

We don't raise our neighbor's children as our own, but we do help all the children in our community every time we affirm and reinforce marriage—through our speech, through our action, through our culture, and through our wallets. It is a position reinforced through our laws and our practices, and I believe it is a good one. Government cannot be neutral, should not be neutral, nor should it pretend it is possible to be neutral when it comes to children and families.

Most Americans take for granted that traditional marriage as we know it today will always exist. But that is sadly proving to be a mistake. We see in Scandinavia why that assumption is a mistake.

Across this country today, renegade judges and some local officials are attempting to radically redefine this traditional institution. Lawsuits seeking to dismantle traditional marriage have already been filed in Federal court and State courts in Massachusetts, New York, Nebraska, Utah, Florida, Indiana, Iowa, Georgia, West Virginia, Arizona, Alaska, Hawaii, New Jersey, Connecticut, Oregon, Washington, California, and Vermont, as well as my home State of Texas. According to the New York Times, we can expect lawsuits in 46 States by residents who have traveled to San Francisco in recent weeks to receive a marriage license, then return and claim the validity of that marriage under the laws of their home State.

Louis Brandeis famously described the States as "laboratories for democracy." But he was, of course, referring to representative government in the States and not to the courts. Given how this litigation has spread, it appears that judicial activists bent on experimenting with the institution of marriage will have every possible opportunity to do so.

The American people are not persuaded that this radical redefinition of marriage is needed or that it is a good thing. When given the opportunity in the voting booth, they have always supported traditional marriage clearly and forthrightly.

While The New York Times recently described the law on this subject in California as "murky," the California family code clearly defines traditional marriage in an initiative enacted by voters themselves 4 years ago by 61-percent majority.

Rather than believing this discussion is altogether a bad thing, I believe there is a lot of good to be had out of a national discussion on the issue and importance of traditional marriage, supporting family life as providing the best hope for raising children. Those of us on the side of traditional marriage, though, must not flinch in the face of those who would try to characterize our efforts as some hateful or hurtful position. Indeed, I believe advocates of traditional marriage must not back down. We must not allow those who will try to paint our motivations as

discriminatory because, in fact, they are not.

What we are seeking to preserve is the fundamental bedrock of our society, the wellspring of families, and an institution that is in the best interest of children. That is what we are for. Those of us who have the honor of serving in this body and in government have a duty to act to protect this positive social good and not ignore this issue until it is too late.

Some activists believe traditional marriage itself is about discrimination, that all traditional marriage laws are unconstitutional and must, therefore, be abolished by the courts. Indeed, that is what the court in Massachusetts said. These activists found friends in four justices in Massachusetts who were legislating from the bench and who contended that traditional marriage is "rooted in persistent prejudices" and represents "invidious discrimination." Those are not my words. Those are the words of the four justices who struck down traditional marriage laws in Massachusetts.

Indeed, these justices even claim that traditional marriage is not in the best interest of children. They accuse others of wanting to write discrimination into the Constitution. Yet they are the ones writing the American people out of our constitutional democracy.

In the face of similar arguments, Hawaiians and Alaskans a number of years ago took preemptive action when they were faced with State constitutional challenges to their traditional marriage laws. Citizens of Nebraska, Nevada, and other States have also taken preemptive action under their State constitutions before suits were even filed.

Interestingly, in the hearing we had just a couple weeks ago, we heard from Nebraska Attorney General Jon Bruning, who said that while his state has a Constitutional Defense of Marriage Amendment, even that amendment has now been challenged in Federal Court by the American Civil Liberties Union, who claim that this state constitutional provision itself violates the Federal Constitution.

The threat to traditional marriage is now a Federal threat, and a Federal constitutional amendment is the only way to preserve traditional marriage laws nationwide before it is too late.

America needs stable marriages and stable families. The institution of marriage is just too important to leave to chance.

Unless and until the American people are persuaded otherwise, we have a duty, as their representatives, to defend the laws they passed and to not let those who would take the law into their own hands reshape society according to their whim.

We can be confident in the fact a constitutional amendment is the most representative process we have in American law—requiring, as it does, two-thirds of the Congress to pass a constitutional resolution and three-quar-

ters of the States to ratify it. It is the most democratic form of lawmaking we have in this country, bar none.

