Cole	Holden	Murtha
Conyers	Holt	Musgrave
Cooper	Honda	Myrick
Costello	Hooley (OR)	Nadler
Cox	Hostettler	Napolitano
Cramer	Houghton	Neal (MA)
Crane	Hoyer	Nethercutt
Crenshaw	Hulshof	Neugebauer
Crowley	Hunter	Ney
Cubin	Hyde	Northup
Culberson	Inslee	Norwood
Cummings	Isakson	Nunes
Cunningham	Israel	Nussle
Davis (AL)	Issa	Oberstar
Davis (CA)	Istook	Obey
Davis (FL)	Jackson (IL)	Olver
Davis (IL)	Jackson-Lee (TX)	Ortiz
Davis (TN)	Jefferson	Osborne
Davis, Jo Ann	Jenkins	Ose
Davis, Tom	John	Otter
Deal (GA)	Johnson (CT)	Owens
DeFazio	Johnson (IL)	Oxley
DeGette	Johnson, E. B.	Pallone
Delahunt	Johnson, Sam	Pascrell
DeLauro	Jones (NC)	Pastor
DeLay	Jones (OH)	Payne
DeMint	Kanjorski	Pearce
Deutsch	Kaptur	Pelosi
Diaz-Balart, L.	Keller	Pence
Diaz-Balart, M.	Kelly	Peterson (MN)
Dicks	Kennedy (MN)	Peterson (PA)
Dingell	Kennedy (RI)	Petri
Doggett	Kildee	Pickering
Dooley (CA)	Kilpatrick	Pitts
Doolittle	Kind	Platts
Doyle	King (IA)	Pombo
Dreier	King (NY)	Pomeroy
Duncan	Kingston	Porter
Dunn	Kleczka	Portman
Edwards	Kline	Price (NC)
Ehlers	Knollenberg	Pryce (OH)
Emanuel	Kolbe	Putnam
Emerson	LaHood	Radanovich
Engel	Lampson	Rahall
English	Langevin	Ramstad
Eshoo	Lantos	Rangel
Etheridge	Larsen (WA)	Regula
Evans	Larson (CT)	Rehberg
Everett	Latham	Renzi
Farr	LaTourette	Reyes
Fattah	Leach	Reynolds
Feeney	Lee	Rodriguez
Ferguson	Levin	Rogers (AL)
Filner	Lewis (CA)	Rogers (KY)
Flake	Lewis (GA)	Rogers (MI)
Foley	Lewis (KY)	Rohrabacher
Forbes	Linder	Ros-Lehtinen
Ford	Lipinski	Ross
Fossella	LoBiondo	Rothman
Frank (MA)	Lucas (KY)	Roybal-Allard
Franks (AZ)	Lucas (OK)	Royce
Frelinghuysen	Lynch	Ruppersberger
Frost	Majette	Rush
Gallegly	Maloney	Ryan (OH)
Garrett (NJ)	Manzullo	Ryan (WI)
Gerlach	Markey	Ryun (KS)
Gibbons	Marshall	Sabo
Gilchrest	Matheson	Sánchez, Linda T.
Gingrey	Matsui	Sanchez, Loretta
Gonzalez	McCarthy (MO)	Sanders
Goode	McCarthy (NY)	Sandlin
Goodlatte	McCollum	Saxton
Gordon	McCotter	Schakowsky
Goss	McCrery	Schiff
Granger	McDermott	Schrock
Graves	McGovern	Scott (GA)
Green (TX)	McHugh	Scott (VA)
Green (WI)	McIntyre	Sensenbrenner
Grijalva	McKeon	Serrano
Gutierrez	McNulty	Sessions
Gutknecht	Meehan	Shadegg
Hall	Meek (FL)	Shaw
Harman	Meeks (NY)	Shays
Harris	Menendez	Sherman
Hart	Mica	Sherwood
Hastings (FL)	Michaud	Shimkus
Hastings (WA)	Millender-McDonald	Shuster
Hayes	Miller (FL)	Simmons
Hayworth	Miller (MI)	Simpson
Hefley	Miller (NC)	Skelton
Hensarling	Miller, Gary	Slaughter
Herger	Miller, George	Smith (MI)
Herseth	Mollohan	Smith (NJ)
Hill	Moore	Smith (TX)
Hinchey	Moran (KS)	Smith (WA)
Hinojosa	Moran (VA)	Snyder
Hobson	Murphy	Solis
Hoeffel	Murtha	Souder
Hoekstra	Musgrave	Spratt
Holden	Myrick	Stark
Holt	Nadler	Stearns
Honda	Napolitano	Stenholm
Hooley (OR)	Neal (MA)	Strickland
Hostettler	Nethercutt	Stupak
Houghton	Neugebauer	Sullivan
Hoyer	Ney	Sweeney
Hulshof	Northup	Tancredo
Hunter	Norwood	Tanner
Hyde	Nunes	Tauscher
Inslee	Nussle	Tauzin
Isakson	Oberstar	Taylor (MS)
Israel	Obey	Taylor (NC)
Issa	Olver	Terry
Istook	Ortiz	Thomas
Jackson (IL)	Osborne	Thompson (CA)
Jackson-Lee (TX)	Ose	Thompson (MS)
Jefferson	Otter	Thornberry
Jenkins	Owens	Tiahrt
John	Oxley	Tiberi
Johnson (CT)	Pallone	Tierney
Johnson (IL)	Pascrell	Toomey
Johnson, E. B.	Pastor	Towns
Johnson, Sam	Payne	Turner (OH)
Jones (NC)	Pearce	Turner (TX)
Jones (OH)	Pelosi	Udall (CO)
Kanjorski	Pence	Udall (NM)
Kaptur	Peterson (MN)	Upton
Keller	Peterson (PA)	Van Hollen
Kelly	Petri	Velázquez
Kennedy (MN)	Pickering	Visclosky
Kennedy (RI)	Pitts	Vitter
Kildee	Platts	Walden (OR)
Kilpatrick	Pombo	Walsh
Kind	Pomeroy	Wamp
King (IA)	Porter	Waters
King (NY)	Portman	Watson
Kingston	Price (NC)	Watt
Kleczka	Pryce (OH)	Waxman
Kline	Putnam	Weiner
Knollenberg	Radanovich	Weldon (FL)
Kolbe	Rahall	Weldon (PA)
LaHood	Ramstad	Weller
Lampson	Rangel	Wexler
Langevin	Regula	Whitfield
Lantos	Rehberg	Wicker
Larsen (WA)	Renzi	Wilson (NM)
Larson (CT)	Reyes	Wilson (SC)
Latham	Reynolds	Wolf
LaTourette	Rodriguez	Woolsey
Leach	Rogers (AL)	Wu
Lee	Rogers (KY)	Wynn
Levin	Rogers (MI)	Young (AK)
Lewis (CA)	Rohrabacher	
Lewis (GA)	Ros-Lehtinen	
Lewis (KY)	Ross	
Linder	Rothman	
Lipinski	Roybal-Allard	
LoBiondo	Royce	
Lucas (KY)	Ruppersberger	
Lucas (OK)	Rush	
Lynch	Ryan (OH)	
Majette	Ryan (WI)	
Maloney	Ryun (KS)	
Manzullo	Sabo	
Markey	Sánchez, Linda T.	
Marshall	Sanchez, Loretta	
Matheson	Sanders	
Matsui	Sandlin	
McCarthy (MO)	Saxton	
McCarthy (NY)	Schakowsky	
McCollum	Schiff	
McCotter	Schrock	
McCrery	Scott (GA)	
McDermott	Scott (VA)	
McGovern	Sensenbrenner	
McHugh	Serrano	
McIntyre	Sessions	
McKeon	Shadegg	
McNulty	Shaw	
Meehan	Shays	
Meek (FL)	Sherman	
Meeks (NY)	Sherwood	
Menendez	Shimkus	
Mica	Shuster	
Michaud	Simmons	
Millender-McDonald	Simpson	
Miller (FL)	Skelton	
Miller (MI)	Slaughter	
Miller (NC)	Smith (MI)	
Miller, Gary	Smith (NJ)	
Miller, George	Smith (TX)	
Mollohan	Smith (WA)	
Moore	Snyder	
Moran (KS)	Solis	
Moran (VA)	Souder	
Murphy	Spratt	
Murtha	Stark	
Musgrave	Stearns	
Myrick	Stenholm	
Nadler	Strickland	
Napolitano	Stupak	
Neal (MA)	Sullivan	
Nethercutt	Sweeney	
Neugebauer	Tancredo	
Ney	Tanner	
Northup	Tauscher	
Norwood	Tauzin	
Nunes	Taylor (MS)	
Nussle	Taylor (NC)	
Oberstar	Terry	
Obey	Thomas	
Olver	Thompson (CA)	
Ortiz	Thompson (MS)	
Osborne	Thornberry	
Ose	Tiahrt	
Otter	Tiberi	
Owens	Tierney	
Oxley	Toomey	
Pallone	Towns	
Pascrell	Turner (OH)	
Pastor	Turner (TX)	
Payne	Udall (CO)	
Pearce	Udall (NM)	
Pelosi	Upton	
Pence	Van Hollen	
Peterson (MN)	Velázquez	
Peterson (PA)	Visclosky	
Petri	Vitter	
Pickering	Walden (OR)	
Pitts	Walsh	
Platts	Wamp	
Pombo	Waters	
Pomeroy	Watson	
Porter	Watt	
Portman	Waxman	
Price (NC)	Weiner	
Pryce (OH)	Weldon (FL)	
Putnam	Weldon (PA)	
Radanovich	Weller	
Rahall	Wexler	
Ramstad	Whitfield	
Rangel	Wicker	
Regula	Wilson (NM)	
Rehberg	Wilson (SC)	
Renzi	Wolf	
Reyes	Woolsey	
Reynolds	Wu	
Rodriguez	Wynn	
Rogers (AL)	Young (AK)	
Rogers (KY)		
Rogers (MI)		
Rohrabacher		
Ros-Lehtinen		
Ross		
Rothman		
Roybal-Allard		
Royce		
Ruppersberger		
Rush		
Ryan (OH)		
Ryan (WI)		
Ryun (KS)		
Sabo		
Sánchez, Linda T.		
Sanchez, Loretta		
Sanders		
Sandlin		
Saxton		
Schakowsky		
Schiff		
Schrock		
Scott (GA)		
Scott (VA)		
Sensenbrenner		
Serrano		
Sessions		
Shadegg		
Shaw		
Shays		
Sherman		
Sherwood		
Shimkus		
Shuster		
Simmons		
Simpson		
Skelton		
Slaughter		
Smith (MI)		
Smith (NJ)		
Smith (TX)		
Smith (WA)		
Snyder		
Solis		
Souder		

NAYS—2

Baird	McInnis

NOT VOTING—13

Bachus	Greenwood	Paul
Carson (IN)	Kirk	Quinn
Collins	Kucinich	Young (FL)
Gephardt	Lofgren	
Gillmor	Lowey	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SHIMKUS) (during the vote). Members are advised 2 minutes are left in this vote.

□ 1300

So (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. BASS. Mr. Speaker, on Thursday, July 22, I regrettably missed recorded votes numbered 407 and 409. Had I been present, I would have voted ''yea'' on both measures.

MARRIAGE PROTECTION ACT OF 2004

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 734, I call up the bill (H.R. 3313) to amend title 28, United States Code, to limit Federal court jurisdiction over questions under the Defense of Marriage Act, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 734, the bill is considered read for amendment.

The text of H.R. 3313 is as follows:

H.R. 3313

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Marriage Protection Act of 2003''.

SEC. 2. LIMITATION ON JURISDICTION.

(a) IN GENERAL.—Chapter 99 of title 28, United States Code, is amended by adding at the end the following:

''§ 1632. Limitation on jurisdiction

''No court created by Act of Congress shall have any jurisdiction, and the Supreme Court shall have no appellate jurisdiction, to hear or determine any question pertaining to the interpretation of section 1738c of this title or of this section. Neither the Supreme Court nor any court created by Act of Congress shall have any appellate jurisdiction to hear or determine any question pertaining to the interpretation of section 7 of title 1.''.

(b) AMENDMENT TO TABLE OF SECTIONS.—The table of sections at the beginning of chapter 99 of title 28, United States Code, is amended by adding at the end the following new item:

''1632. Limitation on jurisdiction.''.

The SPEAKER pro tempore. The amendment in the nature of a substitute printed in the bill is adopted.

The text of the amendment in the nature of a substitute is as follows:

H.R. 3313

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Marriage Protection Act of 2004''.

SEC. 2. LIMITATION ON JURISDICTION.

(a) IN GENERAL.—Chapter 99 of title 28, United States Code, is amended by adding at the end the following:

''§ 1632. Limitation on jurisdiction

''No court created by Act of Congress shall have any jurisdiction, and the Supreme Court shall have no appellate jurisdiction, to hear or decide any question pertaining to the interpretation of, or the validity under the Constitution of, section 1738C or this section.''.

(b) AMENDMENTS TO THE TABLE OF SECTIONS.—The table of sections at the beginning of chapter 99 of title 28, United States Code, is amended by adding at the end the following new item:

''1632. Limitation on jurisdiction.''.

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 45 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

□ 1300

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that the time for debate on H.R. 3313 be extended by 20 minutes, said time to be equally controlled by myself and the ranking member, the gentleman from Michigan (Mr. CONYERS).

The SPEAKER pro tempore (Mr. SHIMKUS). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill, H.R. 3313.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. DELAY), the distinguished majority leader.

Mr. DELAY. Mr. Speaker, I asked the gentleman from Wisconsin (Mr. SENSENBRENNER) for the privilege of opening this debate so as to lay before the

House not only the arguments in favor of the Marriage Protection Act, but also, and perhaps more importantly, to appeal to Members on all sides of this issue to conduct today's debate with the compassion and civility that it deserves.

Mr. Speaker, I repeat my appeal to Members on all sides of this issue. I would hope that Members would conduct today's debate with the compassion and civility that it deserves.

I really feel that, I fear that the debate about homosexual marriage, which has recently been thrust upon the entire Nation by the Supreme Judicial Court of Massachusetts, has begun to deviate from a productive conversation about public policy. Too often proponents and opponents seem more interested in talking to themselves than to each other, and if we truly seek a national consensus on the future of marriage, little can be gained by an afternoon spent hectoring each other.

So those who oppose homosexual marriage need not be lectured about compassion any more than those who support it need to be lectured about morality. You think this bill is cruel and we think same sex marriage is a contradiction in terms. Saying so at the top of our lungs for the next few hours will do little good for anyone, least of all the millions of American homosexuals who deserve respect in this debate as American citizens and as human beings.

Mr. Speaker, we are elected to judge policies, not people, and the policy before us today, the Marriage Protection Act, would reaffirm the current national consensus on homosexual marriage by leaving to the States and to the American people the right to define marriage in this country. This is the position that many Democrats say that they support, all 50 States deciding for themselves how to define marriage rather than a one-size-fits-all definition being imposed on them from above, and this bill is their opportunity to publicly adhere to that argument.

If you support the States and respect the will of the American people, you must support this bill. The overwhelming bipartisan passage of the Defense of Marriage Act in 1996, signed into law by President Bill Clinton, provides uncontradicted testimony to the consensus opinion of the American people, an opinion shared by every civilized society in history. That consensus is simply that marriage is the union between one man and one woman.

The consensus of the American people is simply that marriage is the union between one man and one woman. It is not a contract of mutual affection between consenting adults. It is, instead, the architecture of family, the basic unit of civilization, and the natural means by which the human species creates, protects and instills its values in its children.

Traditional marriage is the most stable, enduring and efficient means of raising children, laying down the roots of community life and establishing the necessary and sustainable predicates of nationhood. This is the evolution of civilization.

Individual men and women, with the innate qualities of their gender, come together in shared sacrifice to raise children. They each make their own unique contributions to the raising of boys and girls as male and female models for their male and female children and create the ideal family unit of mother, father and children, an ideal established by nature, sustained by human experience and supported by decades of social science.

It is not a collection of individuals but of families that come together to form a community of shared values and common purpose, and communities in turn come together and bind each other by those shared values and common purpose to establish a common nation. If any link, if any link in that chain breaks, like, for instance, the erosion of the traditional family that has occurred in this country over the last 40 years, the institution of marriage suffers, but so does the Nation.

Children need their community and their Nation to help stabilize their social environment so that they can have the same chances in life we and every generation of Americans have had before them. That is why there has always been and always will be a compelling government interest to protect the institution of marriage from corrosion within or artificial social engineering without.

If it is true what the Massachusetts Supreme Court says, and I do not believe that it is, that ''marriage is an evolving paradigm,'' then should not that evolution be an organic, natural evolution and left to the collective and evolving wisdom of the American people?

And if, on the other hand, no such institutional evolution exists, does not the arrogance of judges who would impose on our society their own contrary and misguided prejudices fundamentally undermine American democracy?

In both cases the answer is yes, and in both cases the Marriage Protection Act will ensure that we take the proper course.

We are a nation of laws, not commandments, and neither the conservative politician nor the liberal judge by himself has the right to define marriage for a nation of 270 million people. That responsibility, that responsibility lies with the people we all serve, whether it is in Sugar Land or San Francisco and everywhere in between.

So I urge my colleagues, let us have a debate. Let us have a civil debate. But in the end I hope my colleagues understand that that responsibility lies in the body of the House of Representatives and you will vote yes on the bill before us.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I begin by thanking the leader and the chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER), for allowing us to add 10 minutes on each side to this debate.

Now, let us begin with the nature of H.R. 3313. This is not about marriage. This is about whether the third branch of government, the judiciary, since Marbury v. Madison will continue to be the arbiter of what is constitutional in the American system.

So I begin by pointing out that to deny any branch, any issue the right to full judicial review would bring about more chaos than even the proponent of this change, which is patently unconstitutional, would want. The legislation is the first of its kind that has ever been brought to the floor of the House of Representatives.

Never have we ever tried to do something as breathtaking as taking away the right of a Federal appeal when it is clearly permissive not even to go to the Supreme Court. We had an amendment that would have allowed the Supreme Court at least to take precedent. It was voted down by the conservatives in the Committee on the Judiciary. This would be the only instance in the history of the Congress that we have totally precluded the Federal courts from considering the constitutionality of Federal legislation.

The other body only last week decided this question the same way that I pray we will today. They turned it back. It was considered too unconstitutional and too unprecedented. Now, make no mistake about it, were the bill to be enacted, the chaos that would ensue from 50 States plus the District of Columbia issuing conflicting opinions on the marriage law would be irrational.

Why, I ask my colleagues, and I will yield, why would anyone want to create out of this rational body a law that would prevent the Federal courts from deciding cases rather than allowing anywhere up to 50, 51 different decisions? I yield to anyone in this body.

So I want to urge to you that the reason is that we are actually stripping the Federal courts from jurisdiction that has historically been theirs. We have these branches in the judiciary. Now, what would have happened had conservatives decided during the civil rights battles of the sixties to have decided that we would just take the decisions away from the courts, or Brown v. The Board or any of the tests against the Civil Rights Act, the Voter Rights Act, would have had nowhere to go had someone come across this incredibly weird decision.

So I rise in strong opposition to this. I urge the Members, as the leader who preceded me said, may rationally analyze where stripping the Federal courts from any one single issue, where that would lead this great Constitution and democracy of over 209 years.

I rise in strong opposition to this unconstitutional, discriminatory, divisive, and unprecedented bill. The only reason we are debating today is that the President is in danger of losing his job and wants to detract attention from

his failure in Iraq and to bolster support amongst right-wing conservatives.

In the past few weeks, I am sorry to say the death toll of U.S.-led forces in Iraq topped 1,000. The bipartisan 9–11 Commission found, contrary to the President's implications, that there was no "collaborative relationship" between Iraq and Al Qaeda. And we all know that no weapons of mass destruction have been found in Iraq.

What did the President do about it? He followed the advice of conservative organizers and "changed the subject" so he could have a chance of winning in November.

That is why we are here. The President and the Republican leadership know that a constitutional amendment could not pass; in fact, it failed the Senate last week. Instead, they are moving this divisive and unconstitutional bill, which proposes to strip all federal courts and the Supreme Court from reviewing not just one but two acts of Congress.

I cannot believe that proponents of this bill understand its implications. Imagine if, in the early 1950's, a conservative Congress had succeeded in stripping the federal courts of jurisdiction to hear segregation cases. The Supreme Court would never have issued its historic Brown v. Board of Education decision declaring that separate was not permitted in education.

Alternatively, consider the implications if a more liberal Congress opted to prevent federal courts from hearing any Second Amendment cases. How would my conservative colleagues like it if the California or the Massachusetts Supreme Court was the final arbiter of the right to bear arms in their states? Would they think it fair that a single class of citizens—gun owners—were excluded from appeals to our federal judicial system?

Yet that is what H.R. 3313 would do—deny any judicial review, even by the Supreme Court—of any case brought challenging the constitutionality of the Defense of Marriage Act, which clarifies that states need not give full faith and credit to same sex marriages entered into in other states. This legislation would be the first and only instance in which Congress had totally precluded the federal courts from considering the constitutionality of federal legislation.

This runs totally contrary to our bedrock principles. Article III of the Constitution says "the judicial Power of the United States, shall be vested in one supreme Court." And in the more than 200 years that have passed since Marbury v. Madison, judicial review has served as the very touchstone of our constitutional system and our democracy.

It is no wonder that, when court stripping legislation was proposed in the 1970's concerning school prayer, abortion, and busing, conservatives found the proposals to be so repugnant. Then-Yale Law School Professor Robert Bork wrote of the bills, "you'd have 50 different constitutions running around out there, and I'm not sure even conservatives would like the results." Senator Barry Goldwater stated that the "frontal assault on the independence of the Federal courts is a dangerous blow to the foundations of a free society" and warned "there is no clear or coherent standard to define why we shall control the Court in one area but not another."

Today, the stakes are no less significant. As emotionally charged and politicized as the issue of same sex marriage has become, we should not use that controversy to permanently damage the courts, the Constitution, and the Congress. At a time when it is more important than ever that our Nation stand out as a beacon of freedom, we must not countenance a bill that undermines the very protector of those freedoms—our independent federal judiciary.

The bill is even more misguided considering that it was a state court, not a federal court, that issued an opinion that permitted same sex marriage. Further, no federal court has even opined on the constitutionality of DOMA.

Make no mistake about it. If this bill is enacted, chaos will ensue when the fifty states and the District of Columbia issue conflicting opinions on DOMA. Then my colleagues on the other side will be clamoring for review by a Supreme Court that has seven Republican appointees and two Democratic appointees.

I urge my colleagues to vote "no" on this legislation.

CONGRESSIONAL RESEARCH SERVICE.

MEMORANDUM

To: House Committee on the Judiciary, Attention: Perry Apelbaum.

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

Subject: Precedent for Congressional Bill.

This memorandum is in response to your query, respecting H.R. 3313, now pending before the House of Representatives, as to whether there is any precedent for enacted legislation that would deny judicial review in any federal court of the constitutionary of a law that Congress has enacted, whether a law containing the jurisdictional provision or an earlier, separate law. We are not aware of 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.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3313, the Marriage Protection Act, simply prevents one or more Federal judges from striking down the provision of the Defense of Marriage Act, known as DOMA, that protects States from having to recognize same sex marriage licenses granted in other States.

This bill will prevent unelected lifetime appointed Federal judges from taking away from the States their right codified in DOMA to reject same sex marriage licenses issued elsewhere if States so choose.

DOMA passed the Congress overwhelmingly in the House by a vote of 342 to 67 and in the Senate by a vote of 85 to 14, and it was signed into law by President Clinton.

□ 1315

This afternoon we will hear from opponents of this bill that this is an unprecedented move to restrict the jurisdiction of the Federal courts. This is not the case.

Beginning with the first Congress, when the Judiciary Act of 1789 was passed, the jurisdiction of the Federal courts was limited; and since that time, Congress has passed enactments either expanding or restricting the jurisdiction of the Federal courts, whether it be in the area of diversity jurisdiction or elsewhere, including the interpretation of Federal laws.

Just less than 2 years ago, as a part of a supplemental appropriations bill, the Congress enacted a provision inserted by Senator DASCHLE of South Dakota preventing Federal court review of determinations made on the clearing of brush on Indian reservations in South Dakota. That was not called an assault on the Constitution by anyone. It was merely a determination by the Congress that these types of questions should not be reviewed judicially, and that is very clearly authorized by article III, section 2 of the Constitution.

Today, we are talking about an issue of whether the Federal courts can interpret the Defense of Marriage Act to take away the right of the State to determine its own marriage laws.

We have heard earlier in this debate that the supreme judicial court of Massachusetts in an interpretation of States rights made the determination that it was unconstitutional to deny marriage licenses, and in that one State only, to persons of the same gender who applied for such a license. What this bill will do is to prevent a Federal court from exporting the decision of a divided court in a single State to the other States.

I do not believe that when James Madison wrote the Constitution his idea of federalism was to allow a divided court in a single State to set national policy, and I sincerely doubt the Constitution would have been ratified had that been the notion that pervaded Philadelphia in 1787 and in the State legislatures elsewhere.

What we are doing here is restoring the Federal system. We are restoring a Federal system in an area that has always been conceded to be the province of the State.

Now, a lot of people will also argue against this bill saying that the danger is not there. I am here to say that the danger is real.

Just 2 days ago, a lesbian couple married in Massachusetts filed the first lawsuit in a Florida Federal court to set Federal precedent and to strike down DOMA's protection that allows States not to recognize same-sex marriage licenses issued in Massachusetts. The attorney for the plaintiffs explicitly stated he filed the case because he wants a Federal court to force every State to recognize same-sex marriage licenses issued in Massachusetts, whether the people of that State agree or not.

Now, the laws of Florida are different than the laws of Massachusetts. Florida should be allowed to make its own laws and to enforce its own laws and not to have residents who disagree with those laws run to Massachusetts and come back and force a Federal judge to recognize that license in Massachusetts.

The threat that is posed to traditional marriage by a handful of Federal judges whose decisions can have an impact across State boundaries has renewed concern about abuse of power from the Federal judiciary. This concern has roots as old and venerable as our Nation's history and is nothing new in the year 2004.

Thomas Jefferson wrote of Federal judges: ''Their power is the more dangerous as they are in office for life and not responsible to the elective control.''

Abraham Lincoln said in his first inaugural address in 1861: ''The candid citizen must confess that if the policy of the government, upon vital questions, affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the people will have ceased to be their own rulers having, to that extent, practically resigned their government into the hands of that eminent tribunal.''

This statement by Abraham Lincoln was in the wake of the Dred Scott decision, a decision of the Supreme Court which was the single most important spark that began a civil war which to this day was the most bloody conflict in our history.

A remedy to abuses by Federal judges has long been understood to lie, among other places, in Congress's ability to limit Federal court jurisdiction. H.R. 3313 would prevent a few Federal judges from rewriting State marriage recognition laws in ways that do not reflect the will of the people. Nothing in this bill denies anyone their day in court. The bill simply provides that in cases involving DOMA's protection of States rights, those cases are to be brought in State court.

The door of the courthouse is not slammed shut. The people who were married in Massachusetts and want to get recognition of their marriage elsewhere, it is the State courthouse that they go to, not the Federal courthouse.

Any Member who wishes to protect the Defense of Marriage Act's protections for States from invalidation by Federal judges should support this bill. The vast majority of Members of the House represent States that have passed laws that specifically rely on the right of the States codified in DOMA to resist same-sex marriage licenses issued out of State.

The Constitution clearly provides that the lower Federal courts are entirely creatures of the Congress, as is the appellate jurisdiction of the Supreme Court, excluding only the Supreme Court's very limited original jurisdiction over cases involving ambassadors and cases in which States have legal claims against each other.

In The Federalist Papers, Alexander Hamilton made clear the broad nature of Congress's authority to amend Federal court decisions to remedy perceived abuse. He wrote, describing the Constitution, that ''it ought to be recollected that the national legislature will have ample authority to make such exceptions, and to prescribe such regulations as will be calculated to obviate or remove the inconveniences'' which are posed by decisions of the Federal judiciary.

That understanding prevails today. As a leading treatise on Federal court jurisdiction has pointed out: ''Beginning with the first Judiciary Act in 1789, Congress has never vested the Federal courts with the entire 'judicial power' that would be permitted by article III'' of the Constitution. Even the famously liberal Justice William Brennan wrote a Supreme Court opinion that said: ''Virtually all matters that might be heard in article III Federal courts could also be left by Congress to State courts.''

The United States Constitution applies to the State courts. That was made clear in the 14th amendment.

Limiting Federal court jurisdiction to avoid abuses is not a partisan issue. Senate Minority Leader DASCHLE, as I have previously indicated, supported legislation enacted during the last Congress that denies the Federal court jurisdiction over the procedures governing timber projects in order to expedite forest clearing. If limiting the jurisdiction of the Federal court is good enough to protect trees, it sure ought to be good enough to protect a State's marriage policy.

Far from violating the separation of powers, legislation that leaves State courts with jurisdiction to decide certain classes of cases would be an exercise of one of the very checks and balances provided for in the Constitution. No branch of the Federal Government can be entrusted with absolute power and certainly not a handful of tenured Federal judges appointed for life. The Constitution allows the exercise of judicial power, but it does not grant the Federal courts the unchecked power to define the limits of its own power.

Integral to the American constitutional system is each branch of government's responsibility to use its powers to prevent overreaching by the other branches. H.R. 3313 does just that, and I urge my colleagues to support it.

Mr. Speaker, I reserve the balance of my time.

Mr. NADLER. Mr. Speaker, I yield 2½ minutes to the distinguished gentleman from Maryland (Mr. HOYER), Democratic whip.

Mr. HOYER. Mr. Speaker, I thank the gentleman for yielding me time.

I supported the Defense of Marriage Act. I rise now in the defense of the Constitution of the United States. I rise now in defense of the separation of powers. I rise now in defense of a Nation of laws, not of men and women.

