

would be an insult to them and an insult to me. It would diminish all of us.

To me, this vote is not about how I feel about gay marriage. I have always supported the idea of communities deciding these issues without the long arm of the Federal Government.

Many communities recognize domestic partnerships for those who choose to make a long-term commitment. Many communities in California do this, and, Mr. President, it seems to be working. I have not had one phone call or one letter indicating Congress should override these community decisions. Clearly, this is an issue that should be decided in our communities, not in the Senate.

So to me, this vote is not about how Senators feel about marriage, and it certainly is not about defending marriage. To me, it is about scapegoating. It is about dividing us. It is ugly politics. It is a diversion from what we should be doing. For example, we could be using this time to pass President Clinton's college tax breaks to ease the stress on our married couples today. Now that would be defending marriage.

By my no vote on this legislation tomorrow, I am disassociating myself from the politics of negativity and division, from the politics of scapegoating, and I will cast my vote in that spirit.

Mr. President, thank you very much for the time. I yield the floor.

Mr. NICKLES addressed chair.

The PRESIDING OFFICER. The Senator from Oklahoma [Mr. NICKLES] is recognized.

Mr. NICKLES. I thank the Chair.

(The remarks of Mr. NICKLES pertaining to the introduction of S. 2060 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

#### EMPLOYMENT NONDISCRIMINATION ACT

Mr. NICKLES. Mr. President, I would like to take a moment to respond to some of the statements that were made earlier today by some of our colleagues dealing with a variety of legislation, most important, the legislation that is called ENDA, the Employment Nondiscrimination Act, that Senator KENNEDY and some other people have alluded to.

I heard comments such as, "If this bill becomes law, employers will not be required to keep any information concerning sexual orientation." I totally disagree with this analysis. Granted, there is a section in ENDA that says no quotas, but also if you read the bill, and I encourage my colleagues to read the bill, if you look at section 11(A)(1), it grants to the Equal Employment Opportunity Commission the same powers with respect to sexual orientation it now has with respect to race, religion and sex.

Under current law, employers are required to make, keep, and preserve records on their employment practices

and to make reports to EEOC. That is under the United States Code 42, section 2000 e-8c. I read that code last Friday when we had the debate.

I am amused, or interested, when people say, "Well, that's just not factual. Employers, you won't have to do that."

I am reading section 11(A) of the bill that says the EEOC has the same authority as currently under the Civil Rights Acts to require such records. So the net result is employers are going to have to find out what people's sexual orientation is. They are going to have to ask questions they never asked before that employers don't want to ask and employees don't want to be asked. They are going to have to ask those kinds of questions.

Plus, people said, "It is not really required. Disparate impact is not allowed to be considered under this bill. We're not going to allow disparate impact to be used." Well, how is an employer to defend himself or herself? If they are sued under the legislation—and sponsors of this bill do not deny they have the right to sue for punitive and compensatory damages—how is an employer able to prove they have not discriminated? They have to show they have employed homosexuals and bisexuals. How do they show that? They have to ask questions. That is their defense. It is the same defense employers have as far as race, as far as sex, as far as disability or age.

They have to be able to show that is not their practice, they have not discriminated; therefore, they have employed people of whatever sexual orientation. So, for that defense, they are going to have to ask questions: "What is your sexual orientation? Are you homosexual, are you bisexual, are you heterosexual," in order to defend themselves.

Maybe some people don't agree with that, but I don't see any other way. So the net result of this legislation will require employers to ask questions about sexual orientation which are not desired by employees or by employers.

Plus, Mr. President, I have heard people imply, "Wait a minute, this is not a whole lot different than what several people in the Senate have signed on to, a statement put out by the Human Rights Campaign Fund which says: "Sexual orientation is not a consideration in the hiring, promoting or terminating of employees in my office." And 66 Members of the Senate have signed this statement.

I did not sign that statement, but I guess I could have, because it has never been a consideration in my office. I never asked anybody, I do not want to ask anybody what their sexual orientation is. I didn't sign it because I thought, well, what if a person who is leading a gay activist cause—and there are individuals like that and some are in Congress, and other people—if somebody who had a known propensity to be a very strong advocate of gay rights, I

guess, if they came and asked for a job in my office, I don't think they would be compatible and, therefore, I wouldn't hire them. So I didn't sign that pledge. But I can see why Senators would. Basically, I could sign it. It has never, ever been any consideration in any of my employment decisions as a Senator or when I ran a manufacturing company in Oklahoma.

