

to being born with red hair than it is to choosing to tell a lie. The latter requires a decision; the former just is. You can cover up the former, but underneath the dyes and wigs the hair is still red.

At the same time, I believe there is no denying the fact that large numbers of Americans have deeply held religious beliefs about homosexuality and marriage. Even in questions of discrimination against gays, there is a conflict between religious faith and rights. Madam President, I have resolved that conflict in my own mind by saying that in things secular rights shall prevail, be dominant.

I believe, for example, that there should be no discrimination against gays in housing and employment, and that is why I have been a long supporter of gay rights in these areas, with the proviso that religious institutions that would see these anti-discrimination laws as interfering with their freedom of religion are exempted. ENDA, in my view, does that. It achieves the balance between ending discrimination against gays and respecting freedom of religion. The issue of gay marriage, in my view, does not achieve that balance.

I believe marriage is, first of all, a predominantly religious institution. For example, it is one of the sacraments of the Christian faith, but it is also, in our society, a secular institution. Therefore, it is fraught with a degree of ambiguity. In all cases, it has been a state that exists between a man and a woman. In no country in the world, in no religion that I know of, does the state of marriage exist between two people of the same sex. Therefore, when we contemplate giving state sanction to same-sex marriages, we need to proceed cautiously.

At the same time there are many partners of same-sex relationships who have loving and committed relationships over many years. The question arises, how do we acknowledge the existence of these committed relationships—the partner's desire to be at the bedside of his or her dying partner or to see that a partner receives the benefits that accrue to a survivor of a long and loving relationship?

One might point out that the only way we can do that now is through marriage. There ought to be another way, and I am prepared to look for that other way, but I do not see marriage as flexible enough an institution to accept such redefinition at this time. Too many people in too many places of too many faiths see it as the state that exists between a man and a woman, and they see same-sex marriages as an incomprehensible trespass.

Madam President, that is what this bill is all about. That is what the so-called DOMA legislation is all about. It says marriage should not be redefined to include individuals of the same sex because marriage with all its religious connotations is different from a secular desire to get housing or a good job.

So, Madam President, in trying to balance the religious and historical idea of marriage with the need for extending rights, I say that rights should extend up to but not include recognition of same-sex marriages.

I yield the floor.

RECESS

The PRESIDING OFFICER. The Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, at 12:52 p.m., the Senate recessed until 2:15 p.m.; Whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. COATS].

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1997—CONFERENCE REPORT

The Senate resumed the consideration of the conference report.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, this Defense authorization bill has been done from the very outset in a very bipartisan spirit. Senator NUNN, I am sure, will speak on that side to that effect. We have worked together, Republicans and Democrats, to bring into the Senate a bill that we feel is fair and just. The House has already passed this particular bill. The President has said he will sign this particular bill. I urge all Senators to vote for this bill and show support for our Armed Forces, the men and women who are sacrificing by serving our country and risking their lives to protect the liberty and freedom of this country.

The PRESIDING OFFICER. The Senator from Georgia is recognized for 1 minute.

Mr. NUNN. Mr. President, I share the sentiments of the Senator from South Carolina. This is a good bill for the men and women who serve in our military. This bill is an increase over the President's budget, but it is a decrease in real terms from last year's budget. So the decline in defense spending continues downward, but it is an incremental step upward from the President's budget.

The President said he will sign this. Virtually every provision in the House bill that the administration objected to has been either taken out of this conference report or has been handled in a way satisfactory to the administration. That would include the arms control provisions relating to the ABM Treaty and missile defense. It would also include those members of the military service who have HIV who, under the House bill, would have been automatically expelled from the service. That provision has been dropped.

So I urge those on this side of the aisle to vote for this bill as a strong step forward for our Nation's security.

Mr. GLENN. Mr. President, I rise in opposition to the conference report on the National Defense Authorization

Act for Fiscal Year 1997. I oppose the conference report for many of the reasons I opposed the Senate bill. Unfortunately, the conference report is in many respects worse than the Senate bill.

