over whether Republicans are trying to cut taxes, to impose changes on Medicare beneficiaries as a part of a budget balancing act. We already, in the Congress, submitted to the President proposals to rescue the Medicare Program. That was a part of the Balanced Budget Act which the President vetoed. He has already rejected what Congress has suggested. After weeks and weeks of negotiations with leaders of the Congress and the President at the White House, all we got out of it were some photo ops, some political posturing, partisan sniping. We have had enough of that. The American people are fed up with that kind of politics. That is not the way to run the Government. I am tired of it.

I have recommended and seriously urge this Congress to accept the recommendation of the President—not the one, of course, that says that home health care ought to be paid for out of the general Treasury; I am talking about changes that will reduce the costs of the program in a way that saves the program from insolvency—they recommended last year that we had to act before the year 2002, that we were going to see an insolvency, there would be a bankrupted fund, in effect.

Now, the report this year is worse than that. The year before it was going insolvent. Under the last report, it is going to lose $33 billion, and the following year $100 billion. Contrary to what the junior Senator from West Virginia said, that this is a Republican-manufactured crisis, that is an outrageous comment. That is totally outrageous. These trustees are Democrats by and large. Secretary Rubin said it, Secretary Shalala said it is going to be insolvent, Secretary Reich said it would be insolvent, the head of the Social Security Administration was standing there and agreed with them. That is not a group of Republicans. The Republicans are not manufacturing a crisis. The crisis is real. The crisis is now.

It is irresponsible for us to continue to sit here and listen to this kind of arguing made by Senators on the other side that this is some kind of effort by Republicans to frighten older people. I am frightened. I am not an eligible beneficiary yet. We have to act.

I want to commend the Senator from Pennsylvania for his leadership in an effort to get the Secretary to agree to recommendations to the administration, that they take a stand, put their recommendations in the form of legislation, send it to the Hill, and see if we can pass it.

The PRESIDING OFFICER (Mr. ABRAHAM). The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank my distinguished colleague from Mississippi for his kind comments and would amplify what he said. After his leadership in bringing this issue before the subcommittee and the Secretary of Health and Human Services, it was the subject of extended additional discussion. Secretary Shalala did say that she would be prepared to recommend to the President that he sign a separate bill.

There are really few black and white issues on the floor of the U.S. Senate or in the Congress of the United States. I believe that the gridlock is visible right down the middle between Republicans and Democrats. I think there are, as a rarity, some clear-cut issues, as I mentioned a few moments ago on the Clinton health care plan or on the balanced budget amendment, where there is a clear philosophical and factual difference. The posturing which has been undertaken on Medicare I think has been a plague on both Houses and is so recognized by the American people.

Senator COCHRAN and I put it on the table in a direct conclusive way today and Secretary Shalala agreed with the Cochran-Specter proposal, and that is not giving up on the attempt to reach an overall reconciliation bill, to have a balanced budget, which will be presented by the Congress; but, at the same time, that there be a second bill, and if the first overall bill is rejected—which will be a global settlement on the deficit, an agreement between the President and Congress—Secretary Shalala said she would recommend that a separate bill be approved. That bill would be to accept the figure of the President, where he has recommended—and on this floor it is always articulated in terms of ''cuts,'' which is inaccurate. It is $116 billion of reduction on the rate of increase.

Nobody is suggesting cuts. Every time somebody talks about a cut, it is factually incorrect. Last year, there was not a proposal for cuts in Medicare. There was a proposal to have the rate of increase of 7.1 percent instead of a higher figure on increase. This year, the proposal is 6.1 percent of increase, which is a decrease in the rate of increase. That is to say that the increase is not as much as it would have been.

President Clinton has proposed a reduction of $116 billion in the rate of increase. And the proposal which Senator COCHRAN suggested, and I seconded, and Secretary Shalala agreed to, would be to have that as a separate bill, which would be an accommodation to the Medicare trust fund, which would keep it solvent for a period estimated on a variety of between 5 and 10 years.

Right after Senator COCHRAN's questioning and comments to Secretary Shalala, I said that it was the most forceful statement I have heard on the Appropriations Committee in the 16 years that I was present. I was about ready to say the most forceful statement by Senator COCHRAN, but I amended that to be the most forceful statement from anyone that I have seen in my 16 years. Then I walked over to him and said, had it been on national television, he would have been an instantaneous national, if not worldwide, hero. But that happens to be an area where, perhaps in an off moment, we have had agreement between a Democrat and two Republicans.

I said to Senator COCHRAN that if he would introduce the legislation, I would cosponsor it. Now I say, if he will not, I will, and I hope that he will cosponsor it.

