The result was announced, yeas 73, nays 26, as follows:

[Rollcall Vote No. 279 Leg.]

YEAS—73

Abraham	Feinstein	Lott
Akaka	Ford	Lugar
Ashcroft	Frahm	Mack
Baucus	Frist	McCain
Bennett	Gorton	McConnell
Biden	Graham	Mikulski
Bingaman	Gramm	Murkowski
Bond	Grams	Nickles
Breaux	Grassley	Nunn
Bryan	Gregg	Pressler
Burns	Hatch	Reid
Campbell	Heflin	Robb
Chafee	Helms	Roth
Coats	Hollings	Santorum
Cochran	Hutchison	Shelby
Cohen	Inhofe	Simpson
Conrad	Inouye	Smith
Coverdell	Jeffords	Snowe
Craig	Johnston	Stevens
D'Amato	Kassebaum	Thomas
Daschle	Kempthorne	Thompson
DeWine	Kennedy	Thurmond
Dodd	Kyl	Warner
Domenici	Levin	
Faircloth	Lieberman	

NAYS—26

Boxer	Harkin	Murray
Bradley	Hatfield	Pell
Brown	Kerrey	Rockefeller
Bumpers	Kerry	Sarbanes
Byrd	Kohl	Simon
Dorgan	Lautenberg	Specter
Exon	Leahy	Wellstone
Feingold	Moseley-Braun	Wyden
Glenn	Moynihan	

NOT VOTING—1

Pryor

The conference report was agreed to.

Mr. THURMOND. I move to reconsider the vote.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DEFENSE OF MARRIAGE ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate, equally divided, prior to the vote on passage of H.R. 3396, the Defense of Marriage Act.

Who yields time?

Mr. KENNEDY. Mr. President, I yield myself 1 minute.

Mr. President, during the debate this morning, we had excellent presentations by the Members who spoke at length about the serious legal and constitutional concerns raised by this bill. The first concern was that for over 200 years the States themselves have had sufficient power in recognizing or not recognizing marriage conditions in other States. They have done that for 200 years, and 15 States now have already indicated they would not recognize same-sex marriages, so they have the authority already after 200 years.

Second, by trying to enhance or diminish the full faith and credit provisions of the Constitution, that is basically unconstitutional. We cannot enhance full faith and credit. We cannot diminish it. It is a constitutional issue, and authority and action by statute cannot affect it. Therefore, I think, there are serious questions about the constitutionality.

Third, Mr. President, this is really, I think, a dangerous precedent. Today it is marriage, tomorrow it may be divorce, the third day it may be custody. Where will it end?

Mr. President, I do not think support of this is wise judgment. The States have the authority to be able to deal with it. It is particularly not necessary at the present time. I hope the legislation will be defeated.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, today the State of Hawaii's court is considering a case that would legalize same-sex marriage. This bill does not ban same-sex marriage, it just says that any State does not have to recognize a marriage performed in a State that does legalize same-sex marriage either through the courts or through legislation. I think this is a positive bill. Senator BYRD spoke eloquently on it.

In addition to that, this bill defines marriage as a legal union between male and female. It is almost absurd or unheard of to think we would have to do that. A lot of people, a lot of gay activists are requiring that we do that.

Mr. President, I urge our colleagues to support this legislation. It is constitutional. We do have opinions from the Attorney General and others in the Justice Department saying that it is constitutional. I urge my colleagues to support this important piece of legislation today.

The PRESIDING OFFICER. The question is on the third reading of the bill.

The bill was ordered to a third reading and was read the third time.

The PRESIDING OFFICER. A rollcall has not been requested.

Mr. KENNEDY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is necessarily absent.

The PRESIDING OFFICER (Mr. KEMPTHORNE). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 85, nays 14, as follows:

[Rollcall Vote No. 280 Leg.]

YEAS—85

Abraham	Bryan	Coverdell
Ashcroft	Bumpers	Craig
Baucus	Burns	D'Amato
Bennett	Byrd	Daschle
Biden	Campbell	DeWine
Bingaman	Chafee	Dodd
Bond	Coats	Domenici
Bradley	Cochran	Dorgan
Breaux	Cohen	Exon
Brown	Conrad	Faircloth
Ford	Johnston	Pressler
Frahm	Kassebaum	Reid
Frist	Kempthorne	Rockefeller
Glenn	Kohl	Roth
Gorton	Kyl	Santorum
Graham	Lautenberg	Sarbanes
Gramm	Leahy	Shelby
Grams	Levin	Simpson
Grassley	Lieberman	Smith
Gregg	Lott	Snowe
Harkin	Lugar	Specter
Hatch	Mack	Stevens
Hatfield	McCain	Thomas
Heflin	McConnell	Thompson
Helms	Mikulski	Thurmond
Hollings	Murkowski	Warner
Hutchison	Murray	Wellstone
Inhofe	Nickles	
Jeffords	Nunn	

NAYS—14

Akaka	Kennedy	Pell
Boxer	Kerrey	Robb
Feingold	Kerry	Simon
Feinstein	Moseley-Braun	Wyden
Inouye	Moynihan	

NOT VOTING—1

Pryor

The bill (H.R. 3396) was passed.

Mr. NICKLES. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EMPLOYMENT NONDISCRIMINATION ACT OF 1996

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 2056, the Employment Nondiscrimination Act of 1996, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2056) to prohibit employment discrimination on the basis of sexual orientation.

The Senate resumed consideration of the bill.

Mr. KENNEDY. May we have order, Mr. President.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Massachusetts.

Mr. KENNEDY. I yield 2 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 2 minutes.

Ms. MOSELEY-BRAUN. I thank the Chair. I thank the Senator from Massachusetts.

Mr. President, every American should have the opportunity to work, to use their talents to the fullest extent possible, and no one should be discriminated against. No one should be denied the opportunity to work at jobs they are qualified to fill. That is why I am so proud to be a cosponsor of S. 932, the Employment Nondiscrimination Act, along with 30 of my colleagues.

Strides have to be made to provide gay and lesbian Americans with full and equal protection of the laws promised every American by the 14th amendment. Nowhere is the absence of that protection felt more insidiously than in the area of employment.

The Employment Nondiscrimination Act prohibits employment discrimination based on sexual orientation. It

creates no special rights, or quotas, it merely grants gay and lesbian Americans the same rights afforded other Americans in the workplace. The legislation exempts religious organizations and businesses with fewer than 15 employees, prohibits preferential treatment, and does not require an employer to provide benefits to domestic partners. It also does not apply to the Armed Forces.

It is so important to enact this bill into law. This bill is not about special rights; it is, instead, about equal rights, equal protection. Congress has the power to act to protect your rights, and overwhelming majorities of Americans support doing so. Every Member of Congress should support ENDA, because this legislation embodies American values. It is an essential step to take if we are to continue making progress toward ensuring equal opportunity for all Americans.

A broad coalition of religious, labor and business leaders have endorsed the bill, including the United Methodist Church, the Presbyterian Church, the ACLU, and the National Education Association.

The American Bar Association endorsed the bill when they stated:

> Over the years, and with some struggle, this Nation has extended employment discrimination protection to individuals on the basis of race, religion, gender, national origin, age, and disability. ENDA takes the next necessary step by extending this same basic protection to another group that has been vilified and victimized—gay men, lesbians, and bisexuals. All workers, regardless of their sexual orientation, are entitled to be judged on the strength of the work they do; they should not be deprived of their livelihood because of the prejudice of others.

Ending employment discrimination is an area where Federal action is needed to protect individual liberty and opportunity. Furthermore, it is important to provide a stable, healthy, and productive work environment for employees. Many companies have already adopted their own antidiscrimination policies, recognizing the negative impact discrimination can have on our country's transition into the 21st century's global workplace. They know that there is no place for discrimination in this country.

Furthermore, this is an issue of economic competitiveness. Our work force is what makes America strong. If we are going to head into the 21st century as strong as we can, we need to utilize the talents of all. Every American stands to benefit when each citizen is given a chance to contribute to the maximum extent of his or her ability.