Mr. Speaker, I urge all of my colleagues to seriously consider the ramifications of the legislation under consideration.

If this bill becomes law, it will represent the first time in our history that Congress has enacted legislation that completely bars any Federal court, including the United States Supreme Court, from considering the constitutionality of Federal legislation. Thus, it contradicts the Supreme Court's historic ruling more than 200 years ago in Marbury v. Madison, which enunciated the principle of Federal judicial review of Federal laws and established the separation of powers doctrine.

How dramatically different has that made America than every other nation in the world, in fact? A Nation of laws.

In Marbury, Chief Justice John Marshall wrote: ''It is emphatically the province and duty of the judicial department to say what the law is.''

This legislation, however, would undue the deference and respect that Congress has given to the principle of judicial review. It would intrude upon the principle of separation of powers; and as a result, I believe it is unconstitutional.

This legislation also would undermine the independent Federal judiciary. Even the majority's witness, hear me colleagues, the witness called by the majority, Professor Redish, said that if Congress strips the courts of jurisdiction it would, the majority's own witness, ''risk undermining public faith in both Congress and the Federal courts.'' That was your witness, not ours.

And there is little doubt that this bill would set a dangerous precedent.

The author of the Defense of Marriage Act, one of the most conservative Members that has served in this Congress, Bob Barr, said this: ''My main concern with H.R. 3313 is that it will lay the path for the sponsors of unconstitutional legislation to simply add the language from H.R. 3313 to their bills.'' Bob Barr, the sponsor of the Defense of Marriage Act, said that.

If this end-run of judicial review becomes law, what is next? No judicial review of laws restricting freedom of speech or religion or laws affecting the right to vote?

I was elected to the Maryland State Senate in 1966. One of the first bills I voted on in January of 1967 was to repeal the miscegenation statutes that then were on the Maryland books. America has nevertheless stood strong.

Let us reject this undermining of what America stands for, a Nation of laws, not of men and women.

Mr. SENSENBRENNER. Mr. Speaker, I yield 5 minutes to the gentleman from Ohio (Mr. CHABOT), the distinguished chairman of the Subcommittee on the Constitution.

Mr. CHABOT. Mr. Speaker, I want to thank the gentleman from Wisconsin for his leadership on this issue. I also want to thank the gentleman from Indiana (Mr. HOSTETTLER) for proposing this legislation and his leadership as well.

□ 1330

Mr. Speaker, I rise in strong support of H.R. 3313, the Marriage Protection Act. This legislation prevents unelected lifetime appointed Federal

judges from striking down the protections Congress afforded States through the Defense of Marriage Act.

The fact of the matter remains that marriage between a man and a woman has been and continues to be the cornerstone of our society. If we are going to change that, if we are going to make two men able to be married or two women able to be married in this country, and I do not think we should, but if we were, it ought to be done through the will of the people, and the will of the people is expressed through their elected representatives, either at the State legislature, whatever State they are located within, or the Congress of the United States, should we determine to take that on nationally.

Rather than having the elected representatives do this, it has been done piecemeal by a rogue mayor, for example, in San Francisco, or a court by a 4 to 3 decision in Massachusetts. So clearly what has happened here, and this is an issue that some on the other side of the aisle might think that Members on this side of the aisle want to be debating today, well, this is an issue which has been thrust upon us by rogue mayors and rogue courts, not something we chose but something we have to do.

The Subcommittee on the Constitution that I chair held four hearings focusing on the status of marriage in the United States. One of the hearings focused specifically on the issue we are considering today. That hearing clearly demonstrated that we could, if we wished, constitutionally strengthen the Defense of Marriage Act and limit the ability of activist Federal judges to force one State's controversial marriage laws on any other State by passing this legislation. We can clearly constitutionally do this.

Now as my colleagues know, in 1996 the House overwhelmingly passed the Defense of Marriage Act by a 342–67 vote. The Senate voiced similar support passing DOMA by a vote of 85–14. It was later signed into law by President Clinton. In passing DOMA, Congress recognized that controversial views on marriage adopted in one State should not be forced on other States. Understanding that marriage as defined by a State would have an impact across State lines, Congress exercised its authority under Article IV, Section 1 of the Constitution, the full faith and credit clause, to protect States right.

Under this provision, ''full faith and credit should be given in each State to the public acts, records, and judicial proceedings of every other State; and the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.''

Today, 44 States have enacted laws defining marriage as between a man and woman. That is 88 percent of the States, and 86 percent of the population throughout the country. So far, 38 States have specifically rejected the recognition of same sex marriage licenses granted out of State. Unfortunately, the will of the States could be jeopardized by Federal judges. That is the point of this legislation.

H.R. 3313 will protect the provision of DOMA that keeps final authority of the will of the States with the States, not with Federal judges. Let me make something very clear. If Members voted for the Defense of Marriage Act or purport to support it now, Members must logically vote for the Marriage Protection Act, this law. Voting against this legislation will undermine DOMA and potentially force same-sex marriages on all 50 States.

The Constitution allows Congress to protect DOMA through judicial limitations set forth in H.R. 3313. Together, Article III, Sections 1 and 2 of the Constitution, provide that the Federal courts derive authority solely from Congress and the Supreme Court's appellate jurisdiction is subject to such exceptions and such regulations as the Congress shall make. Moreover, this authority was made clear as far back as the first Judiciary Act of 1789, which according to leading scholars ''is widely viewed as an indicator of the original understanding of Article III.''

Mr. Speaker, I strongly encourage my colleagues to support this legislation. It is very important.

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, more than anything else, today's debate is about the politics of a national election. Perhaps our sons and daughters have been sent to Iraq based on intelligence we now know was not correct, perhaps millions of Americans are out of work, and many more do not have access to a doctor. Perhaps our seniors cannot afford life-protecting medications, but none of that matters, at least we can today take the time out to beat up on an unpopular minority.

Mr. Speaker, that may be good politics, but it demonstrates a dangerous contempt for our system of government. This debate is not really about gay marriage, no matter how long they may talk about it. The courts will or will not declare the Defense of Marriage Act unconstitutional. We do not know that yet. If they declare the Defense of Marriage Act unconstitutional, for those that disagree with them, the remedy is the normal remedy, a constitutional amendment, which I gather we will be debating on this floor in a couple of weeks before we know what the courts do.

But this debate is about whether Congress can adopt unconstitutional legislation on any subject and protect that legislation from constitutional challenge by stripping the courts of their jurisdiction to consider any such challenge. We have never done that before in our history, and we should not do that now.

No less a conservative icon than Barry Goldwater opposed court stripping bills in previous decades on the subjects of school prayer, school busing and abortion, which were the big issues in those days. He warned his colleagues that, ''The frontal assault on the independence of the Federal courts is a dangerous blow to the foundations of a free society.''

Our former colleague, Bob Barr, the author of the Defense of Marriage Act which this bill purports to protect, had this to say in a letter to the Members of Congress about this bill. ''H.R. 3313 will needlessly set a dangerous precedent for future Congresses that might want to protect unconstitutional legislation from judicial review. During my time in Congress, I saw many bills introduced that would violate the takings clause, the second amendment, the 10th amendment, and many other constitutional protections. The fundamental protections afforded by the Constitution would be rendered meaningless if others follow the path set by H.R. 3313.'' That is from Bob Barr.

The distinguished majority leader of the House, the gentleman from Texas (Mr. DELAY), has already said that if this bill passes he will introduce court-stripping legislation on other subjects. In fact, the likelihood is that language saying the court shall have no jurisdiction to judge the constitutionality of this act will become boilerplate. Just as every rule that we consider in this House has boilerplate language saying that all points of order against this bill are waived, which means the rules of the House do not apply, it will become boilerplate on every bill of doubtful constitutionality. That would render the Bill of Rights meaningless.

The 1936 Stalinist constitution of the Soviet Union read wonderfully on paper. It had a long list of Bill of Rights, freedom of religion, freedom of speech, and freedom of assembly. It was not worth the paper it was written on because there was no means of enforcing those rights. We depend on the courts to enforce our rights against majorities represented in Congress or State legislatures, momentary majorities perhaps.

Without the means of the courts enforcing the Bill of Rights, the Bill of Rights is a nullity. Our Constitution would become like the Soviet constitution, meaningless. We must have a Federal forum to protect liberty, otherwise that liberty will not exist.

The due process clause of the fifth amendment, passed after the Judiciary Court Act of 1789, says that no person may be deprived of life, liberty or property without due process of law. Due process of law means there has to be a judicial forum to assert the right and have the judges decide.

We are told the State courts will be the forum. The State courts will decide whether a law, a Federal law or a State law, violates the United States Constitution. That means we will have 50 different constitutions, 50 different laws. We say in the Pledge of Allegiance the United States is one Nation, indivisible; not if this bill passes. If this bill and other bills like it pass, we

will balkanize the United States. The Constitution will mean one thing in New Jersey, another thing in New York and a third thing in Pennsylvania.

Mr. Speaker, it is our very system of government and the constitutional system of checks and balances which is under attack with this bill. If the Congress by statute can prevent the Federal courts from applying the Constitution on any subject matter, then the protections of an independent judiciary, the protections of the Bill of Rights, the protections of the United States Constitution, become no more than a puff of smoke. It will, of course, be unpopular minorities, whether religious minorities, political minorities, ethnic minorities, racial minorities, lesbians, gays, whoever is unpopular at the moment, who will lose their rights.

There have been many Supreme Court decisions I have found loathsome and wrong, such as Bush v. Gore, and some of the cases invalidating or limiting our civil rights law, but while that makes me question the wisdom of some of the justices, even occasionally the motives, it does not make we want to alter the fundamental structure of our government that has protected our liberties for the last two centuries.

The evisceration of our Constitution and Bill of Rights, the natural result of this bill, threatens all of us. It is far, far more important than the question of gay marriage, which is not really involved here because that has not been decided by the courts. We are playing with fire with this bill, and that fire could destroy the Nation we love.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, the predictions of attacks by opponents of this bill, including the gentleman from New York (Mr. NADLER), are slaps in the face of the 50 States.

The Supreme Court itself agrees in this case. In a decision this year, the Supreme Court reaffirmed that ''the whole subject of domestic relations of husband and wife, parent and child belongs to the laws of the States and not to the United States.'' That is Elk Grove Unified School District v. Newdow.

The Supreme Court also has stated, ''domestic relations are preeminently matters of State law.'' That is Mansell v. Mansell, 1989. And that ''family relations are a traditional area of State concern,'' Moore v. Sims, 1979.

So by reserving marriage law decisions to States, as this bill does, we are doing nothing more than what the Supreme Court itself has said is proper.

Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. HOSTETTLER), who is the author of the bill.

(Mr. HOSTETTLER asked and was given permission to revise and extend his remarks.)

Mr. HOSTETTLER. Mr. Speaker, I thank the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the full committee, for yielding me this time.

In my discussion during the consideration of the rule, I informed the body of the constitutional basis for this law. I have several of the provisions beside me here, and for Members who are actually interested in what the Constitution says, that is available in the record as well as in several copies that are available to every Member's office.

However, I would like to address some of the issues talked about during this debate, and one of the issues that is a discussion of where we are with regard to other countries, it was suggested earlier, and we heard it in the last person's speech, that somehow we are doing as the Soviet Union has done in the past by limiting the ability for individuals to go before the court.

Well, the fact is that there was a mechanism in the Soviet Union very similar to the mechanism we have in this country, and it was referred to as the Politburo, and the Politburo was a very small entity of individuals that made policy for the hundreds of millions of individual citizens of the Soviet Union. We have that today in this country. We refer to it as the United States Supreme Court. As few as five people in black robes can look at a particular issue and determine for the rest of us, insinuate for the rest of us, that they are speaking for the majority when, in fact, they are not.

It is time with the passage of this legislation to say that we will have the people in the several States to determine their marriage laws, and we will not allow, for example, what is attempting to be done in the State of Florida, and that is a couple that was wed in the State of Massachusetts imposing their will on the rest of the country by overturning the Defense of Marriage Act.

This bill uses constitutional provisions to allow the States and to allow the citizens of the several States to determine the definition of marriage for themselves and to not allow another State and especially the Federal judiciary to determine the definition of marriage for them.

□ 1345

Mr. NADLER. Mr. Speaker, I yield 1½ minutes to the distinguished gentleman from California (Mr. BERMAN).

Mr. BERMAN. Mr. Speaker, I thank the gentleman for yielding me this time.

I think I just heard the Supreme Court of the United States analogized to the politburo of the Soviet Union, but I am not sure. The Hostettler fix was tried before. It has never happened, but it was tried before and here is what Attorney General William French Smith said in a letter to Strom Thurmond back in 1982:

''The integrity of our system of Federal law depends on a single court of last resort having a final say on the resolution of Federal questions. State courts could reach disparate conclusions on identical questions of Federal law, in this case interpreting the Constitution, and the Supreme Court would not be able to resolve the inevitable conflicts.''

If you want to do away with the supremacy clause, repeal Marbury v. Madison, and rip apart any uniform effort to enforce constitutional protections, you should vote for this bill. But one day, some liberal runaway court in some State, justices which we cannot impeach and that we did not confirm over in the other body, one day that court will come down and say that DOMA, the Defense of Marriage Act, is unconstitutional because of the full faith and credit clause; and the losing parties, the people who want State control on the issue of who can marry, will not be able to appeal that to the U.S. Supreme Court under this bill.

What a ridiculous situation.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Speaker, I thank the chairman of the Committee on the Judiciary, the gentleman from Wisconsin, for yielding me this time.

Mr. Speaker, all Americans are entitled to a fair hearing before independent-minded judges whose only allegiance is to the law. However, over the last several years we have witnessed some judges wanting to determine social policy rather than interpret the Constitution. They seem to be legislators, not judges; promoters of a partisan agenda, not wise teachers relying on established law.

Judicial activism has reached a crisis. Judges routinely overrule the will of the people, invent new rights, and ignore traditional morality. Judges have redefined marriage, deemed the Pledge of Allegiance unconstitutional, outlawed longstanding religious practices, and imposed their personal views on all Americans.

Fortunately, there is a solution. The Constitution empowers Congress to say that some subjects are off-limits to Federal courts. The constitutional authority authorizing Congress to restrain Federal courts, in fact, has been used before, and it should be used again.

The legislation being considered today preserves the right of State courts to consider the constitutionality of the Defense of Marriage Act, DOMA. It prevents Federal judges from ordering States to accept another State's domestic relations policy, an area of the law historically under the jurisdiction of the States, not the Federal Government.

While the bill does not dictate any conclusions about DOMA, the vast majority of States have enacted laws that support DOMA. We need to protect the right of the voters of those States to define marriage as they see it.

When Federal judges step over the line, Congress has a responsibility to

drop a red flag. On behalf of the American people, we should vote for this legislation because it rightfully restrains Federal judges who threaten our democracy.

Mr. NADLER. Mr. Speaker, I yield myself 20 seconds.

Mr. Speaker, reference was made before to the Daschle court-stripping bill. There was no such thing. His bill did not court-strip. In fact, in the case of Biodiversity Associates v. Cables, his bill was judged constitutional. If the courts had been stripped of jurisdiction, they could not have done that.

The CRS says, ''We are not aware of any precedent for law that would deny the inferior Federal court's original jurisdiction or the Supreme Court of appellate jurisdiction to review the constitutionality of a law of Congress.''

Let us stop with this nonsense that this is not unprecedented.

Mr. Speaker, I yield 2½ minutes to the distinguished gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Speaker, I rise in opposition to this bill. It is an attack on fundamental rights and unconstitutionally exceeds the power of this body to regulate the judicial branch of government.

Within our constitutional framework, although Congress is expected to follow the Constitution, it is not for Congress to make the final decision as to what is constitutional and what is not. Since Marbury v. Madison in 1803, at least until today, there has been a longstanding acceptance of the principle that the United States Supreme Court is the final arbiter of what is constitutional and what is not. And although Congress has some power to regulate the jurisdiction of Federal courts, it cannot totally prevent the Supreme Court from ensuring that States comply with the Constitution.

Mr. Speaker, this bill not only violates numerous constitutional principles; it is dangerous policy. If this bill were found to be constitutional, there would be no prohibition against boilerplate language stuck into every bill we consider, stripping judicial review from every controversial issue.

Frankly, I am glad that this kind of legislation did not pass before 1954 so Congress did not strip the Supreme Court from jurisdiction over segregation in public schools, or before the 1960s when unelected, lifetime-appointed activist Federal judges required Virginia to recognize racially mixed marriages, overruling the will of the people of Virginia.

If this bill ever became law, there would be no Federal law. Some States would rule that DOMA is constitutional. Other States would rule that DOMA is unconstitutional. States will adopt full faith and credit principles in some areas and not in others. A Massachusetts or Vermont couple moving to another State may have their relationship recognized in some States, but not in others. If this bill passes, each State will decide for itself what the Federal law is. Even if it passes, some States will recognize same-sex marriages.

Mr. Speaker, simply because we anticipate that we may not like how the Supreme Court will rule on an issue is no reason to prevent the court from ruling. Today, some Members of Congress are afraid of how courts may rule on issues pertaining to marriage. Tomorrow they may be afraid of how the courts may rule on a different issue, such as abortion or gun control. If we strip the jurisdiction of the Supreme Court over the Defense of Marriage Act, what will we do next?

Mr. Speaker, this unprecedented and perilous legislation violates constitutional principles, establishes dangerous procedure, and undermines the credibility of our system of government. For these reasons, Mr. Speaker, I urge my colleagues to oppose the bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, the gentleman from New York has just referenced the Daschle provision in Public Law 107–206 and said it was not, ''court-stripping.'' I just want to quote what the provision of law says:

''Any action authorized by this section shall not be subject to judicial review by any court of the United States.''

That quote from the law speaks for itself.

Mr. Speaker, I yield 2 minutes to the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. I thank the gentleman for yielding time.

Mr. Speaker, I first want to agree with what the gentleman from Maryland and the gentleman from Virginia said on the other side. They said we are talking about fundamental rights here. They said what we are talking about, this decision today, defines us as Americans, that this is about who we are as Americans. I want to agree with that. This is an important decision, one that defines us as a country.

Who should make that decision? The gentleman from Maryland said an individual, every individual, ought to make that decision about marriage. Is that so? A man and a woman? Or two men? Or two women? What about a man and two women? What about a man and three women? What about a man and his first cousin? What if a man chooses to marry his daughter? Is that not an individual decision? Of course not. What if a man decides to marry a 12-year-old young lady? We said, no, that is not an individual decision. It is a decision of law. That is who makes it. The people make it the law.

The gentleman from Maryland said we are a Nation of laws, not people; and that is why it is up to the people to make the decision through their elected Members, their elected representatives, not the courts.

What about letting the courts be the final arbiter of the Constitution? Thomas Jefferson said on August 18, 1821 that it was a very dangerous doctrine for the Supreme Court to be the final arbiter of what the law is. He said in 1820, it would be an act of suicide for the Supreme Court or a judge to make the law. An act of suicide. He said letting the Supreme Court fix the law would be for the people to give up their own ability to rule themselves.

Mr. Speaker, as I close, I submit for printing in the RECORD quotes from Abraham Lincoln and Thomas Jefferson all saying that it is the legislature who makes the law as representatives of the people.

America's greatest leaders have long been concerned about limiting federal judges' abuse of their authority.

Deep concern that federal judges might abuse their power has long been noted by America's most gifted observers, including Thomas Jefferson and Abraham Lincoln.

Thomas Jefferson lamented that ''the germ of dissolution of our federal government is in the constitution of the federal judiciary; . . . working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped . . .'' In Jefferson's view, leaving the protection of individuals' rights to federal judges employed for life was a serious error. Responding to the argument that federal judges are the final interpreters of the Constitution, Jefferson wrote:

''You seem . . . to consider the [federal] judges as the ultimate arbiters of all constitutional questions, a very dangerous doctrine indeed and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men and not more so. They have with others the same passions for party, for power, and the privilege of their corps . . . [T]heir power [is] the more dangerous as they are in office for life and not responsible, as the other functionaries are, to the elective control. The constitution has erected no such single tribunal, knowing that, to whatever hands confided, with the corruptions of time and party its members would become despots.''

Jefferson strongly denounced the notion that the judiciary should always have the final say on constitutional issues:

''If [such] opinion be sound, then indeed is our Constitution a complete felo de se [act of suicide]. For intending to establish three departments, coordinate and independent, that they might check and balance one another, it has given according to this opinion, to one of them alone, the right to prescribe rules for the government of the others, and to that one too, which is unelected by, and independent of the nation . . . The constitution, on this hypothesis, is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please.''

Abraham Lincoln said in his first inaugural address in 1861, ''The candid citizen must confess that if the policy of the government, upon vital questions, affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers having, to that extent, practically resigned their government into the hands of that eminent tribunal.''

Mr. NADLER. Mr. Speaker, I am pleased to yield 2 minutes to the distinguished gentleman from Michigan (Mr. DINGELL), the dean of the House.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Speaker, this is an outrage. I do not know whether you

are for or against gay marriage, and I do not think it makes a great deal of difference. I happen to oppose the idea. But this is an extraordinary piece of arrogance on the part of the House of Representatives to consider a piece of legislation which would strip American citizens of their right to access to court. Can you imagine anything more shameful than telling an American citizen you cannot go into court to have your concerns addressed, to have cases and controversies, many of which will arise under the Constitution, heard by the courts of your Nation?

The right to access to courts to decide questions of policy is as old as the Magna Carta, and it is as important to us as anything else in the Constitution. Here we calmly say, you cannot have access to the courts, the Federal courts, the lower inferior courts, and the Supreme Court. Shame. Shame, shame, shame.

It is a precedent which is going to live to curse us, and we are going to live to regret this day's labor because other precedents will be following this, wherein we will strip the rights from citizens to go to schools, to have questions relative to their equal rights, to have questions decided about whether they can properly be detained by courts or others and whether or not the citizen can be detained under the authority of the Attorney General; rights of citizens under the second amendment, the first amendment, all of the important questions of the Constitution. Rights under the 14th and the 15th and the 13th amendments, those will also be precedents which could follow this.

The Congress has considered these kinds of questions before. It is to be anticipated if this works, we can look to see this kind of abusive legislation considered in this body again. And you can be almost certain that somebody is sitting there now out there deciding, what new rights can we strip of American citizens because we disagree with them.

I do not think the question is whether or not there should be gay marriage. The question before this body today is, are we going to protect all of the rights of American citizens, regardless of who they might be or how they might be affected?

Mr. NADLER. Mr. Speaker, I yield 2½ minutes to the distinguished gentlewoman from California (Ms. LOFGREN), a member of the committee.

Ms. LOFGREN. Mr. Speaker, as the prior speaker, the dean of the House, has indicated, however one feels on the issue of gay marriage, the question before the House today really is quite a different one, and it is about the fundamental nature of our democracy. Really, the plan before us is a radical, extreme plan to overturn the system of government that we as free Americans have enjoyed for over 200 years.

I have been a Member of this House for 10 years; and I must confess, I have never been as disappointed as I am today in the level of legal analysis that I have heard here. It is disappointing in the extreme. I must also say that you know you are in trouble when you have to go back and reread a case from 1803, Marbury v. Madison, because that is what we are talking about overturning today, that seminal case that we all read in law school, and I read it again this week and it was inspiring me again to understand how fortunate we are that we have a written Constitution and that we have a system of checks and balances that makes sure that the rights in that Constitution cannot be taken away in a flimsy or easy way.

□ 1400

Court Justice Marshall 201 years ago said in his decision, ''It is emphatically the province and duty of the judicial department to say what the law is. If then the courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution and not such ordinary act must govern the case to which they both apply.''

It is that principle of constitutional law that is threatened today, and we should not fool ourselves into thinking that overturning our democracy, our system of checks and balances, can be limited to just the hot button issue of today. If this is constitutional, and many scholars believe it is not, but if this measure passes and is constitutional, we will end up not having the ability to rely on the rights guaranteed to us and the generations before us in our Constitution. We will in fact see any item that a majority of this House and this Congress can muster enshrined as equal to the Constitution itself. I think that that is a result that is disastrous for the United States of America. It is not something I thought I would see as a Member of the House of Representatives, as a member of the House Committee on the Judiciary. It is a radical and extremist position to take that, and I urge all Members of the House, whatever their view is on gay marriage, to not destroy our checks and balance system of America that we have been handed that we should treasure and preserve and cherish instead of recklessly endanger in this way.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. PENCE), a member of the Committee on the Judiciary.

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. Mr. Speaker, I rise in strong support of the Marriage Protection Act. I commend the gentleman from Indiana (Mr. HOSTETTLER) for his principled leadership on this issue.

The Marriage Protection Act is a constitutional remedy to a looming constitutional crisis. Let me say, despite what we have just heard on this blue and gold carpet, nothing in this bill shuts access by petitioners to any State court in the land. What brings us here today is that activist judges in some States are poised to force a new definition of marriage on States like Indiana, and the Marriage Protection Act will stop that strategy in its tracks.

Let me say clearly not on my watch will I stand idly by while the courts in Massachusetts redefine marriage in Indiana, and despite what my colleagues have said on the other side of the aisle about high principle and constitutional ideals and a history lesson, this is about marriage. The Bible says ''If the foundations are destroyed, what can the righteous do?'' And marriage is such a foundation in our society. Marriage was ordained by God, established in the law. It is the glue of the American family and the safest harbor to raise children. We must preserve and defend this foundation in our society, and we begin by defending the right of States like Indiana to define marriage as it has ever been defined and will always be defined in the hearts of the overwhelming majority of the American people.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the gentlewoman from California (Ms. PELOSI), distinguished minority leader.

Ms. PELOSI. Mr. Speaker, I have been married for over 40 years, and I cannot for the life of me think how this legislation that is on the floor today, the so-called Marriage Protection Act, is any protection for my marriage. In fact, I think it is not a protection of the rights of Americans.

Every Member of this body has taken a solemn oath to protect and defend the Constitution of the United States. That is our oath of office. All Members should consider that this bill has far-reaching consequences for the separation of powers that has been the hallmark of our Constitution, our government, and our rights as American citizens. We must today honor our oath of office and oppose this legislation.

This court-stripping bill is not about reaffirming the Defense of Marriage Act or even about gay marriage. The fundamental issue in this bill is whether we want to undermine the Supreme Court and the Federal judiciary and our system of checks and balances. This bill will impact the very foundation of our government. It impedes the uniformity of Federal law. It sets a dangerous precedent, and it does grave damage to the separation of powers.

When former Senator Barry Goldwater spoke against a court-stripping bill in 1982, he warned his colleagues in the other body that it was a frontal assault on the independence of the Federal courts and it is a dangerous blow to the foundations of a free society. We must heed that warning today.

This bill would prohibit Federal courts, including the Supreme Court of the United States, from hearing cases related to the interpretation and the validity under the Constitution of the full faith and credit provision of the

Defense of Marriage Act as well as this court-stripping bill. If passed, it would constitute the first time in the over 200 years of our country's history that Congress has enacted legislation totally eliminating any Federal court from considering the constitutionality of Federal legislation. Only State courts would be able to decide questions related to this provision of a Federal statute. The irony of that is that if one's State passed a law that allowed gay marriages and they wanted to challenge it in Federal court, they would only be confined in challenging it in a State court in their State. So even those who would oppose gay marriage would not have recourse to the Federal courts.

I know that the gay marriage issue is a difficult issue for many people, and I respect that. But do not let that bait take them down a path that would have them dishonor their oath of office that they took to become a Member of this House. Attempting by statute to remove the Supreme Court's and the entire Federal judiciary's power to hear a class of cases and to even determine the constitutional validity of a statute is nothing more than a backdoor attempt to amend the Constitution by simple majority.

It would effectively end the Supreme Court's role as a separate and independent branch of government. It would eliminate all means of reconciling conflicting State court interpretations of the Constitution. Think about that. If passed, it would prevent the Supreme Court from being the guardian of our rights.

It has been a settled principle since Chief Justice John Marshall's opinion in Marbury v. Madison, which has been oft quoted here today. Marbury v. Madison stated that ''It is emphatically the province and the duty of the judicial department to say what the law is.'' Subsequent decisions and the Court's role as an equal branch strongly suggest that Congress cannot prohibit the Court from determining the validity of a law in the first place.

Indeed, the author of this legislation here today stated that he believed that the part of Marbury v. Madison that established judicial review was ''wrongly decided.'' Over 200 years of precedent was ''wrongly decided,'' a view that can only be characterized as radical.

Just 2 months ago we all celebrated the 50th anniversary of Brown v. The Board of Education. If the precedent established by this bill had been in force in 1954, there may have been no Brown decision. Imagine what would have happened to all of the advances in civil rights without that ruling. Imagine how little we would have had to celebrate.

Numerous legal experts, including from the other party, indicate that this bill will likely be found unconstitutional. The court-stripping issue is not a new one. Numerous proposals have been made since the Civil War but have never been adopted because Congress wisely exercised restraint and respected the separation of powers and our constitutional framework.

More recently, in 1981 and 1982, more than 30 court-stripping proposals were introduced, primarily by former Senator Jesse Helms, to remove such issues as school prayer, reproductive rights, school busing from Federal courts' jurisdiction. They all failed, thanks to the principled opposition on a bipartisan basis, principally that of, as quoted earlier, Senator Barry Goldwater and then Attorney General under President Ronald Reagan, Attorney General William French Smith.

Mr. Speaker, now as then, full jurisdiction of the Supreme Court is fundamental under our system of government for a uniform and consistent interpretation of the law even when we do not agree with the Court's decision. The impact of this legislation goes far beyond the subject matter that the proponents claim to be concerned with. Our Founders carefully constructed our system of checks and balances, which we tamper with at our peril. It is unwise and politically motivated, I believe. It is designed simply to distract attention from the real issues that we should be dealing with.