Mr. HELMS addressed the Chair.

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

(The remarks of Mr. HELMS and Mr. FEINGOLD pertaining to the introduction of S.J. Res. 56 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. COVERDELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

UNCONSTITUTIONALITY OF S. 1740, THE SO-CALLED DEFENSE OF MARRIAGE ACT

Mr. KENNEDY. Mr. President, S. 1740, the so-called Defense of Marriage Act, raises serious questions about the authority of Congress to limit the effect of a State court judgment in other States.

To assist the Senate in its consideration of S. 1740, I asked Harvard Law School Professor Laurence H. Tribe, one of the most respected constitutional scholars in the Nation, to review the bill and its constitutionality. Professor Tribe has done so and has concluded unequivocally that enactment of S. 1740 would be an unconstitutional attempt by Congress to limit the full faith and credit clause of the Constitution.

Mr. President, assaulting the Constitution is hardly defending marriage. I believe that all Members of Congress will be interested in Professor Tribe's analysis, and I ask unanimous consent that the text of his letter be printed at this point in the RECORD.

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

MAY 24, 1996.

Hon. EDWARD M. KENNEDY,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR KENNEDY: You have asked me whether the Constitution empowers Congress to enact Section 2(a) of S. 1740, which calls itself the Defense of Marriage Act and which would amend 28 U.S.C. 1738 by amending a new section 1738C to exempt ''same sex * * * marriage[s]'' from the reach of the Constitution's Full Faith and Credit Clause, Art. IV, sec. 1, cl. 1, by authorizing any State choosing to do so to deny all ''effect to any public act, record, or judicial proceeding'' by which another State either recognizes such marriages as valid and binding, or treats such marriages as giving rise to any ''right or claim.''

My exclusive focus in this analysis is the question of affirmative constitutional authority in light of the Full Faith and Credit Clause, which the Supreme Court over half a century ago aptly described as ''a nationally unifying force,'' ''alter[ing] the status of the several states as independent foreign sovereignties, each free to ignore rights and obligations created under the laws or established by the judicial proceedings of the others, by making each an integral part of a single nation, in which rights * * * established

in any [state] are given nationwide application.'' *Magnolia Petroleum Co.* v. *Hunt,* 320 U.S. 430, 439 (1943). I have not found it necessary to pursue the further inquiry that would be required if one were to conclude that Congress does have affirmative authority to create the proposed exception to the Full Faith and Credit Clause for same-sex marriages—namely, whether such an exception would nonetheless violate a negative prohibition like that of the Due Process Clause of the Fifth Amendment, see *Adarand Constructors, Inc.* v. *Pena,* 115 S. Ct. 2097, 2111–16 (1995); *Bolling* v. *Sharpe,* 347 U.S. 497, 500 (1954), on the ground that it singles out same-sex relationships for unfavorable legal treatment for no discernable reason beyond public animosity to homosexuals, cf. *Romer* v. *Evans,* 1996 WL 262293, *9 (U.S. May 20, 1996).

Whether this fairly characterizes the Defense of Marriage Act and would in fact be a fatal constitutional flaw in the Act, or whether part or all of the Act could be successfully defended against such a Due Process Clause attack, are questions on which I express no view here, and indeed are questions that it would be unwise to address in light of the conclusion I think one must reach on the anterior question of affirmative congressional power. On that question—and for reasons having absolutely nothing to do with anybody's views on the merits of same-sex marriage or homosexual relationships, and nothing to do with anybody's views about *Romer* v. *Evans* or other equal protection cases—my conclusion is unequivocal: Congress possesses no power under any provision of the Constitution to legislate any such categorical exemption from the Full Faith and Credit Clause of Article IV. For Congress to enact such an exemption—whether for same-sex marriages or for any other substantively defined category of public acts, records, or proceedings—would entail an exercise by Congress of a ''power[] not delegated to the United States by the Constitution''—a power therefore ''reserved to the States'' under the Tenth Amendment. The proposed legislation is thus plainly unconstitutional, both because of the basic ''limited-government'' axiom that ours is a National Government whose powers are confined to those that are delegated to the federal level in the Constitution itself, and because of the equally fundamental ''states'-rights'' postulate that all powers not so delegated are reserved to the States and their people.