The conference report includes \$11.2 billion in unrequested funds, including almost \$1 billion in additional funding for ballistic missile defense, hundreds of millions of dollars for unrequested military construction projects, and billions of dollars for weapons programs the Pentagon does not think it needs.

Another troubling aspect of the conference report involves land conveyances. I have been very concerned by the yearly practice in which Members of Congress include special land conveyances in the Defense authorization bill enabling the transfer of Federal property outside of the requirements of the Federal Property Act of 1949. Having been unable to curb outright the practice of making these sweetheart land deals, I have worked to ensure that the properties are screened by the General Services Administration to make sure that there is no other Federal interest in the properties. The conferees found the idea of protecting the Federal taxpayers' assets so distasteful that they refused to require a Federal screening for the land conveyances contained in the House bill. This decision is unacceptable in my view and I did not sign the conference report in large part due to this decision.

In addition, the conferees adopted a provision from the Senate bill which affords special retirement rights to a select group of employees affected by base closure. There has been no demonstrated need for this authority that will cost the American taxpayer millions of dollars in the out years and it is unfair to the hundreds of thousands of other Federal employees who have been affected by ongoing efforts to downsize the Government.

I would also mention my concern with a provision in the conference report that terminates the defense business operations funds [DBOF] in the year 1999. The purported reason for this provision as I understood from its proponents is to instill more discipline in the Defense Department's financial management. I have been concerned about the state of the Government's financial management for years. I have worked to enact legislation creating the inspectors general and the chief financial officers. I have held numerous and long detailed hearings on the condition of DBOF. I agree that the Pentagon has an obligation to the American taxpayer to focus more attention on getting its financial house in order. But, I do not agree that terminating DBOF will accomplish anything other than to create chaos where we should be seeking progress.

In addition, I have concerns about section 1033 of the conference report which significantly expands an existing program within the Department of Defense regarding the transfer of excess

personal property. The Senate bill was silent on this issue. The House bill however expanded an existing DOD program which enables State and local agencies involved in drug enforcement activities to have a preference to obtain excess DOD personal property. The House bill expanded this program to enable all law enforcement activities to have this preference. Beyond that the conference added counterterrorism as an additional preferential category.

Now I bow to no one in my willingness to take action to enforce our drug laws and to fight terrorism. And it may be entirely appropriate for excess small arms and ammunition to be made available to law enforcement agencies for these purposes. However, I have serious concerns regarding the conference's approach. In particular, I have questions about the effect this provision will have on other entities entitled to receive excess property as a public benefit. I'm speaking not about small arms parts, but about computers, furniture, vehicles, and other equipment. Under current law potential beneficiaries to this equipment include, State agencies, hospitals, schools, the homeless, and other worthy causes. I do not believe that this concern was adequately considered in the conference. I intend to work with other Senators and Congressmen who share my concerns to clarify how the Secretary of Defense intends to implement this provision, and to take corrective legislative action if necessary.

The conferees also dropped a provision from the Senate bill that would allow women who are serving in the military or who are servicemembers' dependents from obtaining abortions in overseas military medical facilities. We have debated this issue repeatedly and I am very sorry the conferees again chose not to afford women who are stationed overseas the same basic rights available to women living in the United States.

Finally, I mention a number of House provisions that were dropped in conference: the so-called multilateralization and successor state provisions affecting the Anti-Ballistic Missile Treaty, the provision to repeal the don't-ask, don't-tell policy and the provisions relating to servicemembers diagnosed with HIV. I am genuinely pleased that these provisions were dropped from the conference report. However, I do not believe the mere elimination of completely unacceptable provisions from the conference report is a sufficient reason to support the conference report.