Today, Mr. Speaker, millions of Americans are looking for work. Millions more Americans do not have access to quality health care since President Bush took office. Our children are not receiving the quality of education that they deserve to have, the opportunity that is the promise of our country. We are driving ourselves deeply in debt with the irresponsible reckless economic policies of the Republicans here, giving our children obligations instead of opportunity. We have our men and women in uniform in harm's way without the proper equipment, training, and intelligence to get the job done, and we want them to be second to none, and we will make sure they have what they need, but we must take the time to do that.

And instead, what are we doing? Instead, we are gathering here to talk about discrimination, to talk about undermining the Constitution of the United States, to talk about dishonoring the oath of office that we take to protect and defend the Constitution.

I agree with those who say ''this bill is as wrong as wrong can be.'' In short, this bill is bad law, bad policy. That is why it will not have my support.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I can understand the fervor of the gentlewoman from California (Ms. PELOSI), distinguished minority leader, in opposition to this legislation. She did not support the Defense of Marriage Act when it was passed in 1996 and signed by President Clinton. But to insinuate that this bill is an attack on the foundations of our government is just plain wrong.

The framers of the Constitution put in Article III, Section 2 relating to the jurisdiction of the Federal courts, inferior Federal courts and the appellate jurisdiction of the Supreme Court to provide a check by the legislative branch of government on the judicial branch of government, and we have heard quotes from Thomas Jefferson and Abraham Lincoln expressing their fears about judicial power being unchecked.

This bill is a check on judicial power, and the question is whether we should have the elected representatives of the people, in this case the Congress today and the State legislatures in the future, determining Federal marriage policy, or whether we should have a Federal judge stating that for a State to take a different position than a divided court in Massachusetts is an unconstitutional deprivation of rights.

Now, in the last 10 years or so Congress has restricted the jurisdiction of the Federal courts on numerous occasions. Much has been mentioned here about the provision that the minority leader in the Senate, Senator DASCHLE, put into Public Law 107–206.

□ 1415

The press comments about that action, which is public law today, included headlines that said: ''Daschle seeks to exempt his State; wants logging to prevent fires,'' and ''Plan to curb forest fires wins support.''

Senator DASCHLE told the Congress and the country there was an emergency in his State, that action needed to be taken, and we could not have judicial review. The Congress agreed. And we did not hear the hue and cry about the Constitution being undermined because of a congressional determination that there had to be some logging to prevent forest fires in South Dakota, and I think the Congress was right in agreeing with Senator DASCHLE in this instance.

Now, there are a number of other instances in the past 10 years where Congress has precluded Federal judicial review in cases. In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 was passed. That was Public Law 104–208. It precluded all judicial review over specified discretionary decisions of the Immigration and Naturalization Service. There you are involving the allegations of rights by people who are subject to deportation or other actions by the INS. Congress, when it passed that bill, and it was signed by President Clinton, said no judicial review. Did we hear at the time that that undermined the Constitution? No, we did not. It was a correct decision by the Congress to preclude judicial review on this.

After September 11, 2001, Congress passed the Terrorism Risk Insurance Act, Public Law 107–297, precluding judicial review of certifications by the Secretary of the Treasury that a terrorist event had occurred. Did anybody allege that that undermined the Constitution at the time? No way.

The Small Business Liability Relief and Brownfields Revitalization Act,

also passed in the last Congress as Public Law 107–118, precludes judicial review of hazardous waste cleanup programs.

So this has been going on all the time.

The Judiciary Act of 1789, one of the first bills passed by the first Congress, recognized that the judicial power of the United States was not unlimited and limited that judicial power. There have been expansions and contractions in the area of diversity jurisdiction of the Federal courts. Nobody has alleged that the Constitution is being undermined; and, in fact, Federal judges have come to the Congress and asked that the jurisdictional amount in diversity cases be raised so they did not have as many cases to decide.

We have heard the Supreme Court say in asbestos that there should be some way to prevent 600,000 cases from choking the Federal court dockets. I would hope that we would be able to pass some kind of asbestos litigation reform.

The fact of the matter remains that we could go on and on and on. It does not violate the Constitution. There are over 200 years of precedents in adjusting the jurisdiction of the Federal Court.

What this bill says is that if a State decides it does not want to recognize a same-sex marriage license granted in another State, there will not be Federal judicial review to do so. This is a States rights bill, and the Supreme Court has repeatedly said that marriage and family law is primarily a matter of the States, and this ensures that it will be.

Mr. Speaker, I yield 1 minute to the gentlewoman from Tennessee (Mrs. BLACKBURN).

Mrs. BLACKBURN. Mr. Speaker, I thank the chairman for yielding me time.

Mr. Speaker, I find it so interesting that some of our colleagues today are trying to talk about all sorts of other issues, and some that support same-sex marriage are just saying this is an election year ploy to get votes.

I can tell you that for my constituents in Tennessee, they support what we are doing here today, and they are not concerned about whether or not it is an election year or not. They are concerned about protecting marriage, because they know that marriage is an institution that is at the very core of our existence, and that is why we are here today, to protect marriage.

I think it is very sad, very sad, that some courts and some activist judges have taken it upon themselves to usurp the will of the people. Let me remind my colleagues who oppose this that we are acting in the will of the people today.

Already there is a lawsuit that is being brought by same-sex couples in Massachusetts to force other States, like my State of Tennessee, to accept their Massachusetts marriage license, and it is contrary to the Defense of Marriage Act, and it is contrary to the will of the people.

Mr. NADLER. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Georgia (Mr. LEWIS).

Mr. LEWIS of Georgia. Mr. Speaker, I thank my friend and colleague, the gentleman from New York (Mr. NADLER), for yielding.

Mr. Speaker, for me, this is unreal. It is unbelievable. I thought that as a Nation and as a people that we had moved much further down the road. To pass this legislation would be a step backward.

There is a song, and some of you are old enough to know it: ''Mr. Big stuff, who do you think you are?'' I would ask, well, Members of Congress, who do you think we are?

We have not been called or chosen by the people to strip the courts of their power. We have not been ordained by some force to say, ''Don't come in here. Don't apply for justice.''

Those of us who came through the civil rights movement saw the Federal courts as a sympathetic referee in the struggle for justice, for fairness and for equality.

If it had not been for the Federal courts, where would we be? If it had not been for the Supreme Court of 1964, there would still be legalized segregation in America. If it had not been for the Federal courts, we would still see signs saying ''White Men,'' ''Colored Men,'' ''White Women,'' ''Colored Women,'' ''White Waiting,'' ''Colored Waiting.''

If it had not been for the Federal courts, I would not be standing here today and many Members of Congress who are people of color would not be standing here either.

We do not want to go back. We want to go forward. To vote for this legislation would be like Members of Congress trying to stand in the courthouse door, just like George Wallace stood in the schoolhouse door to stop integration of Alabama schools.

Today it is gay marriage. Tomorrow it will be something else. During the 1960s, in 1963, in 1964, in 1965, we heard some of the same old arguments. Have we learned anything?

Forget about the politics. Vote your conscience. Vote with your heart, with your soul, with your gut. Do what is right and defeat this bill.

Mr. NADLER. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Florida (Mr. WEXLER).

Mr. WEXLER. Mr. Speaker, in spite of all this rhetoric about protecting marriage and saving the country from rogue activist Federal judges, the bill we are debating here today does not protect Americans from gay marriage. We are not debating a gay marriage bill. We are debating a court-stripping bill, and one that is more Draconian than any such bill Congress has ever considered.

Every year, we teach elementary school students throughout America about the wisdom of our Founding Fathers, about the precious rights we have fought at home and abroad to protect, about our democracy that considers all people as equals, and about the delicate system of checks and balances upon which all of this is based.

It is a shame that Members of Congress appear to have forgotten these most basic lessons. They have forgotten that our Founding Fathers established three equal branches of government, no one more powerful than the other; they have forgotten that this system has served us well for over 200 years; and they have forgotten that this is a system that cannot survive if one branch arbitrarily strips power from another.

This is not about gay marriage. This is not about respecting marriage. For the record, my marriage is not threatened by gays and lesbians in Massachusetts or California. What is the heinous crime that gays and lesbians have committed? They want to live with the same dignity that their fellow Americans live with every day.

Please vote this bill down.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I sit here and listen to this debate, and it is one of many debates on this issue that we have had, and it is one of many we will have into the future. And as I listened to the gentleman talk about the civil rights, I harkened back to a time when I sat in the Iowa Senate, where I heard a senator stand and say the next great civil rights crusade is homosexual rights.

Something about how true that rang to me, it caused me to pay attention and understand that was the message. There will always be another civil rights crusade. We will never get this right. There will always be people that see the glass of rights as half full, like us, and some that will say it is half empty, like others.

I will tell you that this is not a civil right. You can look in title VII of the Civil Rights Act, and there it says race, color, religion, sex or national origin. Those things are all immutable characteristics, with the exception of religion, which is constitutionally protected. Immutable characteristics are characteristics that cannot be self-identified, but can be independently verified, and cannot be changed. That is not the case with homosexual marriage.

I hear other statements. The gentleman from Maryland, ''risk undermining public faith in the courts.'' It is the courts that risk undermining public faith in the courts. We are establishing public faith in the process.

And the statement made by the gentlewoman from California, ''this is nothing more than a back door attempt to amend the Constitution by simple majority.'' No, the courts have been continually amending the Constitution by the will of a bare majority

of appointed courts. The transfer of the will of four judges from Massachusetts against the will of the people of the United States of America is protected by the Constitution, and that responsibility lies with us and we must step up to that responsibility.

So I would ask, and, as we heard from the minority witness in hearings, the bottom line of that testimony was that the Congress can grant authority to the courts, and we can create courts and that courts can grasp authority by decisions that they make; but we can only limit the courts by allowing the courts to limit themselves.

Now, how ridiculous is that? How far-reaching is the power of the judicial branch if we will take this position that Congress cannot limit the courts when it specifically is in the constitution? We are charged not with just the right or the privilege, but the duty and obligation, when we swore to uphold this Constitution, to defend the separation of powers.

There is no civil right for marriage, there is a license for marriage, and a license is by definition a permit to do something which is otherwise illegal. We grant that to marriages for those reasons that you have heard some of my colleagues speak to, because the family, the father, the mother, the children and the home, is the essential building block, not just of this culture and this society and this civilization, but every civilization for the last 6,000 years.

That is what is at stake here, and it is our obligation; and I think this is the most essential issue of our time. There is no issue more important than defending marriage, because it is the essential building block of this society, this civilization, and every civilization. We have the duty and obligation.

Mr. NADLER. Mr. Speaker, I yield 2½ minutes to the distinguished gentleman from New York (Mr. WEINER).

Mr. WEINER. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, to vote in favor of H.R. 3313, I would say that the supporters of the bill have to reach four conclusions:

One, they have to decide that Marbury v. Madison was wrongly decided. Some people on the Committee on the Judiciary freely admitted that. You have to agree that when John Marshall wrote, ''If the courts are to regard the Constitution and the Constitution is superior to any ordinary act of the legislature, the Constitution and not such act shall govern the case to which they both apply.''

Secondly, you have to come to the conclusion that DOMA is going to be struck down by this very conservative Supreme Court. Otherwise, why would you be here? If you thought the court was going to uphold it, and I have to tell you, I went back and I looked at some of the speeches. A lot of the debate was whether or not DOMA was constitutional. And, one by one, you stood up and said, oh, it absolutely is, it absolutely is, it absolutely is.

So you have to conclude in order to support H.R. 3313 that the Supreme Court is about to strike down DOMA, although I do not know where you get that indication, unless you believe it was violative of the Constitution.

Third, you have to believe that this clause is more important than abortion, more important than gun control, more important than the Flag amendment, more important than any other thing, because you are including this provision in this bill and you have not done it to protect abortion or to ban abortion or to protect gun rights. How come? Do you not feel strongly about those things? Do you not want to keep the Supreme Court out of those issues?

□ 1430

And finally, in order to support this, you have to have utter and complete contempt for individual rights and freedoms, something I thought conservatives stood for.

What if you are the only person in your State that believes something? What if you are the only person in your judicial area that believes something? And what if you are right? What if you are protected by the Constitution?

Time and time again I have heard people stand up and say this is about doing the will of the people. That is not what the courts are supposed to do. The courts are supposed to protect the minority to make sure their rights are not trampled on, protect women when they want to vote, protect blacks when they want to be considered citizens, protect those that want to have the full rights of the Constitution. That is what the Court is supposed to guarantee, because that is never what the majority does. The majority looks out for the majority rule. That is not the role of the legislature, that is the role of the courts.

If you draw those conclusions that you think DOMA is constitutionally flawed, Marbury v. Madison was wrongly concluded, that this is a more important issue than abortion, gun control, anything else, and that you have contempt for individual rights, vote yes on H.R. 3313.

Mr. NADLER. Mr. Speaker, I yield 2½ minutes to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the distinguished gentleman from New York for yielding me this time, and I thank him for his leadership.

I hope that this is viewed by the American people as a singular discussion on whether or not, no matter what station in life one may hold, whether or not one represents a voice of one or a voice of thousands, the constitutional rights that have been protected by this Constitution is given to you.

As I spoke to some of our very able young people that are serving us as pages here in the United States Congress, and I am so very proud of them because they are inquisitive without being biased or discriminatory, but they are not our futures, they are our todays. In trying to understand what we are doing today, this is not a pronouncement of a constitutional amendment that requires two-thirds of this body and three-fifths of our States, an elongated process that would allow us to debate the question of whether or not we want to preserve the rights of those who are not like us, some of us here, and give them the same rights. This is not this debate.

This is, in fact, a way to sidewind itself around the idea of whether or not whoever you are, whether you be a farmer, an environmentalist, a parent, someone injured, a young military person fighting on the front lines of Iraq, that you come back and the front doors of the courthouse have been closed to you.

I am ashamed that my colleagues would misuse the constitutional instruction for the understanding of the three branches of government, because Article III does say this: ''The judicial power shall extend to all cases in law and equity arising under the Constitution by the laws of the United States of America.'' Can you tell me how we can argue that we can eliminate someone's right to go into the Court to simply ask for relief on their petition.

I do not want to debate one's religious faith. I cannot equate myself to you. I know what I feel in my heart, that all of us are created equal. The Declaration of Independence said that we all are created equal with certain inalienable rights of life, liberty and the pursuit of happiness. I want people to be able to practice their faith. God bless them.

But this is a tragedy, for I stand here as an unequal person in this Nation. If it had not been for the courts of this Nation, many of us, no matter whether you look like me or have my history, would have the doors closed to you.

So, Mr. Speaker, let me say to my colleagues that the reason why we are voting against this, and I ask my colleagues to consider it, because it would be damaging and devastating and detrimental to the constitutional premise of the Founding Fathers who stood for 3 months trying to establish a nation that could keep democracy for now some 200 years plus.

The crux of this is to do this: one, it does not provide for the equal protection of the law. Two, when the legislature overreaches, you have no place to go; you cannot go into courts and find relief. Three, I would say that this denies you due process.

So this is not a question of one's personal determination, it is a question of your rights as an American citizen. Might I say to you as we look at the rights of American citizens, let me reemphasize, the fact that the eliminating of the right to access the appellate courts has never been done before.

To my good friends and colleagues who believe in the Constitution like I do, let us own up to the American people, let us own up to them that what we are doing is destroying justice as we know it. I would only say to my colleagues that I love America, and I would only hope that when we stand to vote that no one looks to see who is who, only to recognize that each of us are equal under the law and should have our right of access to our courts.

Mr. Speaker, marriage is important. Marriage is a concern of many Americans, but so is equal protection, due process and the right of judicial review for a contentious matter raising constitutional issues and questions of law.

Mr. Speaker, I strongly oppose this legislation. Everything from its name to its provisions are in contravention of the principles on which the original Framers of the Constitution created that respected document.

We can see that this proposal purports to deceive our colleagues even in its title. How can this legislation ''protect'' marriage when it precludes access to Federal courts when married couples seek judgment on the merits and validity of their union? A colleague of ours in the Senate was cited, in the context of the Defense of Marriage Act (DOMA) that recently passed, as stating that same-sex marriages threaten a 5,000 year history of the man-woman union as the ''proper union.''

However, this argument, along with the bill before us today, fails to constitutionally address the cause that its proponents intend. The bill before us today, as well as DOMA, are overbroad in their scope.

Article III, Section 2 of the United States Constitution states that ''The judicial Power shall extend to all Cases, in Law and Equity, arising under the Constitution, and the Laws of the United States . . . (emphasis added).''

Today's debate concerns the question of whether we decide to strip the Federal courts of their constitutionally-vested powers to even decide whether it will hear a matter—justiceability. H.R. 3313 takes the decision away from the Federal courts in the area of justiceability.

First of all, the institution of marriage has roots that stem from religion. Given that we have a great myriad of different religions and creeds that have a wide spectrum of perspectives on marriage, it is unrealistic to draft a single bill to mandate what character we will accept for this union. Furthermore, man is not so omniscient that he can, alone, determine what a legitimate union is.

If my colleagues on the other side of the aisle profess to have a formula for the appearance of the ''traditional'' or ''acceptable'' marriage, I ask them whether the following types of family arrangements fit their criteria: single parent, divorced, unmarried parents.

If our colleagues can summarily decide that a same-sex union does not comport with our ideal of ''family'' or ''marriage'' because it is not the union of a man and a woman, how do they characterize the above unions?

On the aspect of overbreadth, this bill, while purporting to protect our view of what an ''acceptable marriage'' is, strips the courts of jurisdiction, strips our Federal judges on the discretion that they have retained for years, and strips tax-paying Americans of their legitimate right to have their causes heard by a Federal court.

As a threshold matter, we as lawmakers should enact legislation that summarily abridges or curtails access to Federal courts only in extreme cases or as a last resort. Furthermore, we should use the same philosophy as it pertains to amending the U.S. Constitution. The bill introduced in the Senate, as well as the bill before us today, amend the document that was created by the original Framers and strip Federal judges of their discretion on the issue of justiceability.

Lastly, I would have offered an amendment that would simply allow the Supreme Court, the highest court in the land, to retain its jurisdiction to hear these matters. It would be at the least, arrogant of legislators to think that their judgment, experience, and expertise would make them better arbiters on this issue than life-appointed judicial officials whose job it is to make determinations concerning our laws. The high court has made so many rulings that have changed the lives of minorities, women, children, the disabled, and many other aggrieved individuals and classes that stripping it of its ability to continue this effort would be injurious to the entire Nation.

Mr. Speaker, for the above reasons, I strongly oppose this legislation.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2½ minutes to the gentleman from Illinois (Mr. HYDE), the distinguished former chairman of the Committee on the Judiciary.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, I think this is a wonderful debate. It is something that I have waited for years to listen to, because these are very important questions and the Constitution is everybody's business. It is certainly ours.

What we are really debating is what does Article III, Section 1, clause 1 mean. The power to court strip, is it there, and if it is there, why is it a mortal sin for Congress to exercise it? I do not know.

The Court is not the only repository of wisdom, nor of due process. We could have a seminar some day on the first amendment. Why does the establishment clause dominate jurisprudence concerning the relationship of religion and the State, but not the free exercise, which is ignored, which withers on the vine? What about the 10th amendment, which says all matters not enumerated to the Court are reserved to the people? It is ignored. It has been ignored for generations.

So as we raise up the Court as the sole repository of wisdom and justice and fair play, we are not very historical because they are capable of abuses, too.

Now, democracy requires checks and balances. We know that. What is the check and balance on the Supreme Court? Unelected, these are people who are well connected and they get confirmed, and they are imperial in their scope, and no check and balance whatsoever.

Now, I would rather have a check and balance on the Court, just as I want one on the Congress, and the best check and balance is the people, the people who do the electing. That is what Article III, Section 1, clause 1 does. It reserves to the people the ultimate decision on a given issue.

Well, I just want to say for a court of last resort, I think ''the people'' is superior to these people who are nominated and confirmed and unelected and sit for life. I have never heard of an imperial state in this country, but I have heard of an imperial court.

This is not the end of the world; this is fulfilling the very language that our Founding Fathers were wise enough to incorporate into the Constitution, and all of the sky-is-falling-down rhetoric is misconceived, in my judgment.

Mr. NADLER. Mr. Speaker, I am pleased to yield 3 minutes to the distinguished gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Speaker, I disagree with my friend from Illinois. This does not take the matter out of the courts; it takes the matter of constitutionality away from the United States Supreme Court and confers it on the 50 State supreme courts.

What this bill says is, no court created by act of Congress and the Supreme Court shall have no jurisdiction to hear or decide any question pertaining to, among other things, the validity under the Constitution of Section 13, et cetera.

The State courts have, as has been acknowledged, also the right to interpret the Federal Constitution. Frankly, from the standpoint of there being more same-sex marriages under the Full Faith and Credit Clause, I think there would be more if this bill became law. I do not want the bill to become law because of its terrible precedential consequences. But, frankly, the likelihood that this U.S. Supreme Court will find that full faith and credit compels the nationwide recognition of same-sex marriages is quite slight. It is likelier that there are four, five or six State courts that will find that.

So what you are saying is not that the people will decide it as opposed to the courts, the courts presumably made up of aliens that you have appointed in many cases, but the fact is that it will be decided by State supreme courts.

Now, this is the problem. The gentleman from Wisconsin says there is precedent. He is wrong. All of the things he cited had to do with administrative matters, with deportees who are by definition noncitizens and who do not have the same rights. There is no case in American history of this language: you cannot decide any question pertaining to the validity under the Constitution. This is the first time we have said, not that it will not be litigated, but it will not be decided by the U.S. Supreme Court. What you are doing here, you are not repealing anything except the Constitution by going back to the Articles of Confederation.

Here is the problem, and it is not just about same-sex marriage. As I have

said, I think there will probably be more State courts that will find full faith and credit than national. But we all know that we never in this body do anything only once. The gentleman from New York (Mr. WEINER) was right when he said, what about other issues. Once you establish this as the way you show your fealty to a principle, it will be demanded with regard to everything else. This will become boilerplate. So on issue after issue we will pass legislation, and we will say, but it cannot be questioned by the Supreme Court.

Now, I can tell you, on the Committee on Financial Services on which I serve, the business community of the United States overwhelmingly comes to us and says we need uniformity, we need uniformity. What you are enacting here today does not say the courts do not have the final say; it says that instead of there being one United States Supreme Court binding interpretation on constitutional questions that are controversial, there will be different State court interpretations, and the impact will be much less on same-sex marriage than on economics, on land-takings, on gun control and a whole range of other issues.

Mr. NADLER. Mr. Speaker, I yield 1½ minutes to the distinguished gentleman from Illinois (Mr. EMANUEL).

Mr. EMANUEL. Mr. Speaker, at every critical juncture in American history, each preceding generation has been asked to pick between equality and inequality, justice and injustice. In that struggle, our predecessors always tipped the scale in favor of equality and justice, and always widening the circle of democracy. And in widening that circle of democracy, America's character and her democratic values were renewed.

Today we are taking a reactionary departure from constitutional history. Our congressional predecessors never successfully attempted such an extreme measure as this, because they knew it would violate every principle that defines America, but this Congress and its majority leaders, in its infinite wisdom, will take that radical step today.

The majority leader asked for a debate known for its tolerance concerning a piece of legislation that is neither tolerant nor respectful of debate. The proponents of this legislation say, this is an effort to protect the institution of marriage. Half of all marriages end in divorce. Divorce threatens marriage. So why do we not deny access to the Federal courts to divorcees?

If you are worried about your marriage, read your vows and leave our Constitution alone.

Today we are not defending marriage; we are defeating the Constitution. Thomas Jefferson wrote in the Declaration of Independence that all men are created equal, but maybe George Orwell is more appropriate today: all are equal, but some are more equal than others.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the distinguished gentlewoman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Mr. Speaker, this bill, H.R. 3313, is not about gay marriage, it is about taking away access to the Federal judiciary while manipulating our Constitution by using a wedge issue. It is about degrading the role that Federal courts have played in the enforcement of civil rights law. It is about preventing challenges by individuals and groups of Americans who are needy and deserving of their day in court. Most of all, this bill is about ignoring the Constitution.

We must protect the system of checks and balances that our Founding Fathers created. We must refuse to create this dangerous precedent.

This legislation would be precedence for removal of Federal court jurisdiction for other contentious constitutional civil rights issues such as gun rights, religious protections, civil rights.

Mr. Speaker, this is just plain bad policy. Do not support this bill. Know what the proponents are after and do not let them bully you into eroding our judicial protections.

□ 1445

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Missouri (Mr. AKIN).

(Mr. AKIN asked and was given permission to revise and extend his remarks.)

Mr. AKIN. Mr. Speaker, I have heard a number of people saying today that this is not about the institution of marriage. It most certainly is about the institution of marriage. It is also how marriage is going to be defined. I somehow cannot get my mind around the concept that the Founders' idea was that a bare majority in one State court and a bare majority in the Supreme Court can redefine the word of marriage and shove that down the throats of 49 other States. Somehow that does not seem to make sense. The Democrats here have been suggesting that the Supreme Court should be totally sovereign in every decision, and that one also I find rather puzzling, because the first foray of activist judges on the Supreme Court was that brilliant decision of Dred Scott, which said that African Americans are not actually people.

Now, if every decision of the Supreme Court is gold, how about this one? And what was the result of this little act of activism? Well, they are the wonderful folks who gave us the Civil War. I just cannot understand the logic of saying and talking about the idea of separation of powers and checks and balances and at the same time say, anything the Supreme Court says goes. That is what I am hearing argued today.

The question is when the Supreme Court gets really goofy, and my friends, we can pick how goofy is goofy, but when they really start legislating from the bench, at what point and what is the mechanism to hold them in check? Well, whose job is it? Well, it has been made reference to here. We take an oath of office to uphold the Constitution. It is our job, my friends, as legislators, and it is the job of the President, who also seeks to uphold the Constitution.

Now, there is one other thing that has been stated that some staffers probably should be let go, because they have not done their homework. Because if we take a look in the 107th Congress alone, we can take a look and see that the expedite, the construction of the World War II memorial has article III, section 2, the American Service Members Protection Act. Article III, section 2 language, Aviation Security Act. This is all 107th Congress alone. PATRIOT Act, article III, section 2 language. Intelligence Authorization Act, article III, section 2. Terrorism Risk Insurance Act, and also the Department of Justice Authorization Act, that is not to mention a particular elected representative from South Dakota who said no court can have anything to say about his clearing the undergrowth from his forest.

The question before us is a question of whether or not a redefinition of marriage is going to be imposed on all of our States by a few activist judges. Believe me, the answer should be no.

Mr. NADLER. Mr. Speaker, I yield to the gentleman from Washington for purposes of a unanimous consent request.

Mr. MCDERMOTT. Mr. Speaker, I rise against this amendment.

(Mr. MCDERMOTT asked and was given permission to revise and extend his remarks.)

Mr. MCDERMOTT. Mr. Speaker, what the Republicans are doing today is a "needless, futile and utterly dangerous abandonment of constitutional principle . . . without precedent or justification." These were the very words used by the Senate Judiciary Committee in 1937 when they opposed President Roosevelt's court packing scheme. it was exactly 67 years ago today that the U.S. Senate voted down that dangerous plan.

Mr. Speaker, the legislation that you are asking this August body to consider is no less dangerous. This legislation, the so-called Marriage Protection Act, is championed by the Republican leadership. It aims to manipulate, to indeed disrobe the Third Branch of our government, The Judiciary.

Any why, Mr. Speaker? Because the Republican Party and this Republican Congress wishes to deny a particular class of people their right to come before the federal courts and defend their unalienable rights. What a horrible precedent.

Mr. Speaker, Alexander Hamilton—the man on our ten dollar bill—in Federalist 78 said that the courts of justice are the bulwarks of a limited constitution against legislative encroachments, and are there to safeguard the private rights of particular classes of citizens against unjust and partial laws. What the Republican bill does is attack the very foundation upon which our Founding Fathers built this great republic.

The Republican party says that we "need to protect marriage from activist judges." Maybe

there are a few activist judges out there, but this bill strips all federal courts—even the Supreme Court—from considering the constitutionality of a federal law that attacks the rights of a particular class of people.

The Defense of Marriage Act is clearly a legislative encroachment upon the Constitutional rights of Homosexuals. Why else would you bring a bill out here that denies judicial review over that unjust and partial law?

Mr. NADLER. Mr. Speaker, I yield 1½ minutes to the gentleman from Maryland (Mr. WYNN).

Mr. WYNN. Mr. Speaker, I rise today in opposition to the Marriage Protection Act. I took an oath when I came here to protect and defend the Constitution. This bill obliterates the Constitution.

Let me first make an observation. I am married, and many of my colleagues are married. I do not think my marriage or my colleagues' marriages are threatened because two gay people in Massachusetts want to get married. Maybe it is threatened by meddling inlaws, but certainly not by some legislation that passed in Massachusetts.

But I make that observation as an aside. This bill really is not about marriage, gay or otherwise. This bill is about the Constitution. This legislation sets a very dangerous precedent. It says that we are going to set aside our very cherished separation of powers that is provided in the Constitution that enables the courts to check us, to say, wait a minute, Congress, you have gone too far. My colleague says, well, we have the right to make laws. We do. If we do not like it, we can amend the Constitution; but my Republican colleagues are not trying to amend the Constitution. They are trying to change the Constitution by stripping the courts. We need the separation of powers. We need the courts to independently review the things that we do here in Congress.

Think about it. If we can strip the court's jurisdiction, the Supreme Court's jurisdiction over this matter, what about civil rights laws? Could not some Congress come down here and say, well, we do not need the Federal courts or the Supreme Court ruling on civil rights laws? What does that mean? It means that a State court in Arkansas can say one has this right, while another State court in Nevada could say, oh, no, you do not. That is not what the Founders envisioned. This is a very dangerous vision of America in which the courts do not play a critical role. Let us retain the Constitution as we know it.