As many of this statute's proponents are fond of reminding us, the Tenth Amendment says in no uncertain terms that the ''powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'' But it is that basic axiom, as I will explain below, that most clearly condemns the proposed statute. The Supreme Court explained in *New York* v. *United States,* 505. U.S. 144, 155–56 (1992), that the inquiry ''whether an Act of Congress invades the province of state sovereignty reserved by the Tenth Amendment'' is a ''mirror image[]'' of the inquiry ''whether an Act of Congress is authorized by one of the powers delegated to Congress . . . in the Constitution.'' Thus, in *United States* v. *Lopez,* 115 S. Ct. 1624 (1995), the Supreme Court struck down the Gun-Free School Zones Act of 1990 (''GFSZA'') on the ground that, because neither the Commerce Clause nor any other provision of the Constitution delegated to the Federal Government the power that it sought to exercise in the GFSZA, Congress had usurped states' rights in enacting that seemingly sensible measure. The Court stressed, as a matter of ''first principles,'' that requiring Congress to confine itself to those ''few and defined'' powers delegated to the National Legislature, id. at 1626 (quoting James Madison, The Federalist No. 45), was the Constitution's most fundamental device for ''ensuring[] protection of our fundamental liberties','' and ''reduc[ing] the risk[s] of tyranny and abuse.'' Id. at 1626 (quoting *Gregory* v. *Ashcroft,* 501 U.S. 452, 458 (1991)).

As a constitutional scholar sometimes identified as ''liberal,'' I was apparently expected by many to side with the Lopez dissenters—Justices Stevens, Souter, Ginsburg, and Breyer. In fact, however, I had publicly predicted, and publicly applauded, the Court's Lopez decision, believing strongly that Congress, however, sound its policy objectives, has a solemn duty to take seriously the constitutional boundaries of its affirmative authority—something I believe it failed to do when enacting the GFSZA, and something I believe it would even more clearly fail to do were it to enact the Defense of Marriage Act.

Who but a madman could favor handgun possession near schools? Who but a scoundrel could oppose the defense of marriage? But of course that isn't the issue. We must look beneath these plain vanilla wrappings to see the power grabs they conceal. In the ''defense of marriage'' context, that power grab is remarkably clear once one strips away the emotion-laden rhetoric that surrounds the issue.

The defenders of the proposed new 28 U.S.C. §1738C, conceding that the Constitution requires them to identify an affirmative delegation of power to Congress as the source of the lawmaking authority they would have Congress exercise, can point only to the Full Faith and Credit Clause itself, and to this statement in particular: ''And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.'' The proposed law's defenders, without any evident embarrassment or sense of irony, claim that a law licensing States to give no effect at all to a specific category of ''Acts, Records and Proceedings'' is a general law prescribing ''the effect'' of such acts, records and proceedings. That is a play on words, not a legal argument. There may be legitimate debate about precisely what sorts of national legislation this clause empowers Congress to enact so as to mandate sister-state enforcement of various state policies which, absent such effectuating legislation, the States might otherwise be free to disregard notwithstanding the Full Faith and legislation, the States might otherwise be free to disregard notwithstanding the Full Faith and Credit Clause. But it is as plain as words can make it the congressional power to ''prescribe . . . the effect'' of sister-state acts, records, and proceedings, within the context of the Full Faith and Credit Clause, includes no congressional power to prescribe that some acts, records and proceedings that would otherwise be entitled to full faith and credit under the Full Faith and Credit Clause as judicially interpreted shall instead to be entitled to no faith or credit at all!

The reason is straightforward: Power to specify how a sister-state's official acts are to be ''proved'' and to prescribe ''the effect thereof'' includes no power to decree that, if those official acts offend a congressional majority, the need to be given no effect whatsoever by any State that happens to share Congress's substantive views. To read the enabling sentence of the Full Faith and Credit Clause to confer upon Congress a power to delegate this sort of nullification authority—to read it, in other words, as the proponents of this anti-same-sex-marriage-law must read it if they are to treat it as the source of power for the legislation they advocate—would entail the conclusion that congress may constitutionally decree that no Hawaii marriage, no California divorce, no Kansas default judgment, no punitive damages award by any state court against a civil rights lawyer—to suggest a few of infinitely many possible examples—need to be given any legal effect at all by any State that chooses to avail itself of a congressional license to ignore the Full Faith and Credit Clause. The enabling sentence simply will not bear so tortured a reading.

The claim of its supporters that this measure would somehow defend states' rights by enlarging the constitutional authority of States opposing same-sex marriage at the expense of the constitutional authority of States accepting same-sex marriage rests on a profound misunderstanding of what a dedication to ''states' rights'' means. If this is a protection of states' rights, then it would equally protect states' rights for Congress, without any affirmative authorization in the Constitution, to license any State wishing to do so to deny basic police protection to same-sex couples visiting the State after getting married in a home State that recognizes same-sex marriage, despite the Privileges and Immunities Clause, Art. IV, §2, cl. 1. Our Constitution protects the rights of the States by assuring their equal status in the Union, and by guaranteeing that Congress may legislate only pursuant to a delegation of power in the Constitution. The proposal federal law transgresses both of these principles. That it does so in a manner that involves licensing some States to take actions that the Constitution itself would otherwise forbid—and in this sense enlarges the powers of States availing themselves of its purported authorization—should not be permitted to deceive anyone into mistaking this legislation for a law friendly to principles of state sovereignty.