The burden of proof is on those who seek to experiment with traditional marriage, an institution that has sustained society for countless generations. The experimenters must present their case to us that the radical new social unit they propose is good for the community, good for families and, most important of all, good for children. Thus far, the lab for this experiment has already been run in Scandinavia, and it has produced nothing but disastrous results.

With that, Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WYDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SMITH). Without objection, it is so ordered.

SOARING GASOLINE PRICES

Mr. WYDEN. Mr. President, gasoline prices are soaring to the highest levels ever and once again the response of the Federal Government is to do nothing. I have come to the floor today because I believe the gasoline consumer is about to be hit by a perfect storm, a combination of refinery cutbacks that boost profits, the fact that oil is being moved into the Strategic Petroleum Reserve with no plan to protect the consumer from resulting shortages, and the prospect of even higher OPEC prices when OPEC cuts production possibly in June, just at the start of the high travel season. I want to discuss this today because inaction in the face of spiraling gas prices is the worst possible response Congress and the administration could have at this time.

Higher oil and gasoline prices act like attacks on our consumers, causing them to defer spending in order to pay for gasoline. Right now, consumer spending is the principal ingredient driving our economy. If consumer spending declines, economic recovery is going to be delayed and there is the chance of the economy sliding further into a recession.

I know gasoline prices are already as high as they have ever been, and the perfect storm I see coming in the days ahead is going to soak consumers for even more money at the pump with the prices already staggering.

According to the American Automobile Association, the national average price of gasoline is \$1.72 per gallon. That is just 2 cents short of the alltime high set last August and, of course, it is not even the peak driving season. California prices are consistently way over \$2 per gallon. The prices in my State are consistently in the ballpark of \$1.80. I will outline this afternoon

why I believe it is likely to get even worse.

One major oil company, Shell, has announced it is deliberately shutting a 70,000-barrel-per-day refinery in Bakersfield, CA. This refinery is critical to the entire West Coast market. The fact is, when Shell permanently constricts gasoline supplies and drives up prices along the West Coast, our area, which already has staggeringly high unemployment, is going to be hit very hard.

Earlier this month, at a Senate Energy Committee hearing, I asked the Administrator of the Energy Information Administration whether the closing of Shell's Bakersfield refinery could boost West Coast prices even higher. That day he agreed that could be the result of that refinery shutting down. Yet, in the face of these kinds of problems, the response of the Federal Government is simply to sit on the sidelines.

Shell's announcement of its decision to close the Bakersfield refinery claimed in a statement that there is simply not enough crude supply to ensure the viability of the refinery in the long term. Recent news articles have reported that both Chevron/Texaco and State of California officials estimate that in that valley where the Bakersfield refinery is located, there is a 20- to 25-year supply of crude oil remaining. In fact, Bakersfield, CA, reported on January 8 of this year that Chevron/Texaco plans on drilling more than 800,000 new wells in the valley, which is 300 more new wells than last year. The fact that Texaco, Shell's former partner in the Bakersfield refinery, is increasing drilling in the area calls into question this claim by Shell that a lack of available oil supply is the real reason for closing the Bakersfield refinery.

Shell also claimed that its decision was not made to drive up profits, but the company admitted to the Wall Street Journal that there will be an impact on the market. Of course, the impact is going to be to drive up prices even higher. The question for the Senate, and why it is so important for us to act now, is, How much are these prices going to go up and when is the Senate going to finally stand with those who have to make these gasoline purchases?

In 2001, I revealed internal oil company documents that showed major oil companies pursued efforts to curtail refinery capacity as a strategy for stifling competition and boosting their profits. These documents raised significant questions about whether American oil companies are trying to pull off a financial triple play: Boosting profits by reducing refinery capacity, tagging consumers with higher pump prices, and then going out and arguing for environmental rollbacks and additional financial incentives.

I say, and I want to use this to make clear why I think it is important the Senate should act, that I believe these

practices I described in 2001 are still ongoing today as gasoline prices rise even higher and consumers suffer even more. In memos detailed in a report I issued then, oil companies articulated a desire to reduce oil and gas supply.