Mr. NADLER. Mr. Speaker, I yield 1½ minutes to the gentlewoman from California (Ms. LEE).

Ms. LEE. Mr. Speaker, I thank the gentleman for yielding me this time and for his leadership.

This is really a sad day. By stripping away the jurisdiction of the Federal courts and the Supreme Court to hear challenges to the Defense of Marriage Act, this bill opens the door to further court-stripping of additional rights. What is next, the right to vote, the right to assemble, the right to a trial, the right to privacy? Congress would undo over 200 years of history and could potentially rewrite the Bill of Rights, gutting Federal protections against discrimination that are enshrined within the 14th amendment. Where would we be today without a way to redress our grievances against ill-conceived or discriminatory legislation passed by earlier Congresses?

Would interstate travel still be segregated? Would the separate but equal doctrine still exist? Where would we have been without Brown v. Board of Education, Roe v. Wade, or other sufficient landmark court decisions?

From now on will we seek to limit the ability of the Federal courts to hear challenges to any law just because one side or the other opposed it? What does an approach like this bode for the future of our democracy? So why are we doing this? Why are we doing this? I think we are undermining our Constitution today, quite frankly, about trying to get more votes in November. That is why we are doing this. Vote ''no'' on this dangerous bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield to the gentleman from Iowa for purposes of a unanimous consent request.

Mr. LEACH. Mr. Speaker, I rise in opposition to this bill.

(Mr. LEACH asked and was given permission to revise and extend his remarks.)

Mr. LEACH. Mr. Speaker, America is divided on many issues, perhaps none more emotive than that which surrounds family values and the institution of marriage.

For many Americans definitions are critical. Traditionalists believe the term marriage can only properly be applied to a union between a man and a woman. Non-traditionalists, particularly in the gay community, believe that qualification under law for marriage or other forms of civil unions should be provided to same sex couples and that without changes in law to allow such to occur some citizens will have less personal security and legal protection than other elements of the American community.

Historically, issues of marriage come under the primary jurisdiction of State law, but because States may have different approaches and because there is under our Constitution a recognition that legal arrangements made in one State are generally to be respected in others, the Congress chose several years back (1996) to pass a law called the Defense of Marriage Act (DOMA) to allow States not to recognize the validity of same-sex marriages performed in other States.

The measure before Congress today is H.R. 3313, an act which would deny Federal courts, including the Supreme Court, the right to review the constitutionality of the Defense of Marriage Act.

The arguments on the floor today have largely swirled around the issue of marriage. My view is that the bigger issue is process. In America, process is our most important product. Our constitutional system was established with checks and balances. To curb the prospect of concentration of power our Founders created three branches of government—executive, legislative, and judicial—and then quadruplicated these balancing arrangements by creating executive, legislative, and judicial entities at the state, county and city levels.

At any moment in time there will be conflict among various branches and between various levels of government. This discord is sorted out through time tested processes involving compromises, give and take, and at critical moments, definitive decision-making.

In this case, whether one supports or opposes expanding marriage definitions or favors compromise approaches such as sanctioning civil unions, it is a dubious precedent to deny a key component of the American governmental system—federal courts—the power to exercise its constitutional responsibilities.

Although the Constitution gives Congress broad authority to define the jurisdiction of courts, Congress has historically been cautious in limiting the power of courts to review substantive law. to do so would wreak havoc with the separation-of-power doctrine and our legal system.

If one of the objectives in the bill before us is to rein in a runaway judiciary, we might be equally concerned about creating runaway legislative precedents. Barry Goldwater, who was no friend of activist judges, noted a decade ago when referring to previous court stripping attempts: ''frontal assault on the independence of the Federal courts is a dangerous blow to the foundations of a free society.'' It opens up a can of worms, making all controversial issues vulnerable to similar ''court stripping'' legislation.

It is this court stripping precedent which is primarily at issue today. But it is not the only process problem on the table. One consequence of passage of H.R. 3313 is that it would allow each of the 50 State supreme courts to define DOMA's constitutionality but leave the U.S. Supreme Court powerless to sort out the constitutional mess. Confusion rather than legal clarity would be the likely result.

Judicial review is the heart of constitutional governance. To tamper with the power of courts is a perilous undertaking.

The only oath Members of Congress take upon assuming office is to uphold the Constitution. The founders, who had extensive experience with political persecution, wrote a Constitution which did not put exclusive power in the legislative and executive branches because they wanted to place a check on popular will as well as capricious executive governance. As Madison wrote in Federalist No. 48, ''an elective despotism was not the government we fought for . . .''

Constitutionalism is not majoritarianism. The rights of minorities must be respected and all citizens provided due process under the law. Accordingly, I am convinced the constitutional obligation is to vote ''no.''

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. NEUGEBAUER).

(Mr. NEUGEBAUER asked and was given permission to revise and extend his remarks.)

Mr. NEUGEBAUER. Mr. Speaker, I rise today in support of H.R. 3313, the Marriage Protection Act of 2004, and in defense of the institution of marriage in America.

In 2003, the Texas State Legislature defined marriage as a union between

one man and one woman. Texas joins 37 other States that have enacted similar legislation defending traditional marriages.

With the Defense of Marriage Act, Congress declared that no State can be forced to accept another State's definition of marriage. Unfortunately, these actions are not enough. We have seen time and time again the will of the people can be overturned by the actions of a few judges.

Currently, Federal lawsuits attacking the institution of marriage are underway in several States across the country. If these lawsuits are successful, the voice of the people in Texas and the voice of the overwhelming majority of Americans will be ignored.

Without the Marriage Protection Act, it is possible that Federal judges in California can determine the definition of a marriage in Texas or any other State which tries to protect marriage.

This attack against marriage goes against every value that I and the vast majority of my constituents hold dear. For these reasons I strongly urge the passage of H.R. 3313.

Mr. NADLER. Mr. Speaker, I yield 1½ minutes to the gentleman from Texas (Mr. BELL).

Mr. BELL. Mr. Speaker, as the Democratic leader pointed out earlier, this year marked the 50th anniversary of the historic Brown v. Board of Education decision, and thinking about that decision in the context of today's debate, I think we have to ask ourselves what if some of our segregationist forefathers who felt every bit as strongly about the issue of race as many people here today feel about the issue of gay marriage, what if they had succeeded in passing some radical legislation to prevent any Federal court challenge to the law of separate but equal?

Well, obviously, the progress that we have witnessed in the area of civil rights would have been at the very least stymied and most likely prevented altogether. And the real question is they might have no problem with the law that they seek to protect today, but they might have very big problems with the law that they seek to protect tomorrow; and ladies and gentlemen, we cannot cherry-pick. We cannot control what might come forth in the future, because once this genie is out of the bottle, it is out for good.

And the bottom line is, this is not. This is not how our country works. Just how far are we going to let extremists go in tearing down what makes this country great?

And, yes, open courts, open courts where free people can go in and fight for what they believe is right are a part of what makes this country great; and just because it is an election year, just because it is an election year and some wish to fan the flames of an incredibly controversial issue, let us not make the unforgivable mistake of closing off our courts. It is un-American; it is wrong. Vote ''no.''

Mr. NADLER. Mr. Speaker, I yield 1 minute to the gentlewoman from California (Ms. LORETTA SANCHEZ).

Ms. LORETTA SANCHEZ of California. Mr. Speaker, I thank the gentleman for yielding me the time.

I rise today in strong opposition to H.R. 3313. I call it the ''Offense to the Constitution Act.'' Not only does this bill have nothing to do with what it pretends to address, but it attacks one of the fundamental principles of our American democratic system, the separation of powers.

The Founding Fathers wisely separated the powers of the executive, the legislative, and the judicial branches so as to avoid an abuse of power by any one of the three. This administration was cemented and codified in great historic American cases like Marbury v. Madison. H.R. 3313 is a direct attack on the separation of powers and the legacy of those cases. It says: ''No court created by act of Congress shall have any jurisdiction, and the Supreme Court shall have no appellate jurisdiction, to hear or decide any question pertaining to the interpretation of, or the validity under the Constitution of, section 1738C or this section.''

Protect the Constitution. Vote down this bill. Vote ''no'' on H.R. 3313.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Nebraska (Mr. OSBORNE).

Mr. OSBORNE. Mr. Speaker, I am not a constitutional scholar, obviously. I spent 40 years working with approximately 2,000 young people. I actively recruited those young people to go to the University of Nebraska. I visited annually 60 to 70 of them personally in their homes and met their parents, and I saw firsthand the difference a family makes, for better or for worse.

In my experience, the marriage findings of 12 leading family scholars who summarized thousands of studies on child rearing are as follows: children raised by both biological parents within a marriage are less likely to become unmarried parents, live in poverty, drop out of school, have poor grades, experience health problems, die as infants, abuse alcohol and drugs, experience mental illness, commit suicide, experience sexual and verbal abuse, engage in criminal behavior. And then they concluded with this statement that I think is noteworthy: ''Marriage is more than a private emotional relationship. It is also a social good. It is the bedrock of our culture.''

And so what I observed was that a father contributes something unique to the welfare of a child. A mother also makes a unique contribution. Several countries, notably in Scandinavia, have changed the traditional definition of marriage. There has always been a decline of traditional marriage and a surge of out-of-wedlock births in these countries, and children born in such circumstances, on average, suffer significant dysfunction.

So the question before us is this, as I see it: Do we allow a small number of members of the judiciary to alter an institution which has been the backbone of this Nation? Do we allow these same jurists to do so with a great majority of our citizens and our States firmly in opposition to a change? Forty-four of 50 States have laws defining marriage in a traditional manner.

Again, Mr. Speaker, this is a matter that speaks directly to the welfare of our children, the future of our country, and I urge support of H.R. 3313.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the gentleman from Washington (Mr. BAIRD).

Mr. BAIRD. Mr. Speaker, I thank the gentleman from New York for yielding me this time.

My friends, surrounding us here are profiles of the great law givers. There are two Americans up there, Jefferson and Mason. Mason did not sign the Constitution at the Convention. He did not, because it did not have a Bill of Rights in it. Jefferson, on his epitaph, looked at as one of his proudest accomplishments, was the establishment of the clause providing for religious freedom in the State of Virginia.

□ 1500

We have 900 dead Americans in Iraq, thousands more wounded, we have a $600 billion deficit, we have 3 million Americans without jobs, 37 million kids are born in poverty in this country, and we are here today proposing to try to take away one of the three pillars of a three-legged stool that has made our country so strong for so many years.

Do not do this. A three-legged stool cannot stand. A society that does not have a judiciary to protect the rights of the minority will ultimately degenerate, and we must not let that happen.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the distinguished gentleman from New York (Mr. CROWLEY).

(Mr. CROWLEY asked and was given permission to revise and extend his remarks.)

Mr. CROWLEY. Mr. Speaker, I thank the gentleman from New York for yielding me this time.

We will hear the word ''distraction'' a great deal in the next couple of weeks because that is what is happening here today.

The 9/11 Commission came out with a report today and instead of focusing on and discussing the issues pertaining to the 9/11 Commission's report, we are here today debating a bill that in essence will change the Constitution without going through the formalities of actually changing the Constitution.

We have 2 million people who are unemployed today in this country who would like to work but do not have the opportunity to do so today. We have 44 million Americans in this country today who do not have health insurance coverage, and yet we are here today debating this bill on the floor that will undermine the rights and privileges, not only of people who are gay or lesbian in the country but all

Americans, if this bill were to become law.

Mr. Speaker, I ask my friends and colleagues to vote down this bill. This bill is unfair and unjust. It will undermine the very premise of our Constitution. I challenge my colleagues to please vote down this bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Florida (Mr. STEARNS).

(Mr. STEARNS asked and was given permission to revise and extend his remarks.)

Mr. STEARNS. Mr. Speaker, first of all, most of the folks on that side of the aisle keep talking about that we are mending and changing the Constitution. But I think the argument has been shown to be overwhelmingly wrong and the gentleman from New York (Mr. NADLER) will have to agree, and he would now say clearly, it does not violate the Constitution to pass this bill. And I think others will agree with that.

So the people that come down here and say it violates the Constitution are wrong, for your side of the aisle to say we are violating the Constitution, amending and changing it, clearly we are not.

The distinguished chairman of the Committee on the Judiciary has given you nine examples, recent examples, of where we have used almost the same clause or language to do the same thing we are doing today. Did you know that to expedite construction for the World War II Memorial we did this same thing. We did it for the Terrorist Risk Insurance Act, the Department of Justice Authorization Act, which I am sure the gentleman from New York (Mr. NADLER) voted for. The Intelligence Act, the PATRIOT Act, even for campaign finance reform in which the majority of the people on that side of the aisle voted for.

But now let us talk about the Daschle Act. Now that is more recent and I think something we should mention. The distinguished chairman of the Committee on the Judiciary mentioned it, but I just want to read to you what Senator DASCHLE actually said on the Senate floor when he said, Due to extraordinary circumstances, timber activities will be exempt from the National Forest Management Act and National Environment Policy Act. And these exemptions are such that they are not subject to judicial review by any United States court. I'd say Senator DASCHLE blanketed it completely.

Let us get to the real issue. The real issue is not whether the language in this bill is exempting U.S. courts. The real issue is the Defense of Marriage Act. But the Defense of Marriage Act was voted for overwhelmingly by many folks, on that side of the aisle and of course ours, but now you are claiming a technicality by saying we are violating the Constitution. But we all know that we do not want a handful of judges overturning the will of individual States and millions of Americans.

DOMA relied on the principle of federalism, which is a defined concept in our Constitution, to defend States rights and to preserve the sanctity of marriage. It was a perfect match, at least we thought it was, until we found out several events later that the Supreme Court 1997 decision in Roemer v. Evans overturned a popular referendum in their ruling. Last year in Lawrence v. Texas the Supreme Court ignored a States right to determine its own public policy standard and overturned its previous court ruling, which in turn created a new right out of thin air. For years the Federal Courts have been taking jurisdiction away from Congress. It is only proper that we exercise our constitutional right to limit their jurisdiction.

So I would say to my colleagues, if you are against the Defense of Marriage Act, why do you not argue that and do not use the technicalities of saying we are violating the Constitution because you know that is not true. And I have given you at least nine examples here of where you on that side of the aisle have voted for the same, almost the same language.

Now the gentleman from Massachusetts indicated that in this bill there is unique language we have never seen before. Now Mr. Speaker all of us have heard songs before and lots of times those songs sound the same way. But they do not have the same language or exact words. Those songs may sound the same, but they do not have the same words. Likewise, this bill does the same thing as the other bills I mentioned, but the language may not be the same.

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I place into the RECORD the case of Biodiversity Associates v. Cables, which contrary to the gentleman from Florida (Mr. STEARNS) ruled that the Daschle bill did not apply to preclude court of appeals review as the legislation's constitutional validity.

BIODIVERSITY ASSOCIATES V. CABLE

Biodiversity Associates and Brian Brademeyer, Plaintiffs-Appellants, Sierra Club and the Wilderness Society, Plaintiffs, v. Rick D. Cables, in his official capacity as Regional Forester of the Rocky Mountain Region of the U.S. Forest Service; Dale N. Bosworth, in his official capacity as Chief of the U.S. Forest Service; John C. Twiss, in his official capacity as Supervisor of the Black Hills National Forest; U.S. Forest Service, Defendants-Appellees, Larry Gabriel, in his official capacity as Secretary of the South Dakota Department of Agriculture; Black Hills Regional Multiple Use Coalition; Black Hills Forest Resource Association; Meade County, Lawrence County, and Pennington County, all political subdivisions the State of South Dakota, * Defendants-Intervenors-Appellees.

*Mr. Cables, Mr. Bosworth and Mr. Gabriel, who are the successors in office of Lyle K. Laverty, Michael Dombeck and Darrell Cruea, respectively, have been substituted as parties pursuant to Fed. R. App. 34(c)(2).

NO. 03–1002

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

357 F.3D 1152; 2004 U.S. APP. LEXIS 1702

(February 4, 2004, Filed)

Prior History: Appeal from the United States District Court for the District of Colorado. (D.C. No. 99–N–2173).

Disposition: Affirmed.

Counsel: Ray Vaughn of WildLaw, Montgomery, Alabama (Steve Novak of WildLaw, Asheville, North Carolina, with him on the briefs), for Plaintiffs-Appellants.

Kevin Traskos, Assistant United States Attorney (John W. Suthers, United States Attorney, with him on the brief), Denver, Colorado, for Defendants-Appellees.

Diane Best, Assistant Attorney General (Lawrence E. Long, Attorney General; Charles D. McGuigan, Assistant Attorney General, with her on the brief), State of South Dakota, Pierre, South Dakota, for Defendants-Intervenors-Appellees.

Judges: Before Murphy, Circuit Judge, Brorby, Senior Circuit Judge, and McConnell, Circuit Judge.

Opinion By: McConnell.

For many years, Congress has been unable to come to agreement on nationwide legislation to address the dangers of insect infestation and fire in the national forests. In 2002, however, in a rider to a supplemental appropriations act for the war on terrorism, Congress passed legislation applicable to selected sections of the Black Hills National Forest in South Dakota and nowhere else, permitting logging and other clearance measures as a means of averting forest fires. The legislation specifies forest management techniques for these lands in minute detail, overrides otherwise applicable environmental laws and attendant administrative review procedures, and explicitly supersedes a settlement agreement between the Forest Service and various environmental groups regarding management of these lands.

The question presented is whether the extraordinary specificity of this legislation, coupled with its displacement of a settlement agreement, amounts to congressional violation of the Constitution's separation of powers, by invading the province of the executive branch, the judicial branch, or both. We hold that it does not. Article IV, §3, cl. 2 expressly grants Congress ''Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.'' With respect to this power—like most of its enumerated powers—Congress is permitted to be as specific as it deems appropriate. Moreover, settlement agreements between private litigants and the executive branch cannot divest Congress of its constitutionally vested authority to legislate.

BACKGROUND

The first law involved in this case is the law of unintended consequences. Fire suppression efforts conducted over more than a century in large parts of the West have had the unintended effect of transforming forests from savannah-like grasslands studded with well-spaced large, old, fire-resistant trees, into thicker, denser forests. Prior to the arrival of Europeans, these forests experienced frequent, but relatively mild, forest fires caused primarily by lightning and Native American activity. These fires would clear the forest floor of undergrowth and saplings while leaving the larger trees unscathed. The denser forests produced by fire suppression accumulate more combustible fuel and are more vulnerable to infestations, such as mountain pine beetles, and to fires far more intense and devastating than those of the pre-settlement era. Forestry experts are divided as to the response to these conditions.

Some advocate a hands-off approach, allowing fire (outside areas of human habitation) to reconstitute the forests in their natural state; some advocate controlled burns; and some advocate thinning and fuel removal. The role of commercial logging as part of the last approach has been particularly controversial.

From 1983 to 1997, the Beaver Park Roadless Area, a relatively pristine portion of the Black Hills National Forest, was free of logging activity, apparently because the land management plan then in place did not allow it. In 1997, however, the Forest Service approved a new Black Hills National Forest plan revision (the ''1997 Revised Plan''), which allowed logging in a significant portion of Beaver Park's 5,109 acres. It subsequently began preparations for a timber sale in an area called the ''Veteran/Boulder Project Area,'' which included most of the Beaver Park land newly authorized for logging. Especially in a part of the area known as Forbes Gulch, a major purpose of the logging was to counter an infestation of mountain pine beetles. The Forest Service proceeded to clear various administrative hurdles in preparation for the Veteran/Boulder timber sale, issuing a final environmental impact statement on the proposed sale and records of decision approving timber harvest both inside and outside the Beaver Park Roadless Area.

Several environmental groups, including the Sierra Club, the Wilderness Society, and Appellant Biodiversity Conservation Alliance (BCA), objected strenuously to the timber sale. The Beaver Park Roadless Area was one of the last areas in the Black Hills National Forest still eligible for designation as a wilderness, and logging activity would likely disqualify it from being designated as such. The environmental groups were also concerned about the effects that the Veteran/Boulder timber sale would have on the viability of the northern goshawk population in the Forest. Accordingly, they brought administrative challenges to both the particular project and the recently revised plan under which it was approved.

The groups met with mixed success in their administrative challenges. Their challenge to the Veteran/Boulder sale was initially denied in its entirety, though the sale was stayed pending review of the Revised Plan itself. Then, on October 12, 1999, the Chief of the Forest Service upheld the 1997 Revised Plan in most respects, but found that there was inadequate support in the record for the conclusion that the Revised Plan's proposed changes would not threaten the viability of several species, including the northern goshawk. He therefore ordered further research into that question. In the meanwhile, the Forest Service did not stop all pending projects, but instead provided interim directions that would apply until the identified defects in the Revised Plan were remedied. As a result, when the stay on the sale expired, the Forest Service went forward and put the timber out for bid.

The Sierra Club, the Wilderness Society, and BCA brought suit challenging the sale in federal district court, claiming that the Forest Service could not rely on an ''illegal'' plan to justify project-level decisions under that plan. Specifically, they argued that the final environmental impact statement's conclusion that the Veteran/Boulder sale would not affect the viability of the northern goshawk was based on the very findings in the 1997 Revised Plan that had been disapproved.

In the waning days of the Clinton Administration, in September of 2000, the Forest Service signed a settlement agreement with the plaintiff groups, under which it agreed not to allow any tree cutting in the Beaver Park Roadless Area, at least until the Service approved a new land and resource management plan remedying the defects of the 1997 plan. The settlement was approved by the United States District Court for the District of Colorado, which had jurisdiction over the lawsuit because the relevant Forest Service offices were in Colorado.

The process of approving a new plan took much longer than anticipated. The record does not reveal whether the mountain pine beetles of western South Dakota were aware of the settlement agreement or participated in the plan revision process, but it is clear that they did not wait for authorization from Washington before undertaking an expanded program of forest resource exploitation. Just two years after the initial Veteran/Boulder environmental impact statement, the mountain pine beetle infestation in this section of the Black Hills had reached epidemic proportions. According to Forest Service estimates, the pine beetles killed 114,000 trees in 2002, as compared to only 15,000 in 1999. This convinced forest managers that immediate harvesting of deadwood and infested trees, which the settlement agreement prohibited, was necessary to guard against further spread of the infestation and potentially disastrous forest fires.

Given that approval of a corrected resource management plan was still a long way off, the Forest Service and the local South Dakota interests that shared its concerns had a choice: they could either attempt to obtain consent to the tree cutting from the original parties to the agreement, or with the help of South Dakota's congressional delegation, they could attempt to overturn the settlement agreement's prohibition by legislation. The Forest Service began by trying the consensual approach. Perhaps spurred by the threat of intervention from Congress, the signatories to the settlement met with the Forest Service to discuss changing the agreement in light of the mountain pine beetle problem. The Forest Service reached agreement with the Sierra Club and the Wilderness Society, but BCA and Brian Brademeyer, then chair of the Black Hills Sierra Club, refused to agree to proposed modifications in the settlement. Stymied, South Dakota interests turned to Congress for a legislative solution.

For some years, Congress had been considering national legislation that would streamline the process of obtaining environmental approval of logging and other clearance projects in fire- and disease-threatened national forests; but these efforts were caught up in the debate over the role of commercial logging in forest restoration. By limiting legislative action to a narrow geographical area, however, and with the acquiescence of some influential environmental groups and the active support of the state's congressional delegation, Congress was able to reach agreement on a bill that would permit logging and other measures in the Beaver Park Roadless Area. In a rider to an unrelated appropriations bill, Congress enacted into law essentially the terms of the modified agreement negotiated between the Forest Service and the Sierra Club and the Wilderness Society. See Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Acts on the United States, Pub. L. No. 107–206, §706, 116 Stat. 820, 864 (2002) (the ''706 Rider'' or ''Rider''). The Rider, which was signed into law on August 2, 2002, required the Forest Service to take a variety of actions that violated the settlement agreement, see, e.g., id. §706(d)(5), 116 Stat. at 867, and prohibited judicial review of those actions, id. §706(j), 116 Stat. at 868. It also specifically referred to the settlement agreement, and stated that the agreement should continue in effect to the extent it was not preempted by the Rider. See id., 116 Stat. at 869.

After the Rider was passed, BCA and Mr. Brademeyer (hereinafter referred to, jointly, as ''BCA'') went to the federal district court in Colorado to obtain an order requiring continued enforcement of the settlement agreement, claiming that the 706 Rider unconstitutionally trenched on both the executive and judicial branches. The district court denied the motion, and BCA appealed.

DISCUSSION

As a preliminary matter, we must determine the scope of this Court's jurisdiction over this case. Although we would normally have jurisdiction under 28 U.S.C. §1291, the 706 Rider limits that jurisdiction:

''Due to the extraordinary circumstances present here, actions authorized by this section shall proceed immediately and to completion notwithstanding any other provision of law including, but not limited to, NEPA and the National Forest Management Act (16 U.S.C. 1601 et seq.). Such actions shall not be subject to the notice, comment, and appeal requirements of the Appeals Reform Act, (16 U.S.C. 1612 (note), Pub. Law No. 102–381 sec. 322). Any action authorized by this section shall not be subject to judicial review by any court of the United States.''

Rider 706(j), 116 Stat. at 868 (emphasis added). At oral argument, BCA contended that the italicized language does not preclude us from considering the constitutionality of the Rider itself. The government disagrees, arguing that we have jurisdiction at most to determine whether the denial of jurisdiction, not the entire Rider, is constitutional.

In determining the extent of our jurisdiction, we must start with the precise language of the Rider, keeping in mind that such limitations of jurisdiction are to be construed narrowly to avoid constitutional problems. See Johnson v. Robison, 415 U.S. 361, 366–67, 39 L. Ed. 2d 389, 94 S. Ct. 1160 (1974). What is prohibited here is judicial review of ''any action authorized by'' the Rider. Rider §706(j), 116 Stat. at 868. BCA, however, does not seem to be seeking judicial review of any specific actions already taken or soon to be taken by the Forest Service. Rather, it has moved for enforcement of the settlement agreement in the face of the new Congressional legislation. Admittedly, the basis for the lawsuit, and the alleged injury that gives BCA standing, is the prospect of Forest Service action pursuant to the Rider and in violation of the settlement agreement. Yet at this point, no pastor prospective actions of the Forest Service are directly at issue. The question before us is simply whether the settlement agreement has continuing validity in the face of Congress's intervening act.

The situation here is thus different from one in which the court is asked to hold a party who has violated an injunction in contempt. In such a case, the ''actions'' taken by a party to the injunction are directly at issue. BCA's motion is more analogous to a suit for declaratory judgment holding the Rider itself to be unconstitutional. Because BCA seeks judicial review of the congressional act mandating that the settlement agreement be violated, rather than judicial review of the Forest Service's acts authorized by the Rider, the jurisdictional bar does not apply. See Nat'l Coalition to Save Our Mall v. Norton, 348 U.S. App. D.C. 92, 269 F.3d 1092, 1095 (D.C. Cir. 2001). We therefore must reach the question of whether the Rider is constitutional. Because this question is purely legal, our review is de novo. See United States v. Pompey, 264 F.3d 1176, 1179 (10th Cir. 2001).

BCA's chief argument is that the Rider trenches on the Executive by giving the Forest Service marching orders so detailed that

they go beyond merely ''passing new legislation'' to interpreting the law, which is ''the very essence of 'execution' of the law.'' Bowsher v. Synar, 478 U.S. 714, 733, 92 L. Ed. 2d 583, 106 S. Ct. 3181 (1986). However, they never clearly explain what, in their view, separates permissible legislation from impermissible interpretation. The main flaw they find in the Rider is its extreme particularity, making it seem as if their theory is that extreme particularity by itself infringes the Executive's power to enforce and execute the law. At times, though, they make a more limited claim: that while specificity is not per se unconstitutional, at least in this case it is ''indicative'' of the fact that Congress has unconstitutionally ''directed how law is to be implemented,'' rather than (constitutionally) changing the applicable law. Appellants' Reply Br. 5. This more limited claim suggests that it is particularity in combination with some other feature that raises the constitutional problem. We consider each theory in turn.

BCA bases its argument on a handful of cases in which the Supreme Court has held that the legislative branch cannot play a role in the interpretation and execution of the law. See, e.g., Metro. Washington Airports Auth. v. Citizens for the Abatement of Aircraft Noise, Inc., 501 U.S. 252, 271–72, 115 L. Ed. 2d 236, 111 S. Ct. 2298 (1991); Bowsher, 478 U.S. at 725–26; INS v. Chadha, 462 U.S. 919, 951–52, 77 L. Ed. 2d 317, 103 S. Ct. 2764 (1983); Springer v. Philippine Islands, 277 U.S. 189, 201–02, 72 L. Ed. 845, 48 S. Ct. 480 (1928). There is no basis, however, for BCA's assertion that the sheer specificity of the 706 Rider takes it beyond the realm of Congress's legislative powers. Certainly the cases cited above do not support this position. In each of those cases, Congress sought a role for itself in the execution of the laws, beyond enactment of legislation, through mechanisms such as a one-house legislative veto or the vesting of law-executing powers in officers appointed by, or accountable to, Congress. In Bowsher, the Court held that the Comptroller General, who serves at the pleasure of Congress, could not be the officer who determined what spending cuts would be made in order to reduce the deficit under the Gramm-Rudman-Hollings Act of 1985. 478 U.S. at 717–18, 736. Springer held that it violated separation of powers for members of the legislative branch to be directors of government-owned businesses. 277 U.S. at 202–03. Similarly, Metropolitan Washington Airports struck down an arrangement whereby a board of review composed of members of Congress had authority to veto key acts of the Metropolitan Washington Airport Authority. 501 U.S. at 275–77. Chadha struck down a law that delegated authority to the Attorney General to suspend certain deportations, but allowed either house of Congress acting alone to veto the Attorney General's decisions. 462 U.S. at 923, 944–59. None of these cases, or any others of which we are aware, suggest that Congress is required to speak with some minimum degree of generality, so as to leave play for the Executive to exercise discretion in interpreting the law. Rather, the Constitution expressly leaves it up to Congress to determine how specific it may deem it ''necessary and proper'' for the laws to be. U.S. Const. art. I, §8, cl. 18. The cases cited above have simply forbidden Congress, or its members or servants, from exerting legal authority without observing the formalities for the passage of legislation under the Constitution: ''bicameral passage followed by presentment to the President.'' Bowsher, 478 U.S. at 726 (quoting Chadha, 462 U.S. at 954–55). This is a structural and institutional means of guaranteeing that Congress stays within the bounds of legislating, and is far superior to asking courts to police the shades of gray between the poles of general and specific.

