

to deliver products and services at lower prices.

For the past several years, the Department of Defense has had a program in place to try to develop and maintain small disadvantaged- and women-owned vendors as a vital part of our Nation's defense industrial base. This program has also been a principal source of opportunity for these firms by offsetting some of the other Federal procurement practices, specifically contract bundling, that have squeezed small business out of contracting.

Small businesses play a critical role in our Nation's economic and homeland security. Small businesses are currently the leading job creators in our Nation's economy and are responsible for more than 75 percent of net new jobs in America.

However, millions of Americans today continue to struggle to find jobs. Hardest hit are the Nation's inner cities and depressed rural areas that face poverty year after year.

By locating in a historically underutilized business zone—HUBZone, more than 10,000 small businesses have responded to the call to make a difference in these underserved communities and to strengthen our economic security. Congress needs to do its part by making the DoD a frequent customer of these small businesses, so we can help them compete effectively in the marketplace and create more jobs.

The Federal government, including the DoD, can and should also do more to meet its commitment to small businesses owned by veterans, including service-disabled veterans. As committee chair, I am dedicated to ensuring that these individuals who have sacrificed so much to defend free competitive enterprise are provided with increased opportunities to perform Federal contracts, especially contracts for weapons, equipment, and services for our warfighters.

In the fiscal year 1991 National Defense Authorization Act, the Congress adopted a provision to help small disadvantaged firms develop the technical infrastructure necessary to perform Federal contracts effectively. This pilot program, the Mentor-Protégé program, provided for prime contractors to either be reimbursed for their added costs in providing technical assistance to certain small firms, or to receive credit for accomplishing their subcontracting plans in lieu of reimbursement. Four years ago, I sponsored legislation that now enables women-owned firms to participate in the program.

Experience under the Mentor-Protégé pilot program has been positive. Mentor firms have demonstrated that they can help train small disadvantaged- and women-owned protégé firms to develop the infrastructure, necessary to be successful in large Federal contracts. As these successful protégés graduate, mentors can open their doors to the next generation of firms eager to contract with DoD as suppliers and subcontractors.

The program clearly has contributed to the success of bringing small disadvantaged- and women-owned businesses into DoD contract work. Over the last four years the DoD has increased the volume of dollars awarded to small disadvantaged businesses by more than 180 percent and the dollars awarded to women-owned firms by nearly 100 percent.

I ask that we expand participation to businesses owned by service-disabled veterans and businesses that locate in severely economically distressed areas. In so doing, we enhance the business competitiveness of these classes of firms and strengthen our defense industrial base by generating waves of small businesses prepared to supply goods and services in defense of our Nation.

I urge my colleagues to accept this amendment.

Ms. SNOWE. Mr. President, I also have an amendment to Section 833 of the National Defense Authorization Act for Fiscal Year 2005 providing for improvements and accountability measures in the test program which permits large prime contractors to develop company- or unit-wide subcontracting plans.

This amendment is designed to ensure that the test program undergoes appropriate evaluation and monitoring in order to enable accurate assessment of the effects of the test approach on subcontracting opportunities for small business.

Currently, the Federal Acquisition Regulation and customary procurement practices require prime contractors to prepare subcontracting plans with a particular contract or potential contract in mind. The test program, which operates as an exception to this rule, was authorized in the National Defense Authorization Act for FYs 1990 and 1991. The purpose of the test program was to explore whether comprehensive subcontract planning could prove to be an adequate alternative for achieving meaningful small business subcontracting at lesser cost.

In April 2004, the General Accounting Office issued a report entitled "Contract Management: DoD Needs Measures for Small Business Contracting and Better Data on Foreign Subcontracts," GAO-04-381, where it found the test program's results inconclusive and criticized the Defense Department for failing to adopt measurement metrics to meaningfully evaluate the test program. Despite this report, the Armed Services Committee approved a five-year extension of the test program in Section 833 of the Act.

As chair of the Small Business Committee, I am deeply concerned that the program fails to live up to its purpose as a test, and I question the prudence of extending this test program without proper standards and procedures to measure its success. My amendment provides a certain deadline for the DoD to institute the needed measurement metrics and freezes the expansion of the program until these metrics are in

place. The amendment also provides for oversight by the GAO.

PROCUREMENT TECHNICAL ASSISTANCE PROGRAM

Ms. SNOWE. Lastly, Mr. President, I have an amendment to the National Defense Authorization Act for Fiscal Year 2005 to strike Section 811(b) of the act, which alters disclosure requirements for subcontracting information provided to small businesses through the Procurement Technical Assistance Program of the Defense Logistics Agency.

This amendment will ensure that small businesses seeking federal subcontracting opportunities through PTAP would continue to have adequate point-of-contact information for procurements up to \$1 million.

The Procurement Technical Assistance Program assists small businesses by providing training and information about federal business opportunities, both prime and subcontracts. Under the terms of this program, the DLA joins forces with State, local, and tribal governments for the purpose of delivering technical assistance services to businesses that are new to federal procurement.