HUMANITARIAN DEMINING

Mr. LEAHY. Mr. President, I would like to ask a question regarding section 1304 of the pending fiscal year 1997 National Defense Authorization Act. This provision would amend title 10, section 401 entitled "Humanitarian and civic assistance provided in conjunction with military operations."

The point that I would like clarified is whether the annual \$5 million cap in

new subsection (c)(3) would be a U.S. Governmentwide cap, or whether it is a cap on only DOD humanitarian assistance appropriations.

Mr. THURMOND. I can assure Senator LEAHY that the cap imposed by section 1304 applies only to funds made available to the Department of Defense for humanitarian and civic assistance. It was not intended as a U.S. Governmentwide cap. It does not apply to funds that are made available to other Federal agencies such as the Department of State or the Agency for International Development.

Mr. LEAHY. I thank the Senator for his explanation.

Mrs. MURRAY. Mr. President, I rise today to express my extreme disappointment in the outcome of the House and Senate conference on the Department of Defense authorization legislation. The Senate's version of this legislation contained an amendment offered by myself and Senator SNOWE to allow women servicemembers stationed abroad to obtain privately funded abortions at military facilities. It was very unfortunate that this provision was dropped from the final version of this legislation during negotiations between the Senate and the House.

Mr. President, my amendment simply restored a policy which responds to the unique needs of women serving overseas in our armed services. This policy, which was in place between 1973 and 1988 and between 1993 and 1996, allowed women to use private resources for medical abortion services at military hospitals. This policy is necessary to ensure the health and safety of women servicemembers because overseas health care facilities often do not provide comparable and safe care. Women serving our country in the Armed Forces deserve the same quality of care as women in the United States and to put them at risk is dangerous, unnecessary, and plain wrong.

Further, as I have said before, requiring a woman to travel to the United States to perform this procedure only delays a very time-sensitive procedure and increases the cost—both for the individual and the taxpayer—when a woman is stationed abroad.

We have had many debates in the 104th Congress about a woman's right to choose. My amendment simply guaranteed that women who serve in our Armed Forces have the same rights as women in the United States. It is a right women service personnel have held for most of the last 23 years.

Dropping my amendment is yet another in a long series of actions taken by this Congress to eliminate a woman's right to choose. From the first days of the 104th Congress to the closing hours of this second session, women have seen the new majority seek to undermine their rights at every opportunity. It saddens me to see the will of the Senate and the health care options of women serving in the Armed Forces traded away to the voices of extremism.

This Congress must know that the women and men of this country are awake and aware of these actions. We will be back. I assure you.

Mr. MCCAIN. Mr. President, I rise today in support of the conference agreement on the fiscal year 1997 National Defense Authorization Act. I urge all of my colleagues to support this bill, which represents a reasonable and balanced compromise between the House and Senate on a number of very difficult issues.

Mr. President, I want to take a few minutes to highlight just a few of the very positive aspects of this bill.

This bill provides \$265.6 billion for defense activities for the coming fiscal year, implementing the decision of the Republican Congress to add \$11.2 billion to the President's defense budget request. We fought hard for the last 2 years to add a total of \$18 billion to the inadequate defense budgets of this administration, because we recognized the need to ensure both current and future readiness of our military services.

In the Readiness Subcommittee, we provided \$1 billion more than the budget request for operations and maintenance of the Armed Forces, and \$270 million more than requested for ammunition procurement. These increases will ensure sufficient funding for day-to-day operations and training for the coming fiscal year.

The bulk of the added funding was allocated to military modernization programs. The bill authorizes an additional \$6 billion for procurement of modern weapons systems, including tactical aircraft, sealift and airlift assets, improved communications systems, surveillance and reconnaissance, and other important warfighting equipment. The bill also adds \$2.6 billion for research and development to maintain the technological edge of our military forces on the battlefields of the future, including a significant increase in both theater and national missile defense programs.

The bill also includes a number of legislative provisions which, I believe, will serve the best interests of the taxpayer and the Department of Defense.