To be sure, the Constitution imposes certain specific constraints on the power of Congress to legislate with overmuch particularity. The Bill of Attainder Clause, U.S. Const. art. I, §9, cl. 3, and the ''uniform Duties, Imposts, and Excises'' Clause, id., are examples. See §8, cl. 1 Nixon v. Adm'r of Gen. Servs., 433 U.S. 425, 468–73, 53 L. Ed. 2d 867, 97 S. Ct. 2777 (1977); United States v. Ptasynski, 462 U.S. 74, 80–85, 76 L. Ed. 2d 427, 103 S. Ct. 2239 (1983). Due process and equal protection principles similarly prevent Congress from acting with respect to specific persons or groups in some contexts, and specificity may be relevant to determining whether Congress has trenched on the Executive's ability to carry out its specifically enumerated executive powers. Nixon, 433 U.S. at 443. But when Congress is exercising its own powers with respect to matters of public right, the executive role of ''taking Care that the Laws be faithfully executed,'' U.S. Const. art. II, §3, is entirely derivative of the laws passed by Congress, and Congress may be as specific in its instructions to the Executive as it wishes. Indeed, as the Supreme Court has noted, Congress may even pass legislation governing ''a legitimate class of one.'' Nixon, 433 U.S. at 472.

In the instant case, none of the Constitution's explicit restrictions on specificity apply. The Property Clause states that ''Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.'' U.S. Const. art. IV, §3, cl. 2. The Supreme Court has ''repeatedly observed that the power over the public land thus entrusted to Congress is without limitations.'' Kleppe v. New Mexico, 426 U.S. 529, 539, 49 L. Ed. 2d 34, 96 S. Ct. 2285 (1976) (internal brackets and quotation marks omitted); see also Wyoming v. United States, 279 F.3d 1214, 1227 (10th Cir. 2002). It would be difficult if not impossible to control the use of federal lands without reference to specific actions affecting specific tracts of land, and we see no reason why Congress should be forced to avoid such directives. See Save Our Mall, 269 F.3d at 1097 (noting that particularity is especially unproblematic when addressing unique public amenities). The Supreme Court's remark in Metropolitan Washington Airports seems relevant here:

''Because National and Dulles are the property of the Federal Government and their operations directly affect interstate commerce, there is no doubt concerning the ultimate power of Congress to enact legislation defining the policies that govern those operations. *Congress itself can formulate the details,* or it can enact general standards and assign to the Executive Branch the responsibility for making necessary managerial decisions in conformance with those standards.'' 501 U.S. at 271–72 (emphasis added).

Thus, BCA is mistaken when it argues that Congress has arrogated power to itself at the expense of the executive branch because it ''specifically ordered the Executive Branch to carry out a duty which had been expressly delegated to the Department of Agriculture, the management of the Black Hills National Forest.'' Appellants' Br. 23. To give specific orders by duly enacted legislation in an area where Congress has previously delegated managerial authority is not an unconstitutional encroachment on the prerogatives of the Executive; it is merely to reclaim the formerly delegated authority. Such delegations, which are accomplished by statute, are always revocable in like manner; they cannot extend the domain reserved by the Constitution to the Executive alone. See Stop H–3 Ass'n v. Dole, 870 F.2d 1419, 1435 n.24 (9th Cir. 1989).

We now turn to consider the view that although the 706 Rider's specificity is unobjectionable in the abstract, it is still unconstitutional because it attempts to mandate specific results without changing the underlying environmental laws. BCA relies for this view chiefly on Robertson v. Seattle Audubon Society, where the Supreme Court upheld a similar provision because it ''compelled changes in law, not findings or results under old law.'' 503 U.S. 429, 438, 118 L. Ed. 2d 73, 112 S. Ct. 1407 (1992); see also Apache Survival Coalition v. United States, 21 F.3d 895, 904 (9th Cir. 1994); Stop H–3 Ass'n, 870 F.2d at 1434 (upholding a statute authorizing construction of a highway despite an environmental regulation because it ''does not interpret [the relevant regulation's] requirements but rather exempts H–3 from them''); Armuchee Alliance v. King, 922 F. Supp. 1541, 1550 (N.D. Ga. 1996).

Far from supporting BCA's position, however, Seattle Audubon rejects an argument very much like its own. The case concerned logging litigation to which Congress responded by passing the Northwest Timber Compromise of 1990, applicable only to timber sales entered before September 30, 1990, in thirteen national forests in the Pacific Northwest. The key section of that legislation stated that ''Congress determines and directs that management of areas according to [new rules set forth in the Northwest Timber Compromise] . . . meets the statutory requirements that are the basis for [the litigation].'' 503 U.S. at 434–35. The Ninth Circuit, below, had held that this did not ''establish new law, but directed the court to reach a specific result and make certain factual findings under existing law in connection with two cases pending in federal court,'' thus encroaching on the judicial branch under United States v. Klein, 80 U.S. (13 Wall.) 128, 20 L. Ed. 519, 7 Ct. C1. 240 (1872). Seattle Audubon Soc'y v. Robertson, 914 F.2d 1311, 1316 (9th Cir. 1990) (Seattle Audubon 1). In reversing, the Supreme Court criticized the Ninth Circuit's focus on the form of the enactment; instead, it looked to the legal effect of the Seattle Audubon provision:

''We conclude that subsection (b)(6)(A) compelled changes in law, not findings or results under old law. Before subsection (b)(6)(A) was enacted, the original claims would fail only if the challenged harvesting violated none of five old provisions. Under subsection (b)(6) (A), by contrast, those same claims would fail if the harvesting violated neither of two new provisions. Its operation, we think, modified the old provisions.'' Seattle Audubon, 503 U.S. at 438.

This case follows a fortiori from Seattle Audubon. Just as in Seattle Audubon, the 706 Rider has the practical effect of changing the scope of the government's legal duties. Before the Rider, the Forest Service was prohibited by law from cutting trees without meeting various requirements of various environmental laws; after the Rider, it is required to cut trees in the Black Hills ''notwithstanding'' those laws. Rider 706(j), 116 Stat. at 868. But the 706 Rider lacks the problematic language—''the Congress determines and directs that management of areas according to [new rules set forth in the Northwest Timber Compromise] . . . meets the statutory requirements that are the basis for [the litigation]''—which the Ninth Circuit construed as interpreting rather than amending the law. Seattle Audubon I, 914 F.2d at 1316. By contrast, the 706 Rider orders that certain actions be taken ''notwithstanding'' the requirements of certain prior-enacted laws, thus effectively replacing the old standards, in this one case, with new ones. Similar statutes have been upheld as constitutionally valid amendments of the underlying law. See Save Our Mall, 269 F.3d at 1097; Apache Survival Coalition, 21 F.3d at 904; Stop H–3 Assn, 870 F.2d at 1434. Thus, we

need not decide whether directing specific actions without changing the law would be an unconstitutional attempt by Congress to usurp the Executive's role in interpreting the law. In accordance with the counsel in Bowsher, Congress has influenced the execution of the law here only ''indirectly—by passing new legislation.'' 478 U.S. at 734 (citing Chadha, 462 U.S. at 958).

Next, BCA claims that the 706 Rider encroaches on the Judiciary, in three ways: (1) by disturbing final dispositions of cases in violation of Plaut v. Spendthrift Farm, Inc., 514 U.S. 211, 131 L. Ed. 2d 328, 115 S. Ct. 1447 (1995); (2) by prescribing rules of decision to the Judiciary in pending cases, in violation of United States v. Klein, 80 U.S. (13 Wall.) 128, 20 L. Ed. 519, 7 Ct. C1. 240 (1871); and (3) by vesting review of judicial decisions in the executive branch, in violation of the rule in Hayburn's Case, 2 U.S. (2 Dall.) 409, 1 L. Ed 436 (1792). We reject all three claims.

BCA's first contention, that the 706 Rider impermissibly sets aside a final judicial disposition, depends on a crucial but questionable premise: that the settlement agreement is actually a judicial disposition rather than a mere private agreement between the parties. Although the district court did incorporate the settlement agreement by reference in its order dismissing the suit, it nevertheless preferred the latter characterization in addressing BCA's current request for injunctive relief:

''This case doesn't even rise to the level where the Court executed a consent decree. This is a case where the parties sat down among themselves and settled the case. The more proper analogy here is to an executory settlement contract. It is true that the Court approved the settlement agreement, but that is different from a consent decree.

. . .

. . . As far as I'm concerned, the Court's approval of the settlement agreement is entitled to very, very little weight, because it was negotiated among the parties.''

Tr. of Mot. Hr'g dated Dec. 26, 2002, at 12, App. 405. Nevertheless, because the settlement agreement was a judicial disposition in form if not in substance, we assume for purposes of this appeal that it is entitled to the same constitutional protection that it would have if the court had decided its terms.

Within the scope of its enumerated powers, Congress has authority to enact laws to govern matters of public right, such as the management of the public lands, and authority to change those laws. Even when the Judiciary has issued a legal judgment enforcing a congressional act—for example, by a writ of injunction—it is no violation of the judicial power for Congress to change the terms of the underlying substantive law. The purpose of an injunction is to define and enforce legal obligations, not to freeze them into place. Thus, when Congress changes the laws, it is those amended laws—not the terms of past injunctions—that must be given prospective legal effect. See, e.g., Miller v. French, 530 U.S. 327, 347–50, 147 L. Ed. 2d 326, 120 S. Ct. 2246 (2000); Hall v. Beals, 396 U.S. 45, 48, 24 L. Ed. 2d 214, 90 S. Ct. 200 (1969); System Fed'n No. 91 v. Wright, 364 U.S. 642, 648–650, 5 L. Ed. 2d 349, 81 S. Ct. 368 (1961); Am. Steel Foundries v. Tri-City Cent. Trades Council, 257 U.S. 184, 201–07, 66 L. Ed. 189, 42 S. Ct. 72 (1921).

The Supreme Court applied this principle to dispose of a contention very similar to BCA's as long ago as 1855, in the venerable case of Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U.S. (18 How.) 421, 15 L. Ed. 435 (1855). In that case, Pennsylvania had previously brought suit to enjoin the construction of a bridge over the Ohio River, which would obstruct access to Pennsylvania's ports. The Supreme Court eventually granted an injunction requiring the bridge to be removed or raised. It reasoned that because Congress had ''regulated the navigation of the Ohio River, and had thereby secured to the public, by virtue of its authority, the free and unobstructed use of the same,'' the Virginia-authorized bridge impeding travel on the Ohio River was ''in conflict with the acts of congress, which were the paramount law.'' 59 U. S. (18 How.) at 430 (summarizing the earlier opinion).

Thereafter, Congress passed a new law authorizing the construction of the bridge and stating that the bridge and one other were ''lawful structures in their present positions and elevations.'' Wheeling Bridge, 59 U.S. (18 How.) at 429. Pennsylvania sued again, claiming that the intervening enactment was an unconstitutional attempt to overturn a final decision of the Judiciary. The Supreme Court disagreed:

''If the remedy in this case had been an action at law, and a judgment rendered in favor of the plaintiff for damages, the right to these would have passed beyond the reach of the power of congress. It would have depended, not upon the public right of the free navigation of the river, but upon the judgment of the court. . . . But that part of the decree, directing the abatement of the obstruction, is executory, a continuing decree, which requires not only the removal of the bridge, but enjoins the defendants against any reconstruction or continuance. Now, whether it is a future existing or continuing obstruction depends upon the question whether or not it interferes with the right of navigation. If, in the meantime, since the decree, this right has been modified by the competent authority, so that the bridge is no longer an unlawful obstruction, it is quite plain the decree of the court cannot be enforced. There is no longer any interference with the enjoyment of the public right inconsistent with the law, no more than there would be where the plaintiff himself had consented to it, after the rendition of the decree.''

Id. at 431–32. Central to the Court's analysis was the fact that the right to unobstructed waterways was a ''public right . . . under the regulation of congress.'' Id. at 431. In other words, the plaintiff had no vested property right in an unobstructed waterway. The core violation was against Congress's right to control the waterways, and Pennsylvania's right to an unobstructed waterway was only the derivative right to enjoy whatever degree of navigation Congress saw fit to allow. So long as the will of Congress was to leave the river unimpeded, any impediment was a violation of the public right thus defined. But once Congress changed its mind, the contours of that right changed, and there was no more ground for injunctive relief. If a landowner grants her neighbor a revocable license to use a private road across her property, the neighbor could conceivably obtain an injunction against any third party who prevents him from using that road. However, that does not affect the right of the landowner to revoke the license at any time. Should the license be revoked, the neighbor's right to use the private road ceases, and enforcing the injunction is no longer appropriate.

Wheeling Bridge has remained a fixed star in the Supreme Court's separation-of-powers jurisprudence, and numerous subsequent cases have relied on it. See, e.g., The Clinton Bridge, 77 U.S. 454, 463, 19 L. Ed. 969 (1870) (concluding, on the basis of Wheeling Bridge, that in public rights cases, Congress could not only modify injunctive relief already granted, but also could ''give the rule of decision'' in pending cases); Hodges v. Snyder, 261 U.S. 600, 603, 67 L. Ed. 819, 43 S. Ct. 435 (1923) (noting that the normal rule against disturbing final judgments ''does not apply to a suit brought for the enforcement of a public right, which, even after it has been established by the judgment of the court, may be annulled by subsequent legislation and should not be thereafter enforced''); Sys. Fed'n No. 91, 364 U.S. at 648–650 (holding that it is an abuse of discretion for a district court not to modify an injunction to reflect changes in underlying law); Miller v. French, 530 U.S. at 347–48.

Even Plaut v. Spendthrift Farms, Inc., the principal case on which BCA relies, is careful not to disturb the holding of Wheeling Bridge. There the Supreme Court had previously imputed a uniform nationwide statute of limitations on actions brought under §10(b) of the Securities Exchange Act of 1934, Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson, 501 U.S. 350, 115 L. Ed. 2d 321, 111 S. Ct. 2773 (1991), and held that the newly established statute of limitations applied to all pending cases in the federal courts. James B. Beam Distilling Co. v. Georgia, 501 U. S. 529, 115 L. Ed. 2d 481, 111 S. Ct. 2439 (1991). Six months later, Congress passed a law changing the statute of limitations for those cases commenced before Lampf to what it would have been had the Supreme Court not imposed a uniform nationwide limitations period, and reinstating all actions dismissed as time-barred if they would have been timely under the limitations period of their local jurisdiction. See Federal Deposit Insurance Corporation Act of 1991, Pub. L. No. 102–242, sec. 476, §27A, 105 Stat. 2236 (codified at 15 U.S.C. §78aa–1 (1988 Supp. V)). The Supreme Court held that this action violated the separation of powers by requiring federal courts to reopen final judgments. Plaut, 514 U.S. at 240. It reasoned that once the judicial branch has given its final word on a case, to allow Congress to reopen the case by legislation would destroy the power of the Judiciary to render final judgments. Id. at 219. Instead, Congress would be in effect a court of last resort to which one could appeal any ''final'' decision of the Judiciary.

In rejecting such an outcome, the Court in Plaut did no more than follow the dicta of Wheeling Bridge itself:

''But it is urged, that the act of congress cannot have the effect and operation to annul the judgment of the court already rendered, or the rights determined thereby in favor of the plaintiff. This, as a general proposition, is certainly not to be denied, especially as it respects adjudication upon the private rights of the parties. When they have passed into judgment the right becomes absolute, and it is the duty of the court to enforce it.

. . .

Now, we agree, if the remedy in this case had been an action at law, and a judgment rendered in favor of the Plaintiff for damages, the right to these would have passed beyond the reach of the power of congress.'' Wheeling Bridge, 59 U.S. (18 How.) at 431 (emphasis added), quoted in Plaut, 514 U.S. at 226. As Plaut itself insists, it does not call the holding of Wheeling Bridge into question at all. 514 U.S. at 232. The disturbed court decision in Plaut definitively resolved a private claim to a certain amount of money, leaving the defendants with an unconditional right to the sum in question; the judgments in this case and in Wheeling Bridge merely prohibited future interference with the enjoyment of a public right that remained revocable at Congress's pleasure. The Supreme Court has since reaffirmed the continued vitality of Wheeling Bridge in Miller v. French. In that case, the Prison Litigation Reform Act had set new limits on the power of courts to give injunctive relief to prisoners, requiring (among other things) that

any injunctive relief granted be both narrowly drawn to correct the violation of federal rights and also the least intrusive means of correcting the violation. 18 U.S.C. 3626(a)(1)(A). The provision at issue in Miller directed that an action to modify or terminate injunctive relief pursuant to the PLRA would act as an automatic stay of any existing injunctive relief if a court did not find that the injunctive relief remained appropriate under the new standards within 30 days. Id. 3626(b)(2).

In upholding the PLRA's automatic stay, the Supreme Court found Wheeling Bridge controlling, distinguishing Plaut because in that case Congress had disturbed final judgments in actions for money damages. Miller, 530 U.S. at 344–45. The Court held that when courts grant prospective injunctive relief, they remain obligated to modify that relief to the extent that ''subsequent changes in the law'' render it illegal. Id. at 347.

This case falls squarely within the principle of Wheeling Bridge. BCA's members' rights with respect to the national forests is a ''public right . . . under the regulation of congress,'' Wheeling Bridge, 59 U.S. (18 How.) at 431, in exactly the same way that the right to unimpeded navigation of the Ohio River was. Both rights are entirely contingent on Congress's continuing will that the federal lands or interstate waterways be managed in a particular way. The settlement agreement in the Veteran/Boulder matter in no way touched on vested private rights. To be sure, the private interests of BCA's members are sufficiently affected to give rise to standing, but the interest they represented in their lawsuit was nothing other than the interest of the public in seeing that Congress's environmental directives are observed by the Forest Service.

BCA's attempts to distinguish Miller and Wheeling Bridge are unavailing. It argues, first, that in those cases, Congress simply changed the law, leaving it for the courts to decide whether to modify their injunctions, whereas here Congress is directly requiring the courts to modify the settlement agreement. We see no such distinction. In those cases, as here, Congress enacted rules in direct conflict with existing legal obligations. In those cases, as here, courts later had to decide whether those previous legal obligations remained enforceable in light of Congress's act.

Second, BCA argues that the 706 Rider specifically refers to a particular settlement agreement it means to supercede, whereas the PLRA provision in Miller ''did not speak directly to any pre-existing judicial ruling or issuance of relief.'' Appellants' Br. 27. The same was true in Wheeling Bridge. There, legislation was targeted at two named bridges, one of which was the subject of the injunction in the case. See 59 U.S. (18 How.) at 429. It is true that in Seattle Audubon, the Court declined to address the question of whether such targeting raised a constitutional problem. 503 U.S. at 441. However, its silence ended four years later in Plaut. There, a concurrence found a constitutional violation precisely because the reopening of dismissed cases ''applied only to a few individual instances.'' 514 U.S. at 243 (Breyer, J., concurring). A majority of the Court rejected that position, describing it as ''wrong in law.'' Id. at 238. The majority concluded that the infringement of the judicial power consisted ''not of the Legislature's acting in a particularized and thus (according to the concurrence) nonlegislative fashion; but rather of the Legislature's nullifying prior, authoritative judicial action. It makes no difference whatever to that separation-of-powers violation that it is in gross rather than particularized.'' Id. at 239 (emphasis in original; footnote omitted); see also id. at 239 n.9 (''While legislatures usually act through laws of general applicability, that is by no means their only legitimate mode of operation.'').

To avoid constant interbranch friction, the lines separating the branches should be clear. As the Supreme Court noted in Plaut, and as BCA's arguments illustrate, it only ''prolongs doubt and multiplies confrontation'' to make the constitutional analysis hinge on the murky distinction between generalized lawmaking and particularized application of the law. 514 U.S. at 240.

It is true that the injunction BCA seeks to enforce differs from the one in Wheeling Bridge in that it is the product of a settlement agreement rather than a product of a judicial declaration of right. Thus, Appellants' claimed right to keep Beaver Park unmolested might be said to rest directly on the terms of their contractual agreement, and only indirectly on public rights provided by the environmental laws. We must therefore consider whether the settlement agreement has interposed a new set of contractual rights that adequately support keeping the injunction in place, making changes to the scope of the underlying public right irrelevant.

A negative answer to that question has been clear since at least 1961, when the Supreme Court decided System Federation No. 91 v. Wright, 364 U.S. 642, 648–650, 5 L. Ed. 2d 349, 81 S. Ct. 368 (1961). In that case, several nonunion railway employees brought a class action against the railroad and various unions for discrimination against them and other nonunion workers. The district court eventually entered a consent decree enjoining the defendants ''from discriminating against the plaintiffs and the classes represented by them in this action by reason of or on account of the refusal of said employees to join or retain their membership in any of defendant labor organizations, or any labor organization.'' System Fed'n No. 91, 364 U.S. at 644. At the time, labor law did not allow collective bargaining agreements to require union shops. 364 U.S. at 645–46.

Later, when the applicable law had changed to allow such contracts, the unions sought modification of the decree to make it clear that it would not prevent them from bargaining for a union shop. Id. The district court refused to modify the injunction; since nothing in the amended law made it illegal for parties to agree not to have a union shop, the court concluded that the parties were stuck with their agreement. Id.

The Sixth Circuit affirmed, but the Supreme Court reversed, holding that the district court's refusal to modify the decree was an abuse of discretion. 364 U.S. at 646, 650–53. The Court reasoned that, under Wheeling Bridge, the district court would have had to modify the decree if it had been the result of litigation instead of consent. 364 U.S. at 650–51. It then concluded that the same principles applied to consent decrees:

''The result is all one whether the decree has been entered after litigation or by consent. . . . In either event, a court does not abdicate its power to revoke or modify its mandate, if satisfied that what it has been doing has been turned through changing circumstances into an instrument of wrong. We reject the argument . . . that a decree entered upon consent is to be treated as a contract and not as a judicial act. . . .'' 364 U.S. at 650–51 (quoting United States v. Swift & Co., 286 U.S. 106, 114–15, 76 L. Ed. 999, 52 S. Ct. 460 (1932) (Cardozo, J.)) (some ellipses in original). The Court's reasons are also applicable here:

''The parties cannot, by giving each other consideration, purchase from a court of equity a continuing injunction. In a case like this the District Court's authority to adopt a consent decree comes only from the statute which the decree is intended to enforce. Frequently of course the terms arrived at by the parties are accepted without change by the adopting court. But just as the adopting court is free to reject agreed-upon terms as not in furtherance of statutory objectives, so must it be free to modify the terms of a consent decree when a change in law brings those terms in conflict with statutory objectives. In short, it was the Railway Labor Act, and only incidentally the parties, that the District Court served in entering the consent decree now before us. The court must be free to continue to further the objectives of that Act when its provisions are amended. The parties have no power to require of the court continuing enforcement of rights the statute no longer gives.''
364 U.S. at 651. Put briefly, a settlement agreement or consent decree designed to enforce statutory directives is not merely a private contract. It implicates the courts, and it is the statute—and ''only incidentally the parties''—to which the courts owe their allegiance. The primary function of a settlement agreement or consent decree, like that of a litigated judgment, is to enforce the congressional will as reflected in the statute. The court should modify or refuse to enforce a settlement agreement or proposed decree unless it is ''in furtherance of statutory objectives.'' The agreement or consent decree is contractual only to the extent that it represents an agreement by the parties regarding the most efficient means of effectuating their rights under the statute. It does not freeze the provisions of the statute into place. If the statute changes, the parties' rights change, and enforcement of their agreement must also change. Any other conclusion would allow the parties, by exchange of consideration, to bind not only themselves but Congress and the courts as well.

This principle applies even more clearly here than it did in System Federation itself. There, the original injunction was not inconsistent with the new law; it merely ruled out an option that Congress had since made permissible but not mandatory. If that injunction had to change, then a fortiori the injunction at issue here, which is inconsistent with the 706 Rider, must give way.

Having disposed of the claim that the 706 Rider disturbs the district court's final judgment in violation of Plaut, we turn to BCA's somewhat inconsistent claim that the Rider violates United States v. Klein because it dictates ''rules of decision'' to the district court in a pending case.

Klein involved one episode in a series of conflicts between the Reconstruction Congress and the balking President Andrew Johnson. Various presidential proclamations had offered a ''full pardon, with restoration of all rights of property,'' to certain broad classes, conditioned on taking an oath of loyalty. Klein, 80 U.S. (13 Wall.) at 139–40. In the Abandoned and Captured Property Act, 12 Stat. 820 (Mar. 12, 1863), however, Congress provided that the owner of seized property could sue in the Court of Claims to recover its proceeds only on proof that the owner ''had never given aid or comfort to the rebellion.'' 80 U.S. at 138–39. In United States v. Padelford, 76 U.S. (9 Wall.) 531, 542–43, 19 L. Ed. 788, 7 Ct. C1. 144 (1869) (mem.), the Supreme Court held that a presidential pardon renders the pardoned ''as innocent as if he had never committed the offense,'' and concluded that proof of pardon was equivalent to proof that the claimant had not aided the rebellion. Congress responded to Padelford by passing an appropriations proviso directing the Court of Claims to take the fact of a pardon, with some narrow exceptions, as conclusive proof that the claimant had ''given aid or comfort to the rebellion,'' and

as grounds for dismissing the claimant's suit. Klein, 80 U.S. (13 Wall.) at 142–43. The proviso also removed the Supreme Court's authority to hear appeals of such suits. 80 U.S. at 144–45. In Klein, the administrator of the estate of V.F. Wilson, who had taken the oath and qualified for the pardon, sued to recover the proceeds of Wilson's seized property. Id. at 136, 143. The Supreme Court found the proviso to be unconstitutional, both because it attempted to impair the effect of a presidential pardon and because it ''prescribed rules of decision to the Judicial Department of the government in cases pending before it.'' Id. at 146.

Klein is a notoriously difficult decision to interpret. Read broadly, the ''rules of decision'' language of Klein would seem to contradict the well-established principle that courts must decide cases according to statutes enacted by Congress. See United States v. Schooner Peggy, 5 U.S. (1 Cranch) 103, 109, 2 L. Ed. 49 (1801); Miller, 530 U.S. at 344, 346–47.

In any event, the 706 Rider is very different from the unusual legislation found unconstitutional in Klein. Central to the Court's analysis in Klein was its conclusion that the government's seizure of the private property at issue did not divest its owner of his property rights. See Klein, 80 U.S. (13 Wall.) at 136–39. Thus, the basis of the Klein suit (at least in the eyes of the Klein court) was a private right to property vindicated by a presidential pardon, which Congress was therefore powerless to extinguish. See 80 U.S. at 148. Since Congress could not manipulate these private rights, Klein merely refused to allow Congress to accomplish indirectly (by manipulating the judiciary's interpretation of those private rights) what it could not accomplish directly.

Thus understood, Klein is precisely in accord with Wheeling Bridge, as Klein itself observes. See 80 U.S. (13 Wall.) at 146–47. When Congress does not control the substance of a right, there are limits to its ability to influence the judiciary's determination of that right, either by directing the judiciary to decide a particular way, or by setting aside judicial determinations after the fact. But when rights are the creatures of Congress, as they were in Wheeling Bridge, Congress is free to modify them at will, even though its action may dictate results in pending cases and terminate prospective relief in concluded ones. Thus, Klein's prohibition on prescribing rules of decision in pending cases has no application to public rights cases like this one.

The Supreme Court explicitly made this point in The Clinton Bridge, a case decided only one year before Klein. That case addressed facts almost identical to those in Wheeling Bridge. The only difference was that Congress passed legislation authorizing the bridge in question while the suit over its legality was still pending, not after the injunction issued. See 77 U.S. (10 Wall.) at 462–63. The Court noted that, in so doing, Congress ''gave the rule of decision for the court'' in the pending case. 77 U.S. at 463. While it found that to be unobjectionable under Wheeling Bridge, it warned that ''very different considerations would have arisen'' if Congress had attempted to dictate the rule of decision in a case concerning a ''private right of action.'' Id. Klein must be read as the fulfillment of that narrow warning, not the enunciation of any broader principle.

Furthermore, the Supreme Court has made it clear that Klein does not apply to cases like this one: ''Whatever the precise scope of Klein, . . . its prohibition does not take hold when Congress amends applicable law.'' Plaut, 514 U.S. at 218, quoted in Miller, 530 U.S. at 349 (internal quotation marks and brackets omitted). Because, as we explained in Part II of this opinion, the 706 Rider did ''amend[] applicable law,'' the Klein principle does not apply here.

Last, BCA claims that the 706 Rider violates the rule in Hayburn's Case. Hayburn's Case has come to stand ''for the principle that Congress cannot vest review of the decisions of Article III courts in officials of the Executive Branch.'' Plaut, 514 U.S. at 218. BCA admits that the 706 Rider does not literally authorize Forest Service officials to review judicial determinations. Nevertheless, it maintains that the 706 Rider orders the Executive to ignore and violate judicial orders, and that this is close enough to make out a claim under Hayburn's Case. We disagree. As discussed above, it is well-established that new law can modify old injunctive decrees. Whenever that happens, the new law at least implicitly orders the Executive to ignore the old decrees.