One document from Texaco reads:

Significant events need to occur to assist in reducing supplies and/or increasing the demand for gasoline in order to increase prices and grow profit margins. Oil company competitors also discussed—

Discussed with each other, Mr. President—

mutual opportunities to control oil and gas supply, thus keeping markets tight.

In one case, they were trying specifically to prevent the restart of a closed refinery in southern California. One company document revealed if the refinery in question, Powerine, was restarted, the additional gasoline supply on the market could bring down gas prices and refinery prices by 2 cents to 3 cents per gallon and it called for a "full court press" to keep the refinery down. The Powerine refinery's capacity was 20,000 barrels per day. The Bakersfield company Shell wants to shut down has a capacity of 70,000 barrels a day. If oil companies in the mid-1990s thought a much smaller shutdown would raise the price of gas by 2 cents to 3 cents, you can't tell me the shutdown of a refinery with 3½ times the capacity will not have an even larger impact on prices at the pump.

What makes Shell's decision to close its Bakersfield refinery especially curious is it seems the company has done virtually nothing proactively to find a buyer. But, to date, in spite of my requests and the requests of others, the Federal Trade Commission has made no effort to stop or even slow plans for Shell's refinery closure. The Federal Trade Commission has been arguing they can only prosecute if they find out-and-out blatant collusion, setting out a standard that is virtually impossible to prove against these very savvy oil interests. But in this case the Federal Trade Commission has the authority to act because the Agency allowed two megamergers to go through that directly affect the refinery Shell now plans to shut down. The Federal Trade Commission had a chance to act when it allowed Shell to acquire full ownership of the Bakersfield refinery in 2001 from a Shell-Texaco partnership.

The Federal Trade Commission had another chance to act when it allowed Shell to acquire Pennzoil-Quaker State in 2002. Then last November, when Shell announced it was closing the Bakersfield refinery, the Federal Trade Commission had a third chance to act, using its continuing authority to reexamine these earlier mergers.

I say it is time to get the Federal Trade Commission off the sidelines and onto the side of the consumer who is getting shellacked at gasoline pumps all across America. Today I am calling on the Federal Trade Commission to exercise its continuing authority over these past mergers and to either block

the shutdown of Shell's Bakersfield refinery or to otherwise keep refineries in that area viable. That set of decisions will affect the entire west coast gasoline market. At a time when our economy is being hit so hard, it is absolutely critical to the public interest.

The Energy Department ought to be doing more to address the problem of high gasoline prices, but at a minimum the Energy Department should not be making the problem worse. When Secretary Abraham was asked recently about the problem of rising gasoline prices, he told reporters he was extremely concerned but did not specify the Department would do anything. One thing that could be done by the Department that would help address the problem is the Energy Department could stop making the current supply situation worse by taking oil from the tight U.S. market to fill the Strategic Petroleum Reserve without any protections for the consumer.

On February 12, as crude and gasoline prices were spiking up, the Bush administration awarded five new long-term contracts to fill the Strategic Petroleum Reserve. These new contracts will run from April through the summer, the very time period where prices typically shoot upward. If the Bush administration were concerned about high gasoline prices, the Energy Department could have either delayed awarding these long-term contracts or arranged to defer the delivery of oil to the Strategic Petroleum Reserve, as was done last winter, to minimize the impact on the market and on the consumer. But now the administration is taking oil off the market and moving it into the Strategic Petroleum Reserve with no concrete plan to protect consumers from the higher prices this action will cause.

Earlier this month, Guy Caruso of the Energy Information Agency told me OPEC would be making up the difference in supply for oil that is being moved into America's Strategic Petroleum Reserve. So you have a situation where the administration, through the Energy Information Agency, is telling people to not really sweat these OPEC decisions. But now OPEC is telling us they are going to cut production by 1 million barrels a day. This morning we hear they might hold off until June instead of making cuts in April. But even if they do that, the OPEC production cuts would come at the beginning of the summer travel season. So certainly OPEC is engaged in some doubletalk. For some time they have not kept their promise to hold oil prices within their own target price range. In fact, some members of OPEC just want the price range increased.

