

EXHIBIT 1

DEFENSE OF MARRIAGE ACT

HEARING
BEFORE THE
SUBCOMMITTEE ON THE CONSTITUTION
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTH CONGRESS
SECOND SESSION
ON
H.R. 3396
DEFENSE OF MARRIAGE ACT

MAY 15, 1996

Serial No. 69



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DEFENSE OF MARRIAGE ACT

WEDNESDAY, MAY 15, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:48 p.m., in room 2237, Rayburn House Office Building, Hon. Charles T. Canady (chairman of the subcommittee) presiding.

Present: Representatives Charles T. Canady, Henry J. Hyde, Bob Inglis, Michael Patrick Flanagan, F. James Sensenbrenner, Jr., Martin R. Hoke, Bob Goodlatte, Barney Frank, Melvin L. Watt, John Conyers, Jr., and Patricia Schroeder.

Also present: Representatives Bob Barr and Sheila Jackson Lee.

Staff present: Kathryn A. Hazeem, chief counsel; William L. McGrath, counsel; Jacqueline McKee, paralegal; and Mark Carroll, staff assistant.

OPENING STATEMENT OF CHAIRMAN CANADY

Mr. CANADY. The subcommittee will come to order.

There are two fundamental questions raised by the topic of today's hearing. The first is the substantive policy issue of whether we as a society will permit same-sex relationships to be recognized as marriages. And, second, quite apart from the substantive decision, is the critical question of who shall decide. The Defense of Marriage Act speaks to both of these important issues. As to the issue of how we will define "marriage," the act simply restates the current and long-established understanding that marriage means "a legal union between one man and one woman as husband and wife." The bill adopts that definition for purposes of Federal law only. It does not intrude on the ability of the States to define marriage however they choose.

I expect—and, in fact, I hope—that most Americans will think it quite odd that we are actually considering legislation to define marriage as an exclusively heterosexual and monogamous institution. Simply stated, in the history of our country, marriage has never meant anything else. It is inherently and necessarily reserved for unions between one man and one woman. This is because our society recognizes that heterosexual marriage provides the ideal structure within which to beget and raise children. This fundamental, unavoidable fact of our human nature belies any attempt to betray this bill as a defense of some archaic social construct. Marriage exists so that men and women will come together in the type of committed relationships that are uniquely capable of

producing and nurturing children. This is the simple wisdom reflected in section 3 of the act.

But let us assume that we don't all agree that marriage should be confined to opposite-sex couples. Let's assume what we know to be true: that some among us believe that same-sex unions should be given the status of marriage. How should we, in our democratic republic, decide that question? Should we let three judges in Hawaii decide to redefine marriage, not only for the people of Hawaii, but for the rest of the country as well. Or do we let the States decide this for themselves?

This is the issue addressed by section 2 of the Defense of Marriage Act. It says, simply, that no State shall be required to recognize as valid a marriage between persons of the same sex that was entered into in a different State. Each State can do what it wants. The bill merely provides that the States can deliberate and decide this issue free from any constitutional compulsion that might arise under the full faith and credit clause of the U.S. Constitution. I really can't imagine how anyone, in good conscience, oppose the proposition that the States should be able to deny the status of marriage to same-sex unions. Do the opponents of this bill really believe that three judges on Hawaii's Supreme Court should be permitted to redefine marriage for the entire country?

And make no mistake about it, that is the strategy that gay-rights lawyers have been pursuing. They have made no attempt to conceal that strategy. They intend to wage a concerted legal battle to force other States to recognize same-sex marriage licenses obtained in Hawaii. Not only would such a transformation in the institution of marriage be disastrous policy, to effect that transformation in this manner would be profoundly undemocratic.

I am very gratified to learn that the Clinton administration has apparently come to the same view. Just yesterday, we received a letter from the Justice Department indicating that the administration believes that the Defense of Marriage Act is constitutional and otherwise raises no legal difficulties. And a report in this morning's Washington Times indicates that the President actually supports the bill. According to the report in the Times, the President's spokesman, Michael McCurry, said yesterday that the President's, quote, "evaluation of the bill would be consistent with his personally-stated view that he opposes same-sex marriage." I am pleased to know that the President does not oppose this bill. This is an important issue, and I look forward to working with President Clinton and other Democrats, and all Members of Congress, as this bill works its way through the legislative process.

[The bill, H.R. 3396, follows:]

104TH CONGRESS
2D SESSION

H. R. 3396

To define and protect the institution of marriage.

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 1996

Mr. BARR of Georgia (for himself, Mr. LARGENT, Mr. SENSENBRENNER, Mrs. MYRICK, Mr. VOLKMER, Mr. SKELTON, Mr. BRYANT of Tennessee, and Mr. EMERSON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To define and protect the institution of marriage.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Defense of Marriage
5 Act”.

6 **SEC. 2. POWERS RESERVED TO THE STATES.**

7 (a) IN GENERAL.—Chapter 115 of title 28, United
8 States Code, is amended by adding after section 1738B
9 the following:

1 **“§ 1738C. Certain acts, records, and proceedings and**
2 **the effect thereof**

3 “No State, territory, or possession of the United
4 States, or Indian tribe, shall be required to give effect to
5 any public act, record, or judicial proceeding of any other
6 State, territory, possession, or tribe respecting a relation-
7 ship between persons of the same sex that is treated as
8 a marriage under the laws of such other State, territory,
9 possession, or tribe, or a right or claim arising from such
10 relationship.”

11 (b) CLERICAL AMENDMENT.—The table of sections
12 at the beginning of chapter 115 of title 28, United States
13 Code, is amended by inserting after the item relating to
14 section 1738B the following new item:

“1738C. Certain acts, records, and proceedings and the effect thereof.”

15 **SEC. 3. DEFINITION OF MARRIAGE.**

16 (a) IN GENERAL.—Chapter 1 of title 1, United
17 States Code, is amended by adding at the end the follow-
18 ing:

19 **“§ 7. Definition of ‘marriage’ and ‘spouse’**

20 “In determining the meaning of any Act of Congress,
21 or of any ruling, regulation, or interpretation of the var-
22 ious administrative bureaus and agencies of the United
23 States, the word ‘marriage’ means only a legal union be-
24 tween one man and one woman as husband and wife, and

1 the word 'spouse' refers only to a person of the opposite
2 sex who is a husband or a wife.'".

3 (b) CLERICAL AMENDMENT.—The table of sections
4 at the beginning of chapter 1 of title 1, United States
5 Code, is amended by inserting after the item relating to
6 section 6 the following new item:

"7. Definition of 'marriage' and 'spouse'."

○

Mr. CANADY. Mr. Frank.

Mr. FRANK. We are dealing with a couple of related events today: this legislation and Senator Dole's apparent resignation from the Senate. They are both indications that the Republican national campaign is not doing very well and there is a significant effort to change the subject.

There are issues that ought to be discussed around the question of same-sex marriage. They ought to be discussed in a reasonable and unhurried way. First, let's be clear that the crisis that is being invoked to justify this drafting of this committee into the Republican campaign effort is greatly exaggerated. Same-sex marriage is nowhere legal in American today and is not likely to become legal within the next couple of months in a final and binding way. Why the hurry then? Particularly "Why the hurry?" in a Congress which has not been known for its capacity rapidly to dispose of important issues. Because we have a campaign that is hurting, and this is part of that effort.

