

Now then, let there be no mistake about it, this bill in no way, to any degree, is the kind of legislation which homosexual and lesbian leaders have disdainfully described as a, to use their words, "hate-driven bill."

In fact, it is precisely the critics of H.R. 3396 who are demanding that homosexuality be considered as just another lifestyle—these are the people who seek to force their agenda upon the vast majority of Americans who reject the homosexual lifestyle.

Indeed, Mr. President, the pending bill—the Defense of Marriage Act—will safeguard the sacred institutions of marriage and the family from those who seek to destroy them and who are willing to tear apart America's moral fabric in the process.

Isn't it disheartening, Mr. President, that Congress must clarify the traditional definition of marriage? But inch by inch, little by little, the homosexual lobby has chipped away at the moral stamina of some of America's courts and some legislators, in order to create the shaky ground that exists today that prompts this legislation being the subject of debate tomorrow morning in the U.S. Senate.

Just think, the prospect of a sovereign State's being compelled to recognize same-sex marriages sanctioned in another State is incredibly stark. If Hawaii's supreme court legalizes same-sex marriages in Hawaii, does the full faith and credit clause of the Constitution compel the other 49 States to recognize the new marriage law within their jurisdictions? I say no.

Such a suggestion, Mr. President, is a cockeyed interpretation of the Constitution; and this is one of so many times that I have wished the late, great Senator Sam J. Ervin, Jr., were here to cut it down to size. Homosexuals and lesbians boast that they are close to realizing their goal—legitimizing their behavior.

Mr. President, Bill Bennett has championed the cause of preserving America's culture; he contends that we are already reaping the consequences of the devaluation of marriage. And he warns that "it is exceedingly imprudent to conduct a radical, untested, and inherently flawed social experiment on an institution that is the keystone and the arch of civilization."

Bill Bennett is everlastingly right, and I believe the American people in the majority understand that the Defense of Marriage Act is vitally important. It will establish a simple, clear Federal definition of marriage as the legal union of one man and one woman, and it will exempt sovereign States from being compelled by a half-baked interpretation of the U.S. Constitution to recognize same-sex marriages wrongfully legalized in another State.

If the Senate, tomorrow, makes the mistake of approving the Employment Nondiscrimination Act proposed by the Senator from Massachusetts, it will pave the way for liberal judges to threaten the business policies of count-

less American employers, and, in the long run, put in question the legality of the Defense of Marriage Act. The homosexual lobby knows this and that is why there is such a clamor favoring adoption of the Kennedy bill.

Mr. President, at the heart of this debate is the moral and spiritual survival of this Nation. Alexis de Tocqueville said a century and a half ago that America had grown great because America was good. Mr. de Tocqueville also warned that if America made the mistake of ceasing to be good, America would cease to be great.

So, we must confront the question posed long ago: "Quo Vadis, America?"

The Senate is about to answer that question. We will decide whether goeth America. It is solely up to us.

EMPLOYMENT NONDISCRIMINATION ACT

Mr. KENNEDY. Mr. President, I addressed the Senate earlier today, but I just take a very few moments to respond to some of the points that have been made earlier by those who are opposed to the Employment Nondiscrimination Act.

First of all, on the question of disparate impact and disparate treatment of individuals, I want to make it clear again this evening, as we tried to make it clear earlier in the day—this is an issue that keeps coming up and I think it is important that we address—the Employment Nondiscrimination Act covers a showing of discrimination based on disparate treatment, not disparate impact. That means the person must do the following, first, prove that he or she is covered by ENDA.

Second, a person must show that he or she was qualified for the employment opportunity at issue and that the employer's adverse treatment was based on the person's sexual orientation.

Third, the employer must then present evidence to show that the adverse treatment was taken because of some legitimate nondiscriminatory reason, not sexual orientation, and then the individual making the claim bears the ultimate burden of proving that discrimination based on sexual orientation actually occurred.

Now, the Employment Nondiscrimination Act is not violated merely because an employment practice has a disparate impact on gay men and lesbian women. Therefore, statistics are not needed to enforce the Employment Nondiscrimination Act and employers are not required to ask whether an employee is gay. Despite this provision in the Employment Nondiscrimination Act, my colleagues are concerned that the Equal Employment Opportunity Commission will require employers to keep statistics regarding the sexual orientation of their employees.