This is also about fundamental fairness. Each of us should be allowed to fully participate in society, regardless of our gender, race, or sexual orientation. Americans should not be held back by conditions that have nothing to do with merit, or talents and abilities.

If there is any objective that should command complete American consensus, it is ensuring that every American has the chance to succeed—and that, in the final analysis, is what this bill is about. No issue is more critical to our country, and nothing makes a bigger difference in a person's life than opening up opportunities.

At this time there is no truly effective recourse for sexual orientation job discrimination in 41 States across the Nation. Currently, nine States have laws that prohibit discrimination on the basis of sexual orientation in employment, as well as in other areas, such as housing. But the vast majority of gay men and lesbians across the country have no protection.

Opponents of ENDA claim that this legislation will provide gay men and lesbians with special treatment and cause a proliferation of litigation, but that is not the case. ENDA prohibits giving preferential treatment to any individual based on sexual orientation. Thus, employers may not provide special treatment to gay men, lesbians, or heterosexuals. The bill provides that an employer may not use the fact of an individual's sexual orientation as the basis for positive or negative action against that individual in employment opportunities.

Furthermore, existing data suggests that ENDA will not result in much litigation. Consider the experience of the District of Columbia whose Human Rights Act (1977) was the first statute to bar employment discrimination on the basis of sexual orientation. The D.C. Department of Human Rights states that in fiscal year 1995, 435 discrimination complaints were filed. Out of the 435 complaints, only 20 were based on sexual orientation. The nine States having statutes giving legal remedies to employees suffering from sexual orientation job discrimination follow the same pattern as the District.

Although Illinois does not have an employment discrimination statute, the city of Chicago has an ordinance protecting gay men and lesbians from discrimination in the work place. Due to this city ordinance, Chicago residents have protection against discrimination. And it works. For example, in October 1991, a Chicago man, shortly after being hired as a waiter at a restaurant told his manager that he was gay. From that point on, the manager yelled and screamed at the man using derogatory epithets. None of the other employees were called similar names.

After a few months on the job, the man's shifts were cut from 6 to 7 shifts per week to 2 to 3 shifts per week. The assistant manager stated that the hours were being reduced because the waiter complained about carrying three hot plates at once and because he brought a donut into the restaurant. However, none of the other waiters carried three hot plates at once, nor were other employees penalized for bringing food into the restaurant. No one else on the staff had their shifts cut for the above reasons.

Because Chicago has a city ordinance protecting gay men and lesbians from employment discrimination, this man was able to file a complaint with the city of Chicago Commission on Human Relations. The commission found substantial evidence that the ordinance was violated. The restaurant appealed the case to the State courts and the court upheld the commission's decision.

It is clear that discrimination in the workplace still occurs. Without national legislation to protect all Americans, cases of discrimination against gay men and lesbian women will continue to occur unchallenged.

The basic principle we should keep in mind is that every American must have the opportunity to advance as far in their field as their hard work will take them. Gay and lesbian Americans should not have to face discrimination in the workplace, including being fired from a job, being denied a promotion, or experience harassment on the job just because of their sexual orientation.

As a matter of fundamental fairness and because all workers should be entitled to legal protection in the work force, I will enthusiastically support this legislation.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. NICKLES. Mr. President, I yield to the Senator from Kansas 3 minutes.

The PRESIDING OFFICER. The Senator from Kansas is recognized for up to 3 minutes.

Mrs. KASSEBAUM. I would like to reiterate my opposition to the legislation before us.

Last Friday, we had a thorough debate on the Employment Nondiscrimination Act during the course of which important arguments were made why it should not become law.

First, Senator HATCH pointed out the relationship between this bill and title VII and how the use of statistics in certain cases will also be available under this bill. The net result is that under this bill, as under title VII, statistics may be used by the EEOC as evidence of discrimination. Employers, as a defensive measure, may feel compelled to keep track of the sexual preferences of their employees. This is an example of the unintended consequences that may flow from this bill.

Second, Senator ASHCROFT pointed out that the bill itself acknowledges that there are legitimate reasons why in certain situations the law should not apply. For example, the bill exempts the military as well as religious organizations and their not-for-profit activities. His question, which I think is a good one, is: If there are reasons for exempting these employers, may not these same reasons apply to other employers in the private sector?

Finally, Mr. President, I want to repeat my own principal objection to this bill. I do not believe that relying on more lawsuits and litigation, as this bill would do, will promote greater tolerance in the workplace. I believe prejudice and discrimination can be fought

in other ways, and I hope that it would be done—leading by way of example.

The Senator from Massachusetts [Mr. KENNEDY], who is the author of the legislation, pointed out numerous examples of employers who adopted their own nondiscrimination policies, and I applaud those efforts, but I do not believe we need to create another legal cause of action with compensatory and punitive damages that will only lead to more division in the workplace, not less.

Mr. President, I urge my colleagues to vote against this bill, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield 2 minutes to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for up to 2 minutes.

Mr. CHAFEE. Mr. President, I wish to take a moment to make two comments in favor of this bill, the Employment Nondiscrimination Act, or ENDA.

I believe the matter before the Senate is a very simple one: Whether or not sexual orientation is a factor that should be considered in employment decisions. In my view, the answer is clear. The only factor that should be considered in the workplace is the ability of an employee or potential employee to do the job at hand. Since sexual orientation, like race or ethnicity, has nothing to do with job ability, it seems to me it has no place as a basis for discrimination.

There is nothing particularly radical about this proposition, Mr. President. It is a singularly American belief that each and every person shall be judged not on unrelated factors such as color or gender but on their merits. In the workplace, that translates to an individual's job skills and capabilities. To judge a person otherwise, I believe, goes against the grain of what this whole country stands for. As Barry Goldwater recently noted, ''job discrimination against gays or anybody else is contrary to each of our founding principles.''

Other Senators have recounted tales of gays and lesbians who have suddenly lost their jobs when employers discovered their sexual orientation. These instances are shocking and, I believe, shameful. No one deserves such treatment.

So let me make one point clear, Mr. President. An employee whose behavior in the workplace is inappropriate deserves no protection from sanction. A gay employee who makes inappropriate statements or otherwise conducts him or herself in an inappropriate manner should not be countenanced. That is clear. The same would apply to a nongay individual who conducts him or herself inappropriately. That conduct would not be tolerated.

As my colleague from California, Mrs. FEINSTEIN, put it last Friday, ''Do something that is improper conduct, and it all changes.'' Any kind of untoward behavior, no matter from whom it comes, must not be permitted.

This bill before us would provide basic protection to Americans who are subject now to arbitrary and unreasonable job denial or dismissal. I think that is appropriate, Mr. President, so I urge support of this measure.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I yield 2 minutes to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia is recognized for up to 2 minutes.

Mr. ROBB. Mr. President, I understand the difficulty many Members may have with the prospect of same-sex marriages, and so I understand why the vote completed just a few minutes ago was so tough for many Senators. But this one shouldn't be. Those of us who support the Employment Non-Discrimination Act have a simple plea—let's end discrimination in the workplace.

We can't forget, Mr. President, that we are a nation made prosperous and strong by the labor of millions of American workers. And each American worker—whether they build houses, pave roads, serve meals in country diners, or manage corporations—deserves to be judged by their dedication to their job and the quality of their work.

It is indefensible, that in a great country like ours men and women can lose their jobs, be passed over for promotions, or suffer harassment because they have—or are perceived to have—a different sexual orientation than the rest of us.

And for their part, American businesses deserve a work force which embodies maximum talent and minimal prejudice and dissention. Surely ending discrimination will improve productivity and enhance employee satisfaction. Former Senator Barry Goldwater, just quoted by the Senator from Rhode Island, wrote in support of this legislation: ''job discrimination excludes qualified individuals, lowers work-force productivity and eventually hurts us all. It's not just bad—it's bad for business.''

So this bill, Mr. President, which extends Federal employment discrimination protections modeled after those currently in place for race, gender, age, and disability to sexual orientation, is good for American businesses and good for American workers.

It is moderate, reasonable, and eminently fair. This vote on this bill ought to be an easy one. It specifically rejects special rights and preferences. It exempts businesses with 15 or less employees, as well as all religious institutions and educational nonprofits owned or managed by religious organizations. It does not affect the U.S. military. It does not provide benefits for same-sex partners.