Some in OPEC say they are concerned prices are too high. Yet this cartel is taking oil off the market. Others are saying they see a glut of oil on the market, justifying the production cut. These are mixed signals, but the message for our consumers is clear: OPEC is certainly going to do what is

best for OPEC, not what is best for the American consumer.

My bottom line is the Federal Government certainly is challenged, in terms of stopping OPEC from cutting production. But certainly the Federal Government can take steps and take steps immediately to make sure there is competition in our gasoline markets so consumers are not getting ripped off at the pump.

Today I am calling for Congress to take action on a specific, concrete package of procompetition initiatives to help consumers at the Nation's gas pumps. First, Congress needs to direct the Government regulators to act to eliminate anticompetitive practices that currently siphon competition out of gasoline markets. Scores of communities, including those in my home State, have few if any choices for the consumer. Nationwide, the gasoline markets in Oregon and in at least 27 other States are now considered to be tight oligopolies, with 4 companies controlling more than 60 percent of the gas supply. In California, where Shell's Bakersfield refinery is located, 4 oil companies control 70 percent of the market. In these tightly concentrated markets, numerous studies have found oil company practices have driven independent wholesalers and dealers out of the market. One practice they employ, called redlining, limits where independent distributors can sell gas. As a result, independent stations have to buy their gas directly from the oil company, usually at a higher price than the company's own brand-name stations are paying. With these higher costs the independent stations can't compete.

Last year I sponsored legislation, S. 1732, that would give the Federal Trade Commission additional tools to promote competition in these areas that are essentially small monopolies. Under my bill, in these very highly concentrated markets you would have consumer watch zones. In these zones there would be greater monitoring of anticompetitive practices by the Federal Trade Commission. The Federal Trade Commission would also be empowered to issue cease-and-desist orders to prevent the companies from gouging the consumer, and Congress would stipulate certain anticompetitive practices like redlining and zone pricing are, per se, anticompetitive and oil companies engaging in these anticompetitive practices that manipulate supply or limit competition would have the burden of proof to show these anticompetitive practices are not harming consumers.

There is a vehicle right now. Right today there is a vehicle, S. 1737, Congress could use to address the problem of skyrocketing gasoline prices, because the companies admit the market is not going to solve the problem on its own.

Last August, a report by the RAND Corporation revealed even oil industry officials are predicting more price vola-

tility in the future. This means consumers can expect more frequent and larger price spikes in the next few years.

Last November, the Energy Information Agency also issued a report on the causes of last summer's record high gas prices. The Energy Information Agency found, "There is continuing vulnerability to future gasoline price hikes." The industry and the Bush administration both agree gasoline price spikes are going to be a continuing and significant problem. But neither, as of today, is willing to step in and work with the Congress on a bipartisan basis to do anything about the problem. I am here to say the Congress needs to act now. This is legislation to act now before gasoline shoots up to \$3 per gallon, as some oil industry analysts are predicting.

The reasons Congress ought to act are twofold. Aside from the obvious cost to the consumer at the pump, there are hidden costs to the price manipulation. There is a huge economic impact that will only worsen as prices rise. When gasoline costs more, the costs for our businesses in the transportation area go up. Our businesses see their profits go down. So we have one of two things—either the prices of the goods they sell to consumers have to go up or the number of people they employ is going to plummet. Higher gasoline prices either means bigger costs for consumer goods or fewer jobs in our economy. And certainly in our home State, we cannot afford to see that. This isn't high economic theory. This is basic math.

Just this month, the New York Times quoted a truck driver from Wisconsin saying eventually the added cost of transporting household goods and snacks and other items will once again come back and clobber the consumer. You have a double whammy. Consumers get socked at the pump in person, and then get hit again with higher prices for the goods they buy. That is not acceptable to me, and I don't believe it is acceptable to the American people.

The challenge now is for the Congress to stand up to the status quo in the oil industry. I understand—and certainly nobody would minimize this—this will be a hard row to hoe in terms of taking on these very powerful interests.

When I first introduced legislation that now can be used to protect the consumer from gasoline prices going up to \$3 per gallon, various oil interests and Bush administration officials voiced great consternation and argued vociferously that the legislation I believed will protect the consumer was unacceptable to the oil industry and the administration.

