the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.'') be brought in federal court, and in no way favors any particular outcome.

Therefore, I am writing to ask you whether you continue to believe the statement that there is not ''any precedent for a law that would deny the inferior federal courts original jurisdiction or the Supreme Court of appellate jurisdiction to review the constitutionality of a law of Congress'' is correct.

We would appreciate your answer as soon as possible, but no later than August 16, 2004.

Sincerely,

PHIL KIKO,
Chief of Staff/General Counsel.

[Letter in response to the letter dated August 4, 2004 from the Congressional Research Service to the Committee on the Judiciary]

CONGRESSIONAL RESEARCH SERVICE,
August 16, 2004

MEMORANDUM

To: House Committee on the Judiciary, Attention: Philip C. Kiko.

From: Johnny H. Killian, Senior Specialist, American Constitutional Law, American Law Division.

Subject: Congressional Control of Jurisdiction of Federal Courts.

This memorandum responds to your request that we reassess an earlier memorandum of ours that was prepared for Congress in light of construction of an early congressional enactment.

In brief, during consideration of H.R. 3313, the Marriage Protection Act, in the House of Representatives, we were asked whether we were aware of any precedent for the provisions of the bill that would deny all federal courts, the Supreme Court under its appellate jurisdiction and the inferior courts under their original jurisdiction, of authority to review any questions pertaining to the interpretation of, or the validity under the Constitution of, 28 U.S.C. §1738C. That statute provides that no State, or other relevant jurisdiction, is required to give full faith and credit to any public act, record, or judicial proceeding that recognizes marriage between two persons of the same sex. We responded, first orally and then by a brief memorandum, that we were not aware of any precedent for a law that would deny to all federal courts the power to review the constitutionality of a law of Congress.

You have called our attention to provisions of the Judiciary Act of 1789, 1 Stat. 85, specifically §§11, 25, which you contend contradict our memorandum and do deny all federal courts jurisdiction to review the constitutionality of acts of Congress. We do acknowledge that the cited provisions of the first Judiciary Act do in some respects prevent federal judicial review of the constitutionality of some acts of Congress, with, however, some qualifications that we set out below. Nonetheless, there were, indeed, some circumstances under which federal court jurisdiction was denied or not provided, so that our memorandum was not entirely accurate.

Our response requires some analysis. As you point out and as it is the consensus of the scholarly community, the first Judiciary Act did not confer on the federal courts, both the inferior federal courts and the Supreme Court, all the jurisdiction that might have been conferred under Article III of the Constitution. (Footnote Text: See R. Fallon, D. Melzer, & D. Shapiro, Hart & Wechsler's The Federal Courts and the Federal System (4th ed., 1996), 29–33; W. Casto, The First Congress's Understanding of Its Authority Over the Federal Courts' Jurisdiction, 26 B.C. L. Rev. 1101, 1116–17(1985)). Thus, §11 of the Judiciary Act generally conferred diversity jurisdiction, with some limits, on the inferior federal courts, and a few other grants, but it did not confer federal question jurisdiction, that is, jurisdiction arising under the Constitution, laws, and treaties of the United States. So, absent the ability of litigants to obtain original jurisdiction in the inferior federal courts under some other head of jurisdiction, the constitutionality of federal statutes could not be attacked in those inferior federal courts. Some few instances of federal question jurisdiction appeared in the historical record, but it was not until 1875 when Congress conferred general federal question jurisdiction on the inferior federal courts, subject to a jurisdictional amount limitation. 18 Stat. 470.

However, such actions could be brought in the state courts, and the Supreme Court had limited appellate jurisdiction to review the state court decisions. This presents the focal point of the issue before us. Congress did not confer complete appellate jurisdiction over such questions decided by state courts. There were three categories of jurisdiction (Footnote Text: Casto, cited in fn. 1, 1118–20). That is, the Supreme Court enjoyed appellate jurisdiction:

1. Where the validity of a treaty, statute, or authority of the United States is drawn into question and the state court's decision is against their validity.

2. Where the validity of a state statute or authority is challenged on the basis of federal law and the state court's decision is in favor of their validity.

3. Where a state court construes a United States constitution, treaty, statute, or commission and decides against a title, privilege, or exemption under any of them.

Thus, the Supreme Court's appellate jurisdiction in these cases depended upon the particular results reached by the state courts. The first grant clearly recognized the federal interest in having one national, uniform resolution of the question of the validity of a federal law or a treaty, so that if a state court decision invalidated either under the U.S. Constitution the Supreme Court could review it. Only if the state court upheld the federal law or treaty did the Supreme Court lack jurisdiction. Obviously, Congress had in mind the federal interest involved in this situation, but it is nonetheless true that one challenging the validity of a federal law could not take that challenge to the Supreme Court if he lost in the state court.