I first became a cosponsor of the 1994 act in the midst of a very difficult reelection campaign. But I knew that equality on the job ought to be the right of every single American, that prejudice divides us, that discrimination is wrong, and that I could justify my support for this bill to anyone.

Mr. President, this bill is not about special rights for anyone. It is about equal rights for everyone. I urge my colleagues to vote ''yes'' to the Employment Non-Discrimination Act.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. I yield the Senator from Indiana 4 minutes.

Mr. COATS. Mr. President, today's debate concerns an issue of extreme import and controversy—extending civil rights protection to sexual orientation.

This is an issue of great importance because, for the first time in our history, Federal legislation would protect an individual's behavior, rather than an individual's status, as traditional civil rights laws have done. The practical impact of this bill is that employers will no longer be able to consider or hold an employee accountable for any acts related to their sexual orientation.

The fact that this issue—the extension of civil rights to an individual's behavior—is controversial goes without saying. This is an issue about gay rights in the workplace, which the American people have not reached a moral consensus. Many Americans, including business people, those who support strong traditional families, and persons with religious or moral objections, have serious concerns about promoting homosexuality as a lifestyle. This is important, because if this bill becomes law, it will give the Federal stamp of approval to activities that are still considered illegal in many States. It is significant also because individual employers, employees, forprofit religious organizations and enterprises will no longer be able to conduct their business without the fear of Federal intrusion and potentially costly litigation.

Mr. President, we are not speaking of extending rights that every citizen of the United States is guaranteed—rather we are considering special rights for persons based on their lifestyle choice, as evidenced by their behavior. I share the concern of many that no person be subjected to violence and hatred simply because they do not meet with societal approval. But I am just as concerned about individuals who, because of sincerely and deeply held religious or moral convictions, find certain lifestyles to be morally unacceptable and yet are told by the Government that those beliefs must be kept private and may not be applied to their business decisions. These individuals are told that the first amendment's protections do not apply to the way they run their businesses, their family bookstore, or their day care center. This should not be the case.

I ask my colleagues to join with me in voting to preserve one of our Nation's most cherished rights: The freedom to freely exercise our religious beliefs and to not be coerced by the Government into accepting into our employ those whose behavior violates our deeply held religious convictions.

I yield back any time I have.

Mr. KENNEDY. I yield 2 minutes to the Senator from Vermont, a cosponsor on this important legislation.

The PRESIDING OFFICER. The Senator is recognized for 2 minutes.

Mr. JEFFORDS. Mr. President, I have spoken at length on this issue previously so I will not extend my remarks to any great extent. I remind people what we are talking about here.

First of all, we ought to have a sense of the public; 84 to 85 percent of the people in this country say, ''What is the issue? Pass the bill.'' Nobody should be inquired of about their sexual preference or whatever in getting employment. They ought to be allowed to work.

The questions about all these things that have been brought up—there are exceptions to almost all of them. The religious organizations are excepted, nonprofits are excepted. The rights of employers in all these areas are protected. There is no question here.

My question is why should I or why should my wife or my kids be asked, when they go to get a job in this Nation, ''Where are you living and who are you living with?'' And, if it is of the same sex, be inquired of as to what their sexual preferences are, their sexual activities? To me, that is a disgrace, to allow that to happen in this Nation of freedom, where working is so important, where our people ought to be free to work where they please and ought to be able to have a life they want and to live free from that kind of intimidation.

I yield the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I yield 2 minutes to the Senator from Connecticut, a cosponsor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized for 2 minutes.

Mr. LIEBERMAN. Mr. President, I rise to support the bill. This bill offers us an opportunity to take, not only a fundamental principle of American life and history, but in my opinion the driving impulse of the American experience, which is equal opportunity, and apply it to a specific circumstance. The basic question here is whether a person who works hard, plays by the rules, does the job, is entitled to be protected from discrimination in hiring, in promotion, in salary, based on a very private and personal decision which is that person's sexual orientation.

You do not have to decide the question of whether you believe homosexuality is right or wrong. You do not have to decide the question of whether domestic partnership is right or wrong. You do not have to decide the question of whether one's sexual orientation is a matter of choice or whether you are born with it, to vote for this bill. All of that is irrelevant.

The question here is whether we are going to protect a category of our fellow Americans, fellow citizens, fellow human beings—children of God—from being discriminated against based on their sexual orientation; a private matter.

I say the answer has to be ''yes.'' In 1996, it is time to offer that protection to keep the promise of the American Constitution and the American dream. This is a narrowly circumscribed bill. By God, this bill even says to an employer you can regulate the clothing of someone working for you if that is an issue.

I support the bill and ask all my colleagues to do the same.

The PRESIDING OFFICER. Who yields time?

Mr. NICKLES. Mr. President, I yield the Senator from Utah 4 minutes.

The PRESIDING OFFICER. The Senator from Utah is recognized for 4 minutes.

Mr. HATCH. Mr. President, everybody here knows I have worked hard to pass the hate crime statistics bill, I worked hard with the distinguished Senator from Massachusetts to pass AIDS bills and do other things that benefit people who are gay and lesbians. I believe that we should respond to the needs of our citizens in these regards. Special protected status in the law, however, is another matter. I, therefore, oppose this legislation.

Mr. President, I oppose this legislation. This bill represents a massive increase in Federal power. The Federal bureaucracy will have a field day with this bill. The bill will be a litigation bonanza. Moreover, this bill deals in a blunderbuss way with an issue much more complex than issues raised by legislation addressing race, ethnicity, and gender. Sexual orientation involves conduct, not immutable nonbehavioral characteristics.

Indeed, during the debate about homosexuals in the military, Gen. Colin Powell made this point in responding to the suggestion that discrimination against homosexuals in the military should be equated with racial discrimination. He said,

> Skin color is a benign, non-behavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument.

Indeed, this very bill exempts employment in the U.S. military, although it does not exempt the National Guard.

It is totally indefensible to say that a black person should be denied the right to teach children of any race in any of our public or private schools. But should the Senate run roughshod over the concerns of parents and educators about having homosexuals teach their kids?

I mentioned last week on the floor that Loudoun County, VA, parents and educators wanted to fire a male health and physical education teacher at a middle school, who was also an assistant athletic coach at a high school because of public homosexual conduct, in this case, participation in homosexual videos. Such concern is not triggered just by participation in videos. It can be triggered by public displays of romantic, physical affection between two persons of the same sex.

In Loudoun County, the school superintendent said,

> We believe that teachers, as people who are chosen to be instructors as well as leaders of our young people, should be exemplary in their professional as well as personal lives. What we have here is an allegation of a lifestyle that is not in keeping with that. If the allegations are true, that is not conduct befitting a teacher.

One parent of a daughter who attended a school where this person taught said she believed that what people do in their private lives is their business—unless they are teachers. ''I want our teachers to have the highest moral fiber. I'm not comfortable with him doing both.'' A school board member said,

> Here we have a teacher in a middle school working with children who are at that age where they are struggling with their identity. This is obviously a person who has made bad choices. To give someone like this access to children at that stage of development would be irresponsible of us.

And just because some of the citizens of Loudoun County and across this country do not share the view of public morality of some of the sponsors of this measure, who seek to cast aspersions on opponents of this legislation, does not make those citizens bigots.

Moreover, those proponents of this bill who, wrongly in my view, support blatant, intentional discrimination on the basis of immutable characteristics such as race and ethnicity in teacher hires in order to provide role models to students, are in no position to lecture parents concerned about the conduct of teachers as role models. Finally, I want to know how it is that proponents of a bill that itself exempts the military can dismiss the concerns of parents about the conduct of their children's teachers.

I note, Mr. President, that if a school district wanted to dismiss, or decline to hire, a male teacher, for example, who engages in romantic, physical displays of affection in public with his male partner, this bill makes such a dismissal or refusal illegal—unless the school district will do the same regarding a male teacher's equivalent display of romantic affection for his wife or girlfriend.