That's reflected, in part, in the very nature of the bill. There's a desperate effort here to find an issue, so we are, apparently, going to be asked to give the States a power which everybody who's for the bill thinks the States already have. We are told we must empower the States to reject, under their acceptance of the full faith and credit clause, marriages in Hawaii. But everybody who is talking about giving the States that power, in fact, thinks the States already have it.

What my friends have here is an elephant stick. Now an elephant stick is the big stick someone is carrying walking around the White House, and when asked what it's for he says, "Well, it keeps all the elephants off Pennsylvania Avenue." And when the answer is, "There are no elephants," they say, "See, my stick worked." Well, that's what they've got. They seek to empower the States to do what they believe the States can already do. In fact, if you took this seriously, it would be undermining the States' power. Because if, in fact, you accept as a reality that the States have the power to do this—and everybody here that's pushing for this bill accepts that: legislators accept it; States have already acted on it—if you accept that, what we are now saying to the States is, "Oh, no; you must get permission from us." Authors of this bill have written and said, "This is a bill to allow the States to do this."

Well, passing a bill that allows the States to do something logically assumes that the States cannot do it in the absence of that permission. If we need to pass a bill to allow the States, then the States apparently can't do it without us. And no one thinks that. So why are we passing a bill to do what the people who want the bill passed think the States can already do? Because, what they're worried about is not what the States decide to do with regard to marriage; they're worried about how the State decides to allocate its electoral votes, and this is an effort to influence not marriage in the States, but whether the Democratic or Republican tickets win.

We'll deal with that more, but I also want to talk about the substance. This is entitled "protect the institution of marriage." You define and protect. With "define" I would have no semantic objection; we could debate this. But the notion that same-sex marriage

somehow constitutes an assault on marriage between a man and a woman is very bizarre. Apparently, the only logic I could think of is that people are afraid that men and women who are now married or who are contemplating marriage will, if they learn that they could get a tax advantage for marrying someone of the same sex, change their minds about marrying someone of the opposite sex and go off and marry someone of the same sex. Because how could it be—against what are you protecting marriage?

I mean, those who believe in the importance of a man and a woman in love coming together in a union that is emotional and reinforced legally, how in the world is it a threat? And I will say, in terms of the priorities here—and I understand why they want to change the subject; things aren't going well with regard to medicare, or the environment, or education, or a lot of other issues. I've talked, obviously, as others do, to people in my district and I have people tell me, "I am worried about losing my Medicare," "I am worried about losing my job," "I am worried about the lack of safety on the Streets," "I am worried that there is not enough money now to continue with toxic waste cleanup."

Never yet has someone come up to me and said, "Congressman, I am terribly threatened; there are two women who are deeply in love a couple of miles away from me, and if you do not prevent them for formalizing their union, this will be terrible for me and, in fact, will threaten my marriage." I know of no heterosexual marriage—the form of marriage that we have that has sustained us—that is threatened by this. Herb and I entertained on Sunday 21 members of my family.

Mr. CANADY. The gentleman's time has expired. Without objection, the gentleman will have 2 additional minutes.

Mr. FRANK. I appreciate the courtesy of the chairman.

We entertained 21 of our relatives. A large majority of them were, in fact, heterosexual couples and the children of those heterosexual couples. I must tell you that having spent several hours in Herb's and my company, none of them left with their marriages in jeopardy. In no case were the marital bonds any weaker than before. In no case did these people who range in age from a couple of toddlers, who might be too young, but from a 4-year-old to a 20-year-old and on to Herb's parents—in no case was this disruptive.

So that's why I reiterate that this is largely political in motivation. There is no need to empower the States to do what the States want. I do believe there is a constitutional issue here, but the constitutional issue is not one where there is a role for the Congress. There are people who believe that under the full faith and credit clause the States must accept same-sex marriage if any State does it. There are other people who believe that under the public policy exceptions that States have been allowed to have, that that would not be binding. That is something that will be litigated directly between the States and the Supreme Court. There is no constitutional role for the Congress in this.

Apparently, what this is is an amicus brief. I never heard of Congress passing an amicus brief and calling it a law, because that's all it could mean. So this part about the States is either a nullity, if you believe that the States have no such power, or, if you believe that the Supreme Court would uphold the States' rights here, as

it has in other cases, then it's totally unnecessary. So, we have a totally unnecessary bill to ward off something, which is not now in effect, being rushed through a Congress which is unable to even get the gas tax repealed because they are unable to function, and, therefore, they are looking desperately for an alternative political issue—and that's it.

And it is, I think, an issue which, in addition, is exaggerated in its defense because the notion that two men who have an emotional bond live together—or two women—threatens marriage is of a piece with the illogic of the rest of this bill.

Mr. CANADY. Mr. Hyde.

Mr. HYDE. I have no statement.

Mr. CANADY. Mr. Sensenbrenner?

Mr. SENSENBRENNER. Mr. Chairman, I wish I could concur in the gentleman from Massachusetts's statement that there is no urgency in this. There is an urgency in this, and I'd like to ask unanimous consent to insert in the record at this time a memorandum dated April 19 from the Lambda Legal Defense and Education Fund, Inc., called "Winning and Keeping the Freedom To Marry for Same-Sex Couples—What Lies Ahead After Hawaii, What Tasks Must We Begin Now?"

Mr. CANADY. Without objection.

[The information follows:]



**Lambda Legal Defense
and Education
Fund, Inc.**

National Headquarters

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New York, NY 10012
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BRIEFING: **Winning and Keeping The Freedom to Marry for Same-Sex Couples -- What Lies Ahead After Hawaii, What Tasks Must We Begin Now?**

FROM: **Evan Wolfson, Director, The Marriage Project**
212-995-8986 (work), 212-995-2306 (fax)

DATE: **April 19, 1996**

Thank you for the opportunity to brief you on the status of Lambda's Hawaii marriage case, and the challenges, opportunities, and work that lie ahead for our equality movement. Throughout the country, we must begin preparing now to defend the freedom to marry, which we are on the verge of winning. Lambda looks forward to working with you, others in our movement, and our allies, and is available as a resource to assist you and others, in organizing and preparing at this historic moment in our equal rights struggle.

Update on the Hawaii Marriage Case

In May 1993, the Hawaii Supreme Court ruled that the State's refusal to issue civil marriage licenses to same-sex couples under the Hawaii marriage law presumptively violates the state constitutional guarantee of equal protection. *Baehr v. Lewin*, 852 P.2d 44, 74 (Haw. 1993). The Court held that the "different-sex restriction" on marital choice constitutes unconstitutional sex discrimination, much as the analogous "same-race restriction" prevalent just a generation ago constituted unconstitutional discrimination based on race.¹ Unless the State can show a "compelling" reason why it should be allowed to continue discriminating, it will have to stop. Any justifications the State comes up with must undergo "strict scrutiny," the strongest review. The case is now back in the trial court, scheduled for trial on August 1, 1996 -- which gives us real, although limited, time to organize and educate the public.

