

and cultural heritage that is based on a centuries-old philosophy which is a benefit even in the 21st century, and to protect the delicate environment of the Tibetan plateau. This approach will contribute to the overall stability and unity of the People's Republic of China.

I have worked on behalf of Tibet and the Tibetan people for over 20 years and I have done everything in my power to bring China and Tibet together to settle their differences peacefully at the negotiating table. I have personally carried messages from the Dalai Lama to China on these issues and there is no doubt in my mind that he is fully prepared to negotiate with China to achieve a just and lasting peace for the Tibetan people.

It is disappointing that another year has gone by and more progress has not been achieved in settling these issues. The road ahead of us is long but we must persevere to ensure that the Tibetan people will one day achieve the freedom and autonomy to shape their own society. It is my sincere hope that China will cooperate with the Dalai Lama in resolving their differences on Tibet.

FULL FAITH AND CREDIT CLAUSE OF THE CONSTITUTION

Mr. KENNEDY. Madam President, I welcome this opportunity to call the attention of the Senate to an impressive article in yesterday's Wall Street Journal by Professor Lea Brilmayer of Yale Law School on the proposed amendment to the Constitution on same-sex marriage.

Supporters of the amendment claim that same-sex marriages in one State must be recognized in all other States. That claim is not true. As Professor Brilmayer explains, "Longstanding precedent from around the country holds that a state need not recognize a marriage entered into in another state with different marriage laws if those laws are contrary to strongly held public policy." States have broad discretion in deciding to what extent they will defer to other states when dealing with sensitive questions about marriage and raising families.

There is no need to amend the Constitution on this issue. States across the country are clearly dealing with the issue and doing so effectively, according to the wishes of the citizens in each of the 50 States. If it is not necessary to amend the Constitution, it is necessary not to amend it.

Professor Brilmayer testified on these constitutional issues at our Judiciary Subcommittee hearing last week, and I ask unanimous consent that her article in the Wall Street Journal be printed in the RECORD.

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

[From the Wall Street Journal, Mar. 9, 2004]

FULL FAITH AND CREDIT
(By Lea Brilmayer)

Last Wednesday's hearing before the Senate's "Subcommittee on the Constitution,

Civil Rights and Property Rights" was billed as the occasion for a serious discussion on the need for a constitutional amendment to limit the interstate effects of Goodridge, the Massachusetts court decision recognizing a state constitutional right to same-sex marriage. Why else would the hearing's organizers invite me, a professor with no particular published opinion on gay rights but dozens of technical publications on interstate jurisdiction? Prepared to do battle over the correct interpretation of the Constitution's Full Faith and Credit Clause, I found myself instead in the middle of a debate about whether marriage is a good thing, and who really loves America's kids the most—Republicans or Democrats.

Like many political debates, the discussion was framed in absolutist terms. Conservatives say that without a constitutional amendment, Goodridge goes national. Gays will travel to Massachusetts to get married and then their home states will be forced (under the Full Faith and Credit Clause) to recognize their marriages. Traditional marriage (apparently a frailer institution than I'd realized) will be fatally undermined unless we act now to prevent the Massachusetts Supreme Judicial Court from imposing its will upon the whole nation. Either amend the Constitution to adopt a national, and traditional, definition of marriage (they say) or there will soon be gay and lesbian married couples living in your own neighborhood. Either it's their nationwide standard—anyone can marry—or it's ours.

The fly in the ointment was that nobody bothered to check whether the Full Faith and Credit Clause had actually ever been read to require one state to recognize another state's marriages. It hasn't. Longstanding precedent from around the country holds that a state need not recognize a marriage entered into in another state with different marriage laws if those laws are contrary to strongly held local public policy. The "public policy doctrine," almost as old as this country's legal system, has been applied to foreign marriages between first cousins, persons too recently divorced, persons of different races, and persons under the age of consent. The granting of a marriage license has always been treated differently than a court award, which is indeed entitled to full interstate recognition. Court judgments are entitled to full faith and credit but historically very little interstate recognition has been given to licenses.

From a technical legal point of view, the debate at last week's hearing was entirely unnecessary. But inciting a divisive and diversionary debate over whether America's children will only thrive in traditional marriages (on the one hand) or whether people who oppose gay marriage are bigots (on the other) was probably a central objective in certain quarters. Social conservatives, in particular, have a vested interest in overstating the "domino effect" of Goodridge. This is particularly true in an election year. Only an ivory tower academic carrying a text full of footnotes would notice anything odd.

The assumption that there must be a single national definition of marriage—traditional or open-ended—is mistaken and pernicious. It is mistaken because the existing constitutional framework has long accommodated differing marriage laws. This is an area where the slogan "stages rights" not only works relatively well, but also has traditionally been left to do its job. We are familiar with the problems of integrating different marriage laws because for the last 200 years the issue has been left, fairly successfully, to the states. The assumption is pernicious because the winner-takes-all attitude that it engenders now has social con-

servatives pushing us down the constitutional-amendment path. For those who see the matter in terms of gay rights, this would be a tragedy. But it would also be a tragedy for those who genuinely favor local autonomy, or even those of us who genuinely favor keeping the constitutional text uncluttered by unnecessary amendments.