First, the bill includes a new discretionary waiver of domestic source restrictions for our allies with whom we have reciprocal defense procurement agreements. This provision, which was included in the Senate bill, will provide the needed flexibility for the Secretary of Defense to purchase the best equipment at the lowest price for our military services. It will also help to promote continued free trade among our allies, rather than threatening reciprocal trade in defense items by restricting the United States to buying only American-made products. In my view, this is one of the most important provisions in this bill because of its potential to save money and preserve our longstanding positive defense trade balances with our allies.

The bill also authorizes \$14 million in a newly established account under the

control of the Secretary of Defense for antiterrorism activities and programs. This provision was added to make funds available for urgent, emergency requirements necessary to deter or defend against terrorism directed at our military personnel. The bombing of the U.S. military housing complex in Dhahran demonstrated the need for such an account.

Last year, the Congress approved the enactment of several provisions related to accounting for missing service personnel which the Chairman of the Joint Chiefs of Staff and our warfighting CINC's opposed, arguing that they would interfere with their ability to conduct their missions in the event of war. This bill repeals several of those provisions without harming or limiting in any way the ability of the Department of Defense to continue its intensive program to locate and recover the remains of all those missing in action in wartime.

I am particularly pleased that the conferees agreed to drop from the bill both the Senate and House provisions regarding discharge of military personnel who test positive for the HIV virus. This allows the Department of Defense to continue its current policy of non-discrimination and fair treatment of all military personnel with conditions which prevent them from deploying with their units.

The bill authorizes compensation for Vietnamese commandoes who participated in United States wartime operations in Vietnam and were captured by North Vietnam. Payment of these amounts is a matter of fairness and is long overdue.

The conferees also approved a Senate provision, cosponsored by myself, Senators LIEBERMAN, COATS, and ROBB, which directs the Department of Defense to conduct a new assessment of U.S. national security strategy and military force structure requirements. This provision provides specific guidance to the Department for its Quadrennial Defense Review. The provision also establishes a nonpartisan panel of national security experts to review the Department's work and to provide an independent assessment of alternative force structures and strategies. In light of the continuing changes in the post-cold-war world, I believe it is necessary to conduct such a comprehensive reassessment of our national security posture.

The bill also requires the Chairman of the Joint Chiefs of Staff to provide an assessment of the readiness requirements of each of the services, using a tiered readiness concept that I discussed in a March 1996 white paper. This report is important to the development of this concept, which could result in savings in operation and maintenance funding which could be reallocated to the modernization accounts where a significant shortfall remains.

The bill also includes language requiring fair pricing of United States military equipment to be transferred

to Bosnia under existing drawdown authority. Since the equip and train program for the Bosnian Muslims is an essential part of the exit strategy for United States troops serving in the peace implementation force [IFOR] in Bosnia, it is essential that the program be implemented properly and promptly if we are to meet the end-of-1996 withdrawal deadline for IFOR.

Finally, the bill includes a provision requiring organizers of civilian sporting events to reimburse the Department of Defense for the cost of providing security and other support services, only if the event makes a profit. This provision is designed to ensure that defense dollars are available for defense purposes, but it will have no effect on the availability of our military services to provide needed security assistance at these events.

Again, I thank Chairman THURMOND and his staff for achieving such an excellent conference agreement on these important issues.

At the same time, Mr. President, I regret that the conferees deleted the Senate's provisions related to competitive allocation of workload among public and private maintenance depots. The Senate tried to take a positive step toward fair and open competition for depot maintenance work. I am sorry that the conferees were unable to agree to include these provisions, because it could have saved the taxpayers money and allowed the Pentagon to shed excess capacity at its government-owned depots.