Similarly, if a litigant challenged a state law as being invalid under a federal law and the state court upheld the validity of the state law, the litigant could appeal to the U.S. Supreme Court and obtain an answer. But if a litigant was defending in state court a claim under a state law, including a contention the federal law was invalid, and that court held the state law invalid under federal law, the litigant could not appeal that decision to the U.S. Supreme Court. So the way that §25 was worded did have the effect, at least in some instances, of insulating a federal law from a federal constitutional attack (Footnote Text: The law, incidentally, was not changed until 1914, 38 Stat. 790, as a result of the decision in Ives v. South Buffalo Ry., 201 N.Y. 271, 94 N.E. 431 (1911), invalidating a regulatory measure under a Lochner-like application of the Fourteenth Amendment's due process clause. One may wonder how often this kind of thing happened if the law was not changed for 85 years).

Now, one can imagine that federal laws were not forever protected from constitutional challenge, that a challenge might only often be postponed. Just consider, the instance might arise in which a state court invalidated a state law as in conflict with a federal law, and the losing party in the state court could not appeal that decision. But in a Nation of many States, thirteen when the Judiciary Act was passed in 1789, as compared to some 40 or so by 1875, when the inferior federal courts were invested with federal question jurisdiction, how many times is it likely that in only one State a federal law of general applicability that could be interpreted as invalidating a state law would be challenged. No principle of res judicata or collateral estoppel would prevent a challenge to such state laws being brought in many States and surely state courts would be divided. Eventually, the issue would come to the U.S. Supreme Court.

That the effect of §25 might only infrequently result in the constitutionality of a federal statute being insulated from review does not alter the fact that as written and construed the section did operate to preclude any federal court from deciding the validity of a federal statute from 1789 to 1875. Accordingly, our earlier memorandum was incorrect.

EXPRESSING SENSE OF THE HOUSE ON ANNIVERSARY OF TERRORIST ATTACKS LAUNCHED AGAINST UNITED STATES ON SEPTEMBER 11, 2001

SPEECH OF

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 9, 2004

Ms. ESHOO. Mr. Speaker, I rise today to commemorate and observe the solemn anniversary of the unspeakable attacks of September 11, 2001, and in particular to express my deepest sympathies to the families of two American heroes, Naomi Solomon who died in the World Trade Center and Andy Garcia who lost his life aboard Flight 93.

Few events in U.S. history have been so jarring to our collective security and so unifying. The sorrow we all felt that day was surpassed only by our commitment to do everything possible to ensure that never again would we be so vulnerable and so unprepared.

Today, on the third anniversary of that fate-filled day, we must reconnect ourselves to the task of actually doing what has not yet been completed to make America safe.

While we've made progress, we cannot rest. Whether on land, sea, or air, critical security gaps continue to exist 3 years after the attacks of September 11. We have before us concrete steps, recommended by the 9/11 Commission, to address our vulnerabilities and to strengthen our defenses. Congress must reform the intelligence community by doing the following:

Create a strong National Intelligence Director;

Improve Congressional oversight;

Ensure an integrated terrorist watch list;

Strengthen the FBI's ability to collect and analyze domestic intelligence;

Create an integrated strategic plan for aviation and transportation security;

Improve airline passenger and baggage screening;

Improve coordination between FAA and military authorities;

Provide for the increased assignment of radio spectrum for safety purposes; and

Make the Select Committee on Homeland Security permanent.

In the aftermath of our Nation's tragedy, the American people wanted to know how we could help the families of the victims. Their response was to seek independent investigation of what led up to the attack on our country. We owe it to them and to our entire Nation to implement the unanimous recommendations of the bipartisan Commission to protect the American people and our national security. We can do nothing less.

GOOD LUCK TO NATIONAL FEDERATION OF COFFEE GROWERS OF COLOMBIA WITH JUAN VALDEZ COFFEE SHOPS

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 13, 2004

Mr. FARR. Mr. Speaker, during the 1960s, I lived and worked in Colombia as a Peace Corps Volunteer. I was able to see first hand the resilience, business savvy and general gumption of the Colombian people. One of the sectors in Colombia that exemplifies the strength of Colombians is the Colombian cafeteros, or coffee farmers. Despite the roller coaster that is the world market of coffee prices, Colombian cafeteros have managed to excel and continue to produce the best coffee beans in the world. Decades ago, Colombian farmers joined together and formed the National Federation of Coffee Growers of Colombia—a farmer owned and controlled organization that has worked tirelessly to improve the livelihoods of Colombian cafeteros.

In the 1980s the Federation recognized the importance of marketing and created, what is now a pop icon, the Juan Valdez logo. Today, I would like to applaud the Colombian Coffee Federation for reinvigorating the Juan Valdez logo by opening up the first Washington, DC branch of Juan Valdez coffee shop, located in the Washington headquarters of the Organization of American States building. Selling directly to consumers will help the Colombian farmers earn more for the quality beans that they produce and help increase the standard of living of the cafeteros. Again, I would like to send a special ''felicidades'' to the Federation for their work on behalf of Colombian cafeteros and wish them the best of luck with the Juan Valdez coffee shops.