Given what the State has come up with so far as its "compelling" reason for discriminating,² my co-counsel, Hawaii Equal Rights Marriage Project (HERMP)'s Daniel R. Foley, and I are hopeful that we will win in the lower court. Indeed, the official government Commission created by the legislature and appointed by the Governor issued a Report in December 1995 concluding that there is no legitimate justification for the discrimination in marriage. This Commission Report, a historic first, is a useful tool in public education as Americans begin to examine marriage discrimination against same-sex couples for the first time. The Report makes clear that the State is unlikely to win in the lower court. On appeal, the Hawaii Supreme Court is likely to follow through on its earlier holding, and will probably thus uphold a trial court decision ending the "different-sex restriction" on civil marriage. That final ruling will likely come within the next two years. Equal marriage rights for same-sex couples would then be a reality in the Nation's fiftieth state.³

¹See *Loving v. Virginia*, 388 U.S. 1 (1967) ("same-race restriction" on choice of a marriage partner violates U.S. Constitution, both as denial of equal protection and as intrusion on fundamental right to marry).

²See, e.g., 1994 Haw. Sess. Laws 217, 1994 Hi. H.B. 2312 (June 1994) (legislature asserts that marriage statute is "intended to foster and protect the propagation of the human race through male-female marriages"). Because this is neither compelling nor true, the law is unlikely to impede the progress of the litigation, still very much on track. The official Commission created by the legislature concluded that neither this nor any other reason put forward so far justified the government's discrimination in marriage. See Report of the Commission on Sexual Orientation and the Law (Haw. Legis. Ref. Bur. 12/8/95); see also David W. Dunlap, "Panel in Hawaii Recommends Legalizing Same-Sex Marriage," N.Y. Times, Dec. 11, 1995, p.A18.

³Because the case involves state, not federal, constitutional questions, the Hawaii Supreme Court has the final word. There can be no appeal in *Baehr* to the U.S. Supreme Court, nor can the legislature alter the outcome (notwithstanding legislation such as that adopted in June 1994 reiterating its desire to discriminate), short of a highly unlikely constitutional amendment.

In the wake of this landmark victory, many same-sex couples in and out of Hawaii are likely to do what different-sex couples do all the time: get married in Hawaii.⁴ The great majority of those who travel to Hawaii to marry will return to their homes in the rest of the country expecting full and equal legal nationwide recognition of their lawful civil marriages. Despite a powerful cluster of expectations, logistics, rights, constitutional obligations, and federalist imperatives, there will likely be waves of backlash at both the federal and state level, possibly in almost every state. These questions are likely to arise: Will these people's validly-contracted marriages be recognized by their home states and the federal government, and will the benefits and responsibilities that civil marriage entails be available and enforceable in other jurisdictions for people married in Hawaii?

We at Lambda believe that the correct answer to these questions is "Yes." To support that answer, common sense and people's general intuitions both back us up and are there for us to tap into: marriage is marriage; it's a fundamental right; if you're married, you're married; this is one country, and you don't get a marriage visa when you cross a state border. However, we also know that, as always, lesbians and gay men will have to fight against the tendency of some in politics and the judiciary to create a "gay exception" to even the clearest principle of constitutional law or fairness. *Throughout the country*, we must now undertake public education, political organizing, and just plain asking people and groups for support, while combatting the political and cultural backlash that the religious extremists have already launched in many states.

Legal Tasks

Lambda has prepared a summary of the legal issues and theories that will be invoked regarding nationwide recognition of marriages validly contracted in Hawaii, as well as a bibliography of articles on various aspects of equal marriage rights. Identifying the legal tasks ahead,⁵ we have also already begun work to:

- develop networks of attorneys, law professors, and law students to research on a state-by-state basis the legal arguments available against backlash and in favor of recognition
- collect materials in a national clearinghouse for future battles
- promote, develop, and publish law review articles and spin-offs to mainstream idea of equal marriage rights, recognition, and related constitutional and federalist positions
- enlist legal scholars, former law clerks, etc. to do this mainstreaming work and reach judges through conferences, publications, trainings, and create a "buzz"
- prepare materials for legislatures, ranging from briefings to explanatory materials to draft legislation directly on issue and on related issues, i.e., marriage validation.

Political Tasks

At the same time, it is vital that all of us, and our allies, begin work *now* on the political tasks (i.e., public education, national and local organizing) that will shape the legal outcome. On the national, statewide, and local levels, all of us must begin now to:

- send wake-up calls to our national and local community organizations, and our allies (through, for example, conferences, ad hoc forums, contacts, and briefings such as this)
- create a non-defeatist sense of entitlement and expectation, and a climate of receptivity and

⁴There is a vast demand among lesbians and gay men, as among non-gay people, for the freedom to choose whether and whom to marry. See, e.g., Evan Wolfson, "Crossing the Threshold: Equal Marriage Rights for Lesbians and Gay Men, and the Intra-Community Critique," 21 N.Y.U. Rev. L. & Soc. Change 567 (1994-95). Marriage brings with it a host of legal and social benefits and protections otherwise largely unattainable. And even those in our movement who may not have chosen to fight to win this right are undoubtedly not willing to see us lose it -- with all the potential damage such a setback could entail across a range of lesbian and gay concerns.

⁵Lambda and the other legal groups strongly recommend that, for now, people not file or precipitate marriage lawsuits. The strategy for now is to do the nitty-gritty work of political organizing and public education, to accompany the legal work in progress.

Mr. SENSENBRENNER. Mr. Chairman, this memorandum does outline a strategy for the use of the full faith and credit clause for same-sex couples to go to Hawaii, to get married, and then come back to their home States and claim that their marriage is valid. That, I think something that should be decided in each legislature around the country. The bill that has been introduced by Mr. Barr of Georgia, and which I have cosponsored, does preserve the right of each State to determine its own marriage policy and not to be boot-strapped into same-sex marriages by Federal court suits because marriages were performed in Hawaii and there is a Hawaii marriage license that the couple would present.

What the bill does is two things: It allows the other 49 States which have not legalized same-sex marriages, either through legislation or through court decision, to determine for themselves whether or not to recognize same-sex marriages, whether performed locally or performed in Hawaii. It doesn't overturn any law, anywhere, and in this way I think is the ultimate States' rights proposal.

There is precedent for the Congress acting in this area and some of it's 100 years old. The admission of Utah to the Union was delayed for several years until such time as Utah agreed to abolish polygamy and not to legalize polygamy once admitted to the Union. The fear of the Congress over a hundred years ago was that polygamous marriages solemnized in Utah would have to be recognized in the other States of the Union under the full faith and credit clause of the Constitution, and Congress made sure that that would not take place.

The second part of this bill frankly defines marriage for the purpose of obtaining Federal benefits to be a "legal union between one man and one woman." The word "marriage" appears approximately 800 times in the United States Code; the word "spouse" appears over 3,000 times in the United States Code. When all of these benefits were passed by Congress—and some of them decades ago—it was assumed that the benefits would be to the survivors or to the spouses of traditional heterosexual marriages, and these include Social Security survivors and Medicare benefits, veterans' benefits, pension benefits, and health insurance benefits for Federal or other governmental employees.

Going to same-sex marriages as a result of a court decision in one State will have a very profound impact on these types of spousal benefit programs. And it seems to me that a court decision should not impact on what the Congress decides and should not impact on the status of our trust funds and the status of those benefits that are paid out of the U.S. Government's general fund. The Social Security Medicare Trust Fund is going broke—according to the trustees, very soon. Sometime in the next century there is going to have to be a fix-up of the Social Security Old-Age Pension and Survivors' Fund, and I think we ought to know what the impact of broadening these benefits will be before that becomes the law as a way of protecting the benefits that are being paid to those who have earned them and those who are presently receiving them.

