Senate

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

PRAYER

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

Let us pray.

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

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

We pray in Your powerful Name. Amen.

PLEDGE OF ALLEGIANCE

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

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

To the Senate:

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

TED STEVENS,
President pro tempore.

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

RESERVATION OF LEADER TIME

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

MARRIAGE PROTECTION AMENDMENT—MOTION TO PROCEED

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

RECOGNITION OF THE MAJORIT Y LEADER

The majority leader is recognized.

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

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

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

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

RECOGNITION OF THE MINORITY LEADER

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

VOTING

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

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

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

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

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

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

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

We have heard moving speeches, and I do not doubt the sincerity of the speakers, about the central role and volume of time we are in our society. What I still do not understand, and what the supporters of the amendment have failed to demonstrate, is why we should prevent States from deciding to open this institution to men and women who happen to be gay and lesbian all over the country.

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

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

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

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

The ACTING PRESIDENT pro tem, The clerk will call the roll. The bill clerk proceeded to call the roll.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded. Without objection, it is so ordered.

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

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

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

The ACTING PRESIDENT pro tem, The clerk will call the roll. The bill clerk proceeded to call the roll.

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

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

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

The PRESIDING OFFICER. There is 14½ minutes.

Mr. BROWNBACK. I ask when 7½ minutes have been used, I be informed. The PRESIDING OFFICER. The Chair will inform the Members so.

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

I want to show my colleagues an outdated map. It shows the number of States that have weighed in on the topic of marriage. Yesterday, Alabama voted by a margin of 21,320 to 81,365 to define marriage as the union of a man and a woman.

The dark green States are those that have already passed; light green are those where it is pending, and only five States have not defined marriage as a union between a man and a woman. So if we do not represent their States, this amendment would pass 90 to 10. It would pass with the definition of marriage as the union of a man and a woman. And if anybody wants to define it otherwise, it will have to go through the State legislature, not the courts.

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

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

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

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

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

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

I have shown a number of charts demonstrating that the best situation for our children to be raised is in a home with a mother and father. Children need these two parents. It is not
that you can’t raise good children in a single-parent household: you can. Many struggle heroically to do so. Yet we know from all the data that the best place is with a mother and father. Children do best academically and socio-culturally when they are raised by two people who provide something, each differently, but that is very important.

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

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

Life hasn’t always been easy for them. There have been difficulties through time. They have had some hardships, working together. My father-in-law has done very well, served as Senator from Kansas for his leadership, courage, and for standing in support with me of marriage.

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

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

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

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

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

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

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

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

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

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

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

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

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

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

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

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

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

Neither this nor any other constitutional amendment will not be enacted by the Senate? Nobody believes it will receive the 67 votes that are necessary for approval. So if my State of Illinois decides to establish a domestic partnership law and say that two people of the same gender can live together and share health insurance and can be in a relationship where there would be a guarantee they would have access to visit one another in times of hospitalization and sickness, where property rights could be established, is that a legal incident of married life? Most people would say yes. Clearly, this language says it would be prohibited. So what would it look like if we go far beyond the concept of marriage. We have to take care not to put language in this Constitution that will come back to haunt us.

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

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

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

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

This debate is not about the preservation of marriage. This debate is about the preservation of a majority. The Republican majority believes that if they can bring these issues which fire up their political base to the floor, they will have better luck in the November election. So at the risk of dividing America, at the risk of putting on a show that Americans could not stand the test of time, they will take the time of the Senate and engage us in this debate. That is unfortunate when you think of so many other things we should be dealing with. Wouldn’t it have been a great week to deal with energy policy and reducing our dependence on foreign oil, to make America less dependent upon the Middle East and the foreign powers that push us around because we need their oil to propel our economy? Would this not have been a perfect week to debate affordable and accessible health care for every single American? Would this not have been a perfect week for us to decide what in the 21st century we need to do to make our schools prepare our citizens to continue to lead in this world? Would this not have been an important week for us to come together and have a meaningful debate on the war in Iraq which has claimed 2,476 of our best and bravest young men and women?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the State of Kansas, the former Republican State chairman has decided to become a Democrat. He said he was tired of the culture wars the Republican Party tended to always want to fight. We saw it here in the Congress last year when the House Republicans were in trouble and they brought up the tragic case of Terri Schiavo—an invasion of the Federal Government into the most personal, private decision a family could face. Now, again, facing political difficulty, they bring up this invasion of the Federal Government into our country? Instead, we have the gay marriage amendment.

