society, we do not always live up to our best aspirations as expressed in the law for ourselves.

In that same sense, the fundamental principles of our country, of our democracy, expressed in the Constitution, were a series of values that over

our history we have realized. We were far from perfect from the beginning, we are far from perfect today, we will be far from perfect even if we pass the nondiscrimination act, which I rise to support, but in each case we have tried to make real, according to current circumstances, the values expressed in our Constitution.

Here, today, I think we are taking—if we can bring together the support for this measure—a next logical step in extending the guarantee of nondiscrimination in employment to people, based on their sexual orientation.

I go back to the source of all our rights as expressed in the Declaration of Independence. We did not base these rights on any political philosopher's thinking. We did not base them on the report of some committee constituted for the formulation of basic rights. We did not base them, certainly, on any piece of legislation. It says right there at the outset that all of us are given these rights—are endowed with these rights by our Creator: The rights to life, liberty, and the pursuit of happiness. Over the 220 years of our history we have come to extend that further and further, appropriately, to groups that were not included at the outset: People of color, women, et cetera, et cetera.

What I want to suggest today is that those who are homosexual are also God's children. I say to my colleagues who may have strong personal feelings about this, one does not have to accept homosexuality, one does not even have to accept its morality, if I can speak in very direct terms, to support this legislation. Going back to the source of all our rights in this country, one simply has to acknowledge that those who are homosexual are also God's children and deserve to be protected from unfairness in our society, particularly from unfairness and discrimination based on sexual orientation in the workplace.

Because what is the driving impulse of this country, that brought my grandparents here, brought so many here? Yes, it was religious freedom, but it was the basic promise that, in America, if you play by the rules and work hard, there is no limit to what you can achieve. That is what title VII is all about. That is what the antidiscrimination in employment laws are all about.

What this measure says is very simple but very profound, and in my opinion goes to the heart of what America is about. If you are homosexual and you work hard and play by the rules, you cannot be discriminated against in hiring, in the status of your employment, in the level of your compensation, in promotion. To me, that seems like a statement of a basic American mainstream value of fairness.

This is now a separate measure before us, a freestanding bill. Originally, though I cosponsored it as a freestanding bill, we were going to introduce it as an amendment to the Defense of Marriage Act. I intend to sup-

port the Defense of Marriage Act because I think that affirms another basic American mainstream value, which is marriage as an institution. The traditional, time-tested vision, occasionally battered but now being restored, hopefully, of marriage as an institution between a man and a woman, the best institution to raise children in our society. But I worry, even though I view the Defense of Marriage Act as an affirmative statement, that we may send the wrong message in adopting it, that it is motivated by antihomosexual bigotry. I think that perception is wrong, certainly among the great majority of my colleagues that I have talked to who are supporting DOMA.

The best way to make that clear is with another affirmative statement, and that is to adopt the Employment Nondiscrimination Act and say: Let us be fair. Let us say to everybody in our country that if you play by the rules, if you work hard, if you contribute to this society, you cannot be punished because of a private decision you have made about your sexual orientation.

I think this is a moment that is historic. Not just in that we are debating this measure on the floor. It is historic in that it embraces the best values that are part of American history.

I urge my colleagues to take a fresh look at this, to look at how limited it is, how much it excludes quotas, disparate impact, religious organizations. And in the fullness of their heart and in the fullness of their belief in the American dream, vote for the Employment Nondiscrimination Act.

I thank the Chair.

Mr. KERRY. Mr. President, I rise in strong support for the legislation offered by my friend and colleague, the senior Senator from Massachusetts. I am an original cosponsor of the Employment Nondiscrimination Act.

Mr. President, this Nation is in debt to the senior Senator from Massachusetts for his consistent and unwavering stance on expanding civil rights for all Americans. For decades, he has fought resolutely against all forms of discrimination and, for that, the Commonwealth of Massachusetts and this country are richer places. I share his conviction that, as public servants, we must do all we can to secure, ensure and uphold civil rights for all sectors of American society.

As any resident of Massachusetts knows, the entire Kennedy family has shaped the latter half of the 20th century with progressive public and social policy. This legacy is so profound in our State that we have all been touched by the generosity and vision of the Kennedy family.