Finally, I will plead guilty to my bias for maintaining and strengthening traditional heterosexual marriage. And I genuinely feel as an individual this bill does it and that same-sex marriages

derogate it. Traditional heterosexual marriage, in one form or another, has been the preferred alternative by every religious tradition in recorded history. Marriage laws have been passed by governments at both the State and National level all around the world to protect women and children from men leaving them and going with another woman. And I think that one of the problems our society faces today is the erosion of the family and the erosion of marriage because marriage is the bond that keeps the family together, and that's why I strongly support this legislation and respectfully disagree with those who oppose it.

I thank the chairman for giving me this time.

Mr. CANADY. Are there other members of the subcommittee wishing to make an opening statement?

Mrs. SCHROEDER. Mr. Chairman.

Mr. WATT. Mr. Chairman.

Mr. CANADY. Mr. Watt.

Mrs. SCHROEDER. Go ahead.

Mr. WATT. Mr. Chairman, members of the committee, this, in a number of ways, is a very sad day from several different perspectives. I don't know why this bill has been introduced at this time or why we are considering this bill. I suspect that it is a nice sound bite. Obviously, the people who have brought it here have succeeded in that way: the audience is large; the people are standing outside; the cameras are here, even though yesterday when we had a serious hearing about protecting and preserving our youth, not a camera showed up and very few people. So, I guess you've identified a good sound bite, and if that's what this is about, you have succeeded.

But for me, it just seems that this is another step in the direction of doing what we have been doing throughout this term of Congress, which is fanning the flames of intolerance and seeking to divide people against each other in our country and, perhaps, thinking that that will somehow yield political victory or sustain the majority that currently exists in the House. There is a price to be paid for that. The price exists between individuals; it exists between races; it exists between people of different religious philosophies, different views, and it undermines a basic tenet of our country which was constructed on diversity and has prided itself, historically, in supporting diversity. I'm saddened that we have come today to fan the flames of intolerance.

The second point is that I'm not sure that I yet understand how this doesn't fly in the very face of the things that the Republican majority has said they hold dear. I keep hearing people talk about how important States' rights are and I keep seeing this majority act inconsistently with that. This has never been an issue of Federal import; it has always been a matter of States' rights and, in fact, there is a provision of the Constitution which obligates us in certain circumstances to give full faith and credit to the laws of the States, which brings me quickly to the third point that it seems to me our majority is consistently inconsistent about, and that is claiming on the one hand that they are the preservers of conservatism and, constantly, on the other hand, attacking the most conservative document that exists in our lives, other than perhaps the Bible, the Constitution itself.

So we're engaged in this constant attack on constitutional principles that to me has always—and throughout this term I've articulated it a number of times—been totally inconsistent with any kind of conservative philosophy that I have ever been able to understand or deal with. Finally, some of us do believe that there—

Mr. CANADY. The gentleman's time has expired.

Mr. WATT. I ask unanimous consent for 30 seconds.

Mr. CANADY. Without objection.

Mr. WATT. There are some of us in this Congress who believe in individual rights, and I had thought that some of those people were in the majority. And every time I turn around there is that principle that you are being totally inconsistent about. So, on all of those fronts I am saddened that we are here, and I'd like to be talking about some things that really have some substantive value to them, rather than just making political sound bites, and I feel that that's what we're here about today.

Mr. CANADY. Are there other members wishing to make a statement?

Mrs. SCHROEDER. Mr. Chairman.

Mr. CANADY. Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman. Mr. Chairman, I thank you for holding these hearings on this important issue.

This is not—contrary to what the previous speaker has indicated—an attack on the Constitution. You can't attack the U.S. Constitution by statute; you can't amend the U.S. Constitution by statute. What you can do, however, is that you can clarify the meanings of previous statutes, previous acts of Congress, in terms of what they mean and what their imposition may be upon the State legislatures. And in that respect, this is very much a States' rights issue because, simply, the step we are taking clarifies that in terms of the States interpreting their responsibility regarding interpretations that may be given to issues in other State courts. On this issue they will be able to preserve and protect the values that they hold dear in their State and we should preserve and protect that. This is a States' rights issue and I very strongly commend the chairman for bringing the issue forward.

Mr. CANADY. Thank you.

Mrs. SCHROEDER. Mr. Chairman.

Mr. CANADY. Mrs. Schroeder.

Mrs. SCHROEDER. Thank you, Mr. Chairman.

I don't think—let's not even talk about the Constitution. What this bill is doing today is attacking the very foundation this Republic sits upon. You know, every day in the House we say "The Pledge of Allegiance," and we talk about liberty and justice for all. And today I'm asking what part of "all" don't you guys understand? I see absolutely no reason for this bill except to create a divisive issue in America, one more thing to stir people up, to get hate radio going, to get everybody moving around. I wore my scarf trying to show that I'm proud of the diversity in this Nation. It has been its strength, and yet somehow people think it's its weakness and we must divide and classify people so we have people that we can hate or bash or attack and that's the way we make political points.

You know, I've been married to the same man for 34 years; I've been in this body 24 years. I'm going to stay in my marriage; I want out of this body. [Laughter.]

I want out of this body. My husband and I are not threatened by two other adults standing up and saying they want to be responsible for each other for the rest of their lives. We think that's a positive value, that people will take responsibility for another human being, and I would hope people would be talking about that and saying they're not threatened. If someone is threatened by that, I want to hear why. If there is someone in this room who thinks there's a lot of benefits that come from the Federal Government for being married, let me tell them about the marriage penalty tax that's in the Federal Code.

Let me point out that those of you worried about Social Security—the reason there is a surplus in the Social Security Trust Fund is because of working spouses who put money in there but that don't get it back under their own name; they get it back as a dependant. Social Security would really be in trouble if we didn't discriminate against married couples and what they put in there. No, the Federal Government makes money on married couples through the Tax Code and the Social Security Code, and if you don't believe me, the Congresswomen's Caucus can point that out. We've been talking about economic equity in that area forever.

Let me also say, if you're saying marriage should be for people who have children only, fine, then that's a whole new concept; let's debate that. But that will push a lot of people out. Pat Buchanan couldn't claim marriage; a lot of people couldn't claim marriage. So, you know, what is all of this about? And the fact that Hawaii is 2 years away from coming down one way or another, we've got to hurry to do this right now? Now let me tell you. I want to know when we're going to have the witchcraft trial and when we're going to have the other ones; that's probably next week—and on and on and on. This is getting to be ridiculous.

Let me say, in all seriousness, if this Congress really wants to do something about family values, I'll tell you what we can do. We can support the bipartisan Congresswomen's bill that we keep trying to push to get strong child support enforcement. Now that's an urgency—right now. That's a very high percentage of people who are on welfare because we're allowing adults who were in a marriage to suddenly decide they don't want to support their children, or who were a parent and not in a marriage and still don't want to support their children. We go "wink-wink" and the Federal Government pays for that. I think every American is a whole lot more concerned about that than they are about finding more wedge issues.