But some people could interpret this language as the same as "don't ask, don't tell." If you don't ask, they can't tell. It is not a consideration, so no big deal. But that is not what is underlying Senator KENNEDY's bill.

Under the bill that we have before us, ENDA would make it law of the land, ENDA would elevate sexual orientation to a protected class under the Civil Rights Act. What it would do is say if the school board, for example, did not want to hire a person who was openly homosexual or a gay activist and have that person be a teacher or a coach or physical education instructor, if they felt like that was an inappropriate type person to have as a role model, they are in trouble under this legislation because that school could be sued. That school board might want to take disciplinary action or might not want to employ a person who had that orientation as a role model or mentor to a grade school class.

So they might say, "We don't want to make that decision," and, frankly, they could be sued under this legislation.

Recently, there was a case in West Virginia where a principal was found dressing in drag and actually soliciting sexual favors in West Virginia. It just happened a couple of days ago. Because the principal asked for money, it was in violation of the State's prostitution act and, therefore, illegal. But if he had not asked for money, you could have a person who would be cross-dressing and soliciting sex—and that might be their sexual orientation—and the school board could not take disciplinary action because of their sexual orientation if it is kept private. My point being, you could have a lot of repercussions that go beyond what individuals have thought about in this legislation.

This legislation is not "don't ask, don't tell." I look at this statement that many Senators signed. I think a lot of people thought, "Hey, don't ask, don't tell. That's my policy. I'll stick by it." That is not what we will ask if this proposed bill became law. ENDA would elevate sexual orientation to a much higher level, giving Federal protection and sanction, almost a Federal acceptance to promiscuity.

You might say, how would that be? The legislation says you cannot discriminate on account of someone's sexual orientation as defined by "homosexual, bisexual or heterosexual." It does not say by individual conduct that is done in monogamous relationships in private. So you might have a homosexual or heterosexual that is very promiscuous, with lots and lots of partners, and a company or an individual

or an organization, maybe with somewhat of a religious orientation or moral commitment, finds that behavior very repulsive. If such individual or organization did not want to hire such a person or continue their employment, they would find themselves subject to suit. If ENDA passes, the Federal Government will say: Wait a minute. You can't make any distinctions no matter what your religious beliefs are. You can't make any distinction on account of a person's sexual orientation.

"Bisexual" by definition means promiscuous, having relations with both male and female. We are going to give that a Federal preferred protected status under this legislation. I think that is a serious mistake. What about that school board in West Virginia? What about a school board in Montana? What about a school board making decisions like this in Alabama where maybe this small community says we do not think we should have avowed open homosexual leaders, gay activists, as teachers in the fifth grade?

Mr. President, I ask unanimous consent for an additional 5 minutes.

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

Mr. NICKLES. If they want to have that policy—right now they are able to choose to have such a policy. If this legislation became law, they could be sued. I think it is important to point that out. Do we want to give that kind of special status to behavior that many Americans find objectionable? Some people have said, "Well, it's immutable." I would debate that or question that. But many, many people feel, because of Biblical orientation, that it is immoral. Do we want to give that special protection and status to "sexual orientation" under the Civil Rights Act?

I met with a couple of black ministers who were very offended by the assessment of some that, well, this is just another special class that needs special status, such as race and gender. They are offended because they participated in civil rights demonstrations and they worked to bring about civil rights for minorities. They are very, very offended by this. So, Mr. President, I just make that comment. Plus, I want to make another comment in regard to the military.

The legislation exempts the military. I guess everybody applauds that. This Congress, 3 years ago, voted basically to repeal President Clinton's efforts to say that homosexuals should serve in the military. It was one of President Clinton's first efforts in this Congress. In a bipartisan fashion, we said we do not agree, and we changed the President's policy. He did not like it, but we changed it. And we came up with a policy, "don't ask, don't tell." Most of us basically were comfortable with that result and still are. That is the law of the land today.

It was not what President Clinton wanted. President Clinton wanted to

have gays serve in the military, but a lot of us thought, no, that is a mistake. Evidently, the promoters of the legislation agree this is a mistake because they do not try to change this policy in ENDA. They said, OK, we are going to have an exemption for the military. The military is a large Federal employer. We are going to exempt the military from this language.