If today's proponents of a marriage amendment are motivated by the fear of some full faith and credit chain-reaction set off in other states by Massachusetts, they needn't be. If they are motivated by the desire to assert political control over what happens inside Massachusetts, they shouldn't be. In our 200-year constitutional history, there has never yet been a federal constitutional amendment designed specifically to reverse a state's interpretation of its own laws. Goodridge, whether decided rightly or wrongly, was decided according to Massachusetts' highest court's view of Massachusetts law. People in other states have no legitimate interest in forcing Massachusetts to reverse itself—Massachusetts will do that itself, if and when it wants to—and those who want to try should certainly not cite the Full Faith and Credit clause in rationalizing their attempts.

Unlike most other hotly contested social issues, the current constitutional marriage debate actually has a perfectly good technical solution. We should just keep doing what we've been doing for the last 200 years.

SBA EMERGENCY AUTHORIZATION EXTENSION ACT OF 2004

Mr. KERRY. Madam President, yesterday I introduced a bill, S. 2186, to keep the SBA, its two largest lending programs, the 504 and 7(a) Loan Guarantee Programs, and the Women's Business Centers up and running through the remainder of this year, September 30, 2004. I ask unanimous consent that a letter of support from the trade association of 7(a) lenders, the National Association of Government Guaranteed Lenders, be printed in the RECORD. Along with NAGGL, I thank the American Bankers Association, the Independent Community Bankers of America, U.S. Chamber of Commerce, and the many other small business associations, that have helped us find solutions, demonstrating great cooperation in a difficult position, to help small businesses.

There being no objection, the material was ordered to be printed in the Record, as follows:

NATIONAL ASSOCIATION OF
GOVERNMENT GUARANTEED LENDERS,
Stillwater, OK, March 10, 2004.

Re SBA 7(a) Funding Crisis and S. 2186.

Hon. JOHN F. KERRY,
*Russell Senate Office Building,
Washington, DC.*

DEAR SENATOR KERRY: As Congress considers how to solve the ongoing SBA 7(a) program funding crisis, we are writing to express our support for S. 2186, which includes provisions that both Small Business Committees and the 7(a) industry have already agreed are equitable.

While NAGGL is generally opposed to programmatic fee increases, the 2004 budget for the 7(a) program has made his concession necessary. NAGGL testified in 2003 that 2004 program demand would be nearly \$12 billion, but the Administration adamantly disagreed with our estimate, providing program level

of only \$9.5 billion. The Administration has also failed to reprogram any additional money to the 7(a) program or offer a supplemental appropriations request.

As a result, the SBA's flagship 7(a) loan program, the single largest provider of long-term start-up and expansion loans to American's small businesses, has been crippled since the beginning of this fiscal year, when the SBA temporarily shut it down due to a funding shortfall. When the Agency reopened the program a week later, it implemented an artificial loan cap of \$750,000—a reduction of more than 50% of the program's statutory loan limit of \$2 million—and a prohibition on piggyback loans, which would have allowed lenders to make loans in excess of a loan cap.

Businesses who had already submitted applications for loans in excess of the new cap were then told their deals would not qualify for the program. These applicants had gone through months of financial planning and had been promised their loans would be approved. Many had already begun purchasing equipment and hiring employees. And if their deals don't get done, many will lose earnest money they had taken from personal savings and retirement plans to inject into these loans.

Other potential applicants who would ordinarily qualify for the 7(a) program have since been told there is no alternative to finance their start-up or expansion. The net result to these small businesses is a loss of faith in the U.S. government. The net result to the economy is a loss of jobs.

The provisions of S. 2186 fix this problem, and the bill has NAGGL's full support. As the trade association representing lenders who make over 80% of loans in the 7(a) program every year, we can attest to the fact that the minimal fee increases in S. 2186 are ones that lenders will pay and will not be passed along to borrowers. We also continue to oppose the SBA's legislative proposal to reduce the guarantee on all 7(a) loans to 50% and allow the legislation that provided for lender and borrower fee decreases through the end of this fiscal year to simply sunset.

Without the provisions of S. 2186, \$3 billion in loans will remain unavailable to small businesses for the remainder of FY 2004—a net loss of approximately 90,000 jobs. We also fear that if a swift and equitable solution is not enacted, many 7(a) lenders will flee the program, leaving a void in availability of the long-term financing that is so crucial to small businesses' success. This will be occurring at a time when our economy is in desperate need of a shot in the arm.

We request that you press for swift passage of S. 2186 to bolster economic recovery and the small businesses that can drive it. Thank you in advance for your consideration.

Sincerely,

TONY WILKINSON,
President & CEO, NAGGL.