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

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

The language of the proposed constitutional amendment contains a number of other problems. The amendment reads “Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage be defined to include same-sex marriages.”

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

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

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

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

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

You might ask yourself, why now? What’s the constitutional crisis that needed to be addressed this week? Did the Republicans lead this legislation to the floor in response to a marriage crisis in the United States? States, which have had the responsibility of setting marriage laws for two centuries, have taken action on gay marriage as they’ve seen fit. No crisis there.

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

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

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

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

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

In the past, we have amended our Constitution to protect groups of citizens from discrimination. I strongly oppose any effort by the Senate to change the course of history in such a dramatic way, and I particularly resent that this is being done for raw political purposes.

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

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

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

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

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

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

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

In 1996, the Defense of Marriage Act was passed by the Congress and signed into law. The law gave the State the power to determine its own marriage laws and not be forced to accept another State’s definition of marriage. I voted in favor of the Defense of Marriage Act because I believe in the importance of this law. In Vermont, the right to define marriage in a manner they deem appropriate. As of this date, no court has overruled the Defense of Marriage Act. In fact, the courts that many of my colleagues consider to be the most liberal, the Ninth Circuit, has upheld the Defense of Marriage Act. The proponents of a Federal marriage amendment also point to a case in Nebraska, Equal Protection Inc. v. Bruning, to prove their point. But that case addressed the right of people to petition the government, it did not rule on the definition of marriage. Because the Defense of Marriage Act remains the law of the land, each State retains the right to define marriage as it sees fit rather than have a definition forced upon it.

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, first of all, let me say this has not really been my issue. We have been involved in some other things, but it is one about which I cannot remain silent.

I have to say I am probably the worn-out person to talk about the marriage amendment for a couple of reasons. One reason is I am not a lawyer—one of the few in this body who is not a lawyer. However, I have to say sometimes that gives you a better insight into these things than if you are. I have to say sometimes that gives you a better insight into these things than if you are a lawyer. I have to say sometimes that gives you a better insight into these things than if you are a lawyer.

When you look at the history of this issue and the people who support this kind of amendment, it is a distaste—you can see way back in the founding days that the marriage institution is one of the very basic values on which this country was based. Way back in 1878, Reynolds v. United States which upheld the constitutionality of Congress’s antipolygamy laws, also recognized that the one-man/one-woman family structure is a crucial foundational element of the American democratic society. Thus, there is a compelling governmental interest in its preservation.

That was 1878. That wasn’t just the other day. Yet 3 years ago this month,
the U.S. Supreme Court signaled its likely support for same-sex marriage and possibly polygamy and Federal jurisdiction over the issue when it struck down the sodomy ban in Lawrence v. Texas. That happened only 3 years ago this month. The majority opinion overturned the proponent’s appeal in the 14th amendment of the Constitution to protect that.

Then they declared—this is significant—they declared: [P]ersons in a homosexual relationship may ask for these purposes, just as heterosexual persons do.

In his dissenting opinion, Justice Scalia stated:

The reasoning leaves on pretty shaky grounds state laws limiting marriage to opposite sex couples.

That is really much of a concern, when a member of the U.S. Supreme Court agrees with my interpretation as to what that particular interpretation meant.

Now we face a serious problem. Looking at the various States, right now we have 45 States that have passed laws, statutes, or have passed constitutional amendments to their State constitutions that would do away with gay marriages. Let me mention something that has been mentioned quite enough in this debate. A lot of people are not as emotional about this issue as I am. For those who are not, if you look at the numbers, look at what is going to happen in this country if we follow some of these countries such as the Scandinavian countries. In those societies, they have redefined marriage. In Denmark, as well as Norway, where they have now had same-sex marriages legalized for over a decade, things that are happening in terms of the society—it has nothing to do with emotions.