Mr. President, when I was first sworn in as a U.S. Senator in 1985, I authored the gay and lesbian civil rights bill. At that time, only five other Senators would join me as cosponsors of that legislation. In the last session of Congress, I testified before the Armed Services Committee to lift the ban on gay men and lesbians serving in the military.

I agree with Senator KENNEDY that ENDA is a solution to a serious problem. I have heard stories from many Americans who have suffered discrimination in the workplace because of their sexual orientation. It is time for these Americans to have recourse against blatant discrimination, just as Americans who are fired on the basis of their religion, national origin, or gender. Massachusetts is one of the States which has recognized the problems of anti-gay and lesbian discrimination in the workplace and already has an ENDA-like law.

Mr. President, last year, I joined 65 of our colleagues in signing a pledge that I would not discriminate on the basis of sexual orientation in hiring, promotion and firing. Like the majority of our colleagues, signing this pledge came easy to me. I have always had openly gay and lesbian staff and they have served the people of Massachusetts with effective and committed distinction.

I urge our colleagues to live up to the pledge they signed and support this important legislation.

I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I believe I have 6 minutes left. I yield myself 5 minutes.

Mr. President, I want to address, albeit briefly, some of the points that have been raised over the course of the morning.

First of all, why ENDA should be a national law. The National Government has a duty to set national standards of fairness and equality. Not all matters are appropriate for Federal legislation, but over the past 35 years, we have recognized that the protection of civil rights is a basic Federal duty.

Americans are increasingly mobile. They move from State to State. They work for employers with offices in different States and frequently transfer from office to office, and they should be free from unjust discrimination as they travel across the country.

The Federal Government has a duty to protect interstate commerce, and this deals with employment. It does not tell anyone who to be friendly with, but it does say that with respect to employment, which is the heart of this legislation, gay Americans will be protected from overt, direct, and outrageous discrimination. That is it.

Mr. President, we have heard the discussions about the Boy Scouts and about religious organizations. Regarding the case dealing with the Boy Scouts, we are dealing with an individual Boy Scout who refused to pledge allegiance to God, and he was an atheist. That issue was brought to the courts and was decided by the courts that the Boy Scouts are a private organization. That young person lost the case.

This legislation follows what has been declared by the courts in terms of private organizations.

Another question arose regarding religious organizations, profit and non-profit, and whether this legislation should differentiate. We clearly draw the distinction between profit and non-profit, because we draw the distinction as we have in other civil rights laws in protecting religious liberty and religious rights.

The nonprofit business is generally considered to be one which is more directly associated with religious teachings and with religious doctrines. The for profit are more secular in nature. That has been the definition which has been defined by the IRS. It is the same with regard to this particular issue as well. This does not bring up a whole new set of questions.

But beyond all this, Mr. President, I want to conclude with the underlying issues that were brought up by those who have spoken out against this legislation this morning.

Basically, we heard what is going to be the message to the young people of this country. Our message is that you should not discriminate; you should not be part of bigotry in this Nation. That is the underlying theme of this legislation. We are talking about discrimination and bigotry.

This Nation has fought its way through on discrimination on bigotry, on race and gender, and disabilities, and we are saying we ought to be able to go to the next step with regard to gays and lesbians. That is the issue, not providing additional special privilege to a lifestyle. We are talking about discrimination on the basis of bigotry in our society.

Mr. President, I was around here not that long ago when we were making progress on eliminating discrimination. A number of years ago, when we were talking about knocking down the walls of discrimination on race, some said, "Well, blacks don't work hard." "Blacks are lazy." "Blacks aren't competent." "They're different." "Why do we need to provide any kind of protection for them?"

Well, we did. We do not even hear a dispute about that particular issue at this time.

Then we had the issue about protecting women. "Women are weak." "Women belong in the home." "Women are not smart enough." "Why should women be involved in athletics?"

We passed title IX, and we all celebrated when they got gold medals in basketball and softball. And so the success of our magnificent women Olympians, our gymnasts and others in these last Olympic Games makes us proud. No one is making those arguments anymore.