NOMINATION OF STEPHEN JOHNSON TO BE DEPUTY ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

Mr. WYDEN. Madam President, today, I announced my intention to object to any unanimous consent request for the Senate to take up the nomination of Stephen Johnson to be Deputy Administrator of the Environmental Protection Agency. I did this because I have been trying to obtain information concerning EPA's decision to become involved with the City of Portland's combined sewer overflow program since last August. Despite numerous

requests, EPA has to this point failed to answer my questions and failed to provide me with the documents I have requested, with the exception of a limited number of documents that EPA would have to provide to any requester under FOIA.

There are legitimate questions about EPA's decision to intervene 10 years after the City signed an enforceable order with the State of Oregon and after the city and its ratepayers have spent more than \$500 million to reduce sewer overflows. But to date, I have been unable to get answers to my questions from EPA despite repeated requests.

Last August, I wrote to the Acting EPA Administrator Marianne Horinko requesting answers to a number of questions concerning EPA's decision to become involved with the City of Portland's combined sewer overflow program. I also requested copies of documents about the Portland sewer situation. I never received answers to my specific questions, and I have received only a small number of the documents I requested.

I also submitted written questions following a hearing of the Senate Environment and Public Works Committee on September 15 to then EPA Assistant Administrator for Water, Tracy Mehan. I never received a response from Mr. Mehan, who has subsequently left the agency, or anyone else from EPA.

In October, I received a letter from Acting EPA Administrator Marianne Horinko promising to "work[] with your staff to identify which of the documents that are not enforcement sensitive or confidential would be most helpful to you." Since then, I have received only a slim file of documents that doesn't begin to answer my questions.

Finally, I ask EPA Administrator Leavitt to look into this personally more than a month ago.

Until I receive answers to my questions and the documents I need to exercise my oversight responsibilities over EPA as a member of the Senate Environment and Public Works Committee, I will continue to object to any unanimous consent request for the Senate to take up the nomination of Stephen Johnson to be Deputy Administrator of the Environmental Protection Agency.

ADDITIONAL STATEMENTS

RECOGNITION OF E. NORMAN VEASEY

• Mr. CARPER. Madam President, I rise today in recognition of the Honorable E. Norman Veasey upon his retirement as Chief Justice of the Supreme Court of Delaware. He has served as Chief Justice of the State of Delaware for 12 years. His leadership over that span of time has won him the respect and gratitude of our entire State. He has been, and remains, a trusted friend.

Chief Justice Veasey was born on January 9, 1933 in Wilmington, DE to

the late Dr. Eugene E. Veasey and Elizabeth N. Burnett. He attended the Peddie School in Hightstown, NJ. From there, he went on to Dartmouth College where he obtained his A.B. in 1954. He then attended the University of Pennsylvania Law School where he graduated in 1957 with his LL.B. At the University of Pennsylvania Law School, he was a Member of the Board of Editors of the University of Pennsylvania Law Review from 1955 to 1957 and was Senior Editor from 1956 to 1957. He was admitted to the Delaware Bar in 1958.

Chief Justice Veasey has spent most of his life in public service. He served honorably in the Delaware Air National Guard from 1957 to 1968 whereby he obtained the rank of captain. He has also served, among a long list, as Chief Deputy Attorney General of the State of Delaware, Chair of the Delaware Board of Bar Examiners, President of the Conference of Chief Justices in 2000, Chair of the ABA Special Committee on the Evaluation of the Rules of Professional Conduct "Ethics 2000", and President of the Delaware State Bar Association. Furthermore, he served as a Director of Beneficial Corporation and National Bank for 13 years from 1979 to 1992.

From 1957 to 1988, he was a member of the prestigious Delaware law firm of Richards, Layton & Finger, with practice emphasis in corporate transactions, litigation and counseling. He was a member of the firm from 1957 to 1992, serving as a partner from 1963 to 1992 and as president from 1985 to 1988.

Judge Veasey became Chief Justice of the State of Delaware on April 7, 1992, having been nominated to that post by then Governor Michael N. Castle and unanimously confirmed by the Delaware State Senate. Chief Justice Veasey is a Judicial Fellow of the American College of Trial Lawyers and is a member of both the Standing Committee on Rules of Practice and Procedure of the United States Judicial Conference and the American Law Institute. He is a Life Fellow of the American Bar Foundation and a director of the Institute for Law and Economics at the University of Pennsylvania. He has been a frequent speaker on corporate governance, ethics and professionalism at continuing legal education programs and has been published widely in the fields related to corporate governance.

In June of 2002, Chief Justice Veasey received the 2002 Paul C. Reardon Award, one of the highest awards given by the National Center for State Courts, NCSC. The Reardon Award, named after the late Massachusetts Supreme Court Justice who was the first president of The National Center's Board of Directors, is presented to a person who has made outstanding contributions to the improvement of the justice system and who has supported the mission of The National Center.

Chief Justice Veasey has been a member of the Conference of Chief Justices since 1992, and headed the conference from 1999 to 2000, a singular