According to Stanley Kurtz’s 2004 article in the Weekly Standard, a majority of children in Sweden and Norway are born out of wedlock.

Kurtz says:

Sixty percent of first-born children in Denmark have unmarried parents.

That is in Denmark. Not coincidentally, these countries have had marriage close to full gay marriage for a decade or more.

Stop and think. What is going to be the result? The result is going to be very expensive. Many of these kids are going to end up on welfare, so it goes far beyond just the current emotions. I think my colleague, Senator Sessions, I believe it was yesterday, said: If there are not families to raise children, who will raise these children? Who will take responsibility? It will fall on the State. Clearly it will become a State responsibility.

I am not sure. I have listened to many of my colleagues, for whom I have a great deal of respect, talk about some of the ways the language should be changed. Should we do anything more, or does it fall on the lawmakers to accomplish something or avoid another problem.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. INHOFE. I ask if I could have a minute and a half more?

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

Mr. INHOFE. Maybe this isn’t worded exactly right. But this is the only show in town. It is the only opportunity that we have. As we talk about it again, I said maybe I am the wrong person to talk about this. I was talking to my brother, Buddy Inhofe, down in Texas. He is a Texas citizen, I say to my friend from Texas over here. He and his wife Margaret—he is 1 year older than me—I am—they have been married for 53 years. Every time they have a wedding anniversary, it is just like getting married again.

As you see—maybe this is the most important prop we will have during the entire debate—my wife and I have been married 47 years. We have 20 kids and grandkids. I am really proud to say in the recorded history of our family, we have never had a divorce or any kind of a homosexual relationship. I think maybe I am the wrong one to be doing this, as I come with such a strong prejudice for strong families.

When we got married 47 years ago, there were a couple of things that were said. In Genesis 2:24 it is said:

Therefore a man shall leave his father and mother and be joined to his wife, and they shall become one flesh.

Matthew 19 says:

Have you not read that He who made them at the beginning made them male and female, and for this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh? So then, they are no longer two but one flesh.

I can assure you that these 20 kids and grandkids are very proud and very thankful that today, 47 years later, Kay and I believed in Matthew 19:4, that a marriage should be between a man and a woman.

Thank you for an additional time.

Mr. BURNS. Mr. President, I am generally hesitant to amend the Constitution; there are few things as permanent as a constitutional amendment, and it is something that clearly should not be done lightly. However, when activist judges have taken it upon themselves to decide what should constitute marriage, by now, we are all well aware of the actions taken by the judges of the Supreme Court of Massachusetts. In that State, the court essentially mandated same-sex marriage. More recently, a Federal district court invalidated a Nebraska constitutional amendment protecting traditional marriage that had earlier been adopted with over 70 percent approval by Nebraska voters. As we debate this amendment, legal challenges are currently being brought against democratically approved traditional marriage laws in nine States. I fear it is only a matter of time before similar challenges are brought against the marriage protections approved by the voters of Montana.

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

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

We do this, allegedly, in an attempt to uphold the institution of marriage in this country. We do this despite the fact that for over 200 years, Americans
have been defining and defending mar-riage on the State and local level with-out any help from the U.S. Constitu-tion at all.

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

Now, I realize that for some Amer-i-cans, this is an important issue. And I should say that, personally, I do be-lieve that marriage is between a man and a woman.

But let’s be honest. That is not what this debate is about. Not at this time. This debate is an attempt to break a consensus that is quietly being forged in this country. It is a consensus be-tween Democrats and Republicans, lib-erals and conservatives, red States and blue States, that it is time for new leadership in this country—leadership that will stop dividing us, stop dis-appointing us, and start addressing the problems facing most Americans.

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

We all know that if this amendment were to pass, it would close the door on the lives of many gay Americans. This is not what the majority of the American people want. And this is not about trying to build consensus in this country; it is not about trying to bring people together.

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

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

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

There is plenty of work to be done in this country. There are millions with-out health care and skyrocketing gas prices and children in crumbling schools and thousands of young Amer-i-cans risking their lives in Iraq.