Look, let's be honest as to what this is about. This is about nothing but 30-second ads. And any Member of Congress who votes against this bill, you are all ready to do the 30-second ads; you've probably already got the generic ad in the can to try and shock people and startle people. But, why? What good does that do? What do we gain by pitting one American against another? Aren't we all in this Republic together? If for over 200 years this Republic has been able to stand without this kind of a law, what urgency is there that we have to do it right now, when we can't get a balanced

budget, when we can't get child support enforcement, when we can't get all sorts of things that have a whole lot more to do with our survival than this? I am very sorry I have to give this speech, and I am very glad I am leaving this place.

Mr. CANADY. The gentleman from South Carolina.

Mr. INGLIS. Mr. Chairman, thank you. I want to congratulate you on holding these hearings and congratulate the authors of this bill on an excellent bill, and I'm going to yield in a moment to Mr. Barr who may wish to make some comments.

I think that I'd simply respond to the gentlelady from Colorado by noting that this Republic was founded on some basic statements of truth, and it's really interesting that in the Declaration of Independence it made some rather bold assertions: "These are truths that are self-evident." In other words, there was no debate about those things and there was no sort of uneasiness about asserting that there are some things that are true and right and some things that are wrong.

And that, I would submit, Mrs. Schroeder, is what's been one of the strengths of this Nation—is the ability to distinguish between right and wrong and that's what it's about here.

Mrs. SCHROEDER. Would the gentleman yield?

Mr. INGLIS. I'd be happy to yield, but briefly, because I want to yield to the gentleman from Georgia.

Mrs. SCHROEDER. I thought it said that all people were created equal, and it didn't say anything, I think, about marriage at that point and the Republic has survived these 200 years without dealing with it.

Mr. INGLIS. Let me reclaim my time. One of the reasons the Republic has survived so well is that for a long time in this country there was a generally accepted view of what is right and wrong. And folks that you're associated with for a long time have attempted to now undo that sort of understanding, and that's part of what's happening here.

Mrs. SCHROEDER. Will the gentleman yield further? Who am I associated with? Is it guilt by association?

Mr. FRANK. I'm sorry if I'm ruining the gentlelady's reputation.

Mr. CANADY. I'm sorry, the time is controlled by the gentleman from South Carolina.

Mr. BARR. Would the gentleman yield to me?

Mr. INGLIS. I'd be happy to yield to the gentleman from Georgia.

Mr. BARR. I thank the gentleman for yielding, and I thank the chairman for allowing me to participate to the extent of listening to the testimony, which I think will be very enlightening, on this important piece of legislation, and I congratulate the chairman for holding this hearing—knowing full well of the attacks that would be made upon him and this very institution—by bringing forward to the American people, and through the most appropriate forum possible, a piece of legislation that is based directly on explicit language in the Constitution which grants to this very body in which we sit precisely the power to do precisely what we are doing today, and that is to determine the scope of the full faith and credit clause of the Constitution of the United States.

I would point out to those that have already argued in opposition, this was not an issue that we sought out—it was presented

to us, presented to the American people and to the Congress of the United States by acts which have occurred over the last 3 years and which are occurring even today in the State of Hawaii as that society, and basically their court system, fashions a vehicle to direct a frontal attack on the institution of marriage in the United States of America.

The bill that we have crafted—Mr. Largent, Mr. Sensenbrenner, others, on both sides of the aisle—in response to that threat is a reaction and not an overreaction. It addresses the issue in precisely the terms in which it must be addressed, and no further. The remedy that we have fashioned is very respectful of principles of federalism; it does not tell any State what to do or what not to do. It forces no State to do anything; it mandates no State to do anything. It simply provides—in anticipation of confusion in our court system when these issues are presented to it as inevitably they will be by the homosexual activists—that no State can be forced to accept a definition of homosexual or same-sex marriages based on the full faith and credit clause of the Constitution.

Secondly, it provides a response to something that we also know will be coming very quickly after the case in Hawaii is decided very shortly, and that is applications for Federal benefits based on that new definition of marriage crafted by the courts in Hawaii. The legislation, therefore, proposes a definition in the United States Code for purposes of Federal benefits and Federal laws only that reaffirms explicitly that marriage for purposes of Federal laws shall be a union between a man and a woman only.

Mr. Chairman, again I commend this body for taking up this issue, and I would again urge everybody to look at what the legislation actually does and not be drawn off track by the activists, by many in the liberal media, to make it appear as if it does something that it does not. Thank you, Mr. Chairman, and I thank the gentleman for yielding.

Mr. CANADY. There is a vote on the floor. The subcommittee will stand in recess and will reconvene immediately after the vote.

[Recess.]

Mr. CANADY. The subcommittee will be in order.

Mr. CONYERS. Mr. Chairman.

Mr. CANADY. Mr. Conyers.

Mr. CONYERS. Good afternoon. Might I be accorded some time for some comments, please?

Mr. CANADY. The gentleman from Michigan is recognized.

Mr. CONYERS. Thank you very much.

Ladies and gentlemen of the committee, I come here amazed that this proposal to modify the full faith and credit clause is being considered. As the author of the bill, Mr. Barr, said, "It wouldn't hardly change much; it wouldn't prevent any State from doing what it wanted to do." I think that is the most modest undervaluation of what this provision would do that I have ever heard. This provision is an incredible incursion into the Constitution and I am surprised that with only about 30-some-odd legislative days left in the 104th Congress, this issue would be rushed to a hearing in the Judiciary Committee for this kind of debate.

Now Mr. Barr and the leaders of this Congress—the Republicans—are the same people who have given us more conservative

whether our constituents are right. I'll leave you with a quote from Dr. Martin Luther King, Jr., who once said, "A time comes when silence is betrayal." I believe that by taking a stand in opposition to this bill, even in a losing cause, you can help break the silence and stand with those who often have too few willing to stand with them. Thank you.

Mr. CANADY. Thank you, Representative Fallon.
Representative Musgrave.

**STATEMENT OF REPRESENTATIVE MARILYN MUSGRAVE,
COLORADO STATE HOUSE OF REPRESENTATIVES**

Ms. MUSGRAVE. Thank you, Mr. Chairman, and committee members.

In Colorado I represent a five-county district out in the rural plains—we do have areas other than mountains in Colorado—and when I got into the legislature—I am a freshman, I've just completed my second year—in my wildest dreams I could not have imagined the experience that I had in this last session. I chose to sponsor house bill 1291, which reaffirmed the prohibition of same-sex marriage recognition in Colorado. And this was a bill that if you think a person would carry for political reasons, you'd have to be dreaming. It was a very difficult bill to carry; I have the scars to prove it. I had the threatening phone calls; I had the intense atmosphere, much more than we're experiencing right now, but it was quite an experience to carry that bill. I would not have chosen to do that except that I felt very strongly about this issue.

I believe that when you're a representative that you should represent your district and you should also exhibit leadership. There are many people who are not concerned about same-sex marriage recognition, but there are many people who should be, because, indeed, it is a profound issue of our day. It passed out of the house of representatives; it passed in the senate; it came back with minor amendments; we approved it again and it went to Governor Romer in Colorado and he chose to veto that bill. Governor Romer is of the opposite party than I am, but he's a very popular Governor even though the Republicans are the majority in the legislature. Governor Romer received over 20,000 phone calls and many faxes and letters in regard to this issue, but he chose to ignore the overwhelmingly huge majority of Coloradoans that supported my bill.

