

Testimony of
The Honorable Russ Feingold

September 4, 2003

Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Property Rights
Hearing on "What is Needed to Defend the Bipartisan
Defense of Marriage Act of 1996?"
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Mr. Chairman, I first want to thank you and your staff for your courtesies in working with me and my staff in preparing for this hearing.

That having been said, with all due respect, I do not believe that Congress should spend time on an issue that should be left to the states and religious institutions. The Free Exercise and the Establishment Clauses of our Constitution guarantee that religious institutions have the freedom to determine without government interference which unions they will recognize. In addition, our nation has a long tradition of deferring to the states on marriage and family law issues.

I feel especially strongly about this given the many pressing challenges that our nation faces at home and abroad. We just returned from a month of recess and most of us spent a lot of time with our constituents. I certainly did; I held 21 town meetings in 21 counties in Wisconsin. I can tell you, Mr. Chairman, that my constituents were talking to me about the economy, the loss of jobs to foreign competition, skyrocketing gas prices, the war in Iraq and the fact that our troops are still suffering considerable losses on almost a daily basis, the need for federal help to fund homeland security efforts and equip and train our crucial first responders, and access to health care. The American people should be united to meet these and other challenges, and they are best served if Congress focuses its attention on these pressing matters that are properly within its authority and not on a divisive issue that is best left to the states and the courts. In these difficult times, we should be working to bring the country together to solve our problems, not divide it with controversy.

For these same reasons, I voted against the Defense of Marriage Act, or "DOMA," in 1996. I believed then, as I believe today, that the issue of marriage is best left to the states. The President and a majority of the Congress disagreed, and DOMA became law. Despite my protests, it is the law today.

Now, Representative Musgrave has introduced a marriage amendment to the Constitution. Mr. Chairman, if a similar resolution is introduced and considered in the Senate, I would oppose it. I do not believe that Congress should amend the Constitution on this issue. During the two hundred-plus years since the adoption of the Bill of Rights, the Constitution has been amended

only 17 times. The Constitution has never before regulated marriage, and I don't think it should begin to do so now.

A number of conservative commentators and legal scholars agree with me. Former Congressman Bob Barr, who was the author of DOMA in the House, recently wrote: "Marriage is a quintessential state issue. . . . A constitutional amendment is both unnecessary and needlessly intrusive and punitive."

Mr. Chairman, I am also concerned that amending the Constitution could have the effect of writing discrimination into the Constitution. H.J. Res. 56, the marriage amendment introduced in the House, defines marriage as a union between a man and a woman. But this proposed amendment also states: "Neither this Constitution or the constitution of any State, nor state or federal law, shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups."

This is wrong. A state should be able to grant rights or protections to same-sex couples if it wants to, and the federal government should not interfere with that decision. For example, over 170 state and local governments extend health benefits to the same-sex partners of their public employees. But if the House marriage amendment is ratified, same-sex couples could be denied such rights and protections.

Among our witnesses today, we will hear from Keith Bradkowski. Keith lost his longtime partner, Jeff Collman, a flight attendant on American Airlines flight 11, on September 11. Keith will talk about the protections that he has enjoyed as a partner - and now as a surviving partner -- in a committed relationship, and the impact a constitutional amendment could have on his life and on the surviving partners of other patriotic Americans. In the audience today, we have individuals who are in same-sex, committed, long-term relationships, such as Jo Deutsch, Sheryl Griffin, Wanda Floyd, Frank Benedetti, and Gary Trowbridge. The amendment proposed in the House would prevent states from choosing to give them and other individuals in same-sex, committed relationships the same legal recognition that married couples enjoy. I also want to acknowledge Alice Hoglan, who is also with us today. Her son, Mark Bingham, a gay man, was one of the heroes on flight 93 who helped to divert that plane from Washington, DC on September 11.

With the exception of the Eighteenth Amendment instituting prohibition, which was later repealed, the Constitution has never been amended to limit basic rights. If the federal marriage amendment is ratified, it would do just that. Our Constitution is an historic guarantee of individual freedom. It has served as a beacon of hope and an example to people around the world who yearn to be free, to live their lives without government interfering with their most basic human decisions. We should not seek to amend the Constitution in a way that will reduce its grandeur.

I look forward to hearing from Keith and all our witnesses, as we explore these issues. Thank you, Mr. Chairman.