Current law requires that experienced defense contractors with over \$500,000 in contract awards disclose to assistance providers the contact information for their executives with authority to enter into subcontracts. These disclosures must be made only once a year. The cost of disclosures is practically non-existent. However, the disclosure requirement materially advances the purpose of the program by allowing small businesses easy access to potential subcontracts.

Nevertheless, Section 811(b) of the act seeks to exempt experienced defense contractors from these annual disclosures unless they receive over \$1 million in government contracts. The need for this change is, at best, questionable. Providing a few names and phone numbers once a year is hardly a significant burden. As chair of the Small Business Committee, I am concerned that this change would needlessly obscure the procurement process for small business. I urge the Senate to retain the current PTAP disclosure requirements.

• Ms. CANTWELL. Mr. President, I wish to clarify the intent of legislation I introduced yesterday, S. 2457. Certainly, I would like to ensure that the record reflects my intention in introducing this bill.

The provisions contained in S. 2457 mirror those contained in Section 3116 of the fiscal year 2005 Department of Defense authorization bill, which pertain to the reclassification of high-level radioactive waste. Let me be clear: I oppose these provisions. I hope the majority of my colleagues will oppose these provisions as well. I introduced this legislation for the purpose of demonstrating to my colleagues that

issues within the scope of the Nuclear Waste Policy Act of 1982 do not belong within the jurisdiction of the Senate Armed Services Committee. This was an issue of some debate on the floor yesterday, and I am pleased that the parliamentarian has in fact referred this legislation to the Senate Committee on Energy and Natural Resources, of which I am a member. I hope the chairman of the Senate Armed Services Committee will take note of this fact when debate resumes on Sec. 3116 of his bill after the Memorial Day Recess. A policy shift this significant requires substantial public debate within the committee of primary jurisdiction.

I would also like to respond to a few of the comments made by the distinguished Senator from Colorado, Mr. ALLARD, earlier today. First, he noted that the Armed Services Committee discussed the issue of waste incidental to reprocessing at two hearings earlier this year. Again, the Armed Services Committee is not the committee of jurisdiction for issues related to nuclear waste cleanup policy, as has now been affirmed by the Senate's parliamentarian. Second, a hearing at which the concept of "incidental" waste is discussed is not at all the same as a legislative hearing on a specific proposal. To my knowledge, the language to which I object in Sec. 3116 of the DoD authorization bill has never previously been introduced as stand-alone legislation. And if it had, it would not have been referred to the Armed Services Committee. Thus, we have had no legislative hearings on the Senator from South Carolina's proposal.

Lastly, the Senator from Colorado has misstated my position with regard to removal of Hanford's underground tanks, which contain 53 million gallons of high-level radioactive waste. As I stated clearly on the floor last evening, the cleanup plan at Hanford, as outlined in the TriParty agreement, does not include removal of these tanks from the ground. As I stated previously, I agree with the State of Washington's current thinking on this matter. Digging up these tanks would pose a number of unnecessary risks, and that is not a concept now on the table. I hope that the Senator from Colorado will take note of this fact.

I look forward resuming debate on these matters of such tremendous importance when the Senate returns from the Memorial Day Recess.●

The PRESIDING OFFICER (Mr. SMITH). The Senator from Utah.

Mr. HATCH. Mr. President, I have enjoyed listening to my colleague here today. I have been concerned with some of the things my good friend has said.

First of all, you know, I don't think anybody doubts that what we have done over there has put a tremendous dent in terrorism all over the world. Because of the fortitude of this President and this administration, we have stood up against terrorists all over the

world—in Afghanistan and in Iraq, but if the truth be known, in so many other countries that are fraught with terrorism. I can't talk much about that. But I can say one thing as a member of the Senate Select Committee on Intelligence, this administration is on top of this all over the world.

Probably the two greatest experiments right now against terrorism are in Afghanistan—where we are slowly moving that country forward, and showing a commitment of the international community in a very real sense. But we are having a very difficult time locating al-Qaida, which slips across the border into the ungovernable part of Pakistan.

But probably the most important steps taken against terrorism in our world today are being exhibited right in Iraq.

In the 20th century, Iraq has been a very difficult area, with all kinds of animosity, tribal difficulties, tribal conflicts. Many of the current conflicts existed long before we had to get involved, and it is easy to understand why this is taking a bit of time to get done.

The one thing I am very concerned about—that is happening day in and day out with colleagues on the other side of the floor—is the undermining of morale, the undermining of efforts of our troops over there. What happened to the unity that we need in America to support our troops?

War is never easy, and it is never something that is pleasant. Anybody who thinks you can just walk out of Iraq and turn it over to the Iraqis at this point is not only whistling "Dixie," but you have to wonder if the confidence is really there.