We have seen the discrimination on the basis of mental illness. Last night, we took an important step that we had been unwilling to take until now in saying, at least in part, that mental illness is not a stigma and, in many cases, it is as serious as cancer and heart disease.

It ought to be considered that way. We took a partial step last night. We

freed ourselves from the old cliches that there is something strange about people who have mental illness. We have done the same with people who have disabilities. We took steps to do it. We do not hear it today on the floor of the United States that those are now all mistakes. Now everybody agrees with those.

The PRESIDING OFFICER. The Senator has 1 more minute remaining, and the Senator from Kansas has 17½ minutes remaining.

Mr. KENNEDY. I ask for 5 minutes more.

Mrs. KASSEBAUM. I have no problem extending the time.

Mr. KENNEDY. I ask unanimous consent for 5 minutes on each side.

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

Mr. KENNEDY. Mr. President, now we have the stereotyping of gays and lesbians as child molesters; everyone who is gay can't wait to get their hands on a young child. And we are stereotyping it for one more time.

I thought we knew better than that. Some Members start out with the speeches, "Well, I know gays and lesbians, and they are wonderful people, but do we really want them around our children?"

We know we have laws out there with regard to molestation and about violating children, whether they are homosexual or heterosexual. We know, quite frankly, that in any State school system, they provide the same kind of dress codes for heterosexuals, gays or lesbians. Those will be enforced. We know if a gay man or lesbian appears in a pornographic movie, they will be fired, and so should a heterosexual.

Nonetheless, we hear those voices out here saying, "Well, there is something really off on all these individuals," again playing to the stereotype.

Mr. President, when we play to that, we are perpetuating bigotry. It is mean-spirited, it is a cheap shot—cheap shot.

But we are going to hear more of it during the continuing debate on anything to do with gays and lesbians or anyone with HIV. You are going to hear cheap shots, and those are in the spirit of intolerance, which divides America and creates an atmosphere that I believe encourages discrimination in this country. We are trying to free ourselves from discrimination and prejudice and bigotry and free ourselves from that kind of stereotyping which just adds to it.

That is basically what this is about. It is not about penalties. It is not about proliferation of court cases. It is not about statistics. We have addressed those issues, and we will provide additional information on Monday afternoon.

There is a more fundamental and basic question. It is whether we are going to be a nation that is going to be mean-spirited and stereotype our fellow citizens, or whether we are going to say that we are going to free our-

selves on the issue of discrimination in the workplace. That an individual who wants to work and can do the job is going to be able to hold that job and not be fired because they are gay. We must end the tradition of viciousness and discrimination directed toward gays and lesbians.

I hope we will pass this legislation. I thank the Chair.

Mr. HATCH. Mr. President, while the proponents of this bill have tried to minimize the potential impact of the bill, the fact is that, if it passes, the public and private employers of America subject to title VII will face the juggernaut of the Federal enforcement machinery. Anyone who contends that this bill will not result in a litigation boom is not paying attention to the caseloads at the EEOC and Department of Justice.

Let me say, once again, that equating opposition to this bill with opposition to civil rights measures for racial and ethnic minorities and women is totally unfair and serves only to divert attention away from the ramifications of the bill before us, which I described in my opening remarks. Moreover, it equates conduct with immutable characteristics. I think General Powell's comments, which I also cited earlier, on this equation are well worth considering.

Some proponents of this bill bundle off concern by parents and educators about role models in the schools as nothing more than bigotry. But no answer was voiced to the examples I mentioned earlier about a heterosexual male teacher publicly displaying physical affection for a spouse or girlfriend, and a homosexual teacher publicly displaying physical affection for a male partner. Should Congress force a school district to treat both teachers the same? The proponents of the bill say yes. I say no.

The supporters of the bill can offer bland assurances about whether the bill authorizes the EEOC to collect data on the sexual orientation of an employer's employees. They can claim the bill does not talk about statistics, but that is very misleading because the bill cross references title VII in so many ways. Section 11(a)(1) of the bill gives the EEOC "the same powers as [it] has to administer and enforce title VII of the Civil Rights Act of 1964. * * *" Under title VII, the EEOC requires a number of employers to provide data on the race, ethnicity, and gender of employees. Therefore, this bill empowers the EEOC to require employers to provide data on the sexual orientation of employees, plain and simple. And, these statistics and evidence of so-called underrepresentation can be used in cases of intentional discrimination.

