

States do offer protection to all the people who are victims of employment discrimination. Unfortunately, 41 States do not. So it seems to me this is a bill we should be proud to support as Republicans and as Democrats.

The reach of ENDA is modest. It exempts small business, religious institutions, and the military and explicitly prohibits the adoption of quotas. It places the burden of proof entirely on the person claiming to be the victim of discrimination.

I think it is quite instructive to note that ENDA has been endorsed by such blue chip companies as Apple Computer, AT&T, Bankers Trust, Bethlehem Steel, Eastman Kodak, Genentech, Merrill Lynch, Microsoft, Nynex, Pacific Gas & Electric, Pacific Telesis, Polaroid, Prudential Insurance, Quaker Oats, RJR Nabisco, Silicon Graphics, and Xerox. Mr. President, among that list there are many, many endorsers from my home State. These excellent companies that understand fairness and justice in the workplace have endorsed ENDA. I hope it will pass.

#### THE DEFENSE OF MARRIAGE ACT

Mrs. BOXER. Now there is the question of the other bill that will come before us, known as DOMA, the Defense of Marriage Act. When I heard that there was going to be a bill before us called the Defense of Marriage Act, I thought it was going to be about our families and how they cope with the problems and stresses that most married people face. There are financial insecurities with jobs that are ever changing, pension insecurities with corporate raids on pensions and inadequate protections in the law, there is pressure to save enough to afford a home, there is child abuse going on in families, there is alcohol and drug abuse, there is spousal abuse, there are pressures from lack of health care. We have tried to fix some of those in this Congress. There are pressures, worrying, "Will Grandma and Grandpa be all right? Will they make it? Will their Medicare be cut? Can we function as an extended family in this fast moving world?" These are some of the pressures.

I thought it was about, perhaps, flexible working schedules so there could be more time off for school and doctor appointments. I thought it maybe addressed the issue of child care. It is called the Defense of Marriage Act. I thought we were going to deal with those issues, the stresses on marriage. So I was looking forward to seeing this legislation.

Then, when I see it, it turns out to be something completely different. It turns out to be about the U.S. Congress getting into the issue of marriage. No State legislature is even suggesting that it recognize gay marriage, not one State in this Union. Not one person in the Senate or the House has introduced legislation to recognize gay marriage—

not one. There is no bill pending before us to legalize gay marriage and provide benefits to these couples. Not one group has asked any of us, to my knowledge, to carry such legislation.

We are told by constitutional scholars that even if one State does recognize gay marriage, other States have the option not to recognize it. University of Chicago law professor Cass Sunstein, one of the Nation's most distinguished legal scholars, author of numerous texts and articles on constitutional law, testified before the Senate Judiciary Committee that States are not required to recognize other States' marriages. So why this legislation now? With all the things we could be doing that would make a real difference in people's lives, with all the things we could be doing that would really matter to families, we are taking up this so-called Defense of Marriage Act, which, as I have stated, has nothing to do, in my view, with helping married couples cope with the stress on their marriages.

Does the author of the bill in the House, whom the press says has been married three times, truly believe that the Defense of Marriage Act would have made him a better husband or his wives better wives? I seriously doubt that. I doubt that.

Marriages do run into trouble; one in two ends in divorce and that is tragic. It is tragic for the people involved and it is tragic for the children. There are things we should all do in our relationships and as a community and in our religious institutions to make marriage stronger. But passing this act does nothing to affirm marriage at all.

Many of us in this Chamber, myself included, have been married for many years to the same person, and I truly believe that those of us who are honest about it would never list the possibility of gay marriage looming on the horizon as a reason there may be stress in our marriage. I believe, if we were honest, we would never cite that as a reason for a problem of stress in our marriage. In any event, gay marriage is not looming anywhere. As I said, not one State is considering it, not one State legislature. No one has asked to do it. There is no bill pending.

Yes, the Hawaii courts are looking at the issue, but that final resolution is years away. There is plenty of time for us to have this debate. But this Congress cannot wait to have this debate. The Hawaii case is only now about to go to trial. Legal experts are convinced that given the stakes, the losing side will surely appeal the case all the way to the State supreme court. We are talking about a long time here.

So why are we doing this bill now? No one is asking for it, no one is proposing any of it, no one State is considering recognizing gay marriage.