As the Governor vetoed the bill, he mentioned that he did respect and reaffirm the institution of marriage for one man and one woman, but as he went on in the four-page veto, he also said that my bill was mean-spirited and divisive. Well, I haven't heard the term "mean-spirited" yet, but I'm sure it will be coming forth today. You know, it's getting to be where if you take a strong stand anymore in preserving a traditional institution like we're trying to do today when we reflect on marriage in our history, you're mean-spirited and divisive. But I would ask you, have the homosexuals not had the opportunity to bring forth laws, just like anyone else? Haven't they had the opportunity to operate in a legislative arena to accomplish their goals?

But, rather, I felt, when I carried the bill in Colorado, that this was an end-around run to get their complete agenda in one fell-swoop. And I find it rather amazing that people would say that I'm

divisive and I'm mean-spirited, when I would carry a bill like this, when it is very obvious that they want a judicial decision to go in their favor when they're well aware that legislatively and in the general populace that is not what people want. And I ask you, if we redefine marriage in our country, I can't even imagine all the ramifications that that would have. I think it's rather disingenuous to be cavalier about it and say, "Well, I'm not worried about it and how does that threaten you?"

What about the education of our children? What about health education? What about Madison Avenue? What about advertising? The cultural changes will go on and on if we choose to redefine marriage. I took a strong stand in Colorado; there were many that stood with me. The Governor chose to veto that, for whatever reason, and the people in Colorado are not happy about that. Our Governor will be term-limited, so he doesn't have to look at reelection, but I'll tell you, I am proud that I carried that bill. I did it for the right reasons; I know my motives; I know my heart, and I thought it was the right thing to do.

Mr. CANADY. Thank you, Representative Musgrave.
Senator Chambers.

**STATEMENT OF SENATOR ERNEST CHAMBERS, NEBRASKA
STATE SENATE**

Mr. CHAMBERS. Mr. Chairman and members of the subcommittee, I also am pleased to be here, and I'm glad somebody let me know what that "Hon." in front of my name stood for. I read not too long ago that a black lady who worked in a cafeteria somewhere around here was fired because she referred to some individual as "baby," and so I thought maybe this was to show that certain terms of endearment would be allowable and it was an abbreviation for "honey." [Laughter.]

But they tell me that it means honorable, and it's hard for my colleagues to accept it, but it reminds me of a situation where this old gentleman was testifying in a court. He was known as the town character and he was ridiculed. People treated him like a fool, but he was smart enough to recognize how they mistreated him and how little they thought of him. He was referred to as "Colonel," and his last name happened to be Smith—no relationship to the gentleman from Texas probably, but the judge leaned over and said, "Colonel Smith . . ."

And the old gentleman said, "Yes?"

He said, "How do you come by this title 'Colonel'? You don't look old enough to have been in World War II, but you look too old to have been in the Korean War. So just how do you come by this title 'Colonel'?"

He said, "Well, Judge, it's just like 'the honorable' in front of your name; it don't mean nothing." [Laughter.]

And in many instances these honorific titles are really horrific when you look at what those of us with the power to protect the rights of all people will do in terms of misusing that power.

I know that there are appeals to religion, but I'm skeptical when that is done by those of us who legislate because those of us who make laws are involved with legislation, not salvation. Leave that to the churches. But if you do want to go to religion, and you talk

Mr. CANADY. Thank you, Senator.
Representative Whyman.

**STATEMENT OF REPRESENTATIVE DEBORAH WHYMAN,
MICHIGAN STATE HOUSE OF REPRESENTATIVES**

Ms. WHYMAN. Good afternoon, and thank you, Mr. Chairman and members of the committee, for allowing me to speak on this most important issue.

In way of introduction, I'm Michigan State Representative Deborah Whyman. I'm currently serving in my second term in the Michigan House of Representatives.

As a member of the Michigan Legislature, I frequently find myself reacting to actions taken here in Washington requiring our body to comply with Federal mandates. My colleagues and I are seldom pleased with these edicts from Washington. However, we can take some small measure of comfort in knowing that we can vote for or against these individuals who impose these burdens on the States.

Today we are discussing a very different kind of mandate being imposed upon the several States. This mandate may well be imposed on every State in the Union by the court system of one State. This kind of imposition must not be permitted.

I'm, of course, speaking of the same-sex marriage cases currently winding their way through the Hawaiian courts. If Hawaii's Supreme Court rules that the State law prohibiting same-sex marriage provides—violates the Hawaiian constitution, that State will be the first to allow this practice. Consequently, if Hawaii permits same-sex marriages, every State would then be forced to recognize these unions under the full faith and credit clause of the U.S. Constitution.

Article IV, section 1, of the U.S. Constitution states that "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and effect thereof."

Extremist homosexual groups are relying upon article IV, section 1, to open the floodgates for same-sex marriage. These groups are trying to accomplish, through judicial fiat, what they could never accomplish through the legislative process. I'm here today asking you to stop the extremists and allow the States to regulate marriage without the interference of another State's court.

In Michigan I've introduced house bills 5661 and 5662. These bills specifically prohibit marriage between individuals of the same sex and refuse to recognize the same such unions that may be legally valid in another State. An overwhelming majority of those individuals contacting my office about these bills favor their passage.

Since I've introduced these bills, the homosexual extremists have demanded such things as my expulsion from the legislature. I realize they are a very vocal group. While they are loud, they are small in numbers. The vast majority of Americans reject their extremism.

I come here today asking that you also reject the extremists in the homosexual movement. I wish to lend my support to H.R. 3395—I'm sorry, 3396. As you recall, article IV, section 1, gives Congress the right to regulate how acts, records, and proceedings

are reciprocated throughout the States. I urge you to restrict the recognition of same-sex marriages to States where the practice is allowed. No one State should be allowed to inflict its bizarre social experimentation upon unwilling participants.

Extremists will insist that every act, record, and proceeding is covered under the clause. To demonstrate the fallacy of this argument, let's examine the State where the heterosexual marriages are performed 24 hours a day under the glare of neon lights. In Nevada, State law permits prostitution except where prohibited by county government. Only Clark County prohibits legal prostitution. Since prostitution is permitted in Carson City, is it then also legal in all other States? Of course not. A license to perform acts of prostitution in Nevada's capital city is not valid in Michigan or any other State.

I, for one, am furious with Hawaii's attempt to abolish thousands of years of legal tradition. Many Americans are disgusted with this attempt to destroy every other State's laws regulating marriage. For this reason, I have launched a boycott on the Hawaiian tourism industry, and I'm urging individuals who support the traditional family to travel elsewhere until the State government of Hawaii can end this madness. If the homosexual extremists can boycott the State of Colorado, the other 95 percent of the population can boycott Hawaii.

With that, I'll close. Thank you for the opportunity to speak before you today.

[The prepared statement of Ms. Whyman follows:]

entity, this discrete unit we're talking about, problems would be created therein, but if you're talking about what we're discussing in terms of gay marriages, you have two individuals voluntarily in that relationship—

Mr. INGLIS. But I understand all that—

Mr. CHAMBERS [continuing]. And it is not likely because of the makeup—

Mr. INGLIS. Right, I understand all that.

Mr. CHAMBERS [continuing]. It will lead to these problems.

Mr. INGLIS. I understand all that. But I'm very interested in following up with Mr. Fallon's comment now about applying the principle that you're not enunciating, I'm enunciating for you, but I think it's a principle that you really must believe in. And that is it's OK to proscribe polygamous relationships.