Additionally, this bill will empower the EEOC to require employers to collect statistics on the sexual orientation of their employees.

One proponent of this bill last week said the bill does not give the EEOC this authority. That is wrong. The bill,

at section 11, gives the EEOC, ''with respect to the administration and enforcement of this act'' the same power the EEOC has to administer and enforce title VII of the 1964 Civil Rights Act. Under title VII, the EEOC collects statistics on the race, ethnicity, and gender of employees. Would the EEOC request such information? No one in this body can assure us that the EEOC won't do so at some time in the future. Remember, the EEOC is one of those entities responsible for the growth and development of quotas and other preferences under title VII, relying heavily on statistics in the process.

Moreover, it is well established that statistics can be used in intentional discrimination cases under title VII, such as pattern or practice cases. So, notwithstanding language in the bill about prima facie cases of disparate impact, this bill does not at all preclude the use of statistics in sexual orientation cases.

Suppose a complainant, alleging that he was discriminatorily denied a promotion because he is a homosexual, asserts that a supervisor made anti homosexual remarks, and one or two more complainants make the same allegations. Those allegations, and evidence of a supervisor's anti homosexual remarks, could be combined by a Federal enforcement agency or private plaintiffs' lawyer with statistics on the number or percentage of homosexuals in the job in question, or the promotion rates based on sexual orientation, or both, to press a case of a pattern or practice of discrimination.

Finally, let me note that this bill will lead to reverse discrimination and preferences in favor of homosexuals, and I will mention just one way that will happen. The bill's provision allegedly barring preferential treatment does not affect judicial power to enforce this bill. This bill gives the courts the same jurisdiction and powers as such courts have to enforce title VII of the Civil Rights Act of 1964. Further, the procedures and remedies applicable for a title VII violation are available under this bill.

Under title VII's section 706(g), the Federal courts are authorized to order such affirmative action as may be appropriate in cases of intentional discrimination. The Supreme Court has said, unfortunately, that there are some cases in which a court may order numerical and other forms of preferential relief under title VII. Moreover, such preferential relief can be entered as part of a consent decree with the Federal Government, which wields enormous leverage over employers in these costly lawsuits, and in cases with private plaintiffs' lawyers.

Proponents of this legislation have argued that it will not produce much litigation, because there have been very few cases brought in the States with similar laws. That prediction is not persuasive. By authorizing the EEOC to become involved in and to initiate law suits based on gender-preference discrimination, this bill would lead to scores of thousands of new law suits against persons acting on the basis of strongly held religious views. Consider the case of religious broadcasters, for example. This bill would force religious broadcasters to engage in hiring and promotion practices that are contrary to their reasonable, deeply held religious views. We should not force citizens to endorse sexual practices that are contrary to their religious views. This bill, however, would do just that.

Let me also say that my support for the Hate Crimes Statistics Act, which Senator SIMON and I have gotten through the Senate and enacted into law twice, is fully consistent with my position on this bill. My view that absolutely no one should be subjected to violence or vandalism because of who they are is, of course, widely shared. But it does not follow from the fact that while everyone, including homosexuals, should be free of violence, society must confer affirmative civil protections on the basis of sexual orientation not available, I might add, to everyone else.

Let me just add this. There is a religious side to this that must be considered. There are sincerely believing, mainstream religious people in this country who believe we have gone too far in this matter. Can you imagine a religious broadcaster, because they are in a profitmaking business, having to comply with the provisions of this act?

I urge the defeat of this legislation.

Mr. HATFIELD. Mr. President, throughout my career in public service, amounting to over four decades now, I have fought to end discrimination and advance the ideal of equal opportunity in society. One of my first successes as a young Oregon State legislator in the early 1950's was as the sponsor of the Oregon Public Accommodations Act, which prohibited discrimination on the basis of race in public accommodations. With this new law, Oregon set an example for the Nation.

The Public Accommodations Act was the first of many divisive civil rights debates in which I have become involved. I have also played a role in many other civil rights advances as this Nation has attempted to stamp out the irrational and hateful scourge of discrimination. These efforts have often taken the form of extending protection from discrimination in the workplace. Over the years, we have focused on discrimination on the basis of race, gender, national origin, age, religion, and disability. These laws are based on a simple premise: Employees should be judged on the work they do, not on the basis of prejudice not related to workplace performance.

The time has arrived to take the next logical step toward equality of opportunity in the workplace. Senate bill 2056, the Employment Nondiscrimination Act which would prohibit discrimination in employment on the basis of sexual orientation is such a step. The Employment Nondiscrimination Act focuses on a group of citizens who have been victimized and vilified like few other minority groups in this Nation's history. Oregon has not been spared from this prejudice, and I speak here today on behalf of many Oregonians touched by it. One prominent example took place in Medford, OR, last year where two women were murdered. Their murderer confessed that he killed them because of his hate for homosexuals.

While we will not be able to wash this type of deep-seeded hatred from our society merely by enacting a Federal statute, employment relations is narrowly focused and appropriate for a Federal statement of national policy, as we have demonstrated many times. This legislation now before the Senate takes a very measured approach toward addressing this difficult problem. It does not create special protections, preferences, or hiring quotas for gay people. As has been the case in prior civil rights statutes, particularly the Civil Rights Act of 1991, this legislation specifically prohibits quotas on the basis of sexual orientation. This prohibition is further undergirded by a provision that prohibits an employee from bringing a disparate impact suit.

Religious organizations are given a broad exemption from this proposal. The armed services are also exempt, as are small businesses with fewer than 15 employees. Moreover, no business would be required to provide benefits to an employee's same-sex partner.

As this Nation turns the corner toward the 21st century, the global nature of our economy is becoming more and more apparent. If we are to compete in this marketplace, we must break down the barriers to hiring the most qualified and talented person for the job. Prejudice is such a barrier. It is intolerable and irrational for it to color decisions in the workplace.

The employee manual for my office has for some time included a specific provision prohibiting discrimination based on sexual orientation. A majority of the Fortune 500 companies have reached this same conclusion. It is time for this body to do the same. It is time for our laws to reflect a point of fundamental fairness: An employee should be free from discrimination at work because of personal characteristics unrelated to the successful performance of his or her job.

Mr. LAUTENBERG. Mr. President, I rise as a cosponsor of the Employment Nondiscrimination Act, or ENDA, to urge my colleagues to support this historic and important legislation.

This bill would ensure that no American citizen is discriminated against in employment because of their sexual orientation. It's a simple, straightforward bill. And it stands for a fundamental American principle: the principle that discrimination of any kind is wrong.

Mr. President, our Nation was founded over 200 years ago by people who had

migrated to America largely to escape persecution. The earliest Americans often didn't fit in where they used to live. They were different. Maybe they belonged to a religious minority. Maybe they had different political ideas. Or maybe they were ostracized merely because of the way they looked.

These earliest Americans left their homes, their communities, and their homelands to live in a new kind of nation. A nation that not only tolerated differences, but honored them.

From the beginning, Mr. President, this respect for individual differences—perhaps more than anything else—is what has defined us as Americans. It lies at the heart of our culture. It's embedded in our Constitution. And, in the eyes of the world, it's what makes America the special place it is.

Unfortunately, Mr. President, our Nation has not always lived up to our own highest principles. And it's often taken great battles to make sure that we do.

It took almost 100 years and a civil war to eliminate slavery.

It took another 100 years, and enormous social strife, to outlaw racial discrimination.

And it took a long, difficult effort to win women the right to vote, and to prohibit sex discrimination.

Unfortunately, Mr. President, the fight for equal rights for all Americans is not over. Today, it is still legal to fire someone because they are gay, lesbian, or even heterosexual—or merely for being perceived as such.

This kind of discrimination affects hardworking Americans in all sorts of jobs, no matter how well they perform their duties. With hundreds of such cases documented, and many others undocumented, countless Americans fear losing their jobs to discrimination.

Mr. President, today we have another opportunity to restore our commitment to American principles. But, this time, we can do it without the bloodshed and division of previous battles.

Today we have an opportunity to extend the Civil Rights Act, and to say to each and every American, that you have a right to be treated as an individual in employment. You have a right to be judged on the quality of your work. A right to be judged on the basis of your performance. And sexual orientation is irrelevant.