The Employment Nondiscrimination Act grants the EEOC the same enforcement powers that it has under title

VII. This enforcement structure parallels the ADA—under which employers do not have to ask if an employee has a disability or keep statistics—and the EEOC says that it will undoubtedly enforce ENDA in the same way that it enforces the ADA. Therefore, there will not be any additional reporting requirements.

Finally, the EEOC says that because ENDA does not recognize a cause of action for disparate impact discrimination, there are no requirements pursuant to the Uniform Guidelines on Employee Selection. That has been an issue that has been brought up several times and raised again this evening. I hope I have responded to any of the concerns that people have on this issue, and I have included information from the EEOC in the record earlier today.

Second, Mr. President, this legislation is not a license for bizarre behavior—we heard that referenced earlier this evening. Like other civil rights laws, the Employment Nondiscrimination Act does not protect bizarre behavior. Employers can still enforce workplace rules as long as they apply them uniformly to heterosexuals and homosexuals. This legislation allows employers to discipline homosexuals and heterosexuals whose behavior is illegal or unsafe or that compromises their ability to perform their job—the examples given earlier this evening would clearly fall under those standards. These policies must simply be applied to all employees—heterosexual and homosexual.

For example, my colleagues expressed concern about dress conveying explicit sexual messages or that is otherwise inappropriate. There is no need for concern. An employer can enforce a dress code. It must simply apply to all employees. An employer may also enforce a code of conduct. School systems can discipline teachers who appear in pornographic movies or other kinds of activities, but they must discipline both homosexuals and heterosexuals similarly.

That is all we are looking for, similar treatment. Employers can establish codes of conduct. All they have to do is make sure that they apply to both groups.

I say to my colleagues who feel they do not understand this legislation, the Employment Nondiscrimination Act is not a license to illegal behavior. It is legislation that allows homosexuals and heterosexuals to work without being the subject of discrimination. Once again, the legislation simply says that employees, whether heterosexual or homosexual, must be treated fairly and equally.

Finally, there is some question about where all of this would lead. I think we can look to the nine States that have laws at the present time. They can be the best answers to many of the questions posed by those opposed to the bill. We know, that these laws are not, and they have not been problematic. I

have pointed out that in the 9 States, if you added all the cases together, over the period of the last 5 years, you would be lucky if there are 15 cases, in the last 4 to 5 years.

In fact, when the people of California faced a referendum in 1978 to exclude gay people from teaching or mentoring, that referendum was defeated with the help of Ronald Reagan, who did television spots in opposition. He understands, and I think most understand, that we should not be stereotyping individuals. But stereotypes have been used against gay men and lesbians in the past and in this debate, as well.

This is what former President Reagan said in 1978:

As to the role model argument, a woman writing to the editor of a Southern California newspaper said it all: "If teachers had such power over children, I would have been a nun years ago." Whatever else it is, homosexuality is not a contagious disease like the measles. Prevailing scientific opinion is that a child's teachers do not really influence this.

Although I have not always agreed with former President Reagan, in this case, I think he is right on target, just as Senator Barry Goldwater.

This legislation deals with the unfair stereotypes. Homosexuals are not strangers, or pedophiles, or child molesters. They are people we know, respect, and care about. They are people of integrity. They have a sense of right and wrong, an understanding of justice and fair play, and a willingness to work hard. They are American citizens, and they don't deserve to be subjected to discrimination on the job.

We have fought against similar stereotypes regarding women, minorities, the disabled, the elderly, and religious believers.

In the past, we thought women were too weak to compete in the board room or on the playing field. Today, we celebrate their business acumen and gold medal-winning athletic achievements. In the past, people in this Chamber have questioned the intelligence and tenacity of minorities. We still fight some of those battles, but we are not where we used to be. In the past, the Nation questioned whether a Catholic should be President. I remember when our country pushed bigotry aside and put such a man in the White House.

We have become a better country because we rose above the discrimination that divides us and nurtures bigotry.

Mr. President, I yield the floor.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. I am pleased that the Senate, tomorrow, will be voting on the Employment Nondiscrimination Act. Every worker in this country should be judged solely on the basis of valid work-related criteria: The worker's job performance and his or her ability to perform the job. People who work hard and perform well should not be kept from leading productive and responsible lives because of sexual orientation any more than they should be

kept from employment or discriminated against because of race, religion, gender, national origin, age, or disability.