The most controversial aspect of the depot issue is the 60-40 rule which requires that at least 60 percent of all funds expended on depot maintenance be spent in public depots, owned and operated by the Department of Defense. I believe that this 60-40 rule is arbitrary and prevents the Department of Defense from taking actions that could potentially result in a savings of billions of dollars. I would like to point to a recent report by the Congressional Budget Office entitled "Reducing the Deficit: Spending and Revenue Options." This report contains a section dealing with the depot issue and the potential savings that could be realized by relying upon the private sector to perform much of the work that the current 60-40 rule requires to be performed by the public depots. According to this report, cumulative savings after 6 years might amount to roughly \$400 million, rising to over \$3 billion after 10 years if the total workload assigned to public depots on a sole source basis is reduced to 30 percent. CBO estimates that, in the long run, DOD might save on the order of \$1 billion annually if it used public depots only for those tasks that could not be handled competitively in the private sector. Estimated savings of shifting from public to private production range from 20 to 40 percent.

Mr. President, although readiness has been used as the justification for maintaining the arbitrary 60-40 rule, I

believe that it is a justification without foundation. DOD already relies on the private sector to repair many specialized components on its most up-to-date systems. Furthermore, since we rely upon the private sector industrial capability to supply our military forces with this equipment, it seems unreasonable to distrust this same private sector capability to maintain the equipment.

That is the only major legislative provision which was resolved in a way that I cannot approve. In fact, let me say that I was very pleased with the resolution of a number of legislative provisions adopted in the last few days of the Senate's consideration of this bill. The conferees chose to remove legislative earmarks for all of these projects and considered each on a case-by-case basis. Of the most egregious legislative earmarks attached to the bill, none were included in this final conference agreement as legislative earmarks. For that wise decision, I thank the conferees.

However, Mr. President, I note with serious disappointment that many of the special interest and pork-barrel items, to which I objected in the additional views I filed with the Committee, are included in this conference agreement.

These programs are: \$850 million in unrequested, low-priority military construction projects—\$150 million more than the Senate-passed bill; \$780 million for unrequested Guard and Reserve equipment, including \$189.6 million for four C-130J aircraft; \$470.7 million for nine additional C-130J aircraft, only one of which was requested by the Air Force; \$15 million for continued aurora borealis research and construction of the High Frequency Active Auroral Research Program [HAARP], for which there is no current military requirement or validated use; \$13 million for an unnecessary, duplicative, and cumbersome bureaucracy for oceanographic research, which the Navy does not need or want; and \$701 million for advance procurement of a second new attack submarine, and language repeating the earmarking of these new submarines divided evenly between Newport News Shipbuilding and Electric Boat Shipyard.

Mr. President, these pork-barrel projects add up to approximately \$2.8 billion. I am astonished that, once again, after fighting hard to sustain a much-needed increase in the defense budget, the conferees chose to spend these funds on pork.

Last year, we wasted \$4 billion, or more than half of the total defense budget increase, on pork-barrel projects. I suppose this year's bill shows progress of a sort—we are only wasting \$2.8 billion.

But, Mr. President, I will say again that the American people will not stand for this type of wasteful spending of their tax dollars. If, we, in Congress refuse to halt the pork-barreling, it will be more and more difficult to explain to the American people why we

need to maintain adequate defense spending. I would prefer that the \$2.8 billion wasted on pork-barrel projects had not been included in the bill. I hope that, next year, with the very real threat of a line-item veto of some of these items, the Congress will stop wasting defense dollars on these kind of special interest items.

Mr. President, let me conclude by saying, again, that I believe this is, overall, a very good conference agreement on the Defense authorization bill. Chairman THURMOND, Senator NUNN, and the staff on both sides of the Senate Armed Services Committee should be commended for their excellent work. I urge my colleagues to support this conference agreement.

Mr. BINGAMAN. Mr. President, I will vote for the fiscal year 1997 National Defense Authorization Act. I signed the conference report on this bill insofar as it pertains to bill language. I did not, however, sign the conference report's report language because I do not agree with the report language on the missile defense provisions, all of which were dropped from the bill. Several of my Democratic colleagues on the Senate Armed Services Committee took a similar position on the conference report's ballistic missile defense report language.