By the way, having said that, I feel badly that the minority leader in the House of Representatives has chosen to use such unwise language about the President of the United States. She should be ashamed of herself. I know she is trying to do her job over there. I think having two parties is very important, and having a loyal opposition is important as well. But to call the President incompetent, and to call what he is doing incompetency undermines every soldier in Iraq and every soldier around the world. It undermines our fight against terrorism. It undermines so many things that are important for our country, for our troops overseas, and for those who are here. It undermines our young people who might believe that bunk. If you hear it enough, and the media presents it enough, people start to think that type of irresponsible talk is true. It is not only not true, it is irresponsible, mean, vindictive, and, I think, beneath the dignity of any leader in either of these bodies.

It is one thing to criticize the policies. That is what we are here to do. It is one thing to criticize a different philosophy and to try to have yours pre-eminent, but it is another thing to undermine the President of the United

States at a time when we are in grave difficulties in Iraq and when we are in a grand experiment of trying to institute a democracy in lands that have never seen democracy.

I think it undermines our whole process for anybody to come on this floor and say we should leave now and let Iraq go to the Iraqis. What do you think we are doing? On June 30 we are going to turn it over to their Governing Council.

By the way, Mr. Bremer will be gone. He has this incredibly difficult job of trying to bring peace and stability to Iraq. He has done a terrific job. But he is going to be gone, and we are presently in the process of installing John Negroponte—one of our top foreign service officers, one of the top Ambassadors that this country has ever had, who is a wonderful family man who has been all over the world, who has served this country with distinction all over the world—to be our Ambassador in Iraq. This is evidence that Iraq is going to be turned over to the Iraqis. But the Iraqis should be the first to say we still need the stability that only the United States of America and its allies—some 30 countries—can bring about.

I am getting a little tired of people saying this is just the United States against the world. There are some 30-plus countries over there supporting us.

I would like to ask, Where are the French, where are the Germans, where are the Russians, and where are the Chinese? Aren't they concerned about stability in the Middle East? Of course not. They do not share the vision of sacrifice to improve other parts of the world.

I also would like to make a few points on what we have done over there and what we are in the process of doing, hopefully without being undermined by Members of this body or Members of the other body. This is not a grand experiment, but it is a grand approach to try to put a dent in terrorism and create at least a representative form of government in the Middle East, for the first time in history in that area in Iraq.

The U.S., in coalition with allies, has overthrown two terrorist regimes. We have rescued two nations. We have liberated 50 million people.

Some of these people who have been such big critics ought to acknowledge that.

This coalition has captured or killed almost two-thirds of these terrorist leaders around the world—two-thirds of the known senior advisers and al-Qaida operatives.

We have captured or killed 46 of the 55 most wanted in Iraq. We have disrupted terror cells on most continents. Mr. President, \$200 million in terrorist assets have been seized or frozen.

Where are the compliments coming from the other side about some of these things?

The coalition persuaded Libya to eliminate its chemical- and nuclear-related programs and to accept international inspection.

That could never have happened without the President of the United States, George W. Bush; without his guts and without his ability and his foresightedness.

We have put up with Libya all these years, with their irresponsibilities in the Middle East and all over the world, and their sponsorship of terrorism.

Had it not been for what President Bush has done, Libya would never have agreed to start acting responsibly. Qadhafi would never agree, but he has finally seen the handwriting on the wall that we have some fortitude.

Al-Qaida is taking credit for getting rid of that government in Spain. They are going to try to do that to us. We had better be prepared for it.

This President has had the guts to stand up to the terrorist threat. He is certainly the leading person in the world who has had the guts to stand up against international terrorists for the first time in a long time.

I want to give all of the counterparts from the other nations credit, too, especially Tony Blair in Great Britain.

If we eliminate tyranny in the Middle East by doing what is right in Iraq, it is amazing what we can do throughout the rest of the world. It would be a crucial setback for international terror.

Just some of the things that have been accomplished over there in Iraq: The Transitional Administrative Law approved by the Iraqi Governing Council is now considered the most liberal basic governance laws in all of the Arab world. It assures freedom of religion, freedom of expression, freedom of press, and freedom of assembly. It also guarantees the fundamental rights of women for the first time.

That wouldn't have happened but for the courage of this coalition built up by our President.

Iraq's new currency is the most heavily traded currency in the Middle East now. A lot of people do not know that. Oil production and power generation are way beyond prewar levels now.

It is the United States that has done that and the coalition partners that have done that. It is a tremendous advancement.

All 22 universities and 43 technical institutes and colleges are now open in Iraq.

Can you imagine in that, in this short period of time, we have accomplished this?

The coalition forces have rehabilitated more than 2,200 schools, all 240 hospitals and more than 1,200 health clinics are now open.

Health care spending in Iraq has increased 30 times over prewar levels. There have been so many great changes over there that the Iraqi people are now starting to feel they have a chance.

If we leave now, the old regime's gangsters can come right back in, the instability can come back in. We have not finished the job of helping the police be able to run the place.

There are now 170 newspapers being published in Iraq.

As of May 4, the estimated crude oil export revenue was over \$5.6 billion for this year alone. I could go on and on.

I am saying this: Why aren't we supportive of all the good things that have been done and are going on in Iraq? Why are we openly condemning this President, who had the guts to do what is right, and doing it so the whole world can see, so our young men and women are undermined and demoralized over there? Is it political advantage that some people are seeking? Some would say yes. Some might say no. Is it because it is an election year? I think many people would say yes. Is it because some people just hate George W. Bush? The answer to that is yes, too. Is it because of irresponsibility on the part of some in the Congress? Some might even say yes to that, although I personally would not take that position. But some who are saying yes may be right. It is certainly undermining our troops over there, certainly making it difficult for any President to have the guts to do what has to be done against terrorism.

I have worked on terrorist problems from the beginning around here, all 28 of my years. I was the prime sponsor of the Antiterrorism Effective Death Penalty Act in 1996—by the way, we were trying to put some of the provisions that are now in the PATRIOT Act in that bill. That was stopped by these naysayers and the people who are always talking about civil liberties. What about the civil liberties of the 3,000 people who died on September 11 because we were not prepared because we did not give law enforcement the tools to be able to stop that kind of terrible activity?

I get a little tired, to be honest with you. It is time to stand with this President, as Democrats and as Republicans, and back our soldiers over there. Yes, what happened at Abu Ghraib is not right. We know that. As far as I can see—and I went to Guantanamo Bay last week; I have been in all of the intelligence meetings as a member of the Select Committee on Intelligence—as far as I can see, it is limited to a limited number of people in Iraq who just plain got out of line and acted like goons. None of us can justify any of that. Now that we have made that clear, why do we dwell on it every day, every night, all day long, all evening long, on the news and everywhere else? We know it is wrong and we know darned well we will have to clean it up. And we will because this is a free Nation, and we believe in the rule of law.

I have said maybe more than I should have said, but I was disappointed in the remarks of the minority leader in the House yesterday. Talk about remarks that undermine everything this President is trying to do—and coming from one of our leaders. I hope she thinks it through and does not make any more of these irresponsible comments in the future. I hope we on this side think it through, too, and are more responsible in some of the things we do. It would

be wonderful if we could work together more than we are in this body. I have never seen it so partisan in the whole time I have been in the Senate.

F/A-22 RAPTOR

I will change the subject to something that is very important to me.

I stand before you today as an ardent supporter of the F/A-22 Raptor. I urge that the Senate restore the President's budget by authorizing appropriations for 24 F/A-22 Raptors.

Two weeks ago, I had the opportunity to travel to Tyndall Air Force Base to be briefed on the capabilities of this extraordinary aircraft. As a result of these meetings and discussions with the pilots who are training to fly the aircraft and the ground personnel who are learning to maintain the Raptor, I have come to the conclusion that the Raptor is absolutely vital to our national security.

Over the past 30 years, the U.S. has been able to maintain air superiority in every conflict largely due to the F-15C. However, with the great advancements in technology over the past several years, the F-15 has struggled to keep pace. For example, the F-15 is not a stealth aircraft and its computer systems are based on obsolete technology. My colleagues should remember that the F-15 first flew in the early 1970s. It has been a magnificent plane but it is starting to age. During the ensuing years, nations have been consistently developing new aircraft and missile systems to defeat this fighter.

Realizing that the F-15 would need a replacement, the Air Force developed the F/A-22 Raptor. The result is a truly remarkable aircraft.

The F/A-22 has greater stealth capabilities than the F-117 Nighthawk. This is a powerful attribute when one remembers that it was the Nighthawk's stealth characteristics that enabled that aircraft to penetrate the integrated air defenses of Baghdad during the first night of the 1991 Gulf War.

The Raptor is also equipped with super-cruise engines. These engines do not need to go to after-burner in order to achieve supersonic flight. This provides the F/A-22 with a strategic advantage by enabling supersonic speeds to be maintained for a far greater length of time. By comparison, all other fighters require their engines to go to after-burner to achieve supersonic speeds. This is not just our country but all the other countries fighters, as well. This consumes a tremendous amount of fuel and greatly limits an aircraft's range.

The F/A-22 is also the most maneuverable fighter flying today. This is of particular importance when encountering newer Russian-made aircraft which boast a highly impressive maneuver capability.

Yet a further advantage resides in the F/A-22s radar and avionics. When entering hostile airspace, one F/A-22 can energize its radar system, enabling it to detect and engage enemy fighters far before an enemy's system effective range.

However, one of the most important capabilities of Raptor is often the most misunderstood. Many critics of the program state that, since much of the design work for this aircraft was performed during the Cold War, it does not meet the requirements of the future. I believe that this criticism is misplaced. The F/A-22 is more than just a fighter; it is also a bomber. In its existing configuration it is able to carry two 1,000 pound GPS-guided JDAM bombs. Shortly, it will be able to carry the small diameter bomb and in 2008 the aircraft's radar system will be enhanced with a "look-down" mode enabling the Raptor to independently hunt for targets on the ground.

All of these capabilities are necessary to fight what is quickly emerging as the threat of the future—the anti-access integrated air defense system. Integrated air defenses include both surface to air missiles and fighters deployed in such a fashion as to leverage the strengths of both systems. Such a system could pose a very real possibility of denying U.S. aircraft access to strategically important regions during future conflicts.

It should also be noted that for a comparably cheap price, an adversary can purchase the Russian SA-20 surface-to-air missile. This system has an effective range of approximately 120 nautical miles and can engage targets at greater than 100,000 feet, much higher than the service ceiling of any existing American fighter or bomber. The Russians have also developed a family of highly maneuverable fighters, the SU-27/30/35, which have been sold to such nations as China. Of further import, 59 other nations have fourth generation fighters.

It has also been widely reported in the aviation media that the F-15C, our current air superiority fighter, is not as maneuverable as newer Russian aircraft, especially the SU-35. However, the F/A-22 is designed to defeat an integrated air defense system. By utilizing its stealth capability, the F/A-22 can penetrate an enemy's airspace undetected and, when modified, independently hunt for mobile surface-to-air missile operational systems. Once detected, the F/A-22 would then be able to drop bombs on those targets.

Some correctly state that the B-2 bomber and the F-117 could handle those assignments. However, the F/A-22 offers the additional capacity of being able to engage an enemy's air superiority fighters, such as the widely proficient SU-35. Therefore, the Raptor will be able to defeat, almost simultaneously, two very different threats that until now have been handled by two different types of aircraft.

Despite the obvious advantages of this aircraft, there has been resistance to this program in the halls of Congress. As with many military procurement programs, the primary concern is, naturally, cost. This, in part, led to the planned procurement of the aircraft to be reduced from over 600 to the current planned procurement of 277.

In response, the supporters of the F/A-22 devised a new procurement strategy called "Buy to Budget." This strategy capped the total cost for the procurement of the aircraft and forced the Air Force and the Raptor's primary contractor, Lockheed Martin, to cut the cost of the plane. These efforts, so far, have been successful, and last year an additional F/A-22 was procured, solely based on savings.

Unfortunately, as with any complicated aircraft, especially one whose computer power equals that of two supercomputers, schedule delays have occurred. However, these delays have also largely been resolved. Lockheed Martin has placed the former head of its very successful F-16 production line in charge of F/A-22 production. As a result, it is believed that F/A-22 production will be back on schedule by early 2005.

Now, despite this progress, criticisms of the aircraft continue. As a result, colleagues on the Senate Armed Services Committee have reduced the number of aircraft to be purchased this year to 22. In contrast, the President's budget requested 24 aircraft—2 more.

To be fair, it sounds reasonable to see this as a modest reduction in order to ensure existing production schedules are met and possibly decrease the cost of the aircraft. However, production schedules will be met. Due to the already drastic reduction in the number of aircraft to be procured, many have developed the very real concern that there will not be enough aircraft to meet the operational needs of the Air Force, based on the proven Air Expeditionary Force model. Not having sufficient numbers of F/A-22 for some of these contingencies would be an abdication of our congressional responsibilities, especially now that we are faced with war.

However, I wish to add one final point. I have talked about the capabilities of this aircraft and how those capabilities are designed to defeat the threats of the future. But what impressed me most was the way the pilots and ground crews of Tyndall Air Force Base spoke about the F/A-22. They are truly excited about its potential. They understand that this aircraft will ensure American dominance of the skies for the next half century. These young men and women stand ready to sacrifice so much for us. We owe them the best our country has to offer. Therefore, I respectfully urge the Senate to restore the President's budget proposal on this remarkable aircraft.

PRESERVING TRADITIONAL MARRIAGE

Mr. President, I rise today to speak about preserving traditional marriage—an institution which is under attack from so many directions today.

This past week, as everyone by now undoubtedly knows, the Goodridge decision by the Massachusetts Supreme Judicial Court went into effect in Massachusetts. This 4-to-3 decision by the Massachusetts Supreme Court found a constitutional right to same-sex mar-

riage and prohibits the State from defining marriage as between a man and a woman.

According to reports, more than 1,000 same-sex couples have been "married" pursuant to the radical change handed down by the split court.

We all know that it is the legislative branch, and not the judiciary, that makes the laws—or at least should make the laws. But there are some courts, such as the one in Massachusetts, that want to take away the public policy role that the legislatures and people have always had. Senator TALENT of Missouri and I wrote an opinion editorial on this issue that was published in Monday's Washington Times. I ask unanimous consent that it be printed in the RECORD.

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

[From the Washington Times, May 17, 2004]

THE BENCH VS. PEOPLE: CAN A JUDGE'S WILL BECOME A LAW?

(By Orrin Hatch and Jim Talent)

In the debate over traditional marriage, the cultural dominoes are falling in the wrong direction. Activist judges, who specialize in taking issues away from the people and deciding those issues instead, intend to make traditional marriage a thing of the past. Their decisions, like the one that will allow Massachusetts clerks to begin issuing marriage licenses to same-sex couples this week, and the aggressive political and legal strategy driving them, make clear that protecting traditional marriage will require amending the Constitution.

America's founders believed, as James Madison put it, that the legislative branch "necessarily predominates" in a representative democracy. We all learned in civics class that the legislative branch makes the law, which means the judicial branch doesn't. Most state constitutions go beyond separating the branches, and two-thirds explicitly prohibit judges from legislating. With only the power to interpret the law, the judiciary is supposed to be, in Alexander Hamilton's words, the "least dangerous" branch.

Times have changed. Judges have become the most dangerous branch by following former Chief Justice Evans Hughes' view that the law is "whatever the judges say it is." Judges cannot change the literal words of the Constitution or a statute, so they make law by changing the meaning of those words. The obvious danger is that if the law means whatever the judges say it means, judges control the law, run the country and define the culture.

Since before the founding of the republic, legislatures enshrined the traditional view that marriage is a union of a man and a woman. Only in the last decade have judges attempted to substitute their own views, effectively amending state constitutions by judicial fiat and imposing new marriage policies. Neither the people nor their legislatures chose any such thing.

In addition to judges acting like legislatures, some rogue public officials are acting like judges. Although California law defines marriage as between a man and a woman, for example, San Francisco Mayor Gavin Newsom simply declared it unconstitutional, and same-sex couples from at least 46 states have obtained a marriage license there. Similarly, same-sex residents of more than 30 states have obtained marriage licenses in Multnomah County, Ore. Litigation is inevitable as they challenge their home states to recognize these same-sex unions.

This crisis requires a constitutional solution for at least three reasons. First, amending the Constitution is the only way of reigning in the activist judges who will otherwise undermine traditional marriage. Neither judicial self-restraint nor the separation of judicial from legislative power is enough. Nor, it appears, are explicit bans on legislation by judges in state charters. The Massachusetts Supreme Judicial Court's decision that same-sex couples may wed, which goes into effect this week, is a legislative act openly defying the Massachusetts Constitution's edict that judges "shall never exercise the legislative" power.

Second, the 1996 Defense of Marriage Act (DOMA) will no longer effectively protect traditional marriage. While the Constitution requires that states give each other's judicial proceedings "full faith and credit," it also lets Congress make exceptions. Supported by 79 percent of House members, 85 percent of senators and signed by Bill Clinton, DOMA guarantees that one state need not recognize another's non-traditional union. Even so, federal and state court decisions since DOMA have made legal analysts, enthusiastically or grudgingly, concur that DOMA itself likely will not survive a court challenge before activist judges.

Third, amending the Constitution of the United States is the only way for the people of the United States to take this issue back. "We the people" established the Constitution, and only we can rightfully amend it by the single process outlined in the charter, a process that excludes the judicial branch. No amendment on any subject becomes part of the Constitution unless supported by two-thirds of Congress and three-fourths of the states. Amendments by judges, by contrast, defy the people and lack their consent.

The first right of the people is to govern themselves. Activist judges take away that right, sapping democracy's legitimacy and vitality. When courts deny the people the right to decide cultural issues for themselves, they undermine both the freedom and the opportunity to form consensus provided by self-government. Americans on both sides of the marriage debate deserve to have their voice heard and the potential to make it effective. Such civic participation in elections, through legislatures, or in amending the Constitution, is an antidote to judicial activism. Defending the people's right to govern themselves generally and protecting traditional marriage specifically require responding to this judicial activism by amending the U.S. Constitution.

Mr. HATCH. Mr. President, I will not read it, but I will say that people have the right to govern themselves. When a court forces a radical decision on the people—well before the people have had the opportunity to oppose the change—it dramatically undermines democracy's vitality and legitimacy.

Some of the comments from the first same-sex couples to take advantage of the Massachusetts court decision underscore what is wrong with deviations from our culture of traditional marriage. According to the Boston Herald, the first recipients of a Provincetown, MA, same-sex marriage license said: "the concept of forever is overrated." One gentleman in this couple added that he, as a bisexual, and his partner, who is gay, "think it's possible to love more than one person and have more than one partner. In our case, it is, so we have an open marriage." I am sorry, but this simply is not a marriage. I

simply do not understand why these two men felt they needed to be declared to be married by the State. There is not even a pretense of fidelity here.

The reason that maintaining traditional marriage is so important can be summed up in one word, and that is "children." Children are simply better off with a mother and a father than with two mothers or two fathers or any other alternative arrangement. Advocates for same-sex marriage cite studies to the contrary, but, as Professor Steven Nock, a leading marriage scholar at the University of Virginia, points out, "not a single one was conducted according to generally accepted standards of scientific research." Not a single one of those studies was conducted according to generally accepted standards of scientific research.

Marriage is not about adult desires for affirmation and benefits; it is about the well-being of children. Two men being intimate are simply not the same as a husband and a wife, and alternative family forms are not just as good as traditional families. The fact is that fathers and mothers both matter to children. The science confirms this, but common sense tells us this as well.

Some advocates for same-sex marriage argue that traditional marriage will continue the same as before. Unfortunately, this has not been the experience of other countries. Some in Scandinavia, for example, witnessed a dramatic drop in traditional marriages once same-sex marriages were permitted or the equivalent thereof. The net effect was to diminish the importance of marriage altogether, and that is what will happen here if we do not maintain the traditional definition of marriage between a man and a woman.

It has become clear that we need a constitutional solution to this problem. There is simply no other means of reigning in activist judges who seek to impose their will and not their judgment. Some say the Defense of Marriage Act is adequate enough, but based on decisions, such as *Lawrence v. Texas*, this statute will undoubtedly be struck down. People across the political spectrum, including such liberal stalwarts as Professor Lawrence Tribe, agree that this is inevitable.

Without a constitutional amendment, we are headed for a resolution by the U.S. Supreme Court. We should not and cannot wait for this to happen. We simply must protect traditional marriage now by passing a constitutional amendment.

Some suggest that it is not "conservative" to amend the Constitution over such an issue. Baloney. Traditional marriage is perhaps the most fundamental institution in our culture and history. It dates back over 5,000 years. If the only way to protect this institution is by amending the Constitution—and we know that to be the case—then we have an obligation to do so.

What is worrisome to most constitutional scholars, including myself, is

that if this supreme court case of one State—a 4-to-3 decision; hotly contested, not only by the court itself but in the State legislature and among the people of Massachusetts themselves—if that is allowed to stand, then will we, under article IV of the Constitution, the original Constitution even before the Bill of Rights was added to it, will we have to give in every other State full faith and credit under the full faith and credit clause to whatever is called marriage done within the State of Massachusetts? There are many constitutional scholars who say we will have to. That does not mean that Utah will have to have same-sex marriages done within our State or any other State in the Union.

It does mean we will have to recognize as valid same-sex marriages performed in Massachusetts. Now we have people coming from all over the country to Massachusetts to be married so that under the full faith and credit clause that marriage will have to be recognized in their respective States. I cannot begin to tell you the difficulties legally that will come from that type of an approach.

We simply need to resolve this problem. We need to resolve it in accordance with the will of the vast majority of people in this country. Cultural decisions such as this that have existed for over 5,000 years should not be thrown into the wastebasket by an activist court in one very activist liberal State. Nor should an activist court in an activist conservative State impose its will on us. We should, of course, allow the elected representatives of the people to make this decision.

If you don't do that, then you have nothing but another huge, unnecessary, harmful to America culture battle, perhaps for decades. We can name the decisions by the U.S. Supreme Court that have caused us to be torn apart in America over a number of issues that, 5 to 4, 7 to 2, the Supreme Court has culturally imposed upon everybody in America.

I don't believe in discrimination of any kind. But like a number of my colleagues in this body, I draw the line when it comes to traditional marriage. Traditional marriage is one of the most important cultural concepts in any country's history but certainly our country's history. This debate needs to occur. We need to think it through. We need to have a constitutional amendment, and we need to support whatever constitutional amendment we can get to resolve this matter.

Having said that, we need to be fair to those who have a different point of view and to find some way of accommodation. Because it is a disgrace that a gay partner cannot go into an intensive care unit to care for or hold hands with or to be with his or her partner, just to mention one. We have to think this through. One way of thinking it through is to come to a conclusion that one liberal State's 4-to-3 decision by a

Supreme Court should not bind everybody in America to recognize something that I believe will be absolutely catastrophically disruptive to our culture.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I say, while the Senator from Utah is here, how much I appreciate his wise words on so many subjects that are important to our country and to our culture and to American families. He has spoken eloquently about the importance of persevering in Iraq, the importance of traditional families as the bulwark of our culture and in the best interest of children, and the importance of making sure we keep the American military the dominant force in the world by making sure we transform in particular our Air Force by the implementation of the F-22 Raptor which, not coincidentally, is built in part in the State of Texas which is important both for our national security and in terms of the jobs it creates in my State.

I say to the Senator how much I appreciate him and his wisdom and his great leadership on the Senate Judiciary Committee.

Mr. HATCH. Mr. President, if my colleague will yield, I thank my colleague for his kind remarks. My colleague from Texas served on the Texas Supreme Court. He understands these issues very well, serving in a tremendous fashion on the Senate Judiciary Committee. I feel so blessed as chairman to have him and the other freshmen Senators on that committee, each one of whom is playing a significant role in this body and on that committee. I thank my colleague.

Mr. CORNYN. I thank the Senator for those kind comments.

SYMBOLS

Mr. CORNYN. Mr. President, as we all know, symbols are important. Symbols, even more than our words, are powerful communicators of intent, of value, and of commitment. We know, for example, what the pictures that have recently come to light of the abuse of a few Iraqi prisoners in the Abu Ghraib prison have communicated in a way that mere words could not. Indeed, out of all of the terrible consequences of that criminal activity by a few, there has been a positive. I believe that positive is, No. 1, the commitment of the Department of Defense, from the Secretary of Defense, Donald Rumsfeld, all the way down to the troops in the prison themselves, to make sure we get to the facts, that we hold those guilty accountable, and that we do so in a public way which demonstrates that in a democracy we do things in a way that people can judge for themselves whether they are being handled appropriately.

I trust by the time we get through with these investigations—about six of

them in all—and by the time the prosecutions of the seven who have been charged with criminal conduct, misconduct, and possibly others who will be charged as well, by the time we get through, the world will see our commitment to the rule of law and to minimum standards of human decency.

When I think about symbols, I also think about, for example, what has happened in Madrid with the attacks on the trains there which killed many of that country and which, in the eyes of some, caused Spain, because of the election, to pull their troops out of Iraq. We know there is very likely a different explanation for the outcome of that election, but I am haunted by the words of GEN John Abizaid, commander of the central command, including Iraq and that whole troubled part of the world, who said al-Qaida was emboldened as a result of the reaction that they perceived occurred by that attack. That is another example of how symbols are enormously powerful in ways that it is hard for us to articulate or explain in mere words.

I would like to also talk about another symbol that I think is very important for us, beyond the perseverance that we see, and that Senator HATCH talked about so eloquently, of our troops in the battlefield who have put themselves in harm's way to protect us and to liberate the Iraqi people. I believe there is another important symbol that we can send which will tell our enemies that we are absolutely committed to defending ourselves against terrorism. That is the legislation that has been filed today by Senator KYL of Arizona, of which I am a proud cosponsor.

This bill is one page in length. It is very short. I believe it is a powerful symbol. If we act, as I believe we should, to adopt this legislation, that would send a powerful message to our enemies that we remain committed to defending ourselves in this new and dangerous world we live in since 9/11 and that we have not lost our resolve in Iraq or Afghanistan or anywhere else where the war on terrorism rages.

This bill that has been filed would simply do this: It would take the USA PATRIOT Act, which has a sunset provision that causes a number of elements of that bill to expire at the end of next year, and it simply repeals that sunset provision, thus making the USA PATRIOT Act a permanent part of our laws.

Yesterday, we heard from FBI Director Robert Mueller, who voiced strong support for renewing the PATRIOT Act, which this would do. He said, for 2½ years the PATRIOT Act has proved extraordinarily beneficial in the war on terrorism and has changed the way the FBI does business. Many of our counterterrorism successes, in fact, are the direct result of provisions included in the act, a number of which are scheduled to sunset at the end of next year.

I strongly believe it is vital to our national security to keep each of these

provisions intact. Indeed, Director Mueller is not alone. We heard bipartisan support in testimony before the 9/11 Commission, which is studying lessons learned from that terrible event in our history and the aftermath, of what it is we can do to make our country stronger and to defend ourselves from the extremists who simply want to kill us and eliminate our way of life.

One by one, from former FBI Director Louis Freeh to former Attorney General Janet Reno to Attorney General John Ashcroft—just to name a few—they touted the impact of the PATRIOT Act in reducing the wall that prevented information sharing between criminal investigators and our counterterrorism intelligence officials. They talked about how important the PATRIOT Act was in bringing down that wall that prevented information sharing at the Federal level.

As a former State law enforcement officer myself, I can tell you, since 9/11, another thing that has made America safer is not just greater information sharing at the Federal level, between Federal agencies, but indeed it has also been the information shared with State and local law enforcement officials.

Director Mueller made that point again yesterday about how important it is that we work collectively, using all of our resources at the State, Federal, and local levels to make sure we protect this country and keep our citizens safe.

I ask unanimous consent that excerpts of quotations from a number of colleagues on both sides of the aisle, which I have reduced to one sheet, be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.
(See exhibit 1.)

Mr. CORNYN. Mr. President, with this background and context, you might wonder who would possibly object to this legislation that would repeal the sunset provision in the PATRIOT Act. Some might say, well, if the PATRIOT Act provisions are not set to expire until the end of next year, why now? My response is, why not?

Indeed, if we want to send a powerful message that we have maintained our resolve and commitment to defend our country against the scourge of terrorism, this would be a powerful symbol, a powerful message that this body could send that our commitment is strong, that we will maintain our resolve, and we will fight the war on terrorism and defend ourselves from those who would kill our innocent civilians in this country and elsewhere; that we will maintain that resolve and we will fight until the very end.

So I think it is very important that we pass this legislation. Let me also mention, there is a bipartisan consensus which appears throughout Washington and throughout this country about how important the PATRIOT Act has been to protect American citizens; that there are those who would