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

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

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

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

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

When the Senate considered this amendment in July 2004, the Massachu-settas Supreme Court had only recently issued its 4-to-3 decision in the Goodridge case. I urged that we should not overreact to the single decision of a State court and rush to amend the Constitution in such a way as to strip away from our States a power they have exercised, wisely for the most part, for more than 200 years. I also op-posed efforts to amend the Constitu-tion on an issue that, based on evidence suggesting that States could not be trusted to make de-cisions in this area for themselves.

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

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

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

This does not mean that Congress can play no role in this area. To the contrary, Congress has two very impor-tant roles. The first is to protect the right of each State to define marriage according to its own jurisprudence, and the second is to define marriage for Federal pur-poses.

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

Even though DOMA has not been suc-cessfully challenged by the courts as it was 2 years ago, that no State law has been enacted to allow same-sex couples to marry. Nor has there been any referendum to that effect passed in any State.

I reject that argument. The conclu-sion that DOMA is inevitably destined to die a constitutional death is incon-sistent with language in the Lawrence decision. In striking down a Texas statute criminalizing certain privately sexual acts between consenting adult homosexuals, the majority opinion written by Justice Kennedy was careful to note that the decision did not involve “whether the Govern-ment must give formal recognition to any relationship that homosexual per-sons seek to enter.”
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In her concurring opinion, Justice O’Connor was even more explicit when she observed that the invalidation of the Texas statute “does not mean that other laws distinguishing between heterosexuals and homosexuals would similarly fail. Unlike the Texas statute, its disapproval of same-sex relations—the asserted State interest in this case—other reasons exist to promote the institution of marriage beyond mere moral disapproval of an excluded group.” This statement made it clear that the Supreme Court is, in fact, unlikely to strike down DOMA. In fact, in August 2004, a Federal bankruptcy court in Washington State ruled to uphold the constitutionality of DOMA, finding that there was no fundamental constitutional right to marry someone of the same sex.

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

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

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

This amendment is about politics; it is not about strengthening families. It is about helping Republicans get reelected. If Republicans were serious about helping families they would focus on jobs, health care, the raising cost of energy, and the cost of college tuition. This proposed amendment does not create one new job, pay for one bottle of prescription drugs, lower prices for gas, get one child out of poverty, or send one child to college. This amendment does not help a family pay for the health care of a sick child. It does not make sure that the parent of that child has a job with health care coverage. What it does is divide. Americans don’t want to see this divisive debate as part of this year’s elections. It is a dangerous distraction; it is an election year ploy. What do the American people want? They want to see how the Congress is fighting to make families stronger and safer. They want to see how we are standing up for all families. Families are stronger when we create jobs, control the costs of health care, and when we make sure that kids and schools have the resources they need to learn and grow.

First, I will vote against this amendment because it is unnecessary. Congress has already spoken on the issue. There is a Federal law and a State law in Maryland that defines marriage as between a man and a woman. I supported the Federal law because it allows each State to determine for itself what marriage means in its own State law. And no law—not a Federal law, not a State law—can force a church, temple, mosque, or any religious institution to marry a same-sex couple.

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

Largely because I believe so strongly in preserving West Virginia’s ability to legislate in this area, I have been, and continue to be, an ardent advocate of the Defense of Marriage Act, DOMA. This law, which was passed by a bipartisan majority of the U.S. Congress and signed into law in September 1996, makes it clear that no State, including West Virginia, is required to give legal effect to any same-sex marriage approved by another State. DOMA also defines marriage for Federal purposes as being “a legal union between one man and one woman as husband and wife,” and a spouse as being only “a person of the opposite sex who is a husband or a wife.” I strongly endorse the principles codified by DOMA. Not surprisingly, in 2000, West Virginia enacted its own law against same-sex marriage, similar to DOMA. Thus, title 48 of the West Virginia Code now precludes the State of West Virginia from giving legal effect to unions of same-sex couples from other jurisdictions.

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

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

Mr. ENZI. Mr. President, I rise in support of S.J. Res. 1, the Marriage Protection Amendment. This important legislation, which was introduced by my distinguished colleague from Colorado, is simple and straightforward. It amends the U.S. Constitution to clearly define marriage as the union between one man and one woman.