Mr. President, the right to be treated as an individual in employment is consistent with the great American tradition of individual liberties. And so it should not be surprising that it enjoys strong public support. Most Americans believe that people should not be denied a job, or a promotion, simply because of their sexual orientation.

But discrimination against homosexual Americans remains a serious problem. Many employers just will not hire a gay or a lesbian. Or they will fire or fail to promote them once they have been hired.

Sometimes, Mr. President, employment discrimination is based on raw and malicious bigotry—open hatred of people different than themselves.

But often, the discrimination is more subtle. Often, employers don't hate gays. They're just uncomfortable with them. They're uneasy with the concept of homosexuality. And, so, all other things being equal, they'll choose to hire someone with whom they're more comfortable.

Mr. President, from the perspective of an individual employer, that decision may seem entirely reasonable. But that's equally true of employers who are just uncomfortable with blacks. Or employers who are just uncomfortable with Jews.

For those employers, we say: you may be uncomfortable with blacks or Jews. But you may not discriminate against them. Because it's wrong. It's wrong morally and ethically. And it's not fair.

The same reasoning applies in the case of discrimination based on sexual orientation.

Mr. President, individual employers are not making these decisions in isolation. Millions of employers are making similar decisions. And together, they can create a systemic bias with serious consequences.

In the case of homosexuals, this bias limits their opportunity to find meaningful employment. It limits their ability to make ends meet financially. It limits their ability to live full and satisfying lives, and to make meaningful contributions to society.

Mr. President, that's not right. Every American should have the opportunity to live the American Dream. Every American. No matter their race. No matter their religion. And no matter their sexual orientation.

Mr. President, as Senator LIEBERMAN said on the floor last week, we are all God's children. Each and every one of us.

And if we allow hate and discrimination against anyone, we damn our own loved ones. We shame ourselves. And we violate the fundmental principles upon which this great Nation was based.

Mr. President, let me just close by recalling the words of the Declaration of Independence. All men are created equal. They are endowed by their creator with certain inalienable rights. Among those are life, liberty, and the pursuit of happiness.

Mr. President, let us live up to the principles of that Declaration. Let us be true to our values as Americans. And let us ensure that our own loved ones enjoy the respect and dignity that each and every American deserves.

I urge my colleagues to support this legislation.

Mr. KENNEDY. How much time remains?

The PRESIDING OFFICER. The Senator from Massachusetts controls 5 minutes 30 seconds.

Mr. KENNEDY. Mr. President, I yield myself 5 minutes.

Mr. President, for 200 years, we have tried to free this Nation from forms of discrimination. Discrimination was written into the Constitution of the United States, and the American people have paid a fierce price for discrimination over its history.

We fought a civil war in the 1860's. It really was not until the late 1950's that we began to rally in support of the work of Dr. Martin Luther King—by businessmen, by laborers, by church leaders, by all Americans—and said, ''Let's finally get serious and free ourselves from discrimination.''

We all remember what happened with the Japanese internment, one of the darkest periods in American history at the beginning of World War II. And still this country went ahead with that dastardly act.

So in the 1960's, we began to make progress on the issues of race, with the 1964 and 1965 act. Many of the arguments I just heard on the floor of the U.S. Senate were made during that particular debate. Then in 1965, we freed ourselves from a national-origin quota system in immigration, we freed ourselves from the Asian Pacific triangle that was left over from the early part of the 1900's, called the yellow peril. We made progress.

We made progress on race. Then we began on religion and national origin. Then we began to make progress on gender. We did not include an equal rights amendment that said there were ''founding mothers'' as well as Founding Fathers, but, nonetheless, we began to knock down the walls of discrimination on the issues of gender, and we became a more powerful and significant and stronger nation.

In recent years, we have made progress with regards to Americans with disabilities. Six years ago we passed that legislation to say to 44 million Americans, ''We will do everything we can to recognize it isn't disability, it is ability, it is what you can do, what you can contribute, that you can be a part of the American dream.'' That has been the path that we have taken in this country, and we have an opportunity to take a very important and significant step by supporting ENDA.

Just the other night, under the leadership of Senators DOMENICI and WELLSTONE, we began to make progress in terms of knocking down the discrimination that exists with regard to mental health in our country. That exists out there. It exists in our health care systems. We began to knock down that barrier as well with the action that was supported by Republicans and Democrats alike.

Mr. President, today we have the chance to take a meaningful forward step on the road to make America America. We have a really important opportunity to turn our back on bigotry, to turn our back on intolerance, to turn our back on discrimination. We can take an important step in the progress of making America America.

America will only be America when we free ourselves from discrimination,

and this particular legislation, carefully crafted, tries to say, ''If you work in America, if you have the ability to work, you can work, and you ought to be judged on your ability to work and not on the issues of sexual orientation.'' That is the case.

We know that discrimination against gay men and lesbian women exists in this country today, No. 1.

No. 2, we know that there are no laws to protect them.

No. 3, we know that the whole issue of gay men and lesbian women is an immutable condition. It is a condition of life.

What we are trying to say is when Americans want to work and can work and do a job, they ought to be able to be judged on the job that they are going to do and not on one of these other factors.

We can free ourselves from discrimination against those gay men and lesbian women in the employment place. This is a targeted response to that challenge, and I hope we will support it and pass it overwhelmingly.

I withhold the remainder of the time.

The PRESIDING OFFICER. Who yields time?

Mr. NICKLES. How much time remains on both sides?

The PRESIDING OFFICER. The Senator from Oklahoma controls 5 minutes 40 seconds. The Senator from Massachusetts 1 minute 26 seconds.

Mr. NICKLES. Mr. President, I rise in opposition to Senator KENNEDY's bill, and I urge my colleagues to do the same.

Senator KENNEDY's bill before us elevates sexual orientation to special status under the Civil Rights Act. It grants Government approval, acceptance, and protection to homosexual and bisexual behavior under the Civil Rights Act.

Sexual orientation, as defined under the bill proposed by Senator KENNEDY, includes homosexuality, bisexuality, and heterosexuality. It does not just apply to people in a monogamous relationship. Basically, any of the above sexual behaviors are going to be protected by the Federal Government. Such behavior must be OK, because Uncle Sam is now going to protect it.

Senator BYRD made an eloquent speech earlier today, and he read from the Bible. He quoted a couple verses in Genesis talking about what God said about marriage. Many people believe the Bible and believe in it very strongly. Maybe that is recognized by the authors of ENDA, because they exempted religious organizations, but they did not exempt religious people.

We exempt churches under the bill. Well, a lot of people consider themselves part of a church 7 days a week, and they have very serious problems with granting special status to people based on their sexual orientation because they are learning, whether they are Jewish or whether they are Christian or whether they are Muslim, that homosexuality is wrong, it is immoral and should not be condoned and certainly should not be elevated to a special protected status by the Federal Government.

Does that mean that you want to discriminate? No. But should homosexuals and bisexuals have special protected status? Most people would say no.

Mr. President, nine States have something in their statutes, in their State codes, that provide some protections for sexual orientation; 41 States do not. The State of Massachusetts does. The State of Oklahoma does not. I do not really want the State of Massachusetts putting their mandate on my State. Maybe our norms are a little different.

The sponsor of ENDA did exempt religious organizations. They did not exempt schools. There is a high school principal in West Virginia who was recently caught cross-dressing, and he was arrested for soliciting. That was against the law. That was against the State's prostitution laws. What if he was just cross-dressing? He would be protected under ENDA. Cross-dressing could be considered part of a sexual orientation.

What about a schoolteacher who is found to be in homosexual videos—Senator HATCH mentioned one example—what if somebody was particularly well known as a gay activist? What if the school board said, ''We really don't want this person to be teaching our kids physical education in the fifth grade.'' The school board might say, ''That is not the type of mentor, teacher or role model that we would like to have for our young people.'' They can be sued, under this legislation, not only for compensatory damages, but for punitive damages.