I will vote for the national defense authorization bill because, unlike last year, the vast majority of provisions in the bill are the result of bipartisan drafting and have full bipartisan support. I commend Senator THURMOND and Senator NUNN for their efforts to improve the process of the Senate Armed Services Committee during this legislative session. I would also like to commend Senator SMITH for fostering a cooperative working relationship on the Acquisition and Technology Subcommittee.

Mr. President, let me briefly talk about the report language on arms control and ballistic missile defense. In order to get this bill signed by the President, the majority agreed very late in the conference to drop all of the provisions regarding multilateralization of the ABM treaty and theater missile defense demarcation, which the President's advisers had objected to. If these provisions had not been dropped, I would not be supporting this bill, nor would the President be prepared to sign this bill. However, having given up the bill language, the majority attempted in this report language to revive what they had given up. As a matter of law I would urge the President to treat this report language as totally nonbinding and certainly not representing the views of this conferee, and perhaps not even representing the views of the majority of conferees. This report language was first presented to the minority in the middle of the last night of conference, and we had no opportunity to discuss it at member level. I felt compelled to make my very strong views known, that this language is unacceptable to me and as I just said

should be treated by the administration as not in any way having the force of law.

The provisions dropped by the conferees raised serious legal and constitutional issues and would have infringed upon the President's prerogative to make foreign policy. What could not be achieved in bill language cannot be revived through report language. That is the strongly held view of at least this Senator.

Mr. President, that having been said, there is much that is good in this bill. While I do not believe that all of the additional funding included in this bill is warranted, there are many provisions that I worked to have included and that will strengthen our national security. These provisions include the extension of flexible section 845 authority to carry out advanced research projects to the services; the clarification of the section 2371, other transactions authority, to spur broader use by the services; a fair compromise with the administration with regard to dual-use technology programs; the reduction in the total amount allocated for the renovation of the Pentagon by \$100,000,000; very strong support for the Department of Energy's stockpile stewardship program; very strong support for the Nunn-Lugar program and the Department of Energy's nonproliferation efforts. I also strongly supported the additional funds for the tactical high-energy laser program with Israel, and cosponsored an amendment with Senator KYL to restrict remote sensing over Israel. I supported a pay raise and an increase in the basic allowance for quarters for our troops, which I believe is well deserved. The bill also includes a provision supported by the Environmental Protection Agency that could speed the process for opening the waste isolation pilot plant while retaining EPA's clear authority on health and safety matters.

I have previously stated that we are entering a period of military-technical transformation. I believe that by maintaining a strong lead in advanced technologies, and using these technologies as a force multiplier, we can meet our national security requirements with a smaller force structure and at reduced costs. I believe many of us on the Senate Armed Services Committee will be looking hard at the implications of these changes for our military during the coming years.

I would like to address one issue that has raised some questions from my constituents in New Mexico. The House National Security Committee inserted a provision, sponsored by Congressman THORNBERRY, which allows certain Department of Energy sites, including the Pantex plant in Congressman THORNBERRY's district, to report directly to the headquarters office in Washington, DC, rather than through the Albuquerque Operations Office. The provision adds no value to the performance or reporting authorities for the Department of Energy. Indeed, if car-

ried out, it would likely lead to balkanization within the weapons program. I am working with Senator DOMENICI to block this provision in the energy and water appropriations bill. If this attempt fails, I will pursue this issue in the next Congress to have the provision repealed.

