

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
June 22, 2004

Oversight Opportunities Lost

Today, we convene for our fourth hearing in the last 10 months on federalizing marriage law. In the last 10 months, as questions continually surfaced about the Bush Administration's handling of the war against terrorism, its decision to invade Iraq and its homeland security system charged with protecting citizens, this Committee has decided to set the states' marriage laws as its priority. Instead of holding long-promised hearings on enemy combatants, FISA, or detainees at Guantanamo Bay, this Committee has focused much of its energies on proposals to amend the Constitution to narrow the rights of individuals. Instead of hearings on the abuses at Abu Ghraib, the FBI's troubling and costly computer problems, FBI lab problems, FBI foreign translation problems, the bipartisan SAFE Act or any of the other legislative proposals to modify the PATRIOT Act, we have held hearings on limiting free speech by banning flag desecration and outlawing same-sex marriage. We have held no hearings on civil rights matters, including important aspects of the Voting Rights Act. Of course, we wasted two opportunities to hold some of these hearings by letting the hearing room sit empty after this hearing was rescheduled twice and then postponed to suit Governor Romney's schedule. And now we are being asked to devote another morning of hearings on proposals to undercut civil unions and partnerships, and to scapegoat gay and lesbian Americans for political gain.

At the outset, I would like to register my objection to the Chairman's decisions to deny the minority an equal number of witnesses for this hearing, and to put former Representative Bob Barr on a separate panel. Having served in Congress for eight years and worked closely with this Committee on many issues, he deserves more respectful treatment. I renew my request now, that he be permitted to testify along with Governor Romney on the first panel.

We have convened to hear from the Governor of Massachusetts. We will hear about State law developments in Massachusetts. I am sorry the Governor is devoting so much of his time this week to flying to Washington to testify before this Committee about matters transpiring in the legislature and courts and among the people of his State.

A Sky That Has Not Fallen

I have to say that as a non-Massachusetts resident it does not seem like the sky has fallen. I imagine that most Americans have not felt any effects from developments in Massachusetts, and that many would be mystified and dismayed by this Committee's fascination with the topic.

Sadly, if media reports are correct, their dismay and mystification will only deepen in coming weeks. We understand that the Majority Leader will bring the Federal Marriage Amendment to

the floor on July 12 with, or far more likely without, the approval of this Committee. It appears that Committee consideration of constitutional amendments is another tradition that the Republicans are set to discard.

I have heard no one suggest that the FMA is even close to obtaining the required two-thirds support in this body. Indeed, Congress Daily reported last Friday that floor debate on the FMA was not expected to pose a scheduling problem for the majority because the Majority Leader "likely will fall well short of the 60 votes needed to begin debate." Both its supporters and opponents know that the FMA will fail, but with only seven legislative weeks remaining in this session, they will take it up, nonetheless.

Squandering Time For Political Points

Obviously, we are spending time on the FMA because the Republican political leadership thinks it can inflict political damage upon those who oppose the amendment, and curry favor with voters who support it. This debate is not about preserving the sanctity of marriage - it is about preserving a Republican White House and Senate. Senator Santorum, the architect of this effort, has said openly that he wants to "put people on record" as opposing the amendment, apparently including the many Republicans who have expressed reservations about the FMA or oppose it outright.

The American people should understand that this continuing spectacle is designed to enhance the political prospects of President Bush and some Republicans in the House and Senate, and to raise the national profile of some State officeholders. Senator Chafee exhibited New England understatement and candor when he said about his leadership's handling of the amendment: "They may bring it up just for political posturing." I admire Senator Chafee and other Republicans - inside and outside Congress - who have bucked this partisan effort, opposed the FMA, and defended the Constitution.

We will hear today from one such Republican - former Representative Bob Barr of Georgia. Congressman Barr and I did not always agree during his career in Congress, and I can only assume the same is true today. We agree, however, about this constitutional amendment, and we share a high regard for the rights of States to make their own decisions about who should be allowed to marry, regardless of whether the federal government agrees with those decisions. We also agree that the Constitution should not be used to enshrine the policy preferences of any generation. I believe we are seeing repeated attempts to deface it for political purposes.

Republicans from both the conservative and moderate wings of their party oppose this amendment, which only damages and divides our nation to play politics at the expense of groups within our society. Tolerance is an American ideal, and the Constitution should reflect and enhance that ideal, not undercut it. It has been our long tradition to use the constitutional process to expand rights on extremely rare occasions, and never to restrict them. We should not abandon that tradition for short-term political gain.

Bush Administration Silent On Support

In this regard, it is telling that we cannot get President Bush to tell us what constitutional amendment language he supports. I wrote him months ago, in February, asking for his proposed language, and I still have not received an answer. In addition, while we will hear from the Governor of Massachusetts this morning, we have yet to hear from any representative of the Bush Administration on this matter. In four hearings, no witness from the Department of Justice has come forward to testify or endorse specific language of a constitutional amendment.

Yet the Committee is returning to this matter, again. This seems to be the time of this election year in which the Republican majority has chosen to focus attention on constitutional amendments they believe will score them some political points. Having politicized the selection of judges, they now seek partisan advantage at the expense of our fundamental charter, the United States Constitution. This is one of several such amendments the Committee is being required to consider. Along with federalizing marriage law, the Committee- for the fifth time in recent years - is considering a flag desecration constitutional amendment that undercuts the First Amendment.

A State Issue

If given the chance, I will vote against the FMA. I do not share Governor Romney's desire to strip the States of their longstanding power to define marriage or to use the Constitution to deprive people - gay or straight - of rights. Marriage is and always has been a State issue, and it should remain so. At this juncture, 49 States allow marriage only between a man and a woman. Massachusetts is working to develop a consensus on this issue through a State constitutional amendment process. I fail to see how this constitutes a crisis worthy of this Committee's obsessive focus, or justifies a narrowing amendment being grafted onto the charter that protects the rights of all Americans -- the Constitution.

Since Governor Romney has made the trip to Washington, I would like to raise one other issue before finishing my remarks. Given Attorney General Ashcroft's May press conference in which he emphasized the threat of terrorist incidents, noting specifically the July Democratic National Convention in Boston as a potential target, I hope the Governor will also address those circumstances. I hope he will tell the Committee whether he has been given any specific, credible threat information or whether he is, like Homeland Security Secretary Ridge, unaware of any specific threats. Of course, the very day last month that the Attorney General was scaring Americans with his pronouncement that al Qaeda plans to attack in the United States in the next few months and "hit the United States hard," Secretary Ridge was urging Americans "to go out and have some fun" during the upcoming summer months and enjoy living in this wonderful country. I will be interested to know the view of the Governor of Massachusetts: Should America's families dig deep into their pockets to fill up the family station wagon with \$2 per gallon gasoline and travel to the beaches of Massachusetts, or should they buy duct tape and bottled water and hunker down until after the fall elections?

I am disappointed by this Committee's priorities. While the Bush Administration has to apologize for its errors and abuses that have made the American people less safe, this Committee spends its time on proposed constitutional amendments to ban gay marriage and flag desecration. The American people deserve better from their Congress.