I still believe the proposals which I have put forward in legislation and on which the Congress could move now would protect competition and free markets. My legislation doesn't involve big expenditures from Government. It doesn't involve setting up new

agencies. It involves bringing some competition and free market forces back to this country and to the gasoline business—particularly in those States where we have these quasi-monopolies.

But for those who disagree with my legislation, S. 1737, which I believe would protect the consumer who is getting clobbered at the gasoline pumps, I issue a challenge. If they think they have a better approach than my legislation for bringing competition and free market forces back to the gasoline market, they have an obligation to come forward at a time when our consumers are being hit so hard at the pump. Unless people who are opposing my legislation are prepared to say the record high gasoline prices aren't a problem, they have an obligation to come forward with their proposals to promote competition. Put an alternative on the table and stand up for the consumer.

I also think Congress needs to address the growing gap between consumer demand for gas and what the oil companies can produce. When supplies are tight and there is no spare gasoline in inventories, consumers are especially vulnerable to supply shortages and price spikes. That frequently causes severe price spikes when refineries shut down unexpectedly or a pipeline breaks, as happened last summer. Congress should ensure consumers are not left stalled by the side of the road or being pounded at the pump by taking steps to keep supplies available in an emergency. One option would be to require major oil companies to maintain minimum inventories to address unexpected supply crunches.

Alternatively, the Federal Government can create a strategic gasoline reserve to provide supplies during refinery or pipeline shutdowns. This proposal would build on the strategic reserves that already exist for petroleum and heating oil supplies.

It seems to me what it all comes down to is the American people deserve better, and they deserve better than the Federal Government being AWOL when our consumers are facing skyrocketing gasoline prices across the country. With a new energy bill expected to come before the Senate in the next several weeks, this is an opportunity to put the Government on the side of the American consumer when they are filling their tanks at the pumps across the land.

I conclude by again commenting on the role of the Federal Trade Commission. This is the agency that is charged by Congress with promoting competition and free markets. Again and again in the energy field they have either sat on the sidelines or simply looked the other way in the face of increasing concentration in this critical sector of our economy. With gasoline prices already soaring at the highest level at this particular time, it seems to me it is absolutely critical for the Federal Trade Commission to reverse its present

course, get on the side of the consumer, and promote marketplace forces and competition in the gasoline business.

I intend to use my seat on the Senate Commerce Committee at every possible opportunity to force the Federal Trade Commission to do the job it has been charged by the Congress to do. It ought to start with looking seriously into the shutdown in Bakersfield, which is going to, in my view, have calamitous consequences for the entire west coast gasoline market. But it also should include a broader look at the implication of concentration in the gasoline business.

I am hopeful that ultimately the Federal Trade Commission will support my legislation, S. 1737, which would promote more competition in the gasoline business. And if they disagree with it, the head of that agency, Mr. Timothy Muris, ought to propose his own alternative.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, before I make comments on a different subject matter, I commend my friend and colleague for addressing the issue of energy—energy production and energy costs—while he is still on the floor. We have probably close to 200,000 American troops in the gulf area to protect and preserve the countries in those regions. It seems to me it would not be asking too much of our President to jawbone those leaders to increase production. We can see what an increase of production of 1 million barrels per day and 2 million barrels a day would mean. It would have a dramatic impact and effect on consumers in this country. It is difficult for me to understand why we should not expect that kind of leadership from the President of the United States when every day we learn young Americans are losing their lives in that region, and tens of thousands of troops have been serving over in that region for years in order to protect the security of those nations.

Now we come to an issue of enormous need in our country—an important part of that because of our responsibilities in meeting the defense needs and security needs for our forces overseas. We have silence by the administration when they are asked why they aren't jawboning these countries in the Middle East.

I don't know whether the Senator could make some comment on that, just briefly. I listened with great interest to his other comments. I hope the Senate as a whole will take him to heart.