Despite my concerns regarding the excessive funds which have been allocated for missile defense, I will vote for the National Defense Authorization Act. The effort to prepare this legislation was significantly improved since last year, resulting in a bill which contains many provisions which I can wholeheartedly support. Despite some differences on emphasis or funding amounts, I believe we have struck a reasonable balance. I would again like to commend Senator THURMOND and Senator NUNN on their leadership on this defense authorization bill. I would also like to acknowledge that we are losing several valued members of the Senate Armed Services Committee at the end of this legislative year. Senator NUNN, Senator EXON, and Senator COHEN will all be retiring and moving on to new challenges. Senator NUNN, of course, is the ranking member and former chairman, and has dedicated countless hours over the past 24 years to the Armed Services Committee work. His expertise and strong leadership are widely recognized and will certainly be missed.

Senator EXON has been our leader on strategic issues for the past 10 years. His contributions both there and in tying our committee's work to the Budget Committee will be sorely missed.

Senator COHEN has been one of the most productive members of the committee, a leader on issues ranging from acquisition reform to arms control matters and one of the members of the majority who has most frequently reached out to the minority to formulate truly bipartisan policies.

We have all benefited from their participation and membership on the Senate Armed Services Committee. They will be sorely missed by this Senator. I would also like to thank the many Senate Armed Services Committee staff members who work so diligently on this complex and lengthy legislation and support us so well. I want to particularly thank Bill Hoene, who, this year, took on supporting the Acquisition and Technology Subcommittee, as well as supporting the Strategic Forces, and John Etherton, who has supported the Acquisition and Technology Subcommittee for many years. They were an effective team.

The PRESIDING OFFICER. The question now occurs on agreeing to the conference report to accompany the Defense authorization bill, H.R. 3230. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is necessarily absent.

The result was announced, yeas 73, nays 26, as follows:

[Rollcall Vote No. 279 Leg.]

YEAS—73

Abraham	Feinstein	Lott
Akaka	Ford	Lugar
Ashcroft	Frahm	Mack
Baucus	Frist	McCaïn
Bennett	Gorton	McConnell
Biden	Graham	Mikulski
Bingaman	Gramm	Murkowski
Bond	Grams	Nickles
Breaux	Grassley	Nunn
Bryan	Gregg	Pressler
Burns	Hatch	Reid
Campbell	Heflin	Robb
Chafee	Helms	Roth
Coats	Hollings	Santorum
Cochran	Hutchison	Shelby
Cohen	Inhofe	Simpson
Conrad	Inouye	Smith
Coverdell	Jeffords	Snowe
Craig	Johnston	Stevens
D'Amato	Kassebaum	Thomas
Daschle	Kempthorne	Thompson
DeWine	Kennedy	Thurmond
Dodd	Kyl	Warner
Domenici	Levin	
Faircloth	Lieberman	

NAYS—26

Boxer	Harkin	Murray
Bradley	Hatfield	Pell
Brown	Kerrey	Rockefeller
Bumpers	Kerry	Sarbanes
Byrd	Kohl	Simon
Dorgan	Lautenberg	Specter
Exon	Leahy	Wellstone
Feingold	Moseley-Braun	Wyden
Glenn	Moynihan	

NOT VOTING—1

Pryor

The conference report was agreed to. Mr. THURMOND. I move to reconsider the vote.

Mr. INOUE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DEFENSE OF MARRIAGE ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate, equally divided, prior to the vote on passage of H.R. 3396, the Defense of Marriage Act.

Who yields time?

Mr. KENNEDY. Mr. President, I yield myself 1 minute.

Mr. President, during the debate this morning, we had excellent presentations by the Members who spoke at length about the serious legal and constitutional concerns raised by this bill. The first concern was that for over 200 years the States themselves have had sufficient power in recognizing or not recognizing marriage conditions in other States. They have done that for 200 years, and 15 States now have already indicated they would not recognize same-sex marriages, so they have the authority already after 200 years.

Second, by trying to enhance or diminish the full faith and credit provisions of the Constitution, that is basically unconstitutional. We cannot enhance full faith and credit. We cannot diminish it. It is a constitutional issue, and authority and action by statute cannot affect it. Therefore, I think,

there are serious questions about the constitutionality.