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

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

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

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

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

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

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

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

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

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

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

Mr. President. The proposed Marriage Protection Amendment deals with the guarantee of equal protection—the union of a man and a woman. Forty-five States currently have statutory protection for that very definition of marriage—all but Massachusetts, New Jersey, New York, Rhode Island, and Connecticut. Only four States had such statutory protection 12 years ago. The American people have made their wishes known to their State legislators—they are clearly and overwhelmingly for protection of marriage as we have always known it.

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

Mr. AKAKA. Mr. President, I rise today to oppose S.J. Res. 1, the Marriage Protection Act, because any change to an institution as fundamental to our society as marriage should be made by the people, not by the activist judicial process. As mentioned, the amendment process, being the closest process we have to a national referendum, is the best way for the people to speak on this important issue.

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

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

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

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

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

Every time there have been given the opportunity, the American people have strongly supported a traditional definition of marriage—the union of a man and a woman. How can we be certain that the American people support this definition of marriage? By using the ultimate democratic tool: the constitutional amendment process.
believe that, as government leaders, it is our responsibility to protect individual liberties, not to take them away or restrict them. The Marriage Protection Act also underlines the numerous Supreme Court decisions that have underscored individuals’ right to freedom from government interference with regard to their personal lives. The Supreme Court has repeatedly reaffirmed that the Constitution protects an individuals’ fundamental right to make decisions regarding private matters such as marriage and family. The Marriage Protection Act would go a long way toward eroding these constitutional guaranties to the right to privacy.

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

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

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

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

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

So who is right? Is the fate of Catholic Charities of Boston an aberration or a sign of things to come? Some say we are overreacting, but the truth is that while the ramifications continue to be debated, a potentially destructive precedent is being set. The protection of religious liberty is going to become a point of conflict.

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

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

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

Like many States, Massachusetts requires that an entity be “licensed” by the State in order to do adoptions. And to get the State license, the entity must agree to obey State laws barring discrimination including in Massachusetts the prohibition on discrimination based on sexual orientation. When the Massachusetts Supreme Court legalized same-sex marriage, discrimination against same-sex couples was also prohibited. These requirements juxtaposed with Catholic doctrine put the Catholic Church-affiliated Catholic Charities from the Massachusetts legislature.

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

Some say that the rightwing is pushing to pass this amendment, but I take you back to the scholars from the Becket Fund convened a group of scholars to discuss the implications of same-sex marriage on religious liberty. This group was from all parts of the political spectrum and had varying viewpoints, but all agreed on one thing—the legalization of same-sex marriage posed a real threat to the free exercise of religion.

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

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

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

Like many States, Massachusetts requires that an entity be “licensed” by the State in order to do adoptions. And to get the State license, the entity must agree to obey State laws barring discrimination including in Massachusetts the prohibition on discrimination based on sexual orientation. When the Massachusetts Supreme Court
racial discrimination and the differentiation of traditional and same-sex marriage, saying that racial discrimination is "irrational, and morally repugnant" and the issue of same-sex marriage is "at least morally debatable." Doug Laycock, a religious liberty expert at the University of Texas law school, noted that the legal situation is a long way away from equating sexual orientation with race in the law. However, Stern and Feldblum were much more clear on the coming legal issues that religious organizations will face in the wake of same-sex marriage.

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

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

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

A religious educational institution could lose its tax-exempt status because of religious discrimination. For example, Marc Stern is concerned about a California case where a private Christian high school expelled two girls who according to the school announced they were in a lesbian relationship. Will the schools be forced to tolerate both conduct and proclamations by students they believe to be acting in a sinful manner?

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

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

And there are probably a plethora of other areas of friction that will emerge. Will speech against same-sex marriage be allowed to continue unfettered? Will anyone be able to again say that marriage should be between a man and a woman without being branded a bigot?