Some of us have stated the net result of this bill is going to require employers to ask questions about sexual orientation. That has been denied by the proponents. But the facts are, if you are sued, if someone sues you and says, ''Mr. Employer, you didn't hire me because of my sexual orientation, the fact I am well known as a gay, the employer might say, I didn't know that.'' But they can still sue.

How are employers to protect themselves? They are going to have to ask a lot of questions. One way of protecting yourself is to tell the court or convince the court that you have hired homosexuals in the past. How do you find that out? Well, you better ask questions.

You will have to ask questions and have to survey all your employees. We have never done that before. But the net result of this legislation is that employers would have to ask an employee to at least be able to defend himself. And they would have to ask what their sexual orientation is. That may not be well received by the employees, and it may not be well received by their employers because now you really have the intrusive arm of the Federal Government going into areas they should not.

The sponsors of ENDA have exemptions for religious organizations that are not-for-profit. What about a religious broadcaster? What about a religious book store? Bingo, we are going to tell them, we do not care what your belief is, you are going to have to hire somebody that maybe is diametrically opposed to your fundamental beliefs.

Three years ago, we passed legislation that said we rejected President Clinton's call for gays in the military—Congress did—with an overwhelming vote. Three years ago today, we adopted a policy that says, ''Don't ask, don't tell.'' We are going to tell the school boards that such a policy is not good enough, because this legislation goes way beyond ''don't ask, don't tell,'' way beyond ''don't ask, don't tell.''

So that is what Congress said was acceptable for the military. Congress said, sexual orientation is relevant concerning the military, but now, if ENDA becomes law, we are going to tell millions of employers, oh, sexual orientation is irrelevant; it does not make any difference; we do not care what your personal beliefs are, we do not care what your religious beliefs are, it is irrelevant. For some people it is relevant, and for some school boards it might be relevant, or for some religious people or some religious groups or religious broadcasters it is very, very relevant.

Mr. President, this legislation is a serious mistake and goes way too far. I urge my colleagues to vote no.

The PRESIDING OFFICER. Who yields time?

Mr. DASCHLE. Mr. President, I would like to use my leader time for whatever time I may consume.

The PRESIDING OFFICER. The minority leader has a right to do so.

Mr. DASCHLE. Mr. President, there has been so much misinformation about what this does and does not do, so many claims about the effect it has on certain groups and places of employment, that I would not be surprised that people are confused and very concerned.

As we vote, I think we ought to try to clear the air as much as possible as to what this does. This bill simply rectifies a significant omission in our job discrimination laws, period. It simply prohibits anyone from using sexual orientation as the basis for hiring, firing, promotion, or pay. ENDA allows no special privileges, period. It grants no special rights to any group of people. It simply ensures that no one will be denied the opportunity to support him or herself financially because of discrimination on the job.

This is a matter of simple fairness and common sense. In terms of fairness, no one should be denied employment on the basis of a characteristic that does not relate to his or her ability to get the job done. This principle is already embodied in our civil rights laws. It protects religious institutions. Churches, synagogues, and related institutions will not be forced to change

their hiring practices by this bill, nor will it apply to the military or to small businesses with fewer than 15 employees. This is a narrowly crafted bill that simply upholds the basic American principle that employees should be judged by the work they do. It deserves our support.

I ask my colleagues, prior to the time we vote, how many times have we heard the same arguments raised against minorities in other segments of our society, against African Americans, against the disabled, against women? The same arguments that I just heard presented to our colleagues on the Senate floor moments ago were used in the 1960's, in the 1970's, and in the 1980's. We have heard them all.

I ask my colleagues, who today would come to the floor to roll back the rights now that we provided African Americans? Who would come to the floor to roll back the rights we have given women? Who would propose now we roll back the rights for the disabled? Every time we come to the floor, we pronounce our advocacy of freedom. We talk about how free this democracy is, how great it is for all of us to enjoy the magnificent freedom that we enjoy beyond that of anybody else. If this is true, then we will support the freedom guaranteed in this legislation, too. I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Massachusetts has 1 minute, 26 seconds remaining. For the Senator from Oklahoma, all time has expired.

Mr. NICKLES. Mr. President, let me just check and see if the majority leader wants to make a speech on his time. In the meantime, unless the Senator from Massachusetts wants to speak, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Mr. President, I will use leader time to make a closing statement.

The PRESIDING OFFICER. The majority leader has that right.

Mr. LOTT. The legislation we will be voting on in a few minutes, the Employment Nondiscrimination Act, known here as ENDA, should be rejected by the Senate, in my opinion. In its various versions it has been around for many years, I think probably as many as 20 years. But even when there was a Democratic majority in the Senate, this bill was never even called up before.

We are bringing it up today for a vote, a freestanding vote without amendments, as part of our larger effort to work together and move ahead on urgent business of the Senate. There were intense and lengthy negotiations last week to try to come to a conclusion on how to handle the appropriations bill, the Defense of Marriage Act, ENDA—this legislation—and the defense authorization bill, and I have tried to set a record of trying to be fair and make sure that we have our chance to make our cases here, within limits, and then move on, do the business of the Senate, and then move on.

So that is how this legislation was set up to be considered in a freestanding way. There are those that really do not think it should have been brought up this way or would have preferred it not even come up as an amendment. But I think it is a fair process, and it is one that we agreed to in order to be able to do our business. So, be that as it may, that is how we got to where we are.

ENDA, in my opinion, is part of a larger attempt to equate, by law, what the bill itself calls, in the language of the bill, ''homosexuality, bisexuality, or heterosexuality.'' This is part of a larger campaign to validate or to approve conduct that remains illegal in many States. That has to be of concern to a lot of Senators whose States would fall in that category.

ENDA would mean that ethical and religious objections to homosexual or bisexual conduct would have to be pushed aside or closeted. Those objections could no longer touch the workplace. The bill before us seems to be full of exceptions, exceptions for small businesses, the Armed Forces, religious organizations, though not for law enforcement, schools, day care, or for-profit entities that are part of a church's religious mission.

It seems to me there are many instances that should have been exempted or should have been excluded. It seems to me that this is just a guarantee of multiple lawsuits as to exactly what the intent is and what it means. We do not need that. I think Senator HATCH explained in his very definitive statement on September 6 those exemptions will not limit the damage that will be done by this bill. It would put the full force of the Federal Government behind the campaign to validate a lifestyle that is unacceptable in many areas. I think that is the heart of the matter.

Under ENDA, the antidiscrimination apparatus of the Federal Government—the apparatus of the Federal Government—would treat sexual orientation like race. It would scrutinize employment practices, require remedial hiring or promotion, and treat negative attitudes in this area as workplace harassment.

President Clinton's letter supporting this legislation notes that 41 States currently do not outlaw discrimination in employment on the basis of sexual orientation. Only nine States have adopted anything like ENDA. Only 18 Senators represent States which have their own versions of this type of legislation, and 82 Senators are here to represent States which do not have their own laws similar to this one. I cannot believe that the majority of the Senate will impose upon those 41 States a piece of legislation which the citizens of those States apparently do not want.

If ever there was a case of ''Washington knows best,'' ENDA is it. If ever there was a one-size-fits-all approach to social engineering, ENDA is it.

Mr. President, the American people are not bigoted or hateful or prejudiced. They just are not. When it comes to ENDA, the American people are cautious, prudent, and weary. I think they are right. They have seen the good intentions of official Washington go astray time and time again. They have heard sweet slogans to cover up legislation with major problems.

That is the case with ENDA. Senators NICKLES and ASHCROFT and others who have spoken have very forcefully explained the ramifications of what seems to be a simple bill. But it is not simple at all. It is a blank check to a court system increasingly out of touch, in many instances, with the public. It is an open invitation to a Federal bureaucracy brutally indifferent to what goes on in American life—in our businesses, in our schools, and in our communities.

In short, I think this legislation is out of sync with the majority of American people. I think the Senate should not pass it. It a very serious matter, and I urge my colleagues to vote against it.

I yield the floor, Mr. President.

Mr. NICKLES. Mr. President, we are about to vote on final passage of S. 2056, the Employment Nondiscrimination Act. I urge each Senator to vote ''no.''