Third, Mr. President, this is really, I think, a dangerous precedent. Today it is marriage, tomorrow it may be divorce, the third day it may be custody. Where will it end?

Mr. President, I do not think support of this is wise judgment. The States have the authority to be able to deal with it. It is particularly not necessary at the present time. I hope the legislation will be defeated.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, today the State of Hawaii's court is considering a case that would legalize same-sex marriage. This bill does not ban same-sex marriage, it just says that any State does not have to recognize a marriage performed in a State that does legalize same-sex marriage either through the courts or through legislation. I think this is a positive bill. Senator BYRD spoke eloquently on it.

In addition to that, this bill defines marriage as a legal union between male and female. It is almost absurd or unheard of to think we would have to do that. A lot of people, a lot of gay activists are requiring that we do that.

Mr. President, I urge our colleagues to support this legislation. It is constitutional. We do have opinions from the Attorney General and others in the Justice Department saying that it is constitutional. I urge my colleagues to support this important piece of legislation today.

The PRESIDING OFFICER. The question is on the third reading of the bill.

The bill was ordered to a third reading and was read the third time.

The PRESIDING OFFICER. A rollcall has not been requested.

Mr. KENNEDY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is necessarily absent.

The PRESIDING OFFICER (Mr. KEMPTHORNE). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 85, nays 14, as follows:

[Rollcall Vote No. 280 Leg.]

YEAS—85

Abraham	Bryan	Coverdell
Ashcroft	Bumpers	Craig
Baucus	Burns	D'Amato
Bennett	Byrd	Daschle
Biden	Campbell	DeWine
Bingaman	Chafee	Dodd
Bond	Coats	Domenici
Bradley	Cochran	Dorgan
Breaux	Cohen	Exon
Brown	Conrad	Faircloth

Ford	Johnston	Pressler
Frahm	Kassebaum	Reid
Frist	Kempthorne	Rockefeller
Glenn	Kohl	Roth
Gorton	Kyl	Santorum
Graham	Lautenberg	Sarbanes
Gramm	Leahy	Shelby
Grams	Levin	Simpson
Grassley	Lieberman	Smith
Gregg	Lott	Snowe
Harkin	Lugar	Specter
Hatch	Mack	Stevens
Hatfield	McCaïn	Thomas
Heflin	McConnell	Thompson
Helms	Mikulski	Thurmond
Hollings	Murkowski	Warner
Hutchison	Murray	Wellstone
Inhofe	Nickles	
Jeffords	Nunn	

NAYS—14

Akaka	Kennedy	Pell
Boxer	Kerrey	Robb
Feingold	Kerry	Simon
Feinstein	Moseley-Braun	Wyden
Inouye	Moynihan	

NOT VOTING—1

Pryor

The bill (H.R. 3396) was passed.

Mr. NICKLES. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EMPLOYMENT

NONDISCRIMINATION ACT OF 1996

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 2056, the Employment Nondiscrimination Act of 1996, which the clerk will report.

The legislative clerk read as follows:

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

The Senate resumed consideration of the bill.

Mr. KENNEDY. May we have order, Mr. President.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Massachusetts.

Mr. KENNEDY. I yield 2 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 2 minutes.

Ms. MOSELEY-BRAUN. I thank the Chair. I thank the Senator from Massachusetts.

Mr. President, every American should have the opportunity to work, to use their talents to the fullest extent possible, and no one should be discriminated against. No one should be denied the opportunity to work at jobs they are qualified to fill. That is why I am so proud to be a cosponsor of S. 932, the Employment Nondiscrimination Act, along with 30 of my colleagues.

Strides have to be made to provide gay and lesbian Americans with full and equal protection of the laws promised every American by the 14th amendment. Nowhere is the absence of that protection felt more insidiously than in the area of employment.

The Employment Nondiscrimination Act prohibits employment discrimination based on sexual orientation. It