Unfortunately, workplace discrimination on the basis of sexual orientation remains a real problem in many communities. In case after documented case, highly qualified individuals have been dismissed, or otherwise discriminated against in their jobs for no other reason than their sexual orientation.

Such discrimination is intolerable in America. We are better than that. A recent poll in Newsweek indicates that this measure is supported by over 80 percent of the American people. It has been endorsed by a wide array of religious organizations, including the United Methodist Church, the Presbyterian Church (USA), the Episcopal Church, the Evangelical Lutheran Church in America, the American Jewish Congress, the National Council of the Churches of Christ in the U.S.A., the Religious Action Center of Reform Judaism, and the United Church of Christ, to mention some.

As the presiding bishop of the Episcopal Church, Edmund L. BROWNING, wrote in a letter, dated July 30, 1996:

Since 1967, the Episcopal church has been committed publicly to the notion of guaranteeing equal protection for all citizens, including the homosexual persons, under the law. In that year, the General Convention of the Episcopal Church, the Church's highest policymaking body, expressed its conviction that homosexual persons are entitled to equal protection of the laws with all other citizens and called upon society to ensure that such protection is provided in actuality. The Employment Nondiscrimination Act explicitly fulfills that mandate. . . .

My warm embrace of this legislation, of course, reflects more than my standing as Presiding Bishop of the Episcopal Church. It represents my deep, personal belief in the intrinsic dignity of all God's children. That dignity demands that all citizens have a full and equal claim upon the promise of the American ideal, which includes equal civil rights protection against unfair employment discrimination. For far too long, our civil rights laws look the other way with respect to discrimination based on race, gender, religion, national origin, age, or disability. Fighting to right those wrongs taught us that the cause of civil rights protection for one is the cause of such protection for all. Today, so long as some of us remain subject to employment discrimination on the basis of sexual orientation, our system of civil rights protection for all Americans remains an unfulfilled ideal. The long overdue protection embodied in this legislation brings that ideal one significant step closer to reality.

Mr. President, the opponents of this legislation have argued that the Employment Nondiscrimination Act will cause practical problems in the workplace. But we know that this is not true, because similar legislation is already in place, as the Senator from Massachusetts pointed out, in nine States. As Michael P. Morely, the president of Eastman Kodak Co., testified on July 17 of this year:

It is our belief that ENDA is good for American business, large or small. The bill is in step with trends in the Nation's most successful businesses, and is in tune with the

fundamental sense of fairness valued by Americans. If we at Kodak felt that this bill were intrusive, expensive, or otherwise inappropriate for American business, we would not support it. But after a thorough analysis of its provisions, we are convinced that the Employment Nondiscrimination Act will have a positive impact on our country's ability to compete.

Mr. President, this legislation is carefully drafted to prohibit any preferential treatment, including quotas, and to prohibit disparate impact suits based on sexual orientation, as the Senator from Massachusetts has pointed out. It exempts small businesses with fewer than 15 employees, and it exempts religious organizations, including educational institutions substantially controlled or supported by religious organizations.

Mr. President, for too long, many Americans have suffered employment discrimination. In recent decades, we have done much to eliminate this blot on our history. It is time for us to enact this legislation and extend the principle of fairness embodied in the Nation's civil rights laws to all Americans, regardless of sexual orientation.

I thank the Chair and yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

CHEMICAL WEAPONS CONVENTION

Mr. LOTT. Mr. President, under a previous unanimous-consent agreement entered on June 28, 1996, the Senate is scheduled to consider the Chemical Weapons Convention by the end of this week. There has been much written and much said about the convention, whether it is the right thing to do or not; is it verifiable?

On the other side, there are those who say it would affect the overall atmosphere with regard to these chemical weapons. There is very legitimate debate about whether or not this convention should be ratified or not. It is my intention to go forward with the consideration of this Chemical Weapons Convention beginning probably on Thursday. We are scheduled to have votes on Friday.

But as we near consideration of that convention, I wanted to share with my colleagues some of the correspondence that I have recently received. Late on Friday of last week, I received a letter of opposition to the convention signed by more than 50 defense and foreign policy experts, including two former Secretaries of Defense, former members of the Joint Chiefs of Staff, and many others. The letter made four fundamental points: The Chemical Weapons Convention is not global, it is not effective, and is not verifiable, but it will have significant costs to American security.