

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Statement of Senator Patrick Leahy,
Ranking Member, Committee on the Judiciary
S.J. Res. 1, Marriage Protection Amendment
Executive Business Meeting
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That this Committee is meeting this morning when so many of us are trying to focus on comprehensive immigration reform, and other members of the Intelligence Committee are heading to the confirmation hearings on a new nominee to head the CIA, is testament to the misplaced priorities of the Senate Republican leadership. We are taking time away from making progress on comprehensive immigration reform and debating an important nomination in order to push through a purely political piece of legislation aimed at shoring up a faction of the fraying Republican base. We saw earlier this week on the front page of The New York Times a detailed report about how this proposed constitutional amendment is being used to satisfy the most extreme right-wing supporters of Republican politicians.

The Constitution is too important to be used for such base, partisan politics. I agreed with First Lady Laura Bush when she told Fox News that this proposed amendment should not "be used as a campaign tool, obviously." But, obviously, that is exactly what Karl Rove and others are doing. That is why we only vote on such partisan measures months before elections.

I have heard many people describe this amendment as writing discrimination into the Constitution. I agree. That is exactly what we are being asked to decide today.

This debate and the Republican leadership's strenuous contortions to move this proposed amendment to the Senate for further debate shows how important it is to the Republican leadership of the Senate to cater to the extreme right-wing and to special interest groups that are agitating for a fight over this issue. They intend to stir up an election year fight and use it as a "campaign tool" and "a political strategy."

At a time when the Senate should be addressing Americans' top priorities, including ways to make America safer, the war in Iraq, rising gas prices and record deficits, health care costs, stem cell research, comprehensive immigration reform and the reauthorization of the Voting Rights Act, the President's political strategists and his Senate allies instead are actively trying to divide and distract from fixing real problems by pushing forward with this controversial amendment. This is a strategy to divide America, not to unite America.

As a nation we are currently facing many pressing issues - the persistent deadly violence in Iraq; stunning investigations, indictments and convictions over government corruption; a complicated drug program that now penalizes our seniors; a burgeoning national debt; historically high gas prices, and on and on. This Committee has been conducting hearings but has yet to get to the bottom of the Administration's warrantless wiretapping and other programs that have been gathering information on Americans. The Senate had been debating comprehensive reform to our country's immigration laws. We need to turn our attention to reauthorizing the expiring provisions of the Voting Rights Act.

But this morning in this Committee, and soon after Memorial Day on the Senate Floor, we are being made to turn, again, to a divisive measure that will do nothing to correct the weaknesses in our homeland security, will do nothing

to enact a budget that is now overdue, will do nothing to lower gas prices and will do nothing to respond to the most pressing issues facing hardworking Americans that are front and center on the public's agenda, but not on the Senate's.

As the Members of this Committee surely remember, proponents of the Federal Marriage Amendment in 2004, the last election year, could not assemble a majority of Senators to move to consider the proposed amendment. In 2004, we were warned that immediate action was required to protect the fragile institution of marriage, which was said to be under immediate threat.

In the past two years, no States have been forced to recognize same-sex marriages. Rather, several States voted to amend their State constitutions to define marriage. The Defense of Marriage Act remains the law of the land. There was then, and is now, no imminent crisis that demands this political diversion of Congress's attention from all these other urgent problems. I have believed, and continue to believe, there is no justification for altering our founding document to federalize marriage for the first time.

We have heard and will hear a lot of rhetoric about "judicial activism." The proponents of this constitutional amendment claimed that we had to pass it in order to prevent courts from inflicting same-sex marriage on the American people against their will. Does anyone really believe that Chief Justice Roberts is going to preside over a United States Supreme Court that will override State law in this regard?

Ironically, the proposed amendment, now renamed the Marriage Protection Amendment, would itself produce a wide range of litigation that judges, the very boogeymen that proponents of the proposed amendment demonize, would be required to resolve. It would be judges who would be resolving the ambiguities and the meaning of this measure.

The proposal we are being required to consider is exceedingly confusing and subject to interpretation. Its sweeping language will inevitably create uncertainty. For example, who would be bound by the provisions of the Marriage Protection Amendment - State actors, private citizens, or religious organizations? What would constitute the "legal incidents" of marriage? Can a legislature pass a "civil unions" law that mirrors its marriage law, so long as it does not use the word "marriage?" Can the people of a State put protections for civil unions in their State constitution? What State actors are forbidden from construing their own constitutions - the judiciary only, or State executive branch officials as well?

I am particularly concerned about the fate of the Vermont civil unions that have been formed under the color of State law. Despite an initially contentious debate, this State law remains on the books after five years. There has been no ensuing crisis in the lives of Vermont families. It is not clear to me, however, whether the proposed amendment would make the Vermont law unconstitutional. In short, while the language of the amendment before us has changed slightly from the original version, it raises the same concerns.

During the subcommittee hearing on this amendment, we received testimony that illuminated the problems with the proposed language. While academic discussion of the proposed language was helpful, I am still not clear where President Bush stands on this matter. He spoke more clearly this week on the elements of immigration legislation than ever before. I have praised him for that. But in connection with this proposed amendment, he is still having it all ways. For some time now I have been asking the President to explain what language he supports when he gives speeches on the need for a constitutional amendment. My letters have gone unanswered. So I must continue to ask whether the language that this Committee is considering today is endorsed by the President. I note for the record that the White House has not sent a representative to offer the President's support or concern for the scope of this drastic proposal.

I remember a time when leaving States in control of issues such as family law was an easy decision for Members on both sides of the aisle.

I am disappointed that Senators would endorse this broadly drafted amendment since it so clearly violates the traditions of Federalism and local control that many have claimed to respect and cherish.

It reminds me of last year when we were called into emergency session to try to overturn very competent state courts that had thoroughly and repeatedly reviewed Terri Schiavo's medical decisions. What happened to conservatives who would oppose the federal government's intrusion on the prerogative of the states? The states have traditionally set the laws on marriage. They say what age you have to be to marry, whether you have to have your parents' permission, and so on. The states have done that. And what we ought to do is allow the states to do that.

Most states are going to say marriage is between a man and a woman. My own State of Vermont, because of our Constitution, was given a question: Would we support gay marriage? Our State said no. We have civil unions, which give gay couples legal rights of inheritance and so on.

In addition to my concerns that this effort will trample on State authority and responsibility, I am concerned that this proposal is writing discrimination into the Constitution. How will this measure affect American families that currently exist in this country who seek the protection of civil unions and the acknowledgment of their committed relationships? I hope that those who claim to care about families will turn away from wedge politics and scapegoating and diminishing others. Instead, we should join together to work on the many pressing issues already piling up on Congress's doorstep.

On Monday evening, President Bush spoke eloquently about this country and our values. He emphasized something I wish that the White House and the Republican leadership of the Congress would keep in mind in connection with their efforts to demonize lesbians and gays. The President said: "We cannot build a unified country by inciting people to anger, or playing on anyone's fears, or exploiting the issue of - and here I insert "marriage" for "immigration"-- for political gain. We must always remember that real lives will be affected by our debates and decisions, and that every human being has dignity and value"

As an American who has been married for more than 40 years, I am a great fan of the institution of marriage. I also believe it is important to encourage and to sanction committed relationships. I respect and admire my State of Vermont for the careful and civil manner in which the Green Mountain State has resolved this matter by recognizing civil unions. For all these reasons, I continue to oppose measures such as this proposed constitutional amendment, and I am saddened by the cynicism that sometimes propels such divisive efforts to the fore.

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