BCA maintains that in such circumstances, Congress's act cannot constitutionally modify an injunction directly. Instead, it claims, any modification must be made by the court itself (though the court may be obliged to do it), and until the court does so, the injunction remains in force. Thus, because the 706 Rider directs the Forest Service to proceed with its tree-cutting activities regardless of whether the court modifies the settlement agreement, it unconstitutionally directs the Executive to ignore an injunction in force. But this is not the lesson of our cases. Wheeling Bridge held, not merely that Congress's legislation made modification of the injunction necessary, but that it rendered the injunction unenforceable. 59 U.S. (18 How.) at 432; Miller, 530 U.S. at 346. Similarly, the provision upheld in Miller v. French went beyond ordering judges to stay prospective relief after 30 days; instead, it stated that a motion to terminate injunctive relief ''shall operate as a stay'' of that relief beginning 30 days after the motion—thus staying the injunctive relief without any action by the court. Miller, 530 U.S. at 331. When Congress is acting within the boundaries set by Wheeling Bridge and Miller, the parties to a modified injunction need not wait upon the court to ratify the congressional change. Thus, we see no violation of Hayburn's Case or any other constitutional principle here.

Viewed realistically, the 706 Rider intrudes on neither executive nor judicial authority. The Rider comports with the current view of executive branch officials regarding management of the national forest. And while the Rider overrides a settlement agreement entered by the district court, that agreement was in fact a private agreement between the parties, in which the Judiciary had little or no independent involvement. To overturn the Rider would thus serve not to vindicate the constitutionally entrusted prerogatives of those two branches, but rather to keep in place a private group's own preferences about forest preservation policy in the face of contrary judgments by the Executive and Congress. True principles of separation of powers prevent settlement agreements negotiated by private parties and officials of the executive branch from encroaching either on the constitutionally vested authority of Congress or on the statutorily vested authority of those officials' successors in office. BCA's claim amounts to the argument that an agreement forged by a private group with a former administration, without serious judicial involvement, can strip both Congress and the Executive of their discretionary powers. The Constitution neither compels nor permits such a result.

The executive branch does not have authority to contract away the enumerated constitutional powers of Congress or its own successors, and certainly neither does a private group. Accordingly, the governance of the Black Hills National Forest must be conducted according to the new rules set by Congress, as Article IV of the Constitution provides.

For the foregoing reasons, the district court's denial of BCA's motion is affirmed.

The Hostettler bill truly is a revolutionary assault on our Bill of Rights. If Congress, for the first time in our history, is able to prevent citizens from having their rights under the constitution heard in federal court, then the Bill of Rights will be little more than a puff of smoke.

Whatever you think of this legislation, or the Defense of Marriage Act, Sen. Daschle's amendment is no precedent. The Hostettler bill is truly unprecedented. For further information, please visit the Committee website: (http://www.house.gov/judiciary-democrats/marriageprotectioninfo.html).

Sincerely,

JOHN CONYERS, JR.,
Ranking Member, Committee on the Judiciary.
JERROLD NADLER,
Ranking Member, Subcommittee on the Constitution.

Mr. NADLER. Mr. Speaker, I place into the RECORD a memo from the Congressional Research Service that says that Congress has never passed any legislation that denies to the Federal courts the jurisdiction to adjudicate the constitutionality of an act of Congress.

CONGRESSIONAL RESEARCH SERVICE
MEMORANDUM

To: House Committee on the Judiciary, Attention: Perry Apelbaum.
From: Johnny H. Killian, Senior Specialist, American Constitutional Law, American Law Division.
Subject: Precedent for Congressional Bill.

This memorandum is in response to your query, respecting H.R. 3313, now pending before the House of Representatives, as to whether there is any precedent for enacted legislation that would deny judicial review in any federal court of the constitutionality of a law that Congress has enacted, whether a law containing the jurisdictional provision or an earlier, separate law. We are not aware of 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.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. It is my intention, Mr. Speaker, to elaborate on the point that was just made.

I have been listening to the debate. I have not heard my colleagues here say that this is unconstitutional. The point is the legislation the gentleman cited, the World War II Memorial, the timber legislation, exempted from judicial review under the terms of the specific act. As in Campaign Finance Reform it did not preclude challenges against the constitutionality of the legislation in question. That is legitimate use of congressional legislative authority.

What you are doing is not adjusting an act. You are saying we are not going to be able to deal with whether or not the laws in question are constitutional. That has never happened before.

I heard the gentleman from Nebraska (Mr. OSBORNE) here a couple of moments ago talk about his lifetime of working with young people. I just left 50 young volunteers who are working in Washington, D.C. neighborhoods. As we were leaving, one of the young women said she woke up this morning listening to what we were going to be debating here today. It made no sense to her and asked, is there any argument that this is being done other than pure political motivation?

This was, I thought, a very perceptive young woman. Her question, I think, answered itself, and I hope we are not to be guilty of undermining these young people's confidence in our activities.

Mr. NADLER. Mr. Speaker, I yield 45 seconds to the distinguished gentleman from New York (Mr. ENGEL).

Mr. ENGEL. Mr. Speaker, I thank the gentleman for yielding me time.

I rise in opposition to this sham. What a shame it is when we have 41 million Americans without health insurance, more than 2 million jobs lost, an additional $2 trillion in debt, that the leadership of this Congress chooses to try again to divert attention to a divisive issue. Having failed to even muster 50 votes in the other body to place in the Constitution language setting one group of Americans aside as second class citizens, this leadership now turns its attention to a full assault on the Constitution itself.

If they cannot amend the Constitution, then attack the balance of power. I keep hearing that activist judges should not change State laws. Five activist judges denied all the voters of Florida the right to have their votes counted, but this bill is far more cynical.

The other side knows it will be thrown out by the Supreme Court. That means they can keep this issue alive for years and years.

Stop this assault. Vote no on H.R. 3313.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Texas (Mr. GREEN).

Mr. GREEN of Texas. Mr. Speaker, I rise in opposition to H.R. 3313.

While I believe the institution of marriage should consist of one man and one woman, and I voted for the 1996 Defense of Marriage Act, I cannot support this bill. The Defense of Marriage Act has to my knowledge not been challenged in the Federal court, and it seems like we are putting the cart before the horse. We should allow our system of checks and balances to work like our Founding Fathers designed it.

Whatever Massachusetts, Vermont and Hawaii does regarding their marriage license does not change how Texas law does marriages.

In Texas we already have a law that states the institution of marriage is one man, one woman. We also have a law that states that Texas does not have to recognize marriages that are performed outside the State of Texas. The Defense of Marriage Act supports our State law. Marriage is a State issue and not a Federal issue. We do not seek marriage licenses in the Federal courthouses.

What this bill is about is continued efforts of this administration and Republicans in Congress to divide our country when we really need unity.

Just today we heard that while our troops are fighting for our country, they are short $12 billion in funding, even with all the supplementals we voted for. Maybe this administration, the Republicans, need to spend more time explaining why our troops waited months for body armor and armor for their Humvees and we are still $12 billion short.

Let us spend time protecting our country and not worry about ''my'' 34 years of marriage. And once again, this administration has the wrong priorities.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Oregon (Mr. WU).

(Mr. WU asked and was given permission to revise and extend his remarks.)

Mr. WU. Mr. Speaker, I want to concede to my colleagues who argue for the constitutionality of the subject legislation that it is constitutional.

This Congress can strip the Supreme Court of much of its jurisdiction, can abolish all appellate courts, and can abolish all district courts, but just because we can do something does not mean that we should do it.

We have heard much about arrogant activist judges. What have arrogant activist judges done? In 1954 they revoked the reprehensible doctrine of separate but equal in Brown v. Board of Education. In 1964 they reestablished the principle of one-person/one-vote in Reynolds v. Sims. In 1967 they respected the sanctity of all marriages, even those across ethnic lines.

Because we can do something does not mean we should. Let us today not hang out the sign on the Federal courthouse door, ''Some Americans Need Not Apply.''

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Arizona (Mr. FRANKS).

Mr. FRANKS of Arizona. Mr. Speaker, I thank the chairman for yielding me time.

Daniel Webster said, Hold on, my friends, to the Constitution and to the Republic for which it stands, for miracles do not cluster. And what has happened once in 6,000 years may never happen again. So hold on to the Constitution, for if it should fall, there will be anarchy throughout the world.

Mr. Speaker, Daniel Webster is no longer with us, but if we could just realize that we will soon no longer be here either and if we do not uphold and defend the Constitution and the foundation of this republic and society itself, which is marriage and the family, generations will lose this beacon of freedom that we have.

Mr. NADLER. Mr. Speaker, I yield 2½ minutes to the distinguished gentleman from North Carolina (Mr. WATT).

Mr. WATT. Mr. Speaker, on a number of occasions during the 12 years that I have been in this body, I have risen on this floor to chide my colleagues from the Committee on the Judiciary and my colleagues in the House for the arrogant and irresponsible belief that we are somehow smarter than the Founding Fathers, for the belief that process in the system and the form of government that we operate in is less important than the result that we seek on a particular issue.

I think today is the ultimate irresponsible, extreme act in that direction. How arrogant and irresponsible is it to say to our American people that the United States Supreme Court will not have jurisdiction to decide the constitutionality of an issue?

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How extreme is that? It just blows my mind. I have trouble coming to grips with the notion that anybody could believe that this is responsible legislating, whether it is constitutional or not, that we would deprive the United States Supreme Court the authority to determine the constitutionality of an issue and disperse it to 50 different supreme courts of the States and not have one court that would be the ultimate arbiter of constitutionality. How arrogant and irresponsible can we be?

That is exactly what this legislation does today. It says to the American people that the Supreme Court of the United States no longer has the authority to determine constitutional issues. How arrogant, how irresponsible can we be?

Mr. NADLER. Mr. Speaker, I yield 1 minute to the distinguished gentleman from New York (Mr. HOUGHTON).

(Mr. HOUGHTON asked and was given permission to revise and extend his remarks.)

Mr. HOUGHTON. Mr. Speaker, I am not going to support this bill. I do not believe it is right. I think court-stripping is wrong. I do not think it is sound; and frankly, I do not think it is going to work. How are we going to resolve the issue between States?

I used to be in business, and Congress could have passed a law in the 1950s when the civil rights issue was heating up that would have prohibited any challenges to the segregated businesses that existed all around me. There never would have been a civil rights law, never would have been a Brown v. Board of Education.

I voted for the Defense of Marriage Act. It defines marriage for a Federal purpose as a legal union between one man and one woman, and that is good enough for me.

Mr. NADLER. Mr. Speaker, I yield such time as she may consume to the distinguished gentlewoman from Wisconsin (Ms. BALDWIN) to close on our side.

(Ms. BALDWIN asked and was given permission to revise and extend her remarks.)

Ms. BALDWIN. Mr. Speaker, with this bill, we face no less than the specter of a sign posted on the Federal courthouse door which reads, ''You may not defend your constitutional rights in this court; you may not seek equal protection here; you may not petition your government for redress here.'' Today, the ''you'' is gay and lesbian American citizens, but who will be next?

Today, the House is considering legislation that were it to become law would do grave damage to our Republic.

I strongly oppose H.R. 3313 and urge all Members to vote against this legislation, and I urge the Members of the majority to reconsider this extreme and radical approach to addressing the issue of same-sex marriage and their concern about so-called judicial activism. Enacting court-stripping legislation would seriously undermine the faith of the American people in this Congress, in the courts, and in the principles of separation of powers.

When writing the Constitution, our Founders wisely decided that the best way to secure our freedoms and liberties was to establish three coequal branches of government: the Congress, the executive, the Supreme Court; and these three branches of government would have different, but overlapping, authorities to ensure that each branch is subject to the checks and balances. Not only will there be times that they will be in disagreement about a particular issue or law; the structure of the Constitution makes these conflicts inevitable.

It is a terrible mistake to strip one branch of government from its involvement in evaluating particular laws, and this is so particularly true when considering the courts whose constitutional and historic role has been to defend our liberties.

Once court-stripping, this door becomes open, where will it stop? Will this language be added to legislation on issues of abortion, guns, prayer, school choice, affirmative action? How about the USA PATRIOT Act? I suspect this is just the tip of the iceberg.

The late Senator Barry Goldwater, a stalwart conservative, said about previous court-stripping attempts in this Congress that it is a frontal assault on the independence of Federal courts and a dangerous blow to the foundations of a free society. I urge my colleagues to reject this unnecessary, unconstitutional and unwise legislation.

Mr. Speaker, today the House is considering legislation that, if it were to become law, would do grave damage to our Republic. I strongly oppose H.R. 3313 and urge all members to vote against this legislation. I urge the members in the majority to reconsider this extreme and radical approach to addressing the issue of same sex marriage and their concerns about so-called judicial activism. In fact, ''court stripping'' is a bad idea in any form. The consequences of enacting H.R. 3313 far exceed the stated objective of the majority and would seriously undermine the faith of the American people in this Congress, in the courts, in the principle of separation of powers, and in the notion of checks and balances.

When writing the Constitution, the founders wisely decided that the best way to secure our freedom and liberties was to establish 3 coequal branches of government—the Congress, the Executive and the Supreme Court. These 3 branches of government have different but overlapping authorities to ensure that each branch is subject to checks and balances. Not only will there be times that they will be in disagreement about a particular issue or law, the structure of the Constitution makes these conflicts inevitable.

In my home State of Wisconsin, our State university, the University of Wisconsin, dedicates itself to the proposition that through ''continual and fearless sifting and winnowing'' . . . ''the truth can be found.'' In the context of our laws, this sifting and winnowing occurs at many points in the process. In Congress, we hold hearings, markups, and floor votes and we offer amendments, we hold conference committees and we issue reports. The Executive proposes legislation, engages in public debate, signs and vetoes legislation. The Court then interprets, evaluates, settles disputes and invalidates laws based on bedrock principles enshrined in our Constitution. Yes, this process can be slow, frustrating, and messy at times. But, it is through the process, which includes the court, that we sift and winnow our laws to improve them and ensure they are fair and just for all Americans.

It is a terrible mistake to try to strip one branch of government from its involvement in evaluating particular laws. This is particularly true when considering the courts, whose constitutional and historic role is to defend our liberties.

Fortunately for our citizens, it is my belief that H.R. 3313 is unconstitutional and, if it ever becomes law, will ultimately be invalidated. However, we should defeat this bill today, no matter what.

Mr. Speaker, during the Judiciary subcommittee on the constitution's hearing on this issue on June 24, the majority and minority each invited legal scholars to address the questions: ''Can Congress do this?'' and ''Should Congress do this?'' On the former question, the 2 witnesses disagreed, although even the majority witness, Professor Martin H. Redish of Northwestern University, noted that ''Congress quite clearly may not revoke or confine Federal jurisdiction in a discriminatory manner.'' But on the latter question, ''Should Congress do this?'' the legal scholars agreed that we should not.

Let me quote Professor Redish's testimony on this question because it is compelling: ''I firmly believe that Congress should choose to exercise this power virtually never.'' There has long existed a delicate balance between the authority of the Federal judiciary and Congress, and the exclusion of substantively selective authority from all Federal courts seriously threatens that balance.''

Once the ''court stripping'' door is open, where will it stop? Will this language be added to legislation on the issue of abortion, guns, prayer, school choice, affirmative action? How about the USA PATRIOT Act? I suspect that this is just the tip of the iceberg.

Like the FMA, the Marriage Protection Act is not needed. DOMA remains the law of the land and its constitutionality has not been successfully challenged in any United States court. Congress must tread lightly when trying to modify the important doctrine of separation of powers that is the basis for our government. The late Sen. Barry Goldwater (R–AZ), a stalwart conservative, said about previous court stripping attempts that ''frontal assault on the independence of the Federal courts is a dangerous blow to the foundations of a free society.'' I urge you to reject this unnecessary, unconstitutional and unwise legislation.

Mr. Speaker, with this bill, we face no less than the specter of a sign posted on the Federal court house door which reads, ''you may not defend your constitutional rights in this court, you may not seek equal protection here, you may not petition your government for redress here.'' Today, the ''you'' is gay and lesbian American citizens. Who will it be next?

Mr. SENSENBRENNER. Mr. Speaker, has the time for the minority expired?

The SPEAKER pro tempore (Mr. GILLMOR). The time has expired on the minority side.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of the time.

The SPEAKER pro tempore. The gentleman is recognized for 5 minutes.

Mr. SENSENBRENNER. Mr. Speaker, I believe that this debate has fulfilled the majority leader's admonition that the debate be civil. There are strongly held positions on both sides of this question, and I think that both of them have been very well articulated during the course of this debate.

I firmly believe that this bill is not only constitutional but it is also wise and necessary to prevent court decisions from further tearing apart the fabric of our society.

Forty-two years after the Supreme Court decided Marbury v. Madison, the court in the case of Cary v. Curtis in 1845 upheld the regulation of the judicial power by the Congress, and I would like to quote from that decision: ''Dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress. To deny this position would be to elevate the judicial over the legislative branch of the government, and to give to the Federal judiciary powers limited by its own discretion merely.''

This bill attempts to limit the power of the Federal judiciary to export the decision of a divided court in Massachusetts to the other 49 States which do not have laws granting marriage licenses to same-sex individuals.

The people who have been arguing against this bill, Mr. Speaker, seem to think that the State courts are second-class courts, but we believe that they are equally capable of deciding Federal constitutional questions. Nothing in H.R. 3313 denies the right of a same-sex couple married in Massachusetts to file a petition in State court to have that license and that marriage recognized within that State, and the State courts are perfectly capable of making that determination.

Somehow my colleague from Wisconsin says that this bill slams the

door of the Federal courthouse to people who wish to exercise their constitutional rights. Well, I spent a lot of time in Madison as a law student and as a State legislator, and the current Federal courthouse is just a few blocks away from the Dane County Courthouse, and there are judges there that will have all the jurisdiction they need to adjudicate the claims that the gentlewoman from Wisconsin was talking about, and those judges I think are perfectly capable of adjudicating those claims, notwithstanding the lack of confidence on the part of some of the people who have been arguing against this bill.

The real issue is the issue of marriage, and marriage is the foundation upon which any civilized society has been based, long before the United States of America was established and the Constitution was ratified in 1789.

Marriage is under attack as a result of the 4 to 3 decision of the supreme judicial court of Massachusetts. This bill does not affect what Massachusetts does with that decision.

Under this bill, it will be the legislature and the voters and the judges in Massachusetts, should they change their mind, that will determine whether that 4 to 3 decision stands; but what this bill will do is to prevent the export of that Massachusetts decision to the other 49 States that do not allow marriage licenses to be issued to same-sex couples.

I sincerely doubt that when James Madison wrote the Constitution and when the legislatures of the 13 States at that time ratified the Constitution that they ever dreamed that the Federal judiciary would be used to have a decision that has been made in a single State become national policy.

The way we prevent that from becoming national policy is by passing this bill. I urge an ''aye'' vote.

Mr. HASTINGS of Florida. Mr. Speaker, this morning's papers carry, among others, the following stories:

—The New York Times reports that ''The 9/11 Commission is Said to Sharply Fault Role of Congress''.

—The L.A. Times has a story titled, ''The State Department Seeks Shift in Iraq Effort''.

—The Sun Sentinel reports that the American death toll in Iraq has reached 900.

—The Washington Post covers military recruitment, concluding that the pool of future recruits has dwindled to its lowest level in three years.

—And, all these papers and others have stories on the poor shape of the economy and the hardships that the American people are facing.

So, I ask: don't we have better things to deal with two days before going into recess. Is there any sense of responsibility in this Republican Congress?

This bill, more than anything else, is about the politics of a national election. The White House political machine is in full gear, playing to the lowest denominator to reinvigorate the xenophobic and intolerant wing of the Republican Party.

Recognizing that they lack the votes to pass the discriminatory Federal Marriage Amendment, the Republican House leadership is now focusing on slamming shut federal courthouse doors to gay and lesbian Americans.

This bill is at its core a bar on redress for violations of fundamental rights. If Congress by statute can end run the Bill of Rights, no rights to liberty, due process, or equality under the law are safe. Further, it would set the terrible precedent of barring citizens from challenging government infringement of fundamental rights in federal court.

For more than 200 years the federal judiciary has been a check on legislative and executive action. By eliminating an entire subject from the courts' jurisdiction, this legislation threatens to upset the delicate balance between the branches of the federal government that has served our nation well. Indeed, passage of this legislation would represent one of the broadest attacks on the separation of powers in American history.

Once again, it's proven that the most unpopular and vulnerable members of society are all too often the first targets of government repression. But once the federal courthouse door has been slammed shut to one group, it won't be long before others are similarly excluded.

I am reminded of an incisive quote by Holocaust survivor Ellie Wiesel. He said,

''They came first for the communists, and I didn't speak up because I wasn't a communist. Then they came for the Jews, and I didn't speak up because I wasn't a Jew. Then they came for the trade unionists, and I didn't speak up because I wasn't a trade unionist. Then they came for the Catholics, and I didn't speak up because I was a protestant. Then they came for me, and by that time no one was left to speak up.''

I am here to strongly oppose this legislation.

I can remember of one other group in America that had to wander every county courthouse in the country to try to vindicate their rights under the Federal Constitution.

Blacks have experienced the injustice, abuse, and disgrace that the Republican Party is promoting with this bill. For example, after the Supreme Court's 1954 Brown v. Board of Education decision that school segregation violated the Constitution, racist lawmakers furiously sought to exempt federal courts from ruling on public education laws.

I became a public servant with the express mission of preventing one of the worst chapters of American history from repeating itself.

Therefore, I oppose this rule and the underlying bill, and ask—beg—my colleagues to act responsibly and protect the constitution by voting no.

Ms. SCHAKOWSKY. Mr. Speaker, I rise today in opposition to H.R. 3313, the so-called Marriage Protection Act. This bill would expressly forbid the federal courts, including the Supreme Court, from hearing cases on a Constitutional matter. That not only sounds absurd to me, but I'm sure it confuses American Government students across the country who are learning every day about our system of checks and balances and the role of the courts in our country.

But this bill not only violates the principle of separation of powers, it also grossly violates our equal protection and due process rights. This bill singles out a group of people who simply want to live in peace with the person they love and denies them access to the courts in order to fight for equal rights. If we pass this bill, then I wonder who is next—what group of people is next on the target list for being singled out and denied rights?

It strikes me that this bill is yet another example of how the Republican leadership in this country simply changes the rules when things aren't going their way so that the outcome will shift in their favor, regardless of the effects on our civil rights. We've seen votes held open for hours and funding cut off for popular and critical programs just so the Republican leadership can have their way. And, in this case, the Republican leadership is willing to go so far as to change the Constitutional rules and principles that we have lived by for centuries—the guarantee that any group or individual who feels their rights have been violated can go to court to seek redress—in order to protect a law that we passed eight years ago. This is simply unacceptable, and I urge my colleagues to vote no on H.R. 3313.

Ms. DEGETTE. Mr. Speaker, I rise in opposition to H.R. 3313, the so-called ''Marriage Protection Act.''

I was really tempted to offer an amendment mandating that every Member of Congress watch ''School House Rock'' before they are allowed to cast another vote. If you have kids, you are probably familiar with School House Rock. It is the old, ever-popular kids show that explains how American government works. It imparts information on basic civics in fun and easy to understand terms, for example, how there are three branches of government that provide the check and balances that are the bedrock of our country.

But then I decided that, although more of my colleagues than I ever believed possible desperately need this sort of basic primer on government, it didn't seem fair to waste Members' time, like our time is being wasted today as we are forced to debate and vote on this utterly absurd piece of legislation.

Our Founding Fathers established clear separation of powers between the three branches of government. Rep. HOSTETTLER and the Republican leadership are trying to dictate to our formerly independent judiciary what cases it can or cannot consider. This is a court-stripping measure that could lead to Congress's removal of the courts' jurisdiction any time a controversial measure might come before the federal bench.

The Hostettler bill would ban any federal court, including the Supreme Court, from having jurisdiction over challenges to the Defense of Marriage Act. This would mark a nearly unprecedented effort by one independent branch of the federal government, the Congress, to limit the jurisdiction of the judiciary branch.

This is the Republican leadership's last ditch effort to get a vote on gay marriage in the House to effect the election this fall. We are considering legislation to pre-empt an action that has not taken place. The Defense of Marriage Act, which passed in 1996, is not being challenged. This is a cop out, not a compromise. They know they don't have the votes on the Federal Marriage Amendment so they are grasping at straws.

In Federalist Paper 78, Alexander Hamilton defended the need for an independent judiciary. As the only branch of the federal government not swayed by campaigning, Hamilton asserted that it was the branch best able to protect the Constitution from political meddling by the Congress or the President. He also foresaw just the type of action being attempted by Republicans in Congress today,

warning ". . . there is no liberty, if the power of judging be not separated from the legislative and executive powers.

If this bill, by some miracle were actually to be signed into law, and by an even bigger miracle, was not immediately overturned because of its blatant unconstitutionality, it would be a horrible precedent in preventing the most basic redress available to the American people.

Imagine bill after bill being passed in Congress, with the same language tacked on at the end saying that once this law passes it can never be challenged in the federal courts, including the Supreme Court. Today the issue is gay marriage, but tomorrow the issue could be anything.

This bill is incredibly short-sighted and it goes against the very principles that so many of its supporters purport to honor as public servants. It really would be laughable if it weren't so scary.

I urge a "no" vote on this ridiculous, unconstitutional and frankly un-American bill.

Mr. BEREUTER. Mr. Speaker, this Member voted for the Defense of Marriage Act (DOMA), P.L. 104–199, which defines marriage as "a legal union between one man and one woman as husband and wife" and a spouse as "a person of the opposite sex that is a husband or a wife." It allows each state to determine if it will recognize the same sex marriages sanctioned by other states. Also, it is this Member's view that the legal approval of same-sex marriages is not in the public interest—as contrasted with legislation authorizing civil unions between two people of the same sex. In short, that means this Member opposes same-sex marriages and believes that the Massachusetts Supreme Judicial Court's decision was both ill-advised and harmful.

However, I believe that attempting to strip the jurisdiction of the U.S. Supreme Court to possibly consider this issue is a rather extraordinary step that is an unfortunate and even dangerous precedent for future attempts to justify stripping the jurisdiction of the U.S. Supreme Court on other controversial societal issues. Therefore, this Member voted "no" on H.R. 3313. The rights of the minority must be protected from inappropriate use of power by a majority, and the Supreme Court sometimes is the final protector of the minority; stripping the court of jurisdiction gradually by legislative action will disturb the necessary checks and balances established in the U.S. Constitution.

This Member makes this statement fully acknowledging that judicial activists in both the Federal Government and state governments sometimes badly abuse their position as was the case with the Massachusetts Supreme Judicial Court.

Ms. MCCOLLUM. Mr. Speaker, I rise today in strong opposition to H.R. 3313, the Marriage Protection Act. This dangerous bill would severely undermine our constitutional checks and balances and set a precedent that undermines the independence of the federal judiciary.

Republicans in Congress and the Bush Administration know their domestic and foreign policies are failing—so they are changing the subject. The war in Iraq is a quagmire. Our schools under funded. Our seniors are without the prescription drugs they need and millions of Americans are without jobs.

Despite the many challenges facing our nation, the Republicans have chosen to ignore the real needs of the American people. In the process, they are hijacking our constitutional checks and balances and advancing an extreme right-wing agenda.

For years, key decisions by the courts on the social issues of the day, including school prayer, busing, abortion and the Ten Commandments, have been followed by Republican court-stripping bills to remove the court's authority to hear challenges to such important cases. The Marriage Protection Act is just another example of a power grab that extends Republican control from the White House to Congress to the federal judiciary.

This attack on the Judicial Branch's authority to hear cases based on Legislative and Executive actions is in fundamental contrast to the spirit of our democracy and the U.S. Constitution. Appropriately, most legal scholars have agreed that even if this bill was to become law, it would be unconstitutional. The fact that this legislation has advanced far enough to warrant a vote in the full U.S. House should raise alarm to the extent the Republican Majority will go to advance their right wing agenda.

This legislation should be defeated. The House must send a strong message that we reaffirm our constitutional system of checks and balances between the three branches of government, and we support the basic, civil rights of all Americans—regardless of age, gender, race or sexual orientation. We have a responsibility to protect the Constitution, not render it unnecessary.

Mrs. BONO. Mr. Speaker, I rise against H.R. 3313, the Marriage Protection Act, not because I seek to promote gay marriage but because I believe this bill fails to pass constitutional muster.

Perhaps it is for this reason that Congress has never enacted legislation to prohibit all federal courts, including the Supreme Court, from hearing cases on constitutional matters. It is not within the interest of this institution to begin this practice now. This path can only lead us towards a slippery slope with no clear end in sight.

I understand there are strong feelings on the issue of gay marriage on either side of the debate. I, for one, strongly believe in the sanctity of marriage and that marriage is between one man and one woman. But what this bill does is preclude even the ultimate arbiter of the United States legal system, the Supreme Court, from reviewing a constitutional matter. In fact, under this bill, even those who would seek to overturn a state's gay marriage law would not be able to appeal to the Supreme Court.

Certainly, Congress has stripped statutory questions, like tree cutting, from federal courts. But none of these issues have fallen upon constitutional grounds. Even the nonpartisan Congressional Research Service maintains that "We are not aware of 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."

However, I strongly believe in the concept of "checks and balances." Rest assured, should a federal court begin to exercise judicial activism that hijacks the powers of the other two branches, it is up to those branches of government to check the judicial branch and bring it back into balance. But this isn't the case here. In fact, one could question whether or not Congress, with this bill, would encroach upon the powers of the Supreme Court in having the final say.

As of today, our system of "checks and balances" is working. Until this environment changes or breaks down, the most positive action Congress can take is to let the system work.

Mr. SHAYS. Mr. Speaker, I oppose H.R. 3313, legislation which would prevent our courts from ruling on the constitutionality of the Defense of Marriage Act.

I value our justice system and place great faith in the ability of our courts to ensure the laws we pass are constitutional. The bottom line is, taking the federal courts out of the process by specific legislation is not an appropriate remedy for any issue.