Before we vote, I want to address a few issues that have come up during debate. Time does not, of course, allow me to go into these issues in detail.

I urge each Senator to consider the moral implications of this vote. In her recent, acclaimed book, ''The De-Moralization of Society,'' Gertrude Himmelfarb reminded us of a truth that needs to be repeated here:

> Individuals, families, churches, and communities cannot operate in isolation, [they] cannot long maintain values at odds with those legitimated by the state and popularized by the culture. * * * Values, even traditional values, require legitimation. At the very least, they require not to be illegitimated. And in a secular society, legitimation or illegitimation is in the hands of the dominant culture, the state, and the courts.

This bill goes to the heart of traditional values—the values of religious liberty, free association, and traditional sexual morality.

ENDA is solicitous of religious organizations, Mr. President, but what about religious individuals? This bill concedes that it is going to compel an approval of homosexual and bisexual behavior—that is why religious organizations are exempted from the bill—but what about religious individuals?

ENDA will punish those Americans who believe it is important to apply

their moral views in the workplace. To millions of Americans, human sexuality is still a matter of the deepest moral concern, but ENDA says to them that in the workplace they cannot make distinctions based on sexual orientation, no matter how compelling.

Mr. President, I have heard it said on this floor that ENDA is necessary to guarantee to homosexuals and bisexuals the equal protection of the laws. That is not true.

The Constitution of the United States guarantees to every person the equal protection of the laws.

Our colleagues know, for example, that under Federal employment laws as now written every heterosexual, homosexual, or bisexual person is treated equally. Of course, Federal law does not prohibit discrimination on the basis of sexual orientation, so Government bureaucrats cannot forbid or require a particular result if ''sexual orientation'' should become an issue in the workplace, but each person has identical rights, whatever his or her sexual orientation.

I believe that ENDA is going to mean quotas. The sponsors don't think so, and they point to Section 7 of the bill that says that an employer shall not give preferential treatment or establish a quota based on sexual orientation.

Of course, there were many people who thought that the Civil Rights Act of 1964 also prohibited quotas and preferential treatment. History has shown that view to be naive. Today, quotas and preferential treatment are a red-hot issue all across the country—but they are opposed by the vast, vast majority of the American people.

I would remind Senators that ENDA gives to the EEOC—in §11(a)(1)—the Attorney General—in §11(a)(4)—and the Federal courts—in §11(a)(5)—the same powers they have with respect to race and sex discrimination under current law—see §11(b). All of the powers of the EEOC and the courts will be brought to bear against the employer who believes that sexual orientation cannot be ignored in his workplace.

There are a hundred traps for every covered employer. For example, if ENDA is enacted 42 U.S.C. 2000e–2(m) will make it an ''an unlawful employment practice'' if sexual orientation ''was a motivating factor for any employment practice, even though other factors also motivated the practice.''

Mr. President, ENDA is a power grab, and it is exactly the kind of inside-the-Beltway power grab that Americans have come to resent.

ENDA threatens to make sexuality an issue where it has never been an issue before. Currently, most employers don't know about their employees' sexual orientation and don't care. ENDA will help put an end to that. Some employers do care, and ENDA will put an end to that, too. ENDA is about sexuality, but it is not about privacy. ENDA is about going public.

Mr. President, I have heard it said on this floor that 80 percent of the American people support this bill. This is not true.

The claim seems to be based on a poll taken by Newsweek magazine: In that poll, conducted in May of this year, 84 percent of the Newsweek respondents did say there should be ''equal rights for gays in terms of job opportunities''—but that doesn't mean 84 percent of Americans want a new Federal mandate. In fact, that very same poll shows that they don't.

When asked about the effort the country has already made ''to protect the rights of gays and lesbians,'' 26 percent said the country had made the right amount of effort, 27 percent said more effort is needed, but 40 percent said the effort had gone too far.

When asked specifically if there should be ''special legislation to guarantee equal rights for gays,'' 41 percent agreed that there should be such legislation but 52 percent said there should not be such legislation. In sum, Americans favor fairness but they oppose the heavy hand of government which is what ENDA represents.

Mr. President, ENDA equates homosexuality and bisexuality with heterosexuality, but the American people have never regarded homosexuality or bisexuality as the moral or legal equivalent of heterosexuality, whether in the workplace or not.

ENDA for bids discrimination ''on the basis of sexual orientation'' which it defines to mean ''homosexuality, bisexuality, or heterosexuality, whether such orientation is real or perceived.'' Frankly, no one knows what those words mean or how they will be applied in many real-life situations.

There is much more that ought to be said, Mr. President, but let me conclude with this.

Just 3 years ago yesterday, the Senate voted 63 to 33 for a compromise policy on homosexuals in the military. With that vote and later votes and the President's signature, the laws of the United States states that homosexuality was relevant to service in the Armed Forces of the United States, and that open homosexuality was disqualifying.

Today, we will vote on ENDA, a bill that will tell every employer in America that homosexuality and bisexuality must at all times and in all workplaces be irrelevant. Can the Senate truly believe that homosexuality can be relevant in the military services but must be irrelevant in the thousands of private workplaces that will be covered by ENDA?

The Congress and the President have told the Pentagon that homosexuality is contrary to good order and discipline—is it now going to tell every private employer in America that, regardless of his or her own moral judgment, homosexuality and bisexuality are just another orientation that Congress has decreed to be irrelevant?

Mr. President, are we prepared to levy fines on a school district that uses a policy that looks very much like the military's ''don't ask, don't tell''? Are we prepared to force the American people into a policy that holds sexual orientation irrelevant in every workplace except the church and the military? What are we going to say to the small business owner who wants to know why he, a private citizen with strong moral views, doesn't have at least as much freedom to choose employees as a Navy recruiter?

ENDA is a radical step, and it is a step in the wrong direction. It should be defeated.

Mr. President, I ask unanimous consent several letters urging opposition to this bill be printed in the RECORD.

There being no objection, the material ordered to be printed in the RECORD, as follows:

U.S. CHAMBER OF COMMERCE,
Washington, DC, September 10, 1996.

MEMBERS OF THE U.S. SENATE: The Senate will soon consider the Employment Non-discrimination Act (ENDA), S. 2056. On behalf of our membership of over 215,000 businesses, 3,000 state and local chambers of commerce, 1,200 trade and professional associations, and 76 American chambers of commerce abroad, I am writing to urge you to vote against this bill.

S. 2056 amends Title VII of the 1964 Civil Rights Act to allow lawsuits against employers, for compensatory and punitive damages, based on an individual's actual or perceived sexual orientation. Notwithstanding our concerns regarding the specifics of S. 2056, a significant addition of this nature to our basic laws against employment discrimination should be thoroughly deliberated and vented through our legislative process. Thus, the measure should be the subject of hearings and careful consideration by the appropriate committees. ENDA has not been considered by the Labor and Human Resources Committee nor any other committee in the 104th Congress. To pass this bill without thorough consideration by the appropriate committees would be, at best, manifestly unfair to American employers as well as all of the citizens who would be affected by such sweeping legislation.

The Senate should not hastily pass this legislation without first thoroughly considering all of its advantages and disadvantages. We urge you to vote against ENDA and send it to the appropriate committees for careful consideration.

Sincerely,

R. BRUCE JOSTEN.
Senior Vice President,
Membership Policy Group.

NATIONAL ASSOCIATION
OF MANUFACTURERS,
Washington, DC, September 10, 1996.

Hon. DON NICKLES,
Senate Hart Office,
Washington, DC.

DEAR SENATOR NICKLES: On behalf of the NAM's 14,000 member companies, 10,000 of which employ 500 or fewer workers, I urge your opposition to the Employment Non-Discrimination Act (ENDA), S. 2056.

This measure is an unwarranted and unwise extension of Title VII of the Civil Rights Act. Expanding Title VII is a significant legislative initiative that should not be undertaken without the careful consideration afforded by the committee process. The ENDA has not been the subject of any hearings in the Labor and Human Resources Committee, nor has it been considered by any committee in the 104th Congress. Surely an initiative that would have such far-reaching consequences for individual privacy

rights, employment policies and employers, rights should have the benefit of full congressional consideration.