IN HONOR OF ANDY MONTANEZ

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 13, 2004

Mr. KUCINICH. Mr. Speaker, I rise today in honor and welcome of Andy Montanez, premier singer from the beautiful island of Puerto Rico. For nearly 40 years, the salsa sound of Mr. Montanez has garnered countless fans in Cleveland, Ohio and around the world.

His love for music and exceptional voice was the driving force behind the immensely successful band, El Gran Combo. During the 15 years they played together, El Gran Combo recorded 37 LPs that included several hit singles. Mr. Montanez retired from El Gran Combo to pursue an international career. He joined the Venezuelan band, La Dimension Latina, one of the most popular orchestra's in Venezuala. His collaboration with La Dimension also produced several LPs and hit songs.

Today, Mr. Montanez continues to compose, play, record and tour with some of the finest Latin musicians around, including his grown children. His talent and enthusiasm continues to inspire and entertain fans located across the globe, yet connected through the universal language of music.

Mr. Speaker and colleagues, please join me in honor of salsa legend and premier Latin singer, Andy Montanez. His rich and powerful voice continues to uplift our spirits and nourish our souls—here in Cleveland, throughout Puerto Rico and around the world. Let the song begin!

A CELEBRATION OF YOUTH IN HONOR OF MADISON AINSLEY KNAPP

HON. NICK SMITH

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 13, 2004

Mr. SMITH of Michigan. Mr. Speaker, I rise today in honor of the birth and life of Madison Ainsley Knapp, born born September 10, 2004. She weighed 7.6 pounds and is 18¾ inches. Madison was born to my Legislative Director Alan Knapp and his wife Jennifer Knapp. Madison was also welcomed into this world by grandparents Larry and Carol Knapp of St. Joseph, Michigan and Virginia McNees of Benton Harbor, Michigan.

Madison is fortunate to be born to such a great family. We welcome Madison to the world with open arms and congratulate her parents and grandparents on the occasion of her birth.

IN CELEBRATION OF THE 40TH ANNIVERSARY OF LEISURE WORLD—LAGUNA WOODS

HON. CHRISTOPHER COX

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 13, 2004

Mr. COX. Mr. Speaker, I rise today to commemorate the 40th Anniversary of Leisure World in Laguna Woods, California. It was on September 10, 1964 that the first residents moved into Leisure World, a private community designed especially for active, retired seniors. Within a mere three years, the community had grown to a population of 10,000, making it one of our country's earliest and largest age restricted developments.

Today, Leisure World is home to nearly 18,000 residents who enjoy a variety of housing options and social services, an abundance of recreational activities and organizations, and an exceptionally warm and welcoming community. Nestled in the rolling hills of South Orange County, Leisure World existed as an unincorporated part of the county for more than three decades. In 1999, the community made history when its residents voted for cityhood and the area officially became part of Laguna Woods, America's first and only age-restricted city.

I had the pleasure of getting to know the residents of Leisure World when I was first running for Congress in 1988. And, for the past sixteen years, it has been a true honor to represent this unique and thriving community. In my experience, Leisure World residents are among the most politically aware and active of my constituency. Local political clubs have included me in hundreds of roundtable discussions, candidate debates, and ''Get-Out-The-Vote'' events. Leisure World TV has interviewed me on numerous occasions for its local cable show, and the community newsletter has welcomed my columns.

Most importantly, individual residents are always willing to share their informed opinions and suggestions on nearly any issue. Because of their insight, I have authored laws to reduce death taxes for seniors living in communities such as Leisure World, and to ease federal regulations that sought to outlaw age-restricted communities. I truly value my relationship with Leisure World, and I appreciate the opportunity to carry legislation on behalf of this community.

Mr. Speaker, it is my sincere honor to ask the Congress of the United States of America to join me in congratulating Leisure World-Laguna Woods on the occasion of its 40th Anniversary.

REMEMBERING FIRST LIEUTENANT RONALD WINCHESTER

HON. CAROLYN McCARTHY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 13, 2004

Mrs. MCCARTHY of New York. Mr. Speaker, I rise on behalf of the 4th Congressional district of New York in remembrance of First Lieutenant Ronald Winchester, from Rockville Center, of the United States Marine Corps. I would like to extend my heartfelt sympathy and condolences to Robert's friends and family, especially his parents Ronald and Marianna. Lt. Winchester was killed in the line of duty while heroically serving his country during Operation Iraqi freedom.

Ronald graduated from Chaminade High School in Mineola where he was a star on the football team. That did not change upon his arrival at the Naval Academy in Annapolis, Md. He was a star offensive lineman during the 1999 and 2000 seasons when he had some memorable games against Army and his friend Doug Larsen.

Ronald had a profound love and dedication for his family and country. People could see this and were drawn to Ronald's outgoing nature. Ronald had an infectious personality and was a natural leader. It was easy for his peers, whether on the football field or the battlefield, to respect and admire him.

It is always sad when a person, such as Ronald, is taken from us. He will be missed but not forgotten. I ask people to remember Ronald and all of the other men and women we have lost. We must also pray for those still fighting for the ideals, rights and freedoms Ronald held deeply.