I have to give my opinion. It is all about the calendar, that is what I think. It is an election-year ploy to get Senate and House Members to cast a tough vote. We know it is a tough vote.

The PRESIDING OFFICER. The time of the Senator has expired.

Mrs. BOXER. Mr. President, I ask unanimous consent for another 10 minutes. My understanding is we would not have a 10-minute rule at this point.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The Senator has an additional 10 minutes.

Mrs. BOXER. But I think, when we do this, we do lose something. I think we lose our soul. That is what you lose when you scapegoat a group of people, a whole group of people who have never even asked us to legalize gay marriage. Scapegoating is ugly. History has seen it too many times. You know that and I know that. Groups of people who are different are identified. It becomes "we" versus "them." Their identity as individuals is lost and they become faceless. Special rules are written for them. They are singled out as a group. Read the history books, my colleagues. You will find it there. We are all Americans in this country, regardless of our differences. We are Americans first. We are God's children, all of us, regardless of our differences. Why do we need to craft a piece of legislation designed to hurt our fellow Americans when there is absolutely no need to do it?

President Clinton, who comes to a different conclusion on this bill than I do, writes in his book "Between Hope and History":

... we must make a choice ... shall we live by our fears and define ourselves by what we are against, or shall we live by our hopes and define ourselves by what we are working for, by our vision of a better future ... that is a choice we must make every day.

This DOMA bill, in my opinion, is a statement of what we are against. It does nothing, it does not do one thing, to make Americans' lives better. It is a classic example of the politics of division, of a so-called wedge issue to divide us one from another without any reason to do so. I think even if it means you pick up a seat or two in Congress, the better angels of our nature should stop this politics of division and hatred. The Defense of Marriage Act is a preemptive strike against a gay marriage proposal that does not even exist. It is a little bit like bombing a country because you think they are a threat when in reality they want nothing more than to live in peace. We would never do that as a nation, and we should not do this. It hurts people for no reason.

I thank those of my colleagues, in advance, who will vote against this scapegoating measure. There will only be a few of us. It will be a brave vote. I say that because I know what the polls show. But what is leadership about, anyway? It is about the really tough votes.

When I went into politics 20 years ago, I told my constituents then and I tell them now I would not always take the popular side of an issue if I felt it was meanspirited. For me to do that

would be an insult to them and an insult to me. It would diminish all of us.

To me, this vote is not about how I feel about gay marriage. I have always supported the idea of communities deciding these issues without the long arm of the Federal Government.

Many communities recognize domestic partnerships for those who choose to make a long-term commitment. Many communities in California do this, and, Mr. President, it seems to be working. I have not had one phone call or one letter indicating Congress should override these community decisions. Clearly, this is an issue that should be decided in our communities, not in the Senate.

So to me, this vote is not about how Senators feel about marriage, and it certainly is not about defending marriage. To me, it is about scapegoating. It is about dividing us. It is ugly politics. It is a diversion from what we should be doing. For example, we could be using this time to pass President Clinton's college tax breaks to ease the stress on our married couples today. Now that would be defending marriage.

By my no vote on this legislation tomorrow, I am disassociating myself from the politics of negativity and division, from the politics of scapegoating, and I will cast my vote in that spirit.

Mr. President, thank you very much for the time. I yield the floor.

Mr. NICKLES addressed the chair.

The PRESIDING OFFICER. The Senator from Oklahoma [Mr. NICKLES] is recognized.

Mr. NICKLES. I thank the Chair.

(The remarks of Mr. NICKLES pertaining to the introduction of S. 2060 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

#### EMPLOYMENT NONDISCRIMINATION ACT

Mr. NICKLES. Mr. President, I would like to take a moment to respond to some of the statements that were made earlier today by some of our colleagues dealing with a variety of legislation, most important, the legislation that is called ENDA, the Employment Nondiscrimination Act, that Senator KENNEDY and some other people have alluded to.

I heard comments such as, "If this bill becomes law, employers will not be required to keep any information concerning sexual orientation." I totally disagree with this analysis. Granted, there is a section in ENDA that says no quotas, but also if you read the bill, and I encourage my colleagues to read the bill, if you look at section 11(A)(1), it grants to the Equal Employment Opportunity Commission the same powers with respect to sexual orientation it now has with respect to race, religion and sex.