With respect to this bill's incorporation by reference of title VII's remedial scheme, including section 706(g) of title VII, see section 11(a)(5), I say again that the Supreme Court has allowed courts to impose preferences as remedies in some cases until title VII. The

courts will have the same power under this bill. The Attorney General's ability to enter into consent decrees which encompass preferences, along with the ability of private parties to do so, under title VII has been set forth in Supreme Court precedent, however much some of us may disagree with those decisions. This bill provides for the same results. [Sections 11(a)(4) and 11(b)].

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. I yield the Senator from Georgia 5 minutes.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. COVERDELL. Mr. President, I rise in opposition to the proposal before the Senate that is offered by the distinguished Senator from Massachusetts. I think he could find it in himself to concur that a person that might be opposed to this does not necessarily constitute mean-spiritedness. I think that my record as an employer and as a director of a Federal agency would suggest otherwise. And I do not think the discourse over the matter should bring itself to people being, for or against it, mean-spirited or vicious or whatever.

I believe this act sets the stage for an enormous expansion of Federal power over employers. The bill virtually guarantees an avalanche of costly litigation which could hurt small businesses most of all. The bill forbids discrimination on the basis of sexual orientation, which it defines to mean homosexuality, bisexuality, or heterosexuality, whether such orientation is real or perceived.

No one knows what this language means. This definition is brand new in the law. Lawyers are going to litigate over what constitutes homosexuality, or heterosexuality, bisexuality. The bill does not make these terms clear. And until they are clear, employers are in danger of being sued and face enormous claims for damages and Government interference in running their businesses.

The bill gives the EEOC, the Attorney General, and the Federal courts power to impose fines and issue decrees having to do with sexual orientation. Supporters say this bill will not lead to quotas for homosexuals. But we have heard this before. And we are in a national debate about affirmative action and quotas and the like.

The Supreme Court is having to struggle with these very issues at this moment. This bill is based on and tied to the provisions and remedies of title VII of the Civil Rights Act. It gives the courts the same powers in regard to discrimination on the basis of sexuality that they have in the area of race. Even laying aside the question of whether you can equate homosexuality with race or should, look at the results.

In the area of race discrimination, we have seen the imposition by courts and

bureaucrats of racial quotas. We will see the same thing if this bill passes, creating a special, protected class of citizens in America with quotas and even reverse discrimination based on sexuality. This bill makes sexuality an issue where it has never been an issue before.

Currently, most employers, gratefully, do not know about their employees' sexual orientation and do not care, and should not. This bill will put an end to that, disrupting the privacy of employees and employer-employee relations. At a time when we are, as a society, questioning the value and effects of affirmative action programs, we should not be creating a new special category of citizens, a special class of citizens that will be a new basis for a new round of quotas and litigation.

Mr. President, I want to refer to a specific case in particular. In Seattle, a CPA referral specialist, Bryan Griggs, laid off all of his small staff except his wife in 1994. One employee later charged Mr. Griggs with discrimination and sexual harassment under Seattle's gay rights law even though Mr. Griggs did not know the man involved was a homosexual. But before he cleared his name, Mr. Griggs spent thousands of dollars defending himself. I just repeat, Mr. President, this is the kind of activity for which this legislation sets the stage and for which I would encourage all Members of the Senate to thoughtfully consider.

In light of our current experience with affirmative action, national quotas, et cetera, I think, on balance, Senators should join with myself, Senator NICKLES, and others in opposition to the bill.

Mr. President, I yield back whatever time of the 5 minutes I have to the manager of the bill, and thank her for granting me this time.

Mrs. KASSEBAUM. Mr. President, I yield 10 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I want to thank our colleague from Georgia for his statement. He mentioned the fact that he was an employer and he did not ask questions in the past concerning people's sexual orientation. I have been an employer. I never asked that question. I do not want to ask that question. I am afraid if this bill became law, you would have to ask that question.

Looking at the statutes under title VII, it talks about the power of the EEOC to conduct investigations under section 2000e-8. It basically says: "Every employer, employment agency * * * subject to this subchapter shall"—not "may"—"shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or orders thereunder." And so on.