Now, Mr. Fallon—

Mr. CHAMBERS. No, that's—I've stated what I've stated—

Mr. INGLIS. I know that's not what you said, but that's what I say. So let's see what Mr. Fallon says about this: let's assume somebody has some insatiable appetite for spouses. They just must have more spouses.

Mr. FALLON. I can't understand that. My wife can barely handle one husband.

Mr. INGLIS. Right, OK. So the idea is now—in other words, what you would—I assume, based on your testimony, is that's then just the way I am. I can't help it. So, therefore, if I am under such a cloud of victimization and I just can't help it, it's the way I am, then why is it that our society is allowed to proscribe polygamous relationships? What if I just wanted more and more wives? Can you explain to me why it is that we can outlaw that?

Mr. FALLON. I think the distinction is between whether one is naturally attracted to members of the same sex or of the opposite sex, and, clearly, most of us are attracted to members of the opposite sex.

Mr. INGLIS. Oh, wait, wait. OK, I understand all that. I understand the rationale. But what I'm asking is, why can society proscribe a polygamous relationship if you assert that we cannot proscribe a homosexual relationship?

Mr. FALLON. Well, I—I haven't thought about that in much detail. Polygamy is not a big issue in my district. [Laughter.]

Mr. INGLIS. Wait a minute now. OK, so, in other words, you're not certain about that. Let me give you time to think about it.

Mr. FALLON. But same-sex marriages are. I have a lot of couples—

Mr. INGLIS. Let me give you time to think about it while I read something to you, very interesting, that I got recently from a member of PFFLAG. It says—it's an article from somebody who's making an argument that—basically, the argument that you make, and it is the party line: "I can't help it; I'm just this way," which actually, of course, is a secondary argument. The primary argument, and the better argument—

Mr. FRANK. Will the gentleman yield?

Mr. INGLIS [continuing]. For the homosexual cause—in just a moment—would be it's OK; in fact, it's good to be homosexual. See, that's not the argument. The argument is the secondary argument,

that's all marriage is, is swearing to each other before an official witness that they'll love, honor, and obey or cherish, or whatever the word is. You can see how long ago it was that I got married. [Laughter.]

But what's the big deal?

Mr. ARKES. I think you're inviting me to—I don't want to go back about ground I've already traversed, but simply to point out that, as I said, we understand that there are many relations of deep love between men and men, between women and women, grandparents and grandchildren. And, as I said, in the nature of things, not merely a matter of opinion, in the nature of things, those loves cannot be diminished as loves because they are not manifested properly in marriage. So I think I'd agree with that wholly.

Mr. HYDE. How does same-sex marriage legitimize homosexuality? Isn't that one of the objections, that some people don't want it legitimized? And the notion that the State sanctifies, if I may use that word—"recognizes" is probably more important—this relationship officially, doesn't that connote or denote approval of homosexuality?

Mr. ARKES. Yes, I think so, though I think it's worth saying, as Dennis suggested, that one's position on this—

Mr. CANADY. I'm sorry, the gentleman's time has expired.

Mr. Watt.

Mr. WATT. Mr. Chairman, I yield 2 minutes to Ms. Jackson Lee for purposes of a unanimous consent request and whatever other purposes she wants to use it for, and I yield 3 minutes to Mr. Frank—in that order.

Ms. JACKSON LEE. Mr. Watt, I thank you very much for your kindness.

I am not a member of this committee or subcommittee; I am a member of the House Judiciary Committee. And so I think, because of the moment and the striking confusion that this brings to me, that it would be worthy of trying to solicit from those who would present their efforts, to try to listen and discern the reason for this legislation.

Quickly, let me say that I hope, through one of the members, that I might submit a statement for the record. So I will be as brief as the 2 minutes will allow me.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF HON. SHEILA JACKSON LEE, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TEXAS

I want to thank the Chairman and the members of the Committee for allowing me to participate in this hearing today to consider the issue of same-sex marriages. This is a difficult issue, and strong opinions exist on both sides of the debate. I hope that this hearing on the "Defense of Marriage Act" will help to shed some light on the purpose of this legislation and help us to determine whether federal legislation is truly necessary.

No one can deny that the family as an institution has changed dramatically since the days when our own parents were children. Today, there is no single definition of family that applies to all individuals. A family may be made up of two parents and their children, grandparents caring for grandchildren, single mothers or single fathers raising their children, couples without children, foster parents and foster children, or individuals of the same-sex living together and sharing their lives a couple.

We need to respect the human rights of all these American families. We should not make laws which are based on an antiquated notion of what constitutes a fam-

Mr. SULLIVAN. Like almost every single proponent of this institution and its equality, I oppose polygamy. I do so because I think that the essence of marriage is the commitment to one other human being.

Mr. INGLIS. Well, no, wait a minute. OK, hold on just a second.

I understand that. But now we're positing here a situation where we're saying that this bisexual says to us, the State, "This is the way I am." Tell me exactly what you say to that person about why it is that you will stop him or her from exercising—not a choice, again, because you maintain, as the party line does, that this is not a choice. Tell me what you say to that person.

Mr. SULLIVAN. Well, first of all, that's not a party line; it's the truth.

Mr. INGLIS. Well, no, don't answer that. Answer what you would say to that person.

Mr. SULLIVAN. And I don't need any party to tell me the truth about my own sexual orientation.

But, secondly, I would say, no, it is destructive of a human being involved in—

Mr. INGLIS. OK.

Mr. SULLIVAN. Let me finish—

Mr. INGLIS. No, no. I'm—

Mr. SULLIVAN. Let me finish the sentence.

Mr. INGLIS. Go right ahead.

Mr. SULLIVAN. It is destructive of a human being to want to commit themselves to two separate individuals for their entire life.

Mr. INGLIS. OK.

Mr. SULLIVAN. We know that to be true.

Mr. INGLIS. OK, then, enough of that. Let me ask you this then: what you have just said is it's OK for a society to say that some things are right—

Mr. SULLIVAN. Yes.

Mr. INGLIS [continuing]. And some things are wrong?

Mr. SULLIVAN. Of course. No one's disputing that.

Mr. INGLIS. And I'm here to tell you that I think it's pretty clear that the homosexual community is admitting that homosexuality is wrong because you are not making the primary argument.

Mr. SULLIVAN. I make the primary argument—

Mr. INGLIS. If you were the primary—

Mr. SULLIVAN [continuing]. I'm a gay person—

Mr. INGLIS. I want to shift—

Mr. SULLIVAN [continuing]. And I have no shame about it at all.

Mr. INGLIS. I want to shift from you to Ms. McDonald because this is a fascinating point, I think, about the primary versus the secondary argument. Primary would be, Ms. McDonald, this is a wonderful lifestyle and we encourage everyone to be a lesbian or homosexual. The secondary argument admits that there's something wrong, that there is something terribly wrong, about homosexuality, and, therefore, you drop back to the secondary argument, which is: I can't help it. If you can't help it, it must be there's something wrong.

But let me point this out: this is why I'm so interested in talking to you about this. We had a letter recently from a PFFLAG member, and it's got an apologetic in it from somebody that's talking

American history when marriage is denied to certain groups of people, African-Americans during the cruelest portion—

Mr. INGLIS. Yes, OK, you're not answering the question.