Will a minister be able to preach from I Corinthians 6:9 that the unjust and immoral such as adulterers, prostitutes and sodomites will not inherit the earth? Will our local Catholic Charities lose their tax-exempt status if they do not bend their religious faith to the new norm? Will a rabbi or priest be forced to preside over same-sex marriages in order to continue to be able to consecrate traditional marriages?

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

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

Mr. President, I yield the floor.

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

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

The ACTING PRESIDENT pro tempore. One minute 43 seconds.

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

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

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

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

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

The ACTING PRESIDENT pro tempore. Who yields time?

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

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

The bill clerk proceeded to call the roll.

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

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

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

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

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

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

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

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

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

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

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

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

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

I hope the Republican leadership, I hope the Senator, takes to heart the words of the civil rights hero they were once aware of what Mrs. King had to say about the constitutional amendment that Senator Frist has brought to the floor this week. Here is what she said in 2004:

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into family law issues that have always been left to the States, was troubling in so many ways. At least that event was moved out of the White House Rose Garden, for which I am grateful. Sadly, the audience, which the White House could have diversified by the invitation of community leaders, scholars, family organizations and religious leaders, was selected apparently to exclude gays and lesbians. That is hardly the way to engender fair and open debate or to show tolerance or to honor the dignity of all Americans.

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

Just before the last election, President Bush said that “States ought to be able to have the right to pass laws that enable people to be able to marry others.” He cannot square the President’s thoughtful words from the campaign against flag-burning as a protest all but disappeared after 9/11. Sen. Hillary Clinton, N.Y., also has joined this crusade, the sur-

Democrats Must Confront GOP Strategy

By Gene Lyons

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

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

Amending the Constitution to forbid gay marriage is another election-year shell game. Finishing it shouldn’t be too hard for
Democrats. If your church refuses to solemnize same-sex marriages, that’s its undeni- able First Amendment right. Forbidding peo- ple to enter into domestic partnership con- tracts is legal. But talking about a marriage orientation, however, would be un-American.

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

Ironically, the GOP’s Knotehead faction all riled up, helping GOP congres- men in safe districts distance themselves from an increasingly unpopular White House, but also hurting Republicans among His- panic voters in swing districts.

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

Influential conservative author David H. Kopel recently wrote a Wash- ington Post op-ed predicting that “without a drastic change in direction, millions of conserva- tives will... stay home this Novem- ber. And should. Conservatives are beginning to realize that nothing will change until there’s a change in the GOP leadership. If congressional Republicans win this fall, they will see themselves as validations, and nothing will get better.” Which brings us to the Chicken Little theme on which Republican hopes appear to hinge. Sen. Charles Grassley, R-Iowa, who claims the prerogatives of a king. democracy cannot long survive a president

The idea that irrational hatred of Bush

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

ON GAY UNIONS, PANDERING RISES ABOVE PRINCIPLES

(By Cynthia Tucker)

In 1984, just two years before Bush denounced into the Constitution of the United

Cheney told CNN that

With Mrs. Cheney’s decision to publish her memoirs. This month, her partner of 14 years, Heather Poe, and has

Cox’s awkward leap onto the bandwagon was especially disappointing. While Taylor had supported the ban, Cox had pointed out two years ago that the amendment is “un- necessary.” Georgia law, like federal law, al- ready bans same-sex unions. But many ana- lysts have noted that Cox is desperate to
draw black voters away from Taylor in the Democratic primary for governor; black Georgians, like their white neighbors, gave Taylor a massive support of enshrining big- otry in the state Constitution. Cox, like most other politicians, would rather pander to the prejudices of voters than stand by her principles. It’s a perfectly human inclination—doing the safe thing, rather than the right thing.

There are never more than a handful like

Hate. He

The legislation is a very old story in Texas that he actually knows something about.

The worst thing Republicans did toward toward Bill Clin- ton, calling for “endless investigations, congressional censure and maybe even impeach- ment of President Bush.” And then the ter- rorists would win.