Wait a minute. We have millions of private companies and employers in this country that we are going to say, wait a minute, for this big Federal employer, the Federal Government, we are going to exempt them from this policy of nondiscrimination based on sexual orientation. But for all other employers, no matter what your religious conscience tells you, no matter what your religious beliefs are, whether it is Christian or Jewish or Moslem—all of those basic religions have very strong tenets and statements that homosexuality is wrong and it is immoral—no matter what your religious belief is, no matter where you are coming from, too bad, that is an irrelevant decision concerning your employment practices.

When we are exempting the military and saying, oh, it does make a difference in the military—and we passed that; that is now the law of the land—but now we are going to say for all other employers, no matter what your convictions are throughout the country, you are not exempt. I think that is a serious mistake, a serious mistake.

Granted, nine States have some type of nondiscrimination based on sexual orientation laws, nine States. That means there are 41 States that do not. I guess a few of those States have done something by executive order. Senator KENNEDY is right, those executive orders can be changed, rescinded, or amended. But why in the world would we think we have to come in and have 41 States be overridden by the Federal Government? I think that would be a serious mistake.

So, Mr. President, I would just urge our colleagues to think about if school boards in some places, maybe, again, Alabama or West Virginia, really find promiscuous conduct unacceptable, and such persons engaging in such conduct not the right type of role models they would like to have for their young people they would be subject to suit under ENDA. Let us not leave them subjected to unbelievable lawsuits. Let us not have the Federal Government tell them that, no, they are not right. Let us not tell organizations such as the Boy Scouts or others that might have a policy that would be contrary to this legislation, let us not tell them they have to change it because we have decided we know better. I think that would be a serious mistake.

The reason why I mention this tonight is we will have 3 hours of debate on the defense of marriage bill tomorrow. But we only have 30 minutes on the legislation dealing with sexual orientation, elevating sexual orientation

to special status under the Civil Rights Act. I know my colleague from Massachusetts spoke on this earlier today. I felt like it was important to speak on it because tomorrow we only have 30 minutes, 15 minutes equally divided, for the biggest expansion to the Civil Rights Act since its inception, and in my opinion a serious, serious mistake. So I hope all of our colleagues will look at it very, very closely before they vote, and I hope that they will vote no tomorrow afternoon. I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina, [Mr. HELMS], is recognized.

Mr. HELMS. I thank the Chair.

First of all, I commend the distinguished assistant majority leader, Mr. NICKLES. He has made some excellent points that have floated like a ship passing in the night by a lot of Senators. I hope Senators who did not hear him by way of television in their offices will have the Senator's remarks called to their attention by their assistants tomorrow morning.

#### THE DEFENSE OF MARRIAGE ACT

Mr. HELMS. Mr. President, during my years in the Senate I have been privileged on many occasions to work with a substantial number of ministers whose Washington churches today are referred to as "African-American."

These fine ministers have almost unanimously supported efforts by myself and Joe Gibbs and others to restore school prayer to the Nation's classrooms. They are, in the main, opposed to abortion. In fact, I do not recall even one of these ministers ever describing himself or herself as "pro-choice." But that perhaps is neither here nor there in terms of what I am here this evening to speak about.

The day before the Senate adjourned for the August recess, I ran into one of these fine ministers over in the Russell Building. His church is Baptist. He has a booming, cheerful voice. And when I heard that voice, I knew who it was. He was saying, "Are you going home tomorrow?" And I told him I thought I was since the Senate probably would recess for the month of August.

I asked him, Mr. President, if he had a message for the folks back home. And he said, "I sure do. Tell them that God created Adam and Eve—not Adam and Steve."

Some may chuckle at this good-natured minister's humor. But he meant exactly what he was saying. In fact, it was a sort of sermonette. The truth is, he was hitting the nail on the head, if you want to use that cliché, or telling it like it is. However one may choose to describe this minister's getting down to the nitty-gritty, it was no mere cliché, Mr. President. There could not have been, as a matter of fact, a better way to begin this debate in favor of the Defense of Marriage Act, which is H.R. 3396. The formal debate will begin tomorrow morning in this Chamber, the U.S. Senate.