Mr. WYDEN. Mr. President, I very much appreciate the distinguished Senator from Massachusetts coming to the floor because he has done so much to help the consumer in this area. My concern—and I would be interested in the Senator's reaction—is I think the consumer is about to get hit by a perfect storm with the combination of failure to push OPEC, as the Senator

has said, to try to help on the production issue, plus the refinery cutbacks that apparently are primarily to boost profits, plus filling the strategic petroleum reserve. With these factors coming together, it seems to me a perfect storm is going to push the consumers' gasoline price at the pump to \$3 a gallon.

I would be interested in the Senator's reaction, and I am anxious to work with him in this effort to push the administration to go after OPEC.

Mr. KENNEDY. The Senator is sounding the alarm. I think his predictions are self-evident. Thankfully, he is providing the leadership before the full impact of these different events, the confluence of these different events taking place. Clearly, they will take place over the course of late spring or early summer.

I commend the Senator for bringing this to our attention. It is an enormous service, not only to the people of his State but the people of my State and the people all over this country. As we are coming into the late spring and summer, constituents will be wondering where we have been as representatives in dealing with this issue. The Senator from Oregon has outlined a very critical problem and made splendid recommendations. I look forward to working with the Senator to achieve these recommendations.

JOBS ACT

Mr. KENNEDY. Mr. President, I welcome the chance to address the Senate briefly this afternoon on the underlying legislation. We are in morning business now, and we will lay down the bill shortly. I am informed my friend and colleague from Iowa intends to offer an amendment to address the proposal being developed, that has been developed, and continues to be developed by the administration to restrict overtime pay for some 8 million Americans.

I ask unanimous consent to be able to proceed beyond the 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, before the Senate is the legislation called Jumpstart Our Business Strength Act, or the JOBS Act. The proposal of the Senator from Iowa is entirely appropriate to address this issue. He will be addressing key aspects of employment in this country; that is, the question of adequate pay for those working long hours in this country, and the proposal of the administration to cut back on their pay by eliminating the overtime for some 8 million workers.

For those who have been traveling not only in their own States but around the country—as I and other Members have—we know we are facing a serious challenge in creating good jobs with good benefits in the United States. This is affecting the quality of life of millions of American families.

The fact is, the Senate has refused to increase the minimum wage for a pe-

riod of 7 years. We have 7 million Americans, our fellow citizens, hard-working Americans, men and women who take a sense of pride even in working at minimum-wage jobs. They are the men and women who clean the buildings where American commerce takes place. They work in our nursing homes to take care of our elderly people. They work as teachers' aides in many of our schools. These are men and women of dignity. They have worked long and hard over the period of the last 7 years, and we have failed to provide an increase in the minimum wage because our Republican leadership and this administration refuse to support an increase in the minimum wage. That is fact No. 1.

Fact No. 2. Even though we have seen the total loss of some 3 million private sector jobs and now an overall loss of about 2.2 million jobs, this administration refuses to extend the unemployment compensation. The unemployment compensation fund is \$15 billion in surplus. It was paid by people who have worked hard for this very eventuality that we are now facing—this heavy, prolonged unemployment. Those who have extended unemployment, who have worked hard, should be entitled to unemployment compensation. It is in surplus.

The proposal of the Senator from Washington, Ms. CANTWELL, will cost \$5.6 billion to extend unemployment compensation for 13 weeks. There are 90,000 Americans a week losing their unemployment compensation. How do these families pay for their mortgage, put food on the table? How do they feed their children? How do they look forward to the future with any kind of sense of hope?

Where are we in responding to them in their crisis of need? Our Republican colleagues, the Republican administration, refuses to extend unemployment compensation.

If that is not bad enough, what is the administration proposing to do now? They are proposing to eliminate overtime pay for some 8 million of our fellow Americans who otherwise are receiving overtime.

Who is receiving overtime? Police officers, nurses, firefighters. Do those three categories have a ring to Members in the Senate and across this country? Who is in those categories? Whom do they represent? They represent homeland security.

On the one hand, we hear a good many statements in the Senate about trying to deal with the problems of homeland security. On the other hand, the administration is out to take away overtime for those individuals who are the backbone of homeland security.

These are the categories: Police officers, nursing, firefighters. The list also includes primarily women workers in our society. The overtime pay affects all workers but it particularly affects women.

What has been the state of our economy now in terms of new workers?