In other words, the EEOC is going to say keep records. They now have to keep records. Employers have to keep records on their employment practices, on people they hire, on their race, on their sex, on their gender, and now we would include sexual orientation.

What does that mean? It means employers are going to have to ask their employees, "What is your sexual orientation? Are you a heterosexual, homosexual, or bisexual?" I can envision some of the people I used to work with in a particular machine shop, and you might be punched out for asking that question. I mean, that is really none of your business. And yet, now the Government would be asking, I believe in compliance with this EEOC, to keep those records.

Sponsors of this bill will say, well, we do not have quotas, but frankly the records, I think, are going to be asked for. I think that is very intrusive. Then are you going to ask somebody, wait a minute; we found out here you have 100 employees and nobody said that they were homosexual because maybe that would not be well received in the particular place of employment. Maybe that is not true. Are you going to go back to people and say, wait a minute; we want you to tell the truth because we are afraid we might be sued, and we have to prove we have people that are homosexual or bisexual, in other words, to prove we were not discriminating.

So you are going to ask people again, wait a minute; we heard you are * * * This is very intrusive, big Government coming in, meddling in areas that it has no business asking questions about, it should not be asking about. I hope our colleagues are aware of it.

I want to touch on the Boy Scouts. Sponsors of this bill have said, that they are excluding the Boy Scouts. Boy Scouts have been sued without this bill becoming the law, without sexual orientation being added to the civil rights statutes or protections. They have been sued because of their policies, because they did not want to have open homosexuals as Scoutmasters. That is present law, a present suit. They spent hundreds of thousands of dollars. You have a lot of organizations that maybe are not the Boy Scouts but also work with young people that would like to maintain a similar type of policy of having role models that are not avowed or open homosexuals or bisexuals and yet they would be sued.

One comment, on exempting Christian organizations. This bill does not exempt Christian for-profit organizations. If you have a Christian bookstore and you are trying to sell something in Scottsdale, AZ, sell books in your Christian bookstore, and you have somebody come in that is openly gay, maybe it is written on their T-shirt or somehow it is very much communicated and you do not want to hire them, you are subject to suit. You can be sued not only for compensatory damages but for punitive damages. The

big hand of the Federal Government will come in and say, "Mr. Employer of XYZ Christian bookstore or Jewish bookstore, you must employ this person even though their sexual orientation is very contradictory to your personal and religious convictions. You must employ them or you can be sued." I find that very offensive. I hope we will not go so far as to do that. I am afraid that is exactly what we would do if we pass this bill.

I understand some of the motivation that some of the people have. I think this debate has been conducted very well. I just want to say that people who oppose this legislation I do not believe are bigoted. I think they are trying to protect an individual's right to protect their religious convictions and organizations—organizations like the Boy Scouts, organizations like a cheerleading camp or a children's camp or a day care center, or Christian bookstore. We want to at least protect their right that if they want to make sure they have role models who are not bisexual or openly homosexual amongst kids and so on, they would have the right to have that and maintain their policies, without the big hand of the Federal Government coming in and saying, "No, you are subjected to not only compensatory damages but punitive damages and all the legal fees that would come with that."

I urge my colleagues when we vote on Tuesday to please vote "no" on this legislation. I yield the floor.

Mrs. KASSEBAUM. Mr. President, I yield 3 minutes to the Senator from Missouri.

Mr. ASHCROFT. I am pleased to return to the floor to add a note to the discussion which has continued since I left the floor. There has been further debate about how the bill exempts organizations like the U.S. military, and exempts, properly so, I think, private schools, and it attempts to exempt the Boy Scouts.

Since I pointed that out and said basically I thought those were good exemptions, I thought the same reasons for exempting them should exempt the rest of the culture. Why impose something that would threaten the Boy Scouts or threaten the U.S. military, or threaten private nonprofit schools? Why impose those kinds of things on the rest of the culture?