I am sensitive to my colleagues and constituents who oppose gay marriage. But we cannot deny Americans the constitutional rights to which they are entitled and ignore two centuries of judicial precedent, in order to address an issue that should be decided by the states.

I strongly oppose H.R. 3313 and urge my colleagues to do the same.

Ms. HARMAN. Mr. Speaker, in July of 1996, I stood on the House Floor and spoke in opposition to the Defense of Marriage Act. Eight years later, here I am again, standing in opposition to another attempt to divide this nation in an election year and ostracize some of our citizens. Only this time, we're going even further. This time, we are considering legislation that would, for the first time in our Nation's history, seek to exclude a specific group of people from access to the federal court system.

The fact that we are having this debate at this time is as shameful as the debate itself. Our Nation faces many pressing and critical problems: the size of the Federal deficit and its effect on our international competitiveness; threats from rogue nations and terrorists; and an intelligence system that is in desperate need of repair, to name a few. Yet, rather than focusing our energy on protecting our citizens, Congress is debating of a resolution that would take away the rights of some Americans.

There are three really good reasons to vote against H.R. 3313. It's unconstitutional, it discriminates against some Americans, and, for those of you who supported DOMA, it will muddle the definition of marriage and undermine the stated intent of DOMA.

Eight years ago, I warned that the Defense of Marriage Act was an unconstitutional solution in search of a problem. With the measure we are considering today, my colleagues on the other side of the aisle have out-done themselves. H.R. 3313 is the mother of all unconstitutional legislation.

The bill strips the U.S. Supreme Court's original jurisdiction over cases where a state is a party in a DOMA dispute. Original jurisdiction is conferred on the Supreme Court by the Constitution, not by Congress.

Second, this bill is overtly discriminatory. If it were enacted into law, Congress would, for the first time in U.S. history, block a specific group of Americans—same-sex couples and their children—from having full access to the federal court system. It is unconscionable that we would even consider legislation to deny ANY American the right to seek justice through our federal court system.

Finally, we were told that the intent of DOMA was to preserve the traditional definition of marriage. Now we are considering legislation that would make each of the 50 state supreme courts the final authority on the constitutionality of DOMA. This will create a patchwork of state laws on the recognition of marriage, and muddle its definition. Those who support this bill can no longer hide behind the states' rights or the marriage preservation argument. This measure reveals the clear intent of its drafters—to deny certain individuals equal treatment under the law.

I urge my colleagues to stand up and reject this divisive, untimely, and likely unconstitutional bill.

Mr. OBERSTAR. Mr. Speaker, I rise today in opposition to the so-called Marriage Protection Act (H.R. 3313). This bill, contrary to its title, has nothing to do with protecting the institution of marriage. This bill is, in fact, an all-out assault on the U.S. Constitution and our entire system of government. H.R. 3313 has monumentally perilous implications for three basic principles of our democracy—equal protection, due process, and the separation of power between the three branches of government.

This bill discriminates against one class of people, homosexuals, by saying they cannot challenge a law in federal court to determine whether their fundamental rights have been violated. This bill would enable any future majority in Congress to draft laws that would discriminate against any class of people or minority group, and which would then be insulated from a challenge in federal court.

As delineated in the Constitution, the separation of powers doctrine represents the fundamental principle that our federal government consists of three basic and distinct functions, each of which must be exercised by a different branch of government, so as to avoid the arbitrary or excessive exercise of power by any single ruling body. Through this structure, the Framers of the Constitution sought to create an effective, interdependent governmental system which would limit the power vested in any one branch. H.R. 3313, if enacted, would undermine our system of checks and balances, which was carefully crafted by our Founding Fathers to ensure that none of the three arms of government could encroach upon another, or impose its will unilaterally upon the public.

One element of the checks and balances system is the principle of judicial independence, which is so crucial to maintaining our unique democratic system. The Supreme Court's role (under the 1803 case of Marbury v. Madison) is as the final authority on the constitutionality of federal laws. By passing H.R. 3313, Congress would arbitrarily usurp the Supreme Court's power and rightful purpose by appointing itself as both maker and arbiter of the law.

In 1937, President Franklin Delano Roosevelt sent to Congress a bill to reorganize the federal judiciary, which was motivated by the consistent opposition that his New Deal legislation had been encountering in the lower federal courts and the Supreme Court. By increasing the number of judges on the Supreme Court, President Roosevelt hoped to change the balance of opinion of the court. President Roosevelt's proposal met with fiery opposition in Congress—even by those who supported his New Deal policies. Simply put, whether the underlying intent of a legislative initiative is good or bad, if it subverts the Constitution and destroys the independence of the judiciary, it should be defeated.

Over the years, notable conservatives have spoken out against similar court stripping proposals. For example, in 1985, Senator Barry Goldwater stated, ''What particularly troubles me about [court stripping proposals] is that I see no limit to the practice. There is no clear or coherent standard to define why we shall control the Court in one area but not another. The only criterion seems to be that whenever a momentary majority can be brought together in disagreement with a judicial action, it is fitting to control the federal courts.''

Goldwater also said ''those who seek absolute power . . . are simply demanding the right to enforce their own version of heaven on earth, and let me remind you they are the very ones who always create the most hellish tyranny. Absolute power does corrupt and those who seek it must be suspect and must be stopped.''

During the debates on the adoption of the Constitution, its opponents repeatedly charged that the Constitution as drafted would open the way to tyranny by the central government, and they demanded a ''bill of rights'' that would spell out the immunities of individual citizens. The ten amendments to the Constitution, which were enumerated in 1789, have since been expanded to include other democratic principles.

The Equal Protection Clause of the 14th amendment prohibits states from denying any person within its jurisdiction the equal protection of the laws. The question of whether the equal protection clause has been violated arises when a state grants a particular class of individuals the right to engage in activity yet denies other individuals the same right.

Another fundamental principle which is mentioned in the 5th and 14th amendments, due process, requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power. In his 1961 dissenting opinion in Poe v. Ullman, Justice Harlan stated, ''[t]he guaranties of due process, though having their roots in Magna Carta's 'per legem terrae' and considered as procedural safeguards 'against executive usurpation and tyranny,' have in this country 'become bulwarks also against arbitrary legislation.' ''

Indeed, this bill, if enacted, has implications that will haunt this body and our entire nation for years to come. Our Founding Fathers, by setting up our government with checks and balances, sought to protect the future of our democracy from the tyranny of the majority. Thomas Paine, in ''The Rights of Man'' said ''every age and generation must be as free to act for itself in all cases as the age and generations which proceeded it. The vanity and presumption of governing beyond the grave is the most ridiculous and insolent of all tyrannies. . . . That which may be thought right and found convenient in one age may be thought wrong and found inconvenient in another. In such cases, who is to decide, the living or the dead?''

In earlier days, narrow-minded legislators have advocated court-stripping to fight policies they opposed, such as desegregation, but those efforts have always been defeated by sensible, rational lawmakers. No other Congress has passed a law that totally eliminates the federal courts' ability to review the constitutionality of a federal law. I pray that this 108th Congress will not be the first.

Mr. ETHERIDGE. Mr. Speaker, I oppose this bill because it sets a dangerous precedent and upsets the delicate balance of power that is the heart of our Constitutional democracy. For more than 200 years, America has flourished under the Constitution of 1789 because the Framers successfully erected a system of checks and balances that assigned to the courts the task of interpreting the laws. This bill would upset that balance by intruding on that process and stripping from the courts the powers set forth by our Founding Fathers.

The implications of this precedent are very serious and go well beyond the boundaries of the current debate. If Congress passes H.R. 3313, what is to stop this Congress or a future Congress from stripping the courts of the duty to hear cases involving gun ownership, the death penalty, property rights, or any other controversial issue? Nothing. And this dangerous precedent would only encourage Congress to undertake such meddling. The notion that this Congress, which cannot even pass a budget or the appropriation bills needed to keep the government running, has better judgment on Constitutional matters than Thomas Jefferson, James Madison and John Marshall, is ludicrous.

Mr. STARK. Mr. Speaker, I rise in outraged opposition to H.R. 3313, the So-Called ''Marriage Protection Act.'' This blatantly unconstitutional piece of legislation speaks volumes about the uncontrollable homophobia of the Republican Party and its desperation to change the subject from the quagmire in Iraq.

The Republicans' fear of the Federal courts is somewhat surprising. The Supreme Court, after all, despite occasionally tempering the Republicans' hatred of minorities, immigrants, the accused, and others who have the gall to insist on their Constitutional rights, has been pretty good to the Republican Party. It gave them the President they wanted and has given them great leeway to run roughshod over the environment and the disabled in the name of States' rights.

Most legal experts agree that this Court would likely uphold the Defense of Marriage Act, and yet the Republicans would rather set a new, frightening precedent of letting 50 different State courts be the final arbiters of our laws. They prefer that State judges, rather than Federal judges confirmed by the Senate, make Constitutional law.

Thankfully, the right wing wasn't in control of the Republican Party back when desegregation and Miranda warnings were before the courts, as there were court-stripping proposals on those subjects, too. They would never think of passing a bill today barring African Americans from seeking the protection of Federal courts, but sadly, gay and lesbian Americans incur their wrath over everything from the breakdown of the family to the continued inability of the Red Sox to win the World Series. Their delusion would be funny if it weren't so reckless and harmful.

Mr. Speaker, this bill is all about re-directing blame. Everyone here realizes that if Congress could just pass whatever laws it wanted and throw in a line to keep them from being held unconstitutional, our Constitution and our Separation of Powers would be rendered meaningless. So let's just admit what this is really about: changing the subject from Iraq and attacking defenseless Americans.

Shame on any Member of this body who will trample on our Constitution just to score a few political points. If the Oath we all took to ''support and defend the Constitution of the United States'' means anything to you, you will ''No'' on this election-year ploy.

Mr. UDALL of Colorado. Mr. Speaker, it is a cliché to say that there is no perfect legislation. But, to use another cliché, this bill seems to be an exception that proves that rule—because it is not only perfectly unnecessary but also a perfectly bad idea.

The bill seeks to prevent any Federal court—including the U.S. Supreme Court—from deciding ''any question pertaining to the interpretation of, or the validity under the Constitution'' of the part of the ''Defense of Marriage Act'' (DOMA) that says no State is required to give legal recognition to a same-sex relationship that is treated as a marriage under the laws of any other State. It also is intended to prevent any Federal court review of the constitutionality of this bill itself.

That would mean that the State courts alone would have the power and responsibility for interpreting two Federal laws. I cannot support that.

My opposition does not mean I think State court judges are not qualified to decide such questions. I have very high regard for their ability and for the vital role that the States and their courts play in our Federal system.

But I have an even higher regard for the fact that each State is a part of a greater whole—of the United States—which make up one nation, based on the principles of ''liberty and justice for all,'' in the words of the Pledge of Allegiance.

And this bill directly attacks that national unity, seeking to replace it with a system in which each of the 50 State supreme courts would be the final authority on important questions involving relations between the States and between the Legislative and Judicial branches of the Federal Government.

This is not only unnecessary—no court, State or Federal, has ruled on DOMA—but both possibly unconstitutional and definitely dangerous.

I say possibly unconstitutional because the Judiciary Committee's report and today's debate show there are strong disagreements about the constitutionality of the bill, even among Members with much greater legal expertise than I can claim.

But while its constitutionality seems doubtful at best, I have no doubt about the bill's dangers and I am convinced that whether or not it is constitutional, it should be rejected.

In reaching that conclusion, I find myself in agreement with our former colleague, the gentleman from Georgia, Bob Barr.

In a letter of July 19th, Mr. Barr notes the potential for the ''chaotic result'' of ''50 different interpretations reached by State supreme courts, with no possibility of the U.S. Supreme Court reversing any incorrect interpretation'' of the Federal laws involved.

But he then goes on to say that the ''principal problem'' with the bill is even worse: ''H.R. 3313 will needlessly set a dangerous precedent for future Congresses that might want to protect unconstitutional legislation from judicial review. . . . The fundamental protections afforded by the Constitution would be rendered meaningless if others follow the path set by H.R. 3313.''

I completely agree with than analysis. And Mr. Barr and I are not alone in that view. In more or less the same terms, it is echoed by many others, including the Leadership Conference on Civil Rights, the Mexican-American Legal Defense and Educational Fund, Legal Momentum, and the Human Rights Campaign.

Of course, this bill does have its supporters, and in fact may attract a majority when we vote today. But if today there is a majority for putting DOMA beyond Federal judicial review, tomorrow there may be a different majority with a different idea of what legislation should be given such status.

Will tomorrow's majority want to protect future gun-control laws from the judges who struck down the Gun-Free School Zones Act? Or will they want to prohibit the Federal courts from ruling on such matters as State immunity from certain lawsuits? Or might they seek to reverse Roe v. Wade or some other Supreme Court decision by passing a new law and prohibiting the courts from reviewing it?

None of us can know the answers to those questions, because nobody knows what the future holds. But I am convinced that what we do today could shape the future in ways that could undermine the checks of the balances of the constitution and thus weaken the restraints on legislative power that protect the liberties of all Americans.

And because I think it would be profoundly unwise to risk so much on such a radical experiment, I will vote against this bill.

Mr. BARRETT of South Carolina. Mr. Speaker, marriage goes to the heart of our families and our society. My home State of South Carolina is one of at least 42 States that have laws on the books defining marriage as the union of a man and a woman. These laws were passed by the State legislature; those elected to represent the views of their constituents. My constituents contact me on a daily basis about this one issue more than any other issue. They want me to ensure marriage between a man and a woman is preserved.

Yet some in this country, elected by no one, believe they have the right to supercede the wishes of my constituents and the constituents of other members here today.

I respectfully disagree. I believe the only way to ensure court action does not override State law is for the House and Senate to take action. I thank Mr. HOSTETTLER for bringing this legislation to the floor of the people's house for debate, it is time we, as elected officials, have an opportunity to give a voice to our constituents' concerns.

Mr. Speaker, I urge my colleagues in the House to vote in favor of H.R. 3313, the Marriage Protection Act and protect the sanctity of marriage.

Ms. WATSON. Mr. Speaker, I rise in very strong opposition to H.R. 3313, the so-called ''Marriage Protection Act,'' a misnomer that would make George Orwell smile. The fact is, just like the Federal Marriage Amendment, this Court Stripping bill is unnecessary, unwise, and serves as little more than a distraction from the many urgent matters facing our Nation.

Like the Federal Marriage Amendment, the Court Stripping bill is not needed. The Defense of Marriage Act remains the law of the land and its Constitutionality has not been overturned in any United States court. Furthermore, H.R. 3313 is a grave threat to the protection and enforcement of civil rights laws, and will erase decades of social progress all in the name of ''marriage protection.''

Historically, the judicial branch has often been the sole protector of the rights of minority groups against the will of the popular majority. Cases such as Brown v. Board of Education come to mind. The Court Stripping bill would deny the courts the ability to hear challenges to a legislation by a specific minority group, in this case gays and lesbians, thus creating a slippery slope where any law could be subject to ''courtstripping.''

This is a serious challenge to our fundamental system of checks and balances. The Court Stripping bill is the first, and undoubtably NOT the last, effort by the Republican Congress to hamstring an independent Federal judiciary. This reckless bill would take away even the Supreme Court's authority to decide on a Federal law.

Those who are advocating the Court Stripping bill today use the argument of ''judicial activism'' in Massachusetts and other States as a justification. Make no mistake about it, these same arguments were also advanced by defenders of segregation in the South in response to the Brown v. Board of Education decision and other decisions such as Loving v. Virginia that invalidated State anti-miscegenation law.

There are so many issues that this Republican-controlled Congress has failed to address. We don't have a budget. We haven't passed all of our appropriations bills we are engaged in, with no end in sight, and our economy has failed to generate the jobs necessary to keep the GDP growing. Meanwhile, this Republican Congress is taking up a divisive, discriminatory, and completely unnecessary legislation just to appeal to their far right base and to drive a wedge into this upcoming election. It is cynical and simply dead wrong.

Mr. Speaker, I urge my colleagues to join me in rejecting this hateful, unconstitutional, and discriminatory legislation.

Mr. BUYER. Mr. Speaker, I rise in strong support of H.R. 3313, the Marriage Protection Act, introduced by my good friend and fellow Hoosier Mr. HOSTETTLER.

In recent years, judicial activism has continued to attack the traditions that have defined this Nation—our pledge of allegiance declared unconstitutional—and now it seems that marriage is its next target.

In 1996, Congress passed the Defense of Marriage Act by a wide margin in this Chamber and in the other body. I cosponsored the Defense of Marrige Act. It was necessary to pass the Defense of Marrige Act to preserve the States their ability to decide for themselves how marriage is to be constituted within their respective borders. To remind this body of the definition of federalism seems elementary, but I fear that a lesson may be needed for those who do not support this legislation.

The Defense of Marrige Act provides that for Fedreal law, marrige shall mean the union of one man and one woman. It further provides that the States do not have to recognize alternative unions established in other States. Since that time, 44 States of our Union have passed laws that provide that marriage shall consist only of the union of one man and one woman. My State of Indiana has done so.

Now, traditional marriage is under attack and the ability of States to protect traditional marriage within their borders is threatened . . . threatened by the judicial branch.

The Marriage Protection Act, H.R. 3313, is a further step to insure that States maintain

the ability to define marriage within their borders and that States are not forced, against the will of their citizens acting through their elected State legislatures, to accept the contortions of marriage legalized in other States. H.R. 3313 would prohibit the lower Federal courts and the Supreme Court from hearing cases that arise under the Defense of Marrige Act.

Congress has clear Constitutional authority to establish the jurisdiction of the lower Federal courts. In Article III, Congress is given the authority to establish the lower courts and to define the appellate jurisdiction under the regulation of Congress. This is part of the checks and balances that our Founding Fathers wove into the Constitution, to ensure that one branch does not exercise power beyond its bounds.

It is unfortunate that circumstances have arisen that have created the need for H.R. 3313. One State in the Nation has declared that ''marriage'' can be applied to relationships other than one man and one woman; and our fear is that the Federal courts will take the action of one State court and apply it to all 50 States. H.R. 3313 is insurance that the action of this State in expanding the definition of marriage does not have to be recognized in other States unless the people of that State agree to do so.

I commend the gentleman from Indiana's 8th district for introducing this legislation and I strongly urge its adoption.

Ms. ESHOO. Mr. Speaker, I come to the floor today to urge my colleagues to vote against this bill. The Marriage Protection Act would strip the jurisdiction of Federal courts to hear cases interpreting the Defense of Marriage Act or the Federal Marriage Statute.

First, this bill is wrong because it will strip Federal courts, including the Supreme Court, of their ability to hear and review Constitutional cases, something that Congress has never done in our history. The courts are an equal branch of our government. Any attempt to weaken their authority undermines a 200-year precedent and severely endangers the separation of powers that our government is based on. The fact that this kind of action has never been undertaken in the history of this great nation speaks to the absurdity of the bill.

Second, this bill is discriminatory. It singles out one group of people and tells them their interests won't be heard by the highest courts in the land This sends a chilling message, not only to the citizens of this country, but to people all over the world that the United States is moving backward, not forward on issues of civil rights.

Mr. Speaker, no legal crisis exists. This bill is all about politics . . . driving a wedge between people on the eve of party conventions and a national election. It's not only cynical, it's a disservice to the people we represent. What we do with this issue will be forever remembered. I urge my colleagues to oppose this bill. by casting a no vote, we say no to discrimination and state our unwillingness to upset the balance of the equal branches of government.

Mr. KIND. Mr. Speaker, I rise in opposition to H.R. 3313, the so-called Marriage Protection Act. I believe Congress should be focused on supporting American troops fighting in Iraq and Afghanistan, helping the eight million Americans who are looking for jobs, and passing a budget laying out our priorities for fiscal year 2005. Instead, we are debating a bill that fails to address the issues that are of the most importance to our citizens and that is blatantly unconstitutional.

H.R. 3313 would strip the Federal courts, including the Supreme Court, of jurisdiction over any cases dealing with the Defense of Marriage Act (DOMA). This would lead to a patchwork of different decisions from various States which would prove to be unmanageable. Furthermore, it would establish a ridiculous precedent. Whenever Congress passes a law, it could merely insert comparable language prohibiting Federal courts from ever reviewing that legislation to ensure it complies with the United States Constitution. In effect, this bill places the actions of Congress above the law. Clearly, this is not what our Founders intended when they established the separation of powers that has worked well for over 200 years.

This bill is unconstitutional in three ways: it violates the principle of equal protection by depriving a group of people of their right to their day in court; it is inconsistent with the due process clause which demands an independent judicial forum capable of determining Federal constitutional rights; and it violates the concept of separation of powers, so crucial to our system of governance.

Grammar school students in my home state of Wisconsin could tell you that the American system of government finds its strength from our system of checks and balances, a concept that was bold and revolutionary when the Constitution was written over 200 years ago and is now embraced by countries around the world. It is this system that keeps the presidency from becoming a dictatorship, the court from becoming an oligarchy, and members of Congress from becoming despots. If we strip the Federal courts of their seminal role in our process of law, we will have rejected the work of James Madison and the other Founding Fathers who wrote the document that is the oldest written constitution in the world still in effect. Furthermore, it jeopardizes all the rights guaranteed in our Constitution, especially the Bill of Rights. It would also allow a future Congress, that may not like gun ownership in our country, to prohibit gun ownership and then strip Federal courts from the ability to review the law to see if it complies with the Second Amendment.

I cannot vote for a bill that would blatantly reject the Constitution, a document which I swore to uphold upon entering Congress. Regardless of our views on particular issues, I believe that each of us in the House of Representatives should respect the Federal courts as an equal branch of government, and I urge my colleagues to reject this bill.

Mr. GRIJALVA. Mr. Speaker, I rise today in opposition to the drastic and shortsighted measure to strip courts of their authority to review the Constitutionality of the Defense of Marriage Act. This is a very clear and easy vote for me, but in no way does that make it insignificant. To the contrary, this is the most important civil rights vote of the year. Congress has not passed a federal court stripping measure since 1868, though it has been attempted on nearly every hot button issue in the past 50 years (prompted by Brown v. Board, Roe v. Wade, Loving v. Virginia, and others), always with the premise of the need to ''limit activist judges.''

Republicans are trying to undermine the legitimacy of these justices because they are not elected. The founders deliberately created an unelected body that would not have to make the political calculations that the President and Members of Congress need to consider in our controversial decisions. Justices are, by design, removed from the political or electoral process to serve lifetime appointments where they can make independent decisions. Naturally, these decisions often come before the public is quite ready for them. Such was the case with the prohibition of interracial marriage. In 1967, the Supreme Court stated that such a prohibition would ''deprive . . . liberty without due process of law in violation of the Due Process Clause of the Fourteenth Amendment. The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.'' We now look back on the prohibition of interracial marriage as abhorrent and appreciate the court's decision in Loving v. Virginia in helping us reach this realization.

This bill is not about marriage, as the title claims. This bill is about denying a day in court for an entire class of Americans. This is a question of fairness, equality, and social justice. We cannot, in the interest of fairness to all, exclude selected groups of Americans from enjoying equal protection under the law. Furthermore, court stripping is blatantly unconstitutional. It violates the separation of powers, due process, and equal protection clauses in our Constitution.

If you think this is an easy vote because it will never pass constitutional muster to become law, I remind you of the oath we all took the day we were sworn into office. Every single one of us has sworn to ''protect and defend the Constitution of the United States against all enemies, foreign and domestic.'' A vote in favor of this bill is an attack on the very document that we have sworn to defend.

This body is not at liberty to pick and choose which of the laws we pass should be subject to judicial review. The founders created three equal branches of government, a true system of checks and balances that has served us well for over 200 years. The power of one should not outweigh the other or the system will be fundamentally undermined.

I urge my colleagues to vote against this measure to condone discrimination, undermine the Constitution, and disrupt the democratic process.

Mr. UDALL of New Mexico. Mr. Speaker, I rise today to strongly oppose H.R. 3313, the so-called ''Marriage Protection Act.'' There is nothing in this bill that will provide protection to us or to the institution of marriage. On the contrary, this bill will create an extremely dangerous precedent in our legislative system and could cause inculculable harm.

When I was sworn in as a member of this House, I promised to uphold the Constitution of the United States. Every member of this body made the same promise. The Majority's push for passage of this bill sadly signals a step back from that promise and further calls into question the true motivations of the bill's supporters.

The unconstitutionality of this bill is quite clear. The 14th Amendment to the U.S. Constitution reads, ''No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'' By

denying Americans who wish to challenge the Defense of Marriage Act their day in federal court, H.R. 3313 blatantly violates this equal protection clause. The bill singles out a specific group of Americans and tells them that they cannot have their day in court, thereby denying them due process.

Moreover, this bill violates the separation of powers. Our democracy is reliant upon an independent judiciary, and judicial review is a crucial part of our system of checks and balances. By adding a clause to a bill stipulating that cases against it must not be heard by federal courts as H.R. 3313 does, we are overreaching our powers to legislate.

If this bill passes the House today, I ask the leaders in the Majority: What's next? If we enact a bill into law saying that Defense of Marriage Act cases cannot be heard in federal courts, where do we stop? School prayer, gun control, abortion, obscenity—shall we say that none of these issues may be heard in federal court? What issue or group of people will be next?

Broad opposition to this bill from my constituents and colleagues gives me hope that this bill may not make its way to the President's desk. Those opposed include the Lawyer's Committee for Civil Rights Under Law, Human Rights Watch, the American Civil Liberties Union, the Alliance for Justice, and even former Representative Bob Barr, the original sponsor of the Defense of Marriage Act. These groups represent only a small portion of those firmly opposed to this bill.

The fact is, this debate is not about supporting or opposing gay marriage. Rather, it is about the cost of passing a bill that would result in the revocation of constitutional rights for certain Americans. This bill is a drastic, misguided piece of legislation with strictly political aims, and if this bill passes, it will be a tragic day for democracy. I strongly urge my colleagues on both sides of the aisle to vote against this bill, and to preserve the constitutional rights of all Americans.

Mr. MEEHAN. Mr. Speaker, I rise in strong opposition to the so-called Marriage Protection Act, which has nothing to do with protecting marriage.

This bill is nothing more than the latest Republican attempt to divide Americans and distract us from issues that people care about. It is about singling out one group of Americans for unequal justice under law.

Constitutionally, this bill is a non-starter. The Constitution established an independent judiciary to protect every citizen's rights and to check the power of Congress and the executive. Courts exist to protect the rights of all Americans, even those who are often disenfranchised and marginalized.

Unable to amend the Constitution to their liking, the Republican majority is now waging an unprecedented assault on the independence of the judiciary and the separation of powers in our government. If Congress strips the courts of jurisdiction over the Defense of Marriage Act, there is no telling what other issues will be subject to court stripping.

All of us in Congress took an oath to defend the Constitution. This bill is an attack on our most basic constitutional principles—and just as important, a mean-spirited attack on our country's values of fairness, tolerance, and equality.

Earlier this week, the Speaker asserted that Congress doesn't have time this year to implement the recommendations of the 9/11 Commission—urgent measures to protect our security. So why are we here today using our time to divide people for political reasons? Let's reject this cynical political ploy and move on to the real business of the American people.

Ms. HARMAN. Mr. Speaker, in July of 1996, I stood on the House Floor and spoke in opposition to the Defense of Marriage Act. Eight years later, here I am again, standing in opposition to another attempt to divide this nation in an election year and ostracize some of our citizens. Only this time, we're going even further. This time, we are considering legislation that would, for the first time in our Nation's history, seek to exclude a specific group of people from access to the federal court system.

The fact that we are having this debate at this time is as shameful as the debate itself. Our Nation faces many pressing and critical problems: the size of the Federal deficit and its effect on our international competitiveness; threats from rogue nations and terrorists; and an intelligence system that is in desperate need of repair, to name a few. Yet, rather than focusing our energy on protecting our citizens, Congress is debating of a resolution that would take away the rights of some Americans.

There are three really good reasons to vote against H.R. 3313. It's unconstitutional, it discriminates against some Americans, and, for those of you who supported DOMA, it will muddle the definition of marriage and undermine the stated intent of DOMA.

Eight years ago, I warned that the Defense of Marriage Act was an unconstitutional solution in search of a problem. With the measure we are considering today, my colleagues on the other side of the aisle have out-done themselves. H.R. 3313 is the mother of all unconstitutional legislation.

The bill strips the U.S. Supreme Court's original jurisdiction over cases where a state is a party in a DOMA dispute. Original jurisdiction is conferred on the Supreme Court by the Constitution, not by Congress.

Second, this bill is overtly discriminatory. If it were enacted into law, Congress would, for the first time in U.S. history, block a specific group of Americans—same sex couples and their children—from having full access to the federal court system. It is unconscionable that we would even consider legislation to deny ANY American the right to seek justice through our federal court system.

Finally, we were told that the intent of DOMA was to preserve the traditional definition of marriage. Now we are considering legislation that would make each of the 50 state supreme courts the final authority on the constitutionality of DOMA. This will create a patchwork of state laws on the recognition of marriage, and muddle its definition. Those who support this bill can no longer hide behind the states' rights or the marriage preservation arguments. This measure reveals the clear intent of its drafters—to deny certain individuals equal treatment under the law.

I urge my colleagues to stand up and reject this divisive, untimely, and likely unconstitutional bill.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I rise in strong support of H.R. 3313, the Marriage Protection Act. You know it's sad that we're even having this debate. However we are being forced to. Marriage and the American family are under attack by activist groups and they're using wayward judges to chip away at this sacred institution. For the sake of our country, Congress must respond.

This bill would prevent federal courts from forcing states like Texas to recognize same-sex marriages licensed in another state.

Well in Texas, the people have spoken. We have a Defense of Marriage Act on the books. The lone star state only recognizes marriage between a man and a woman, regardless of what other states might do.

