

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 non-germane 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.

The assistant 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. Without objection, it is so ordered.

Mr. REID. Mr. President, I want to add to the statement I completed. In the situation Senator HATCH talked about and I commented on, you could the day before file a special motion and ask that the rules be set aside and that would take a two-thirds vote. So I guess that could be the supermajority he was talking about. It would be extremely difficult to do. You would have to file a notice the day before. I don't think that would likely happen. But I wanted to make sure the record was clear that I did not miss anything.

#### BURMA

Mr. McCONNELL. Mr. President, I want to commend the President for renewing import sanctions against the repressive military junta in Burma. The quick action of both Congress and the President on this matter underscores America's commitment to freedom and justice in that country.

Unfortunately, there have been no significant developments inside Burma since I last spoke on this issue several weeks ago. In 2006, Burma is expected to assume chairmanship of the Association of Southeast Asian Nations, ASEAN; there could be no greater loss of face to ASEAN or the region.

I am pleased that some of our allies in the European Union, E.U. have taken a principled stand over Burma's participation in the upcoming Asia-Europe Meeting, ADEM. However, the United Nations must do more to restore democracy to the Burmese people.

We need a full court press on the junta, which must entail the downgrading of diplomatic relations with the illegitimate State Peace and Development Council, SPDC, by placing its senior representative in Washington on the next flight to Southeast Asia. We do not have a U.S. Ambassador in Rangoon; the junta should not have one here.

I ran into the SPDC's "ambassador" in Washington at a July 4th celebration at the State Department, and told Mr. Linn Myaing to free Burmese democracy leader DAW Aung San Suu Kyi.

I find it incredible that someone from such an odious regime would be invited to celebrate the independence of the freest country in the world. Someone is clearly asleep at the wheel over in Foggy Bottom.

#### HONORING OUR ARMED FORCES

HONORING STAFF SGT. STEPHEN G. MARTIN

Mr. BAYH. Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave young man from Warsaw, IN. Staff Sgt. Stephen G. Martin, 39 years

old, died in the Walter Reed Army Medical Center in Washington, DC, after sustaining serious injuries at the hands of a suicide bomber, just outside a U.S. military compound in Mosul, Iraq. Stephen sacrificed his own life to save the lives of hundreds of fellow soldiers by causing the suicide bomber to ignite the bomb before entering the compound. One other soldier also lost his life in this selfless and heroic action.

Stephen spent his early childhood and junior high years in Columbia City, IN. He then moved to Pennsylvania and graduated from East Pennsboro High School in 1983. Stephen later joined the Army's 101st Airborne Division and worked to become a member of the Trenton, NJ Police Department, until he moved to Rhinelander, WI where he was a sergeant in the department. Just last year, Stephen joined the Army Reserve 330th Military Police Detachment. He was deployed to Iraq to help train local police forces. Stephen's sister, Susan Fenker, told the Fort Wayne Journal Gazette that Stephen told his family "he was proud to help Iraqis build a free society and give hope to the next generation." With his entire life before him, Stephen chose to risk everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

Stephen was the twenty-ninth Hoosier soldier to be killed while serving his country in Operation Iraqi Freedom. This brave young soldier leaves behind his father, Jim; his mother, Carolyn; his wife, Kathy; his two daughters, Jessica and Brianna; his son, Seth; and stepdaughters Jackie, Jessica and Kaitlyn. May Stephen's children grow up knowing that their father gave his life so that young Iraqis will some day know the freedom they enjoy.

Today, I join Stephen's family, his friends and all Americans in mourning his death. While we struggle to bear our sorrow over his death, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is his courage and strength of character that people will remember when they think of Stephen, a memory that will burn brightly during these continuing days of conflict and grief.

Stephen was known for his dedicated spirit and his love of country. When looking back on the life of his late friend and co-worker, Rhinelander Police Chief Glenn Parmeter told the Fort Wayne Journal Gazette, "He was always a soldier striving to bring about a better life for everyone, whether as a Rhinelander police officer or a military policeman in Iraq." Today and always, Stephen will be remembered by family members, friends and fellow Hoosiers as a true American hero and we honor the sacrifice he made while dutifully serving his country.

As I search for words to do justice in honoring Stephen's sacrifice, I am reminded of President Lincoln's remarks as he addressed the families of the fallen soldiers in Gettysburg: "We cannot

dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here." This statement is just as true today as it was nearly 150 years ago, as I am certain that the impact of Stephen's actions will live on far longer than any record of these words.

It is my sad duty to enter the name of Stephen G. Martin in the official record of the United States Senate for his service to this country and for his profound commitment to freedom, democracy and peace. When I think about this just cause in which we are engaged, and the unfortunate pain that comes with the loss of our heroes, I hope that families like Stephen's can find comfort in the words of the prophet Isaiah who said, "He will swallow up death in victory; and the Lord God will wipe away tears from off all faces."

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Stephen.

#### LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On October 14, 1992, Robert K. Woelfel, a transgendered individual, was shot twice by a shotgun blast. Harold Maas, the assailant, claimed to have been assaulted by an unidentified transgendered individual the year before and allegedly shot Woelfel in retribution for that crime.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

#### POLITICAL EXPEDIENCY

Mr. LEAHY. Mr. President, I am struck by the way the Republican majority is managing the Senate. I have noted that we do not yet have a Federal budget resolution. It is July and we have as yet considered only one appropriations bill, and that one bill still has to be resolved with the House. We have yet even to consider the other 12 appropriations bills that are normally regarded as "must pass" legislation—that is unless Republicans intend to shut the Government down, again.