Many pundits who helped publicize the 1,000-odd subpoenas that congressional Rep- publicans dispatched to the Clinton White House find the prospect of Democrats issuing subpoenas terribly alarming. Slate’s John Dickerson worries that a Democratic-led House would descend down with investiga- tions and embrace the worst Bush-hating tendencies of its members.” Time columnist Joe Klein, a.k.a. “Anonymous,” author of the now famous book “Warriors,” who claims that Bush has not really adapted at advancing Gap themes while affect- ing to deplore them, laments that the likely succession of Rep. John Conyers, D-Mich., to chair the House Judiciary Committee if Democrats win in November gives Republi- can a chance to play the race card.

Because Conyers is African American and has said some words like “Knothead” and “impeachable offense” in the same sentence, Klein fears that Rove will have a field day depicting the veteran Detroit congressmen as Knotehead backface.

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

The best way for Democrats to deal with this Chicken Little theme is straight on, as Conyers has attempted to do. In a recent Washington Post column, he correctly iden- tified the “straw-man” logical fallacy that underlies the GOP’s ad- versary has never actually made.

Years of one-party government, Conyers said, have left Americans with many unan- swered questions, such as “whether the Bush admin- istration has broken the law by invading Iraq...”

Given the stakes, prominent Republicans have been silent on a gay marriage issue. OK, first lady Laura Bush has pointed out the unfairness of a constitutional amend- ment. So has Mary Cheney, the vice presi- dency’s gay daughter, who lives openly with her partner of 14 years, Heather Poe, and has recently published her memoirs. This month, the National Review, that venerable bastion of conser- vative discourse, published an editorial claiming that “understanding discrimination into the Constitution of the United States is fundamentally wrong.”

But it’s unlikely you’ll hear the vice presi- dent’s name being mentioned so pointedly on the campaign trail. While he has said in the past that he opposes it, he’d rather remain his right-wing supporters of doing the right thing. But the clout of a Republican Congress has completely abdi- cated its constitutional responsibilities. Our democracy cannot long survive a president who binds unpre- cedentedly high-ranking officials to pledge to uphold laws with which he disagrees.

Conyers wisely stressed that the GOP-led House has already “demolished”—that partisan vendettas ultimately provoke a public backlash and are never viewed as legit- imate.” Nobody wants a government that can only act when it suits them. But the new Republican Congress has completely abdi- cated its constitutional responsibilities. Our democracy cannot long survive a president who binds unpre- cedentedly high-ranking officials to pledge to uphold laws with which he disagrees.

That’s an argument the Democrats must win.
thirds majority required to begin the amendment process, passage is not the primary goal of the GOP. By simply proposing the amendment, it hopes to gain support of a religious right wing base and in the process painting Democrats as the defenders of gay marriage.

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

[U.S. Senate, June 7, 2006]

But with public approval of the president low, Republicans are convinced restirring the emotions of this issue will rally support for him and those GOP hopefuls looking to unseat him. The Senate votes on the very same thing. Is it the war? Deficits? Health insurance? Immigration? Iran? Nort hern Iraq? Not even close. No, the president is going to talk about amending the Constitution in order to ban gay marriage. This is something that absolutely, positively has no chance of happening, nada, zippo, none. But that doesn’t matter. Mr. Bush will take time to make a speech. The Senate will take time to vote on it. It’s something that matters to the Republican base.

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

But if you can appeal to the hatred, bigoted, and discriminatory feelings of people, you might move them to the polls to vote against that big, bad gay married couple. It might move them to the polls to vote against that big, bad gay married couple and make the point that the Senate could be working against discrimination.

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

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

The ACTING PRESIDENT pro tem. The Senator’s time has expired.
Mr. LEAHY. Mr. President, I think we are doing what we did in the Schiavo matter: We are playing politics with the basic rights of people, and it is wrong.

The ACTING PRESIDENT pro tempore. Who yields time?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In any event, this is not an appropriate subject for a constitutional amendment. As James Madison wrote in Federalist No. 49, the Constitution has had no provision on marriage, and we have left this and other family law issues to the states and to this Nation's religious institutions.

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

Several years ago the nonpartisan Constitution Project convened a committee of constitutional scholars, civic leaders, and other prominent Americans to develop criteria for when a constitutional amendment is justified. They wrote that our Constitution should be amended only with the utmost care, after a process that "insures that the American people will have an opportunity to consider a constitutional amendment with the spirit and meaning of the entire document."