However, in light of recent events in Massachusetts and elsewhere, it has become necessary to ensure that the will of the people of Texas isn't circumvented by some unelected judge. And one of the remedies to abuses by federal judges lies in Congress' authority to limit federal court jurisdiction.

Congress shouldn't be afraid to properly exercise checks and balances provided for in the Constitution. It is our responsibility to prevent overreaching by the courts. We've got to reign in these zealous judges who think they can legislate.

Back home we have a popular slogan, ''Don't mess with Texas.'' Well I've got one for this debate, ''Don't mess with marriage!''

Mr. MORAN of Virginia. Mr. Speaker, I rise today in opposition to the so-called ''Marriage Protection Act.''

How marriage is being protected by keeping committed gay and lesbian couples from getting married does not make sense to me. Will it strengthen heterosexual relationships? Reduce promiscuity and unwed pregnancy? Instruct people on the importance of communication to a successful relationship?

No, it would do none of these things.

What it would do is take away Americans right to Due Process and represent a radical departure from our Constitutional and legal tradition in an effort to single out a specific group of American citizens for discrimination. This bill would strip our federal court system of its independence, setting a dangerous precedent and threatening the underpinnings of our free and democratic society.

The Marriage Protection Act precludes federal courts from reviewing the constitutionality of the cross-state recognition section of ''the Defense of Marriage Act.''

The result of this legislation would be that if DOMA is challenged, the 50 State Supreme Courts would each issue a separate and final ruling on the cross-state recognition section of DOMA. The Supreme Court, whose job is to settle conflicting or contradictory state and federal court rulings, would have its hands tied, thus thwarting their ability to resolve the ensuing confusion. What a mess.

If we decide to wall off the federal courts ability to rule on this issue, where will such actions stop? One can easily foresee a number of other hot button social issues with which this country is clearly divided being blocked in a similar fashion from consideration at the federal level.

Furthermore, we already have sufficient legislation to allow individual states the ability to retain and structure marriage laws the way they see fit. While I opposed and continue to oppose the Defense of Marriage Act (DOMA) which passed the House back in 1996, this law is still fully functional and in effect. Since then, it has not been invalidated by any court anywhere in the country.

Mr. Speaker, I am troubled that we are wasting floor time to discuss this issue today. At a time when there are many more pressing matters needing to be discussed and deserving of debate, we are considering ''The Marriage Protection Act,'' a classic example of an election year wedge issue designed for maximum political impact. I implore the House to consider the full implications of this legislation and urge its defeat.

Mr. HONDA. Mr. Speaker, I rise today in strong opposition of the measure before us, H.R. 3313.

Many of my colleagues on this side of the aisle are lawyers by training and they have given us an excellent analysis of the legal problems with this bill.

They have pointed out that by denying the Supreme Court its role as the final authority on the constitutionality of federal laws, the bill unnecessarily and unconstitutionally usurps the Supreme Court's power.

Mr. Speaker, I am not a lawyer. I am a teacher by training and even without the benefit of legal training, I can see the unfairness of this court stripping bill.

What this bill is trying to do is change the rules of the game, only in this case the rules we are talking about are fundamental principles imbedded in our Constitution.

If I were to ask a class of elementary school kids whether they thought it was fair to change the rules so that a federal law, passed by Congress and signed by the President did not have to face the scrutiny of our federal courts—they would all be scratching their heads. They would ask me, ''what about the idea of checks and balances?''

If I mentioned this scenario to some Junior High students they would simply say, ''we see what you are doing, you're rigging the system.'' Teens can be a lot more cynical.

Mr. Speaker, this is not a matter of protecting marriage, it's about protecting the sanctity of separation of powers—and you don't have to be a lawyer to see that.

Mr. STUPAK. Mr. Speaker, I take very seriously my oath of office to the U.S. House of Representatives.

In it, I swear to ''always protect and defend the Constitution of the United States . . . so help me God.''

I will be doing just that when I vote against H.R. 3313. This bill, which strips the courts of their right—and obligation—to hear challenges to federal law, is a direct attack on our U.S. Constitution.

I have long been a supporter of the Defense of Marriage Act that Congress passed in 1996.I believe that marriage should be defined as a union between a man and woman.

Despite my support for DOMA—we cannot as Members of Congress, knowingly vote for legislation that undermines the clearly stated separation of powers between the three branches of government as outlined in the Constitution. This separation of power between the legislative, executive and judicial branches serves as the foundation of our democracy and our system of government.

If we fail today to ''support and defend'' the Constitution, what's next? This legislation sets a terrible precedent!

Will Congress prevent the federal courts, including the Supreme Court, from interpreting civil rights, worker or religious rights laws? Will the courts next be blocked from reviewing actions of the executive branch?

Do we really want to head in a direction where the Constitution and courts reflect only on the political views of the political party that controls the U.S. House, Senate and the Presidency?

I will not use my constituents' vote in the U.S. House of Representatives to undermine our Constitution for blatant election-year politics. And election-year politics is the only reason why this misguided legislation is on the floor. It is truly shameful, as this legislation undermines the integrity and the moral authority of this legislative body to the American people.

Vote ''no'' on H.R. 3313.

Mr. WELDON of Florida. Mr. Speaker, I support H.R. 3313, The Marriage Protection Act. This bill prevents unelected, lifetime-appointed federal judges from striking down the provision of the Defense of Marriage Act. The Defense of Marriage Act overwhelmingly passed in the House and the Senate and was signed into law by President Clinton in 1996.

H.R. 3313 simply provides that cases involving the section of Defense of Marriage Act—that protects states' rights—must be brought in state court. This brings valuable protection to the states and ensures that one state does not have to recognize a same sex marriage granted by another state.

It also keeps federal courts from forcing states to recognize same-sex marriages that other states, such as Massachusetts, have legalized.

This bill is a good first step, but what is ultimately needed in order to protect time-honored, traditional marriage is an Amendment to the U.S. Constitution. Unfortunately, the Senate failed to pass this amendment last week. That vote was 48 to 50, with Senators JOHN KERRY and JOHN EDWARDS failing to vote. It fell short of the number needed to ensure passage so that the American people could consider a Constitutional Amendment.

My constituents in Florida, and the majority of the American people, do not agree with a hand full of activist judges and courts that are redefining marriage in America. They do not agree with the demands of four unelected members of Massachusetts State Supreme Court who have overturned the laws of the State of Massachusetts and sanctioned same sex marriages.

A family headed by a mother and a father has been a basic building block of society for thousands of years, and it is imperative that its integrity be successfully protected from those who wish to re-define marriage by trying to equate other relationships to that of traditional marriage between one man and one woman.

Mr. Speaker, I urge passage of H.R. 3313.

Mr. PAUL. Mr. Speaker, as an original cosponsor of the Marriage Protection Act (H.R. 3313), I urge all my colleagues to support this bill. H.R. 3313 ensures federal courts will not undermine any state's laws regulating marriage by forcing a state to recognize same-sex marriage licenses issued in another state. The Marriage Protection Act thus ensures that the authority to regulate marriage remains with individual states and communities, which is what the drafters of the Constitution intended.

The practice of judicial activism—legislating from the bench—is now standard procedure for many federal judges. They dismiss the doctrine of strict construction as outdated and, instead, treat the Constitution as fluid and malleable to create a desired outcome in any given case. For judges who see themselves as social activists, their vision of justice is more important than the letter of the law they are sworn to interpret and uphold. With the federal judiciary focused more on promoting a social agenda than on upholding the rule of law, Americans find themselves increasingly governed by judges they did not elect and cannot remove from office.

Consider the Lawrence case decided by the Supreme Court last June. The Court determined that Texas has no right to establish its own standards for private sexual conduct, because these laws violated the court's interpretation of the 14th Amendment. Regardless of the advisability of such laws, the Constitution does not give the federal government the authority to overturn these laws. Under the Tenth Amendment, the State of Texas has the authority to pass laws concerning social matters, using its own local standards, without federal interference. But, rather than adhering to the Constitution and declining jurisdiction over a state matter, the Court decided to stretch the ''right to privacy'' to justify imposing the justices' vision on the people of Texas.

Since the Lawrence decision, many Americans have expressed their concern that the Court may next ''discover'' that state laws defining marriage violate the Court's wrongheaded interpretation of the Constitution. After all, some judges may simply view this result as taking the Lawrence decision to its logical conclusion.

One way federal courts may impose a redefinition of marriage on the states is by interpreting the full faith and credit clause to require all states, even those which do not grant legal standing to same-sex marriages, to treat as valid a same-sex marriage licenses from the few states which give legal status to such unions as valid. This would have the practical effect of nullifying state laws defining marriage as solely between a man and a woman, thus allowing a few states and a handful of federal judges to create marriage policy for the entire nation.

In 1996, Congress, exercised its authority under the full faith and credit clause of Article IV of the United States Constitution by passing the Defense of Marriage Act that ensured each state could set its own policy regarding marriage and not be forced to adopt the marriage policies of another state. Since the full faith and credit clause grants Congress the clear authority to ''prescribe the effects'' that state documents such as marriage licenses have on other states, the Defense of Marriage Act is unquestionably constitutional. However, the lack of respect federal judges show for the plain language of the Constitution necessitates congressional action to ensure state officials are not forced to recognize another state's same-sex marriage licenses because of a flawed judicial interpretation of the full faith and credit clause. The drafters of the Constitution gave Congress the power to limit federal jurisdiction to provide a check on out-of-control federal judges. It is long past time we begin using our legitimate authority to protect the states and the people from ''judicial tyranny.''

Since the Marriage Protection Act only requires a majority vote in both houses of Congress and the President's signature to become law, it is a more practical way to deal with this issue than the time-consuming process of passing a constitutional amendment. In fact, since the Defense of Marriage Act overwhelmingly passed both houses, and the President

supports protecting state marriage laws from judicial tyranny, there is no reason why the Marriage Protection Act cannot become law this year.

Some may argue that allowing federal judges to rewrite the definition of marriage can result in a victory for individual liberty. This claim is flawed. The best guarantor of true liberty is decentralized political institutions, while the greatest threat to liberty is concentrated power. This is why the Constitution carefully limits the power of the federal government over the states. Allowing federal judges unfettered discretion to strike down state laws, or force a state to conform to the laws of another state, in the name of liberty, leads to centralization and loss of liberty.

While marriage is licensed and otherwise regulated by the states, government did not create the institution of marriage. In fact, the institution of marriage most likely pre-dates the institution of government! Government regulation of marriage is based on state recognition of the practices and customs formulated by private individuals interacting in civil society. Many people associate their wedding day with completing the rituals and other requirements of their faith, thus being joined in the eyes of their church, not the day they received their marriage license, thus being joined in the eyes of the state. Having federal officials, whether judges, bureaucrats, or congressmen, impose a new definition of marriage on the people is an act of social engineering profoundly hostile to liberty.

Mr. Speaker, Congress has a constitutional responsibility to stop rogue federal judges from using a flawed interpretation of the Constitution to rewrite the laws and traditions governing marriage. I urge my colleagues to stand against destructive judicial activism and for marriage by voting for the Marriage Protection Act.

Mr. TERRY. Mr. Speaker, I rise today in support of H.R. 3313, the Marriage Protection Act. As a cosponsor of this important legislation, I thank Chairman SENSENBRENNER and the leadership for bringing it to the House floor.

H.R. 3313 prohibits any federal court, including the Supreme Court, from hearing challenges to a key provision of the Defense of Marriage Act (DOMA), which will preserve the rights of states to not recognize same-sex unions permitted in other states. I support this limitation of federal court jurisdiction in this area.

I would like to point out, however, that H.R. 3313 does not address the current situation in Nebraska.

In 2000, seventy percent (70 percent) of Nebraska voters approved a state constitutional amendment defining marriage as ''one man, one woman''—and barring civil unions or domestic partnerships. The ACLU is currently challenging this amendment in federal district court. In a preliminary ruling, the federal district judge (Judge Bataillon) indicated sympathy with the ACLU's claim.

As I understand it, H.R. 3313 would not prevent federal courts from striking down state provisions, such as the one approved by Nebraska voters.

For that reason, an amendment to the U.S. Constitution may be required to further protect state statutes and constitutional amendments from challenge in the federal courts. While I will vote for this legislation, it is becoming increasingly clear to me and many of my colleagues that further action may be required by the Congress to protect and defend traditional marriage in America.

Mr. MEEK of Florida. Mr. Speaker, I rise today to voice strong objections to H.R. 3313, the so called Marriage Protection Act. This Act prohibits federal courts, including the Supreme Court of the United States, from hearing cases on the constitutionality of provisions of the Defense of Marriage Act, including those relating to same-sex marriage licenses.

This bill is phony, and it is a sham. The title of the bill itself is false advertising. While claiming to ''protect'' marriage, all the bill does is strip federal courts of jurisdiction so that they cannot even consider whether laws on same-sex marriages are consistent with our United States Constitution. For over 200 years, our Constitution has defined our nation and protected our rights. It is a document of empowerment, not limitation. But the Republican leadership wants to put a fence around it and padlock the gate, and they are doing it for purely political purposes.

The United States Congress should not be in the business of stripping federal courts of their ability to hear particular cases. Such actions, if imposed in the 1960's, could have been used to prevent federal courts from hearing voting rights cases. To limit the power of the courts like this for purely partisan purposes sets a dangerous precedent and is simply intolerable. It would undermine the independence of the judicial branch and run contrary to the vision set forth by our founding fathers in the Constitution.

Even for people who, like myself, believe that marriage is between a man and a woman, this measure does nothing to strengthen or protect those bonds. It seems to me that if a threat exists to marriage, it is that too many of them fail. For every two marriages that occurred in the 1990s, one ended in divorce. The stresses on marriages today are great, but they don't have to do with the jurisdiction of the federal courts. This bill does nothing to deal with problems like affordable housing, quality education and training, daycare for young children, high costs of gasoline, electricity and food, high unemployment rates and underemployment, and the lack of health care coverage and other benefits that place severe strains on many families.

Today, the very nature of the typical American family is changing. Just as families headed by only one adult were rare only a few decades ago but are common today, non-traditional couples are now a widespread fact of American society. Nearly 200 Fortune–500 companies and numerous municipalities and organizations have already recognized this fact on their own and provide benefits to same sex couples. In addition, several municipalities have adopted local ordinances prohibiting discrimination based on sexual orientation in housing and employment.

It is simply unfair to deny law-abiding American citizens the protections of civil law with respect to taxation, inheritance, hospital visits and the like, and it is wrong to shackle the federal courts by preventing them from even considering court cases pertaining to these matters.

For these reasons, I urge my colleagues to defeat this bill.

Mr. HOLT. Mr. Speaker, I rise in opposition to H.R. 3313, which would prevent federal courts from hearing cases related to provisions of the Defense of Marriage Act (DOMA) that allow states to refuse to recognize same-sex marriage licenses issued in other jurisdictions.

The Constitution—perhaps the greatest invention in history—has been the source of our freedom in this great country for more than two centuries. The framework of government it established has allowed our diverse people to live together, to balance our various interests, and to thrive. It has provided each citizen with broad, basic rights.

The judiciary was designed to be the one branch of the federal government that is not influenced or guided by political forces. This independent nature enables the judiciary to thoughtfully and objectively review laws enacted by the legislative branch to ensure that Federal law is in line with the Constitution. Throughout the development of our nation, this check has been vital to protecting the rights of minorities.

The legislation that we are considering today is a political measure that will threaten this precious system of checks and balances. Although the Constitution gives Congress the power to limit the jurisdiction of the Federal judiciary and the appellate jurisdiction of the Supreme Court, I am certain that the founding fathers did not intend for Congress to use this power to change the jurisdiction of the courts over a political issue. This legislation will set a dangerous precedent that Congress can deny the judicial branch the right to review specific pieces of legislation simply because Congress is concerned that the judiciary will find the legislation unconstitutional. This is a clear misuse of Congressional authority and it is a misguided attempt to legislate on a controversial social issue.

In addition to undermining the authority of the judiciary, H.R. 3313 would deprive a minority population—gay men and women—of basic freedoms. This bill would limit their right to due process by barring individuals from challenging the constitutionality of DOMA. Congress should not limit an individual's ability to seek redress in the court system simply because some Members object to the sexual orientation of others.

And if that is not bad enough, H.R. 3313 would set a pattern that would cause unimaginable harm. Today its gay men and women, tomorrow laws dealing with any other area would be exempted for judicial review.

Altering the framework of our government and restricting access to the courts is not the appropriate way to resolve a divisive political issue. I urge my colleagues to vote against this legislation.

Mr. JONES of North Carolina. Mr. Speaker, I am here today with my colleagues in support of H.R. 3315, the Marriage Protection Act. I represent the people of the 3rd Congressional district of North Carolina, a district that has asked me to support and protect the sanctity of marriage between man and woman. Let me read just a small part of a pastoral letter by Bishop Sheridan of Colorado as he explains the history behind our tradition of marriage: ''Every civilization known to mankind has understood marriage as the union of a man and a woman . . . no one can simply redefine marriage to suit a political or social agenda. Once again, we must be clear about this matter. The future of our world depends upon the

strength of the family, the basic unit of our society. The future of the family depends on the state of marriage.''

Mr. Hostettler's bill will give states their Constitutional right to protect traditional marriage. No state should be forced to recognize a same-sex marriage if that state's citizens do not believe in honoring such a union. I stand with the majority of the people in the 3rd district, the citizens of North Carolina and indeed the majority of all Americans when I say that I strongly believe in protecting marriage as an exclusive union between one man and one woman.

I believe the moral future of a our country is dependent upon the Judeo-Christian values that make up the foundation of America, and if America is to survive as a strong nation it must protect those values. This bill is one way Congress can stands up for traditional American values.

I close with a quote from Supreme Court Justice Antonin Scalia in his dissent of the 5–4 case of Lawrence v. Texas: ''But persuading one's fellow citizens is one thing, and imposing one's views in absence of democratic majority will is something else . . . Today's opinion dismantles the structure of constitutional law that has permitted a distinction to be made between heterosexual and homosexual unions, insofar as formal recognition in marriage is concerned.

Mr. WAXMAN. Mr. Speaker, I staunchly oppose H.R. 3313, the so-called ''Marriage Protection Act.'' This bill is an attack on our Constitution, an insult to the fundamental freedoms of our society, and a shameful election year stunt by the Republican party.

Sadly, although its hard to imagine, this bill is even worse than the proposed Federal Marriage Amendment. While I also oppose that legislation, and any effort to write discrimination based on sexual orientation into our laws, this measure presents an even deeper constitutional crisis. What this bill attempts to do is strip the federal court system and the Supreme Court of the ability to decide the constitutionality of a law. Regardless of the issue in question, this bill is a flagrant attack on the basic separation of powers enumerated in the constitution and the inherent right of each branch of government to have full power over its sphere of jurisdiction.

Equally troubling is the purpose of the bill—to single out one minority group and argue that they do not have the right to be heard in court on an issue important to them. The idea that the gay and lesbian community somehow doesn't deserve equal protection under the law is an affront to the Bill of Rights and its guarantee that all Americans have a right to due process.

It is no secret that the Bush Administration will stop at nothing to appeal to its conservative base by discriminating against same-sex couples. But it is an embarrassment to our democracy that the Republican party would promote these initiatives as a ploy to distract from the Administration's far-reaching policy failures. One recent e-mail newsletter sent on June 7, 2004 by veteran right-wing conservative Paul Weyrich openly suggested:

''The president has bet the farm on Iraq . . . Given what the continued killing has done to the president's standing in the polls this far, it is a lead-pipe cinch that as we lead up to the first days of November 2004, violence is going to be horrific. . . The only one alternative to this situation: change the subject. . . Ninety-nine percent of the president's base will unite behind him if he pushed the [Federal Marriage] Amendment.''

I opposed the Defense of Marriage Act when it was considered in the House in 1994. Ten years later, I continue to believe that these initiatives against gay marriage do nothing to preserve the institution of marriage, but serve only to fan the flames of intolerance and prejudice. I urge my colleagues to reject this woefully misguided bill and its crude objectives.

Mr. CANNON. Mr. Speaker, today the House of Representatives is acting well within its Constitutional authority in considering H.R. 3313. Currently, many state courts including those in Massachusetts have begun the process of defining marriage through judicial decree. Because of the Constitution's Full Faith and Credit Clause, this judicial activism may be forced upon all the remaining states, including Utah, undermining the traditional definition of marriage and family.

These and other state and federal courts imperial judges are acting in an extra-constitutional fashion and assuming the powers of legislatures.

In Massachusetts, the Supreme Judicial Court of Massachusetts ruled on a 4–3 vote in Goodridge v. Massachusetts Dep't of Health, 798 N.E. 2d 941 (Mass. 2003) that the state's refusal to issue marriage licenses to same-sex couples violated the state constitution. The court found that the traditional definition of marriage, the same definition used throughout history, was evidence of ''invidious'' discrimination. In a follow-up opinion, these same judges stated the current definition of marriage in Massachusetts was a ''stain'' on the state constitution and needed to be ''eradicated''.

On May 17th of this year, the Goodridge decision went into effect and the state of Massachusetts began issuing same-sex marriage licenses. This new and expanded definition of marriage opens many more questions than it answers. What happens if these individuals move to other states after they are married? What benefits and rights must the new jurisdiction accommodate and what other obligations will be thrust on a jurisdiction that does not recognize such unions?

These are difficult and divisive questions, and this is why representatives elected by the people and not the courts should decide them. Those opposed to an open and deliberative debate and public votes by elected legislators have preferred judicial activism instead.

The Defense of Marriage Act, which passed both Houses of Congress and was signed into law by President Clinton, is central to our debate. DOMA was passed to prevent one state from imposing its family law policy on another state. Historically, family law has always been left to the states. However, scholars on both sides of the ideological aisle have stated their Constitutional concerns with the language of DOMA. If DOMA challenges are successful, then one case in one court could conceivably set social policy for the nation.

When the judicial branch loses its moral compass, it is the responsibility of the Congress to exert its authority to keep the judicial branch in check. In this particular circumstance, the Congress has two options. The first is a Constitutional Amendment. The second is assertion of its authority in the Constitution under Article III, Section 2 clause 2 and ''regulate'' the jurisdiction of the federal courts and make ''exceptions'' to their jurisdiction.

I have reservations about amending the U.S. Constitution. But that may be our last resort. As President Bush stated, ''If judges insist on forcing their arbitrary will upon the people, the only alternative left to the people would be the constitutional process.'' I agree with President Bush.

We are debating H.R. 3313, which limits the role of federal courts. This legislation states, ''No court created by an act of Congress shall have any jurisdiction, and the Supreme Court shall have no appellate jurisdiction, to hear or decide any question pertaining to the interpretation of, or the validity under the Constitution of, section 1738C.'' The referenced section relates to the DOMA language allowing states to opt to not recognize the same-sex marriages of another state. HR 3313 is simply Congress reaffirming its intent under DOMA and disallowing judicial review.

Some argue that Congress should not limit the jurisdiction of the federal courts. I would like to remind them of the provision Senator Daschle inserted into a Defense Appropriations bill in the 107th Congress that exempted all forest management projects in the Black Hills National Forest from any further NEPA requirements, from administrative appeals, from Endangered Species Act Section 7 consultation procedures, from review by any court, and from court ordered injunctions. I agreed with Senator Daschle and supported this legislation not only because it set a precedent for good forest policy, but also because it is a precedent for Congress's authority to limit the jurisdiction of the courts.

Chief Justice Marshall inferred in Marbury v. Madison that if the Supreme Court identifies a conflict between a constitutional provision and a congressional statute, the Court has the authority to declare the state unconstitutional. It is clear that Congress has the duty and responsibility to make sure that no act promulgated by it exceeds the Constitution.

In this particular case, the Congress is exerting its explicit authority to limit the jurisdiction of the Courts. This cannot be held unconstitutional by the federal courts or the Supreme Court because they cannot hear it. They have no jurisdiction because Congress withholds jurisdiction. It is the natural check on the courts' power that the founding fathers built into our system of checks and balances.

I say with all sincerity to those opposed to this legislation, the spirit of the law is explicit. State family law is for the states to decide. The Supreme Court in a 2004 decision, Elk Grove Unified School District v. Newdow, 124 S. Ct. 2301, 2309 (2004) (citing and quoting In re Burrus, 136 U.S. 586, 593–94 (1890)), reaffirmed this presumption by stating, ''the whole subject of domestic relations . . . belongs to the laws of the State and not to the laws of the United States.'' If the opponents of this legislation deny this reaffirmation of the law, a Constitutional Amendment to protect the definition of marriage is the only alternative.

I urge a ''yes'' vote.

Ms. KILPATRICK. Mr. Speaker, I rise in opposition to House consideration of H.R. 3313. My opposition to the bill is based on my belief that when I took my congressional oath to uphold and protect the United States Constitution

and the people of America, I pledged to represent and protect all three branches of government.

H.R. 3313 purports to prohibit the Supreme Court from serving as the ultimate and final arbiter on legal matters. The legislation is wrongly inspired because it reflects the arrogance of its crafters who are engaged in exercising excessive legislative authority. H.R. 3313 seeks to establish legal precedent that will allow radical ideologues to preclude the ability of the Supreme Court to hear cases and render decisions, in an effort to limit the Court's judicial authority. The consideration of this measure is the initial volley of a frontal assault on the Constitution.

In my consideration of the bill I have continued to be mindful that I subscribe to a personal belief that marriage is a sacred relationship which is directly related to my strong belief in, and support of children. I also believe that children must be protected and supported so that they can thrive and replenish the earth. I worry about the welfare of our children if the Court's authority is eviscerated. If H.R. 3313 is passed, I am afraid that the Supreme Court will be stripped of its judicial authority, and ultimately its ability to fulfill its mandate to render justice.

It is against this backdrop that I oppose H.R. 3313. The legislation is designed to derail the judicial process and the proponents of the bill are trying to justify their efforts by contending that they are trying to stop judicial activism. So I rise in strong opposition to this bill and I encourage my colleagues on both sides of the political aisle to defeat this measure.

Ms. MCCARTHY of Missouri. Mr. Speaker, I rise today in opposition to H.R. 3313. This unwise legislation would circumvent the checks and balances guaranteed in our Constitution by irreparably altering the role of the judicial branch of government. ''The Washington Post'' stated in their July 21 editorial: ''This is as wrong as wrong can be.''

In addition to altering the very foundation of our system of government, H.R. 3313 attempts to abridge the rights of gays and lesbians. Federal courts have played an indispensable role in the enforcement of civil rights laws, often being the sole protector of minority groups, ensuring they are afforded the freedoms guaranteed to all Americans. Enacting this bill would weaken the rights of individuals seeking protection from government through the Federal courts.

This bill would take away the right to judicial review established in the landmark Marbury v. Madison case of 1803. The 200 year old legal precedent set in that case established once and for all that the Federal courts have authority over Federal laws.

The framers of the Constitution intended the balance of power between the branches to protect the minority from the tyranny of the majority. This legislation is not just about same sex marriage, it's about who we are as a country. I urge my colleagues to oppose this obstructionist legislation. As members of Congress it is our responsibility to protect the Constitution that has served us well for more than 200 years and is a model to the world of a government for and by the people.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 734, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. SENSENBRENNER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clause 8 of rule XX, this 15-minute vote on passage of H.R. 3313 will be followed by 5-minute votes on suspending the rules and passing H.R. 4056; and suspending the rules and adopting H. Res. 652.

The vote was taken by electronic device, and there were—yeas 233, nays 194, not voting 8, as follows:

[Roll No. 410]

YEAS—233

Aderholt
Akin
Alexander
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Beauprez
Berry
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Boozman
Boucher
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carson (OK)
Carter
Chabot
Chandler
Chocola
Coble
Cole
Costello
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
Everett
Feeney
Ferguson
Flake
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gibbons
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kline
Knollenberg
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Marshall
Matheson
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ross
Royce
Ryan (WI)
Ryun (KS)
Sandlin
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Turner (TX)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—194

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Bass
Becerra
Bell
Bereuter
Berkley
Berman
Biggert
Bishop (GA)
Bishop (NY)
Blumenauer
Bono
Boswell
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Case
Castle
Clay
Clyburn
Conyers
Cooper
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Emanuel
Engel
English
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Foley
Ford
Frank (MA)
Frost
Gephardt
Gerlach
Gilchrest
Gonzalez
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holt
Honda
Hooley (OR)
Houghton
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kolbe
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lynch
Majette
Maloney
Markey
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Ose
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rangel
Reyes
Rodriguez
Ros-Lehtinen
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Shays
Sherman
Simmons
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—8

Carson (IN)
Collins
Greenwood
Kirk
Kucinich
Lowey
Paul
Quinn

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. GILLMOR) (during the vote). Members

are reminded that there are 2 minutes remaining in this vote.

□ 1553

Mr. LEWIS of Georgia changed his vote from ''yea'' to ''nay.''

Mr. SANDLIN changed his vote from ''nay'' to ''yea.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

COMMERCIAL AVIATION MANPADS DEFENSE ACT OF 2004

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 4056, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. MICA) that the House suspend the rules and pass the bill, H.R. 4056, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 423, nays 0, not voting 11, as follows:

[Roll No. 411]

YEAS—423

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kleczka
Kline
Knollenberg
Kolbe
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—11

Carson (IN)
Collins
Gephardt
Greenwood
Istook
Kirk
Kucinich
Lowey
Paul
Portman
Quinn

□ 1603

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

URGING GOVERNMENT OF BELARUS TO ENSURE DEMOCRATIC, TRANSPARENT, AND FAIR ELECTION PROCESS

The SPEAKER pro tempore (Mr. GILLMOR). The unfinished business is the question of suspending the rules and agreeing to the resolution, H. Res. 652.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Iowa (Mr. LEACH) that the House suspend the rules and agree to the resolution, H. Res. 652, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 421, nays 0, not voting 13, as follows:

[Roll No. 412]

YEAS—421

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Cardin
Cardoza
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth