going to see little, if any, monetary benefit. That is an absence of leadership. Of course, the main benefit does not kick in until 2006, conveniently past the next election. He does not want the American public to really see what is in that Medicare bill.

On homeland security, the President talks tough, but is he really there? The President's budget would reduce funding for grants to local police, fire, and emergency medical personnel from $4.2 billion in 2004 to $3.5 billion in 2005, more than a 15-percent decrease. Would anyone suggest we have less to worry about from terrorists when we just heard the dismal review by the Secretary of Homeland Security? The President's proposal will also cut first responder training by 43 percent.

The lack of leadership is not just at the White House. Unfortunately, my Republican colleagues in the Congress almost always march in lockstep with the White House, even at the peril of their constituents. This blind allegiance to the White House is having devastating effects. We have seen our budget surplus turn into deficits as far as the eye can see.

In Iraq, we bought the White House line and ignored military leaders. Look at the case of GEN Eric Shinseki, who said we need 300,000 troops in Iraq to do the job. He was right, but he was fired for telling the truth. We have recently heard from one of the leading Army generals who said our forces are too thin, and as a result of that, it is fair to say we have seen terrible casualties—879 Americans killed in Iraq, over 5,000 injured. If we had listened to General Shinseki and other military experts rather than the White House, perhaps those numbers would be less.

When the President said to the Congress, do not let Medicare negotiate for drug prices, we should have said: Too bad. Prices are out of control. We see that in the newspapers regularly now. We need to do this. Instead, the Republican majority said, ''yes, sir,'' and followed the White House's orders, and drug prices keep soaring.

I say enough is enough. We are a coequal branch of the Government. Let us act like it. My Republican colleagues should stand up to the President when they think he is wrong.

Senator KERRY is on a noble mission to change the direction of this country for the better. In doing so, he is leading us down a path toward a stronger America, and I can think of no better reason to pursue that goal with every minute of time, with every ounce of effort, with every bit of intellect he can muster. We wish him good health and success, to lift our country out of the misery of worry about their children, their jobs, their parents, and their Nation. We wish Senator KERRY Godspeed and hardly think of him as being AWOL. His record disproves any notion of that.

I yield the floor and I 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. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ACTIVIST COURTS IN AMERICA

Mr. SESSIONS. Mr. President, as we finish up today, I want to share a few thoughts on the problem we have with the activist courts redefining marriage.

Marriage has been defined by every legislature that has ever sat in the United States from every State, now 50 States, the same way, but now we have unelected judges altering and changing that fundamental institution.

It is not a little matter. It is a very big matter. It is a matter the American people have a right to be asked about. It is a matter the American people have a right to be engaged in. It is an institution that no one can dispute is central to American culture. Regarding the culture of any country in the world, the status of family and marriage is critical to that culture.

I had the privilege of chairing a committee that had a hearing on marriage. It was a remarkable thing. Barbara Dafoe Whitehead was one of the witnesses. She had written an article that was voted one of the most significant articles in a news magazine in the second half of the 20th century. The Presiding Officer, the Senator from Mississippi, served with Dan Quayle, the former Vice President and Senator of this body. The name of the article was, ''Dan Quayle Was Right.''

She has since continued to study the science of families. She told us when she originally did her report she was criticized by academics around the country, but in the 10 years since she wrote that article there is no dispute that children do so much better—every objective scientific test shows that—if they are in a traditional two-parent family. Indeed, the husband and wife do better. It is a healthy relationship that the State, the Government—without any doubt, it seems to me—has every right to want to affirm and nurture and encourage through legislation.

To me, there is no discrimination whatsoever in a State deciding they are going to give a special protection to the marriage relationship that produces children, who will eventually run our country when we are gone. Any nation, any country, and any State has an interest in producing children who will take over and lead their country in the future.

They also have an interest in how those children are raised. It is a big deal here. Some people in this body continually push for more State and Federal Government involvement in the raising of children. I will ask you this: If there are not families to raise those children, who will raise them? Who will do that responsibility? It will fall on the State. There will be a much less effective job done, at greater cost to the taxpayers. Who could dispute that? I think the State has a remarkable and deep interest in it.

Likewise, when you have a universal, unequivocal, unbroken, consistent decision by every State and virtually every nation, until the last few years, that a marriage should be between a man and a woman, I think anybody ought to be reluctant to up and change it; to come along and say, well, you know, everybody has been doing this for 2000 years, but we think we ought to try something different.

We should not do that. I mean, if you want to bring it up in the legislature of the State of Alabama or the State of Massachusetts and you want to debate it and have hearings on it and take evidence and then you decide you want to vote on it, maybe that is one thing. But what we have had in this circumstance is a situation in which the Supreme Judicial Court of Massachusetts, citing language from the U.S. Supreme Court, up and declared it violates the equal protection clause of their Constitution to treat same-sex unions differently from heterosexual unions.

Maybe that is an equal protection violation. Maybe we could say that is what the Constitution says. But nobody, since the founding of this country, has ever interpreted it that way. What happens if a court makes a mistake? What happens if a group of judges says: I don't like the way the legislature has been handling this marriage thing. I don't think they have been affirming same-sex couples' unions and they ought to do it. Why don't we rule that way? Why don't we do that?

Somebody says, How are you going to do it? They say, We will study the Constitution. Here, it says everyone should be given equal protection of the laws. So we can overrule the State legislatures and we will say treating those two unions differently violates the equal protection of the laws. We will declare it unconstitutional.

Where did that leave the people of Massachusetts? We are on the verge of it, if the U.S. Supreme Court does it, for the entire United States. Where does that leave the people?

I remember in the early 1980s, Hodding Carter, who used to work for President Jimmy Carter, was on ''Meet the Press'' or one of those shows he was on regularly and they were talking about judicial activism. He said the sad truth is we liberals have gotten to the point where we ask the court to do for us that which we can no longer win at the ballot box.

This cannot be won at the ballot box. It can only be imposed on the people of America through a judicial ruling under the guise of interpreting the Constitution. That is what activism is. It is judges allowing personal political views to infect their decision-making

process, where they override the actions of the legislature.

I am sure some say they will pass a law and overturn the Supreme Court. You cannot do that. It is important for everybody in this body to understand that. If the Supreme Court of the United States declares the Constitution prohibits a differentiation between a traditional marriage and other unions, the Constitutions of Massachusetts, or Illinois, or Alabama, or Mississippi is ineffective. It is trumped by the U.S. Constitution.

If we in the Congress pass a piece of legislation, a DOMA-like piece of legislation—I am sure it has been referred to earlier—it will not be effective in the face of a declaration by the U.S. Supreme Court that it is a violation of the equal protection clause of the U.S. Constitution to treat these unions differently. So it is a big deal for us.

We have one of the great institutions of our entire culture, for which there is virtually unanimous public support, virtually unanimous support among all the legislatures who have ever sat in the States of the United States of America, and it is in danger of being wiped out by the Federal courts.

I know Massachusetts has already so ruled on May 17. Less than 2 months ago they began to conduct same-sex marriages in Massachusetts. They say those unions have to be given the same, equal treatment as the other unions.

I would ask, what about two sisters who live together, care for one another, have been together 40, 50, 60 years? Are they treated as a marital relationship? Why don't we call that a marriage? Two brothers? A brother and sister? A mother and a daughter who live together many years without any kind of sexual activity? Why is this same-sex union given a preferential treatment over those unions?

When you get away from the classical definition of marriage, we get into big trouble about where those lines will stay. The reason a State has an interest in preserving marriage, traditional marriage, is because children are produced in that arrangement. Out of that arrangement a new generation is born, raised, nurtured, trained, and educated. We need to affirm that.

We had an African American who spoke to a group of us yesterday.

He was Secretary of State of Ohio and he talked about that and how deeply people felt about it and how important he thought it was.

Another African American was pastor of a 2,000-member church. He was a bishop. He was also a city councilman in Detroit. He talked about how hard they have worked to overcome the breakdown of marriage in America and strengthen marriage in America.

We ought to be passing laws that encourage marriage, not discourage it. We ought to be, as a policymaking body, involved in establishing policies that affirm that relationship. We know scientifically, we know intuitively, and we know morally that this is the better way.

I am not putting down single parents. I am not condemning people who have a different sexual orientation. I don't mean that in any way whatsoever. But the State, the government, has a right to define marriage in the classical term because that is where children are born, that is where they are nurtured, raised, and cared for. If the parents don't do it, I guess the State has to, which is what is happening in Europe.

Earlier today, one of the Senators may have mentioned a new letter that has come out of the Netherlands. Five scholars—social scientists and lawyers—have written a letter to warn that their actions in the Netherlands to affirm through legislation same-sex unions may well have contributed to the collapse, decline, and very rapid disorder of marriage in the Netherlands. We know that over 50 percent of the children in Norway, which a number of years ago created defacto same-sex marriage, are born out of wedlock. It is an incredible collapse of marriage in northern Europe—Norway, Sweden and Denmark have declined, and the Netherlands has shown a rapid decline. These social scientists warned other nations that are considering going in this direction, that are considering passing laws in this direction, that it would further weaken marriage and family.

We ought to pay heed to that. Why would we want to go down that way? We do not follow the European model of national defense. We have an extraordinary, modern, and effective national defense capability that the Europeans do not have. We do not follow the European model on taxing and spending. That is why our Nation is stronger, more economically dynamic, and is growing far faster than the European nations. They are not growing. Their growth rate is down. Their population is aging. They are having fewer and fewer children. Their welfare rolls are growing. They have a workweek of 35 hours. We are supposed to find more people more jobs so more people can work. And their unemployment is about twice ours.

We don't follow their idea on the economy, thank goodness. The socialist model has not worked there and they are in a pell-mell race to secularize Europe. And we have not done that either. They don't allow a Muslim child to wear a scarf, or Christian child to wear a cross.

Why would we want to go that way? We should not go that way. We do not have to. We can make a choice to go a different way.

Some in this country, and I think some on our courts, seem to believe this is the wave of the future; that this is the enlightened Europe, and we ought to follow the enlightened Europe with a negative growth rate, I guess, and a rapid increase in secular relations in society. I don't think we need to go there.

There is an opportunity and a big moment. This is a big moment. It is an opportunity for this Senate to allow the people of the United States to speak on this issue, to say how they want the future of this country to be handled, for them to say who is in charge of this country. As Senator CORNYN from Texas said earlier, when an unelected judge makes a ruling in a political manner, like on the definition of marriage, it is an anti-democratic act. These are people, unelected, with lifetime appointments, not answerable to the public. If we vote wrong, you can remove us from office. That is the way the system works and the Founding Fathers all thought about it. That is what democracy is. But we have unelected people not having hearings, not having debate, not going out and having town hall meetings throughout their State, as I do and most Senators do, listening to the people, thinking about the issues, having a sensitivity of what is occurring in society. They are sitting up there in their robes rendering rulings to go to the heart of who we are as a people. I am concerned about it. I think we have every right to be concerned.

The substance of the matter is large. It is a very big deal. The dynamics of it are very crucial.

It is time for us as a people to utilize the power of the Constitution given us through our elected representatives to amend the Constitution. That is what it provides.

Frankly, when a judge redefines the Constitution's traditional meaning and makes it say something it does not, that judge has amended the Constitution contrary to the provisions in that document.

I remember back when I was U.S. attorney in Alabama. I had a parent come to me and show me the textbook in the classroom. It said how the Constitution is amended. The one way was the amendment process, as provided for in the Constitution. And they mentioned another way: Amended by ruling of the court. They are teaching children—the truth—which is courts, through their rulings, if they are not true and faithful to the document itself, amend the Constitution.

We ought not to allow that to occur.

I think this would be in no way extreme, in no way improper, and highly appropriate for this Senate to say let's let the American people decide about this fundamental institution of marriage, and let us tell the courts that we control life in this country, not them. They are not accountable.

Some say, well, this is all not going to happen; that you are not going to have the courts do this. It is not just not going to happen. It is not thinkable. Was it thinkable that the 9th Circuit Court of Appeals in this country, the largest court of appeals in the United States, would rule that ''under God'' could not be in the Pledge of Allegiance? When it got to the Supreme Court of the United States, do you see

what happened? They punted. They moved it out on procedural grounds and did not state clearly what their view of it is. A number of their rulings, frankly, would indicate that it is not appropriate.

The Supreme Court has a problem in a lot of issues. They are not perfect. People are not without flaw. Many of these decisions are made by just a slim majority. It is not nine votes that are needed out of nine; it is only five, a majority. Five judges can redefine marriage and do a lot of other definitions that can impact significantly this country if they don't show personal discipline and fidelity to the law.

Let me just say this: This is the whole basis of a debate in this body between our Members on the other side of the aisle and on this side of the aisle and President Bush over judges. It is over whether or not judges will show restraint, whether they will remain true to the document, and not use the opportunity to rule as an opportunity to impose their personal views on the American public. That is what this debate is about over judges. It is not Republicans this, and Democrats that, how many judges I confirmed here and how many judges you confirmed there. It is a deep, fundamental difference.

The liberal activist groups in this country cannot win at the ballot box. So they are determined to utilize court rulings like this to further their agendas that are contrary to the American people.

I make one point before I wrap up. We have the language from the U.S. Supreme Court, our Supreme Court. In Lawrence v. Texas, Justice Kennedy, writing for a six-person majority, says:

> In Planned Parenthood of Southeastern Pennsylvania v. Casey, the court reaffirmed the substantive force of the liberty protected by the Due Process Clause.

When the Presiding Officer was in law school and was taught law, I am not sure he was told there was a substantive due process right to liberty. I don't think substantive due process is mentioned in the Constitution, but here we have ''liberty protected by the Due Process Clause. The Casey decision again confirmed that our laws and tradition afford constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education . . . ''

This case has to do with whether a State could prohibit sodomy, and they ruled they could not. It says in the case, Casey confirmed that our laws and our tradition afford constitutional protection. So we are defining the Constitution, this says. The Constitution says you have a right to ''protection to personal decisions relating to marriage, procreation, contraception,'' and more.

Then further it says:

> Persons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do.

Obviously referring back to marriage above.

That is a pretty good indication that the Supreme Court—in dicta, not a holding of the case but in language and logic—made a clear suggestion they were prepared to rule that heterosexual marriage could not exist without homosexual marriage.

Let's hear how one of the brilliant Justices of the Court, Justice Scalia, who believes the Court should show restraint, analyzed the impact of it. Justice Scalia said it does mean we must recognize same-sex marriages.

Justice Kennedy says in the decision, ''The present case . . . does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter.'' But, the logic and language I read earlier indicated that.

Justice Scalia, who dissented from the case, said in his dissent, ''This case 'does not involve' the issue of homosexual marriage only if one entertains the belief that principle and logic have nothing to do with the decisions of this court.''

Justice Scalia is correct. If you read the logic of that Court decision, the language they used—dicta that it was—would indicate that is where they are heading, and six judges signed off on that language. It only takes five.

When a case comes up of this kind, we can say with certainty there is a likelihood, and many scholars believe a very high likelihood, that the Court would rule that traditional marriage is too restrictive, it has to be changed from the way the people have defined it. We do not have to accept that. We have every right to amend the Constitution. The laws in the Constitution provided for slavery—that was changed. The laws of the Constitution provide for free speech. It applies to every State. The right to keep and bear arms. All kinds of guarantees are in our Constitution. The American people can define what marriage is.

This amendment is narrowly drawn. It does not in any way threaten liberties. It does not take our money, it will not put us in jail, it will not do all these horrible things that sometimes you have to deal with in the law if you are not careful and the Constitution might get away from you. It is a narrowly drawn matter dealing with one issue, and that is marriage. We have every right to do that.

I am disappointed that some of the people I know, particularly on the other side of the aisle, are not going to vote for this constitutional amendment, and they are not even here to talk about the amendment. They don't want to talk about it. They say it is somehow wrong to discuss it during a time when we are leading up to an election. What is wrong with that? What is wrong with having a vote?

The reason it is coming up now is because a month and a half ago is when the marriages first started being conducted in Massachusetts, November was when the first ruling came out of there, and last year was Lawrence v. Texas.

This has been building. Law reviews by liberal law professors are pushing this issue all over the country. Lawsuits are being filed throughout the country.

The pressure is on to destroy the traditional definition of marriage. It is time and perfectly appropriate for us to deal with it. I hope we will. The American people need to be watching this vote, watching the issues that are debated. They need to ask themselves how much confidence they have in their representatives if they do not share their views on this important issue.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

NONGERMANE AND NONRELEVANT AMENDMENTS UNDER CLOTURE

Mr. REID. Mr. President, yesterday the chairman of the Judiciary Committee, my friend, the distinguished Senator from Utah, Mr. HATCH, just prior to the cloture vote on the class action bill, made a statement that I want to talk about briefly today.

He said Members can bring up nongermane or nonrelevant amendments after cloture is invoked. I am reading from page S7818 of the CONGRESSIONAL RECORD where he said:

> Keep in mind that if we invoke cloture, that doesn't mean those who want to bring up extraneous, nongermane amendments or nonrelevant amendments can't do it. They can bring them up after cloture, but they are going to have to get a supermajority vote to win. That doesn't foreclose them.

That simply is not valid.

If cloture is invoked, you can bring up a nongermane amendment, but if anyone raises a point of order that your amendment is not germane, that amendment falls automatically. There is no such supermajority motion available like there is under the Budget Act. The amendment fails without a vote—fails or falls without a vote, however you want to term it. The only way you can get a vote is if you choose to appeal the Chair's ruling that your amendment is not germane. If you are successful, you will set a precedent that will permanently throw out the germaneness rule under cloture, and such an appeal of the Chair's ruling is a majority vote, not a supermajority vote.

So the fact remains: Nongermane and nonrelevant amendments are not in order once cloture is invoked, and there is no such supermajority motion available to make them in order.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.