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

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

"Maybe at some point in time there was one that was siller than this one, but I don't know of one. . . . Once before the Constitution was amended to try to deal with matters of human behavior, that was prohibition, that was such a flop that that was repealed in 25 years.

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

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

This amendment is about raw election year politics. It has zero chance of passing, yet everybody knows—hell, everybody—knocks on doors and declares their State constitution's definition of marriage unconstitutional. All of these cases are on appeal.

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

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

Throughout human history and culture, the union between a man and a woman has been recognized as the cornerstone of society. Marriage serves a public act, a civil institution that binds men and women in the task of producing and nurturing children. Some on the other side have said that the strength and stability of marriage is a distraction of little concern to the broader public. And I couldn't disagree more.

As it so happens, they made the very same argument 2 years ago. They said the States had little interest in preserving traditional marriage; voters didn't care; other issues were more important. That argument wasn't true then, and it is even less true now. Marriage, as we know it, is under assault. Activist courts are attempting to redefine marriage against the expressed wishes of the American people. And if marriage is redefined for some, it will be redefined for all. It's a slippery slope.

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

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

Currently, nine States have lawsuits pending. In five States, courts could redefine marriage by the end of the year. In California, Maryland, New York, and Washington, State trial courts have already followed Massachusetts and declared their State constitution's definition of marriage unconstitutional. All of these cases are on appeal.
With all of this litigation pending, there is little doubt that the Constitution will be amended. The only question is whether it will be amended by Congress working the will of the people or by judicial fiat. Will activism override the clear intent of the American people or will the people amend the Constitution to preserve marriage as it has always been understood?

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

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

He writes:

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

In the letter, Governor Romney relates the following account:

In our schools, children are being taught that there is no difference between the same-sex marriage and traditional marriage.

Recently, parents of a second grader in one public school complained when they were not notified that their son’s teacher would read a fairy tale about same-sex marriage to the class.

The parents asked for the opportunity to opt their child out of hearing such stories. In response, the school superintendent insisted on “teaching children about the world they live in, and in Massachusetts same-sex marriage is legal.”

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

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

So while we have advocates denying that same-sex marriage poses any conflict with religious expression or with traditional views, we are already seeing in Massachusetts that simply is not the case. We don’t know yet the range and the extent of the religious liberty conflicts that would arise from the imposition of same-sex marriage laws, but we do know that the implications are serious.

We seek action in the Senate on this important issue.

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

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

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

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

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

Mr. President, I yield the floor.

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

The bill clerk reads as follows:

CLUTCH MOTION

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

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

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

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

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

The assistant legislative clerk called the roll.

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

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

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

[Rollcall Vote No. 163 Leg.]

YEAS—49

Alexander   DeMint       McConnell
Allen       Dineen       Markwardt
Bennett     Dole          Nelson (NE)
Bolinder    Domenici       Roberts
Bond         Sessions       Santorum
Brownback   Rizi          Shelby
Bunning     Grassley      Smith
Burris       Hatch         Stevens
Byrd         Hutchinson    Talent
Chambliss    Inhofe        Thomas
Coburn       Isakson       Vitter
Cochran      Kyi           Voinovich
Coleman      Lott          Warner
Corayn      Lucar         Warrington
Craig         Martines

NAYS—48

Akaka        Feingold       Menendez
Baucus       Harkin        Mikulski
Bayh         Inouye        Murkowski
Biden        Jeffords       Obama
Bingaman     Johnson        Pryor
Boswell       Kennedy      Reed
Canwell         Kerry        Reid
Carper       Kohl           Salazar
Chafee       Landrieu       Sarbanes
Collins       Lautenberg    Schumaker
Durbin        Leahy          Snowe
Duckworth     Levin          Specter
Dorgan        Lieberman      Stabenow
Durbin        Lincoln        Sununu
Ensign        McCain        Wyden

NOT VOTING—3

Dodd        Hagel         Rockefeller

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

RECESS

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

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

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

DEATH TAX REPEAL PERMANENCY ACT OF 2005—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the hour of 12 p.m.