Under current law, employers are required to make, keep, and preserve records on their employment practices

and to make reports to EEOC. That is under the United States Code 42, section 2000 e-8c. I read that code last Friday when we had the debate.

I am amused, or interested, when people say, "Well, that's just not factual. Employers, you won't have to do that."

I am reading section 11(A) of the bill that says the EEOC has the same authority as currently under the Civil Rights Acts to require such records. So the net result is employers are going to have to find out what people's sexual orientation is. They are going to have to ask questions they never asked before that employers don't want to ask and employees don't want to be asked. They are going to have to ask those kinds of questions.

Plus, people said, "It is not really required. Disparate impact is not allowed to be considered under this bill. We're not going to allow disparate impact to be used." Well, how is an employer to defend himself or herself? If they are sued under the legislation—and sponsors of this bill do not deny they have the right to sue for punitive and compensatory damages—how is an employer able to prove they have not discriminated? They have to show they have employed homosexuals and bisexuals. How do they show that? They have to ask questions. That is their defense. It is the same defense employers have as far as race, as far as sex, as far as disability or age.

They have to be able to show that is not their practice, they have not discriminated; therefore, they have employed people of whatever sexual orientation. So, for that defense, they are going to have to ask people, they are going to have to ask questions: "What is your sexual orientation? Are you homosexual, are you bisexual, are you heterosexual," in order to defend themselves.

Maybe some people don't agree with that, but I don't see any other way. So the net result of this legislation will require employers to ask questions about sexual orientation which are not desired by employees or by employers.

Plus, Mr. President, I have heard people imply, "Wait a minute, this is not a whole lot different than what several people in the Senate have signed on to, a statement put out by the Human Rights Campaign Fund which says: "Sexual orientation is not a consideration in the hiring, promoting or terminating of employees in my office." And 66 Members of the Senate have signed this statement.

I did not sign that statement, but I guess I could have, because it has never been a consideration in my office. I never asked anybody, I do not want to ask anybody what their sexual orientation is. I didn't sign it because I thought, well, what if a person who is leading a gay activist cause—and there are individuals like that and some are in Congress, and other people—if somebody who had a known propensity to be a very strong advocate of gay rights, I

guess, if they came and asked for a job in my office, I don't think they would be compatible and, therefore, I wouldn't hire them. So I didn't sign that pledge. But I can see why Senators would. Basically, I could sign it. It has never, ever been any consideration in any of my employment decisions as a Senator or when I ran a manufacturing company in Oklahoma.

But some people could interpret this language as the same as "don't ask, don't tell." If you don't ask, they can't tell. It is not a consideration, so no big deal. But that is not what is underlying Senator KENNEDY's bill.

Under the bill that we have before us, ENDA would make it law of the land, ENDA would elevate sexual orientation to a protected class under the Civil Rights Act. What it would do is say if the school board, for example, did not want to hire a person who was openly homosexual or a gay activist and have that person be a teacher or a coach or physical education instructor, if they felt like that was an inappropriate type person to have as a role model, they are in trouble under this legislation because that school could be sued. That school board might want to take disciplinary action or might not want to employ a person who had that orientation as a role model or mentor to a grade school class.

So they might say, "We don't want to make that decision," and, frankly, they could be sued under this legislation.

Recently, there was a case in West Virginia where a principal was found dressing in drag and actually soliciting sexual favors in West Virginia. It just happened a couple of days ago. Because the principal asked for money, it was in violation of the State's prostitution act and, therefore, illegal. But if he had not asked for money, you could have a person who would be cross-dressing and soliciting sex—and that might be their sexual orientation—and the school board could not take disciplinary action because of their sexual orientation if it is kept private. My point being, you could have a lot of repercussions that go beyond what individuals have thought about in this legislation.

This legislation is not "don't ask, don't tell." I look at this statement that many Senators signed. I think a lot of people thought, "Hey, don't ask, don't tell. That's my policy. I'll stick by it." That is not what we will ask if this proposed bill became law. ENDA would elevate sexual orientation to a much higher level, giving Federal protection and sanction, almost a Federal acceptance to promiscuity.

You might say, how would that be? The legislation says you cannot discriminate on account of someone's sexual orientation as defined by "homosexual, bisexual or heterosexual." It does not say by individual conduct that is done in monogamous relationships in private. So you might have a homosexual or heterosexual that is very promiscuous, with lots and lots of partners, and a company or an individual