After I left the floor the allegation was made that the arguments against this bill flowed from bigotry and could be characterized as cheap shots because we would exempt the entire culture. I guess I just have one question to ask: If it is bigotry to exempt the entire culture, is it small-time bigotry to exempt the Boy Scouts? Is it small-time bigotry to exempt limited portions of the culture? In my judgment, it is not. I think it is a mistake to suggest it is bigotry to oppose this bill.

I think that there are real problems with the underlying principle of this bill, and that those problems are understood, and as a result we attempt to

exempt organizations like the Boy Scouts. We exempt the U.S. military because we do not want to subject it to some of the problems that would attend its application. I think those of us who oppose this bill are not bigots or taking cheap shots or cheaper shots. If it is a cheap shot to exempt the entire culture, it must be something of a cheap shot to exempt part of it. We are not really saying we want to take a cheap shot. We are saying this is not the way for us to move forward.

I believe the framers of the legislation were right in their attempt to avoid the imposition of onerous, counterproductive regulation on a good bit of our culture—private schools, nonprofit, Boy Scouts, the U.S. military. We can ill afford to do things that impair their mission or their capacity. I think they were right in doing so. For those of us who would have a broader exemption, who believe it would be counterproductive overall, I think we are arguing from good faith and in the best national interest. That is a point which I think deserves to be made. It can be contradicted but I do not think it will be refuted.

Mrs. KASSEBAUM. Mr. President, I yield myself 5 minutes.

Mr. President, I have spoken earlier about concerns I had with this legislation. I agree with the Senator from Missouri. I think one can oppose this legislation and not be thought of as being bigoted or, I suggest, creating stereotypes, because I think there are some very troubling aspects of this bill. The subject of this bill is, in many ways, not easy to define.

Let me suggest that there are several points that have been raised here today in the course of the debate. One, I do believe it will lead to prolonged litigation where there are punitive and compensatory damages involved that could further divide the workplace. I do not believe it furthers what we would most like to occur—a tolerant and understanding workplace. Second, there is a question about how this law would impact affirmative action requirements. And third, how it will impact on the strongly held views of employers or employees?

I guess what we are really trying to decide here is how far we can go by legislating what employers should or should not do when it comes to firing and hiring. I do not think we can answer that easily by legislation. I frankly believe, as I said before, that I think every single one of us deplores discrimination. We should not stereotype anyone. I do not think that we are.

However, I do believe that there are legitimate concerns about the consequences of this bill that lead me to oppose the legislation before the Senate. I think there are better ways to promote tolerance. I suggest, also, Mr. President, that I think it is very important for us to respect differing viewpoints in the process and to continue to hold respect for all individuals. I believe we can hold these views. I believe

we can be respectful of differences and still oppose this legislation.

As we consider the aspects of the debate that we have heard here this morning, when we vote on Tuesday, I urge those who are uncertain about how to vote, even though there have been arguments that have been made on the other side that have shown where States have had this legislation in place, very few cases have been brought. As the Senator from New York, Senator MOYNIHAN pointed out, and Senator KENNEDY as well, to have legislation imposing requirements in order to open doors—indeed, this is a different type of situation and we need to think carefully about what it may lead to in the future.

I would suggest there may be some different and better paths as we look at the consequences of litigation on firing and hiring practices.

For these reasons and the concerns I believe that exist, I urge all Senators who have some doubts about this to oppose this legislation.

I yield back any time remaining, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. COVERDELL. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. COVERDELL. Mr. President, it is my understanding that, for the next hour, time designated is under my control and/or my designee.

The PRESIDING OFFICER. The Senator is correct.

TAX RELIEF

Mr. COVERDELL. Mr. President, as we have heard, there is a great national debate in the making with regard to the anxiety in the American workplace, anxiety particularly among middle-class working Americans. I have often talked about a snapshot of an average family in Georgia that makes about \$40,000 to \$45,000 a year. Several months ago, when I took the snapshot of that family—a family of four, with both parents now working, with two children—we added up the Government obligations that that family had to pay, the total cost of Government. At the end of the day, they had 48.2 percent of their gross wages left.

I can think of no institution, including Hollywood, that has had a more profound effect on the behavior of middle-class America than their own Government. This morning, I have just been given data that show that now they only have 47 percent. Just in the last 12 months, they continue to lose the power of the wages and the independence of what those wages mean to that family.