Indeed, the proposed measure would create a precedent dangerous to the very idea of a United States of America. For if Congress may exempt same-sex marriage from full faith and credit, then Congress may also exempt from the mandate of the Full Faith and Credit Clause whatever category of judgments—including not only decrees affecting family structure but also specified types of commercial judgments—a majority of the House and Senate might wish to license States to nullify at their option. Such purported authority to dismantle the nationally unifying shield of Article IV's Full Faith and Credit Clause, far from protecting states' rights, would destroy one of the Constitution's core guarantees that the United States of America will remain a union of equal sovereigns; that no law, not even one favored by a great majority of the States, can ever reduce any State's official acts, on any subject, to second-class status; and, most basic of all, that there will be no ad hoc exceptions to the constitutional axiom, reflected in the Tenth Amendment's unambiguous language, that ours is a National Government whose powers are limited to those enumerated in the Constitution itself.

The basic point is a simple one: The Full Faith and Credit Clause authorizes Congress to enforce the clause's self-executing requirements insofar as judicial enforcement alone, as overseen by the Supreme Court, might reasonably be deemed insufficient. But the Full Faith and Credit Clause confers upon Congress no power to gut its self-executing requirements, either piecemeal or all at once.

If judicial precedent for this textually and structurally evident conclusion is sought, it must be sought in analogous areas rather than in the context of the Full Faith and Credit Clause itself, for Congress has never attempted to exercise its Full Faith and Credit enforcement power to nullify rather

than to enforce the mandate of that clause. In perhaps the closest analogy, the Supreme Court has interpreted another of the Constitution's few clauses expressly authorizing Congress to enforce a constitutional mandate addressed to the States to mean that Congress may effectuate such a mandate but may not ''exercise discretion in the other direction [by] enact[ing]'' statutes that ''dilute'' the mandate's self-executing force as authoritatively construed by the Supreme Court. *Katzenbach* v. *Morgan*, 384 U.S. 641, 651 n. 10 (1966) (Section 5 of the Fourteenth Amendment). A similar principle must guide interpretation of the Full Faith and Credit Clause, whose text leaves no real doubt that its self-executing reach, as authoritatively determined by the Supreme Court, may not be negated or nullified, in whole or in part, under the guise of legislatively enforcing or effectuating that clause. This is especially so in light of ''the strong unifying principle embodied in the Full Faith and Credit Clause looking toward maximum enforcement in each state of the obligation's or rights created or recognized by . . . sister states . . . '' *Hughes* v. *Fetter* 341 U.S. 609, 612 (1951).

It would do violence not only to the letter but also to the spirit of the Full Faith and Credit Clause to construe it as a fount of affirmative authority for Congress—if I may be excused for borrowing a marriage metaphor—to set asunder the States that this clause brought together. The Constitution's plan to form a ''more perfect Union,'' in the preamble's words, would be inexcusably subverted by treating its most vital unifying provision as a license for legislation that does not unify or integrate but divides and disintegrates.

It is no answer at all to say that some purported marriages—e.g., marriages entered into in one State by residents of another in order to evade the latter State's prohibition against bigamy—might in any event be entitled to no ''faith and credit'' under Art. IV, §1, cl. 1, as occasionally construed by the courts. To the degree that this is in fact true of any given category of marriages, divorces, or other official state acts—itself a complex and controversial question (see Robert H. Jackson, Full Faith and Credit—the Lawyer's Clause of the Constitution, 45 Colum. L. Rev. 1, 27 (1945); Douglas Laycock, Equal Citizens of Equal and Territorial States, 92 Colum. L. Rev. 249, 313–37 (1992))—all that follows is that, with respect to such marriages, divorces, or other official acts, the proposed federal legislation would be entirely redundant and indeed altogether devoid of content.

In any such context, ''[e]ven if the Federal Government possessed the broad authority to facilitate state powers, in this case there would be nothing that suggests that States are in need of federal assistance.'' *Rubin* v. *Coors Brewing Co.*, 115 S. Ct. 1585, 1591 (1995) (rejecting on First Amendment grounds a ''let-Congress-assist-the-States'' argument in support of a federal regulation of beer advertising). The essential point is that States need no congressional license to deny enforcement of whatever sister-state decisions might fall within any judicially recognized full faith and credit exception. The only authority the proposed statute could possibly add to whatever discretion States already possess would be authority to treat a sister State's binding acts as though they were the acts of a foreign nation—authority that Congress has no constitutional power to confer.