Ms. BIRCH [continuing]. When they were slaves—

Mr. INGLIS. You're not answering the question.

Ms. BIRCH. I am answering the question.

Mr. INGLIS. And I must tell you that it offends me tremendously to have homosexuals compare themselves to the historic struggle for civil rights among black people.

Ms. BIRCH. Why?

Mr. INGLIS. Because black people were economically disenfranchised and cut out of this society, whereas homosexuals, by most studies that I'm aware of, have a higher standard of living than heterosexuals.

Ms. BIRCH. Yes, well, your information, sir, is inaccurate—

Mr. INGLIS. It offends me tremendously—

Rabbi SAPERSTEIN. Does that make anti-Semitism OK because Judaism—

Mr. INGLIS [continuing]. That you can persist in this comparison to the historic struggle of blacks to achieve equality in this country. The fact is that is not a choice, to be black, but it is a choice—I know you don't like this, but it is obviously a choice to be homosexual.

Ms. BIRCH. Wrong.

Mr. INGLIS. And that is simply—you are wrong to assert that it's not a choice.

Ms. BIRCH. Representative, I don't think you know—

Mr. INGLIS. You are absolutely wrong to assert that. So, therefore—

Ms. BIRCH [continuing]. Anything about it.

Mr. INGLIS. Well—

Ms. BIRCH. And if you'd like to talk about the law, I would like to respond to that.

Mr. INGLIS. Well, I'd be—I just want to—

Ms. BIRCH. I don't think you know anything about the struggle of African-Americans in this country vis-a-vis—

Mr. INGLIS. I know, because you are the head victim. I know, you're in charge of victims. So you will decide who can speak on that—

Ms. BIRCH. I would expect a little dignity and—

Mr. INGLIS [continuing]. Not anybody else.

Ms. BIRCH [continuing]. Respect.

Mr. INGLIS. But I think that the point that should be made here, and really what this all boils down to, is, Is it a choice or is it a condition? And if you would please make the honest argument—

Mr. CANADY. Sorry, the gentleman's time has expired.

Mr. INGLIS. May I have 30 seconds?

Mr. CANADY. Without objection.

Mr. CANADY. If you'd make the honest argument, you'd say, listen, it's a wonderful condition; let's all be gay. But you're not making that argument. You're making the argument we're poor and pitiful, and you must accept us the way we are. So you are admitting that it is not a desirable lifestyle, and there's something wrong with it, by arguing that it's not a choice. So I think if you analyze

that honestly—it's essential to me because I hope that many can be rescued from that lifestyle and returned to where they can have a happy lifestyle, because I think it's inherently destructive.

Ms. BIRCH. Mr. Chairman, may I respond?

Mr. CANADY. I'm sorry, the 30 minutes has gone—I'm sorry, the 30 seconds has gone—

Mr. FRANK. Well, it seemed like 30 minutes, Mr. Chairman.

[Laughter.]

Ms. BIRCH. May I respond?

Mr. CANADY. Mr.—

Ms. BIRCH. May I respond?

Mr. CANADY. Mr. Flanagan is recognized.

Mr. FLANAGAN. I have just 5 minutes, and I'd like to return this to a discussion of the law.

My question is rooted in a difficulty that I'm having with this is that, whether passively or actively, the Federal Government of the United States is now going to speak on the issue of marriage. In the National Legislature we're going to have a marriage law. It doesn't matter that under this law States can do whatever they want—we're going to do this for the first time.

I guess, Mr. Sekulow, I guess my question is to you. Under what historical jurisprudence flavoring can we go to this place and not come back from it? Aren't we setting an incredible precedent?

Mr. SEKULOW. I think the appropriate response would be to understand the context of the way I understand 3396 to be, and that is simply to allow the States to make that decision. We would oppose a Federal law saying: "Marriage for the States is as follows." That's a very different question.

So I think, from that context, what we're really talking about here is a bill that, if it becomes law, will simply allow the debate to take place. There's been a number of times where Congress has sought to intervene on similar actions. I could think of one that I'm very familiar with, and that would be the Equal Access Act, which was passed in 1984, bipartisan support. Recognizing that local school districts controlled their schools, there was this concern by Congress that religious and political clubs on public high schools were being denied access. Congress intervened. They didn't mandate—

Mr. FLANAGAN. Excuse me, Mr. Sekulow, if I can interrupt you—the issue at hand is not school prayer or any other issues. I don't mean to intimate that you're trying to turn it to that.

Mr. SEKULOW. No, sir.

Mr. FLANAGAN. But I'm saying that this is peculiar, special; it is unique in its own right because of the fact that the Federal Government does not have marriage laws. We don't do this up here.

Mr. SEKULOW. Right.

Mr. FLANAGAN. Now, want to assert that the States are going to go ahead and be permitted to have the debate—and I think that that is wonderful. I think the current state of the law allows that. My question is: why are we putting or how can we put our thumbprint on the fact that we're now going to speak on the subject of marriage where for 200 years we have not?

Mr. GOODLATTE. So you disagree with Rabbi Saperstein in terms of the second sentence of the full faith and credit clause, and I agree with you—

Mr. WARDLE. I—

Mr. GOODLATTE. Go ahead and elaborate on that.

Mr. WARDLE. Yes. I think that it's very clear that the Founders and the drafters of the Constitution intended for Congress to be able to declare the effects, and that's precisely what this bill does.

It's very interesting that this bill doesn't say to the States what the substantive policy of the law must be. It simply says you do not have to give it back to the law of another State, and I think that is clearly a neutral approach and it's clearly within the power of Congress.

Now there are some fine-tuning dimensions of the—

Mr. GOODLATTE. To go beyond power, do you think it's the responsibility of the Congress to act when the vast majority of people hold a view contrary to what one State supreme court appears to be holding, and which might then be spread across the land of the rest of the country?

Mr. WARDLE. The recognition of same-sex unions as marriage would be a radical redefinition of marriage which—

Mr. CANADY. Without objection, the gentleman will have 30 additional seconds.

Mr. WARDLE [continuing]. Which I think would be—should not be enforced upon the States through some judicial interpretation or some vehicle such as a strained expression of full faith and credit. I think that should be decided by each State, by the people therein, and by Congress for purpose of Federal law.

I think that same-sex unions do not contribute to society what heterosexual marriage has contributed through the centuries and what is so important for families and for children today. And I think that this—so I think that there are good policy reasons for States not to recognize same-sex marriage, even if some jurisdiction or some court does.

Mr. GOODLATTE. Mr. Chairman, we may run out of time, but I did promise Ms. Birch she'd have the opportunity to respond as well.

Mr. CANADY. If there's no objection, you'll have an additional 30 seconds for that purpose.

Ms. BIRCH. Never before has the Congress of the United States even presumed to give substantive guidance in terms of the full faith and credit clause. Indeed, the second sentence—

Mr. GOODLATTE. But never before has the full faith and credit clause been used for this purpose with regard to same-sex marriages.

Ms. BIRCH. Every law that Congress has passed on this topic—and there have been two before this century, in 1790 and 1804—provides ways to authenticate acts, to prove the records or the acts or the judicial proceedings. That's one piece of it.

Even recent legislation—for example, the Parent Kidnapping Prevention Act does not purport to go into substance. It only purports to—

Mr. CANADY. I'm sorry, the—