Sincerely,

LAURENCE H. TRIBE,
RALPH S. TYLER, Jr.,
Professor of Constitutional Law, Harvard Law School.

RACE FOR THE CURE

Mr. HEFLIN. Mr. President, on June 15, in Washington, there will be a race to raise money to find a cure for a disease that will take the lives of an estimated 44,560 women this year. Appropriately titled Race for the Cure, it stresses the importance of finding a cure for breast cancer, a disease that will claim one in nine women. This race is one of people who care coming together for a cause in which they believe. However, this race is much more than that. It is symbolic of the race women are running against time. The Race for the Cure represents our efforts and concern in finding a cure for breast cancer and helping many women achieve a greater peace of mind.

This terrible disease affects women everywhere. Here in the United States, breast cancer is second to lung cancer in cancer-related deaths among women. However, in spite of its prevalence, we still cling to the belief that it will not happen to us or those we are close to. Chances are that someone you know and love will be a victim of this tragic disease. Chances are that someone will be your wife, mother, daughter, or sister.

As with most types of cancer, a primary cause has not been found. Young women are increasingly dealing with the fear of this potentially threatening disease. Older women, who are at a much higher risk, are often not aware of their vulnerability to breast cancer. Only 34 percent of women over the age of 50 receive regular mammograms.

Until a cure is found, we all must join in the effort to raise money for research and continually improve education and awareness of this disease. I am proud to say that Alabama has been a driving force in our Nation's efforts toward these goals. Advances at the University of Alabama at Birmingham, like the identification of the human natural killer cell thought to play a key role in the body's destruction of cancer cells, are vital to the discovery of a cure. The consistent support of research centers, like the Marshall Space Flight Center, which assist with and support cancer research, are crucial to our progression toward a cure. Not unlike UAB and Marshall Space Flight Center, cancer research and education facilities across the country must receive funding. This signifies the importance of the Race for the Cure which allows individuals, who are essentially helpless against cancer, to work in unison for cancer research and awareness.

Having chaired the Alabama Breast Cancer Summit, I have been amazed at the aggressiveness and frequency of this disease. An article which appeared in The Journal of the American Medical Association on February 9, 1994, told of how the baby boom generation have about twice the risk of developing cancer as their grandparents. The threat becomes even more imminent when one considers how quickly the percentage of elderly people in this country is growing. Even now, the risk for women is greater than before. Women born in the 1950's have almost a 3 times greater risk of being diagnosed with breast cancer than women born 50 years earlier. Some of this increase can be attributed to the improved methods of diagnosing breast cancer. However, because the trends are steady and are seen in women over 50, who receive less screening, researchers believe better diagnoses cannot explain the whole picture.

The Race for the Cure is, therefore, important not only in terms of raising money for breast cancer research but also in providing a forum for awareness and education. I encourage everyone who can to participate in the Race on June 15. Also, I would like to encourage everyone in the Nation to get involved in efforts to fight breast cancer in their communities. We all have to work diligently toward a cure for this tragic disease.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, the impression will not go away: The $5 trillion Federal debt stands today as an increasingly grotesque parallel to the TV energizer bunny that keeps moving and moving and moving—precisely in the same manner and to the same extent that the President is sitting on his hands while the Federal debt keeps going up and up and up into the stratosphere.

Same old story. Some politicians talk a good game—''talk'' is the operative word here—about cutting Federal spending and thereby bringing the Federal debt under control. But watch what they do when efforts are made to balance the Federal budget.

Mr. President, as of the close of business yesterday, Wednesday, June 5, the Federal debt stood at exactly $5,141,669,992,686.17, which amounts to $19,401.82 per man, woman, child on a per capita basis.

A TRIBUTE TO GEORGE L. WESSEL

Mr. MOYNIHAN. Mr. President, I rise today to pay tribute to George L. Wessel, a friend and associate, who is stepping down as president of the Buffalo AFL–CIO Council after 27 years as Erie County's foremost labor leader representing more than 100,000 workers in more than 200 labor locals. Though he will continue to stay active in the community, he will now be fortunate enough to spend more time with his wife of 49 years, Mary; his daughter, Mary Catherine; and his three grandchildren, Joseph, Mary Anna, and Catherine Victoria. I thank him for his good work and wish him the best of luck in the future.

George Wessel's career involvement with the labor movement began when he returned home from serving his country in the U.S. Navy during World War II. He worked for Remington Rand, joined the Printing Pressmen's