Expanding the reach of Title VII would not only increase an already daunting case load at the EEOC (which currently has significant backlogs due to enforcement authority for the Americans With Disabilities Act), but would dramatically increase record-keeping requirements for most employers. The burden of federal recordkeeping requirements falls disproportionately on smaller companies. It is these same companies that continue to generate the greatest number of new jobs and growth in our economy.

I urge you to reject the efforts of the ENDA backers to short-circuit the legislative process, and vote against S. 2056.

Sincerely,

SHARON F. CANNER,
Vice President,
Human Resources Policy.

BUSINESS LEADERSHIP COUNCIL,
Washington, DC, September 10, 1996.

Hon. DON NICKLES,
U.S. Senate,
Washington, DC.

DEAR SENATOR NICKLES: On behalf of the Business Leadership Council I am writing to express strong opposition to S. 2056, the so-called ''Employment Nondiscrimination Act.''

At a time when Congress and the Nation should be working toward cooperation in the workplace, this measure once again revives the failed agenda of confrontation, regulation, and litigation. This bill would expand Title VII of the Civil Rights Act to include and amorphous category based on sexual orientation. As a result the legislation threatens to embroil virtually every workplace in politically and socially motivated controversies which will cost jobs for thousands of workers.

We hail your leadership in opposing this dangerous and costly piece of legislation and will work vigorously to ensure its defeat.

Very truly yours,

DAVID L. THOMPSON.

SMALL BUSINESS
SURVIVAL COMMITTEE,
Washington, DC, September 10, 1996.

Hon. DON NICKLES,
U.S. Senate,
Washington, DC.

DEAR SENATOR NICKLES: On behalf of the 45,000 members of the Small Business Survival Committee, I urge the defeat of the Employment Nondiscrimination Act, S. 2056. Unlike other protected classes under Title VII of the Civil Rights Act of 1964, sexual orientation is a private matter of choice and lifestyle. Federal workplace policy has not and should not intrude in this highly volatile area.

This radical piece of social legislation is anti-worker and anti-small business. There can be no doubt that the bill, if enacted, would result in excessive lawsuits, regulations and costs. As is typically the case with dictates and mandates, the brunt of the federal policy would fall on small businesses across the country. Every dollar spent defending against this ill-conceived measure would be money denied to workers in the form of raises and denied to small businesses to be used to create jobs.

We strongly oppose S. 2056. Thank you for your leadership against the bill.

Sincerely,

KAREN KERRIGAN,
President.

Mr. NICKLES. If the Senator yields back his time, I ask for the yeas and nays.

Mr. KENNEDY. Mr. President, I just want to take 30 seconds.

Mr. President, our friend from Rhode Island pointed out that Barry Goldwater supports this legislation. Coretta Scott King wrote to all of us. In the Coretta Scott King letter she says:

As my husband, Martin Luther King, Jr. said, ''Injustice anywhere is a threat to justice everywhere,'' and, ''I have fought too long and hard against segregated public accommodations to end up segregating my moral concern. Justice is indivisible.''

Those are the words of Dr. Martin Luther King, Jr. They could be said again here on the floor of the U.S. Senate on this particular issue, because what it is all about is the questions of discrimination and bigotry in the workplace. Below the clock in this Senate are the words ''E pluribus unum,'' one out of many. Why do we not eliminate the discrimination that excludes so many of our fellow citizens and make them part of the one as well?

This legislation will help. I ask unanimous consent to have printed in the RECORD the letter from Coretta Scott King.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE KING CENTER,
Atlanta, GA, September 10, 1996.

DEAR SENATOR: Ernest Dillon, an African-American postal employee in Detroit, worked hard and was good at his job. But that wasn't enough. Deciding he was gay, his co-workers repeatedly taunted him, until one day, while on the job they beat him unconscious. And the harassment did not end there. It continued unabated until he was forced out, fearing for his life.

Mr. Dillon sought relief—first from his employer, then from the courts. Tragically, both turned their backs on him. Had he been harassed for being black, federal civil rights law would have protected him. But job discrimination, and even serious harassment, based on sexual orientation is still perfectly legal in the United States of America in 1996. This is unjust, un-American, and intolerable.

Today, workplace discrimination against gay men and lesbians is real, widespread, and continues to cast a dark shadow on our ideals as a free and fair nation. To remedy this situation a bipartisan coalition in Congress introduced the Employment Non-Discrimination Act. This essential legislation will provide dedicated workers with long-overdue protection from irrational fear and unjust discrimination based on sexual orientation.

I am proud to join mayors, governors, religious leaders, CEOs, and the Leadership Conference on Civil Rights in support of this essential legislation. Lesbians and gay men are a productive part of the American workforce, but the gap in current law leaves them vulnerable to bigotry in the workplace. For too long, our nation has ignored discrimination against this group of Americans. They work hard, pay their taxes, and yet continue to be denied equal protection under the law. It is time for a change.

I am encouraged that in a recent Newsweek poll, 84 percent of the respondents favored protecting gay and lesbian people from job discrimination, and I am proud to stand with the overwhelming majority of Americans who recognize the importance of such protection.

The bill in Congress will grant the same rights to victims of discrimination based on sexual orientation that are now available to victims of racial, gender, and religious discrimination and those who have been unfairly treated in the workplace because of their age, ethnic background, or disability. The bill provides no preferential treatment or special rights. It simply requires that all people be judged by their skills and the quality of their work, and not by the prejudice, fear, and stereotypes of others. It is time to root out bias, whatever form it takes.

As my husband, Martin Luther King, Jr. said, ''Injustice anywhere is a threat to justice everywhere,'' and ''I have fought too long and hard against segregated public accommodations to end up segregating my moral concern. Justice is indivisible.''

Lesbians and gays supported the African American freedom struggle. None of us who achieved that freedom should turn our back on this next phase of the movement for freedom and dignity. Like Martin, I believe you cannot stand for freedom for one group of people, and deny it to others. As history affirms, none of us is free until all of us are free.

The Employment Non-Discrimination Act is a logical extension of the Bill of Rights and the civil rights reforms of the 1950s and 1960s. Then as now, we were told that employers were not prejudiced, but their workers and customers feared diversity. In the 1960s, businesses cited ''customer preference'' to rationalize their refusal to hire African Americans. We should learn from these mistakes and not repeat them.

The great promise of our democracy is that we encourage all people to reach their full potential, and provide protection against senseless discrimination and persecution. In doing so, we strengthen ourselves as a nation and all that America stands for.

Congress should help stop job discrimination by enacting the Employment Non-Discrimination Act. Fundamental principles of fairness and human dignity are at stake. All Americans who support real equality in the workplace should watch closely on Tuesday, September 10th as Senators cast their votes on this landmark legislation.

Sincerely,

CORETTA SCOTT KING.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. NICKLES. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. All time has been yielded back.

The bill having been read the third time, the question is, Shall the bill pass?

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 49, nays 50, as follows:

[Rollcall Vote No. 281 Leg.]

YEAS—49

Akaka	Feinstein	Mikulski
Baucus	Glenn	Moseley-Braun
Biden	Graham	Moynihan
Bingaman	Harkin	Murray
Boxer	Hatfield	Pell
Bradley	Hollings	Reid
Breaux	Inouye	Robb
Bryan	Jeffords	Rockefeller
Bumpers	Johnston	Sarbanes
Chafee	Kennedy	Simon
Cohen	Kerrey	Simpson
Conrad	Kerry	Snowe
D'Amato	Kohl	Specter
Daschle	Lautenberg	Wellstone
Dodd	Leahy	Wyden
Dorgan	Levin	
Feingold	Lieberman	

NAYS—50

Abraham	Frahm	Mack
Ashcroft	Frist	McCain
Bennett	Gorton	McConnell
Bond	Gramm	Murkowski
Brown	Grams	Nickles
Burns	Grassley	Nunn
Byrd	Gregg	Pressler
Campbell	Hatch	Roth
Coats	Heflin	Santorum
Cochran	Helms	Shelby
Coverdell	Hutchison	Smith
Craig	Inhofe	Stevens
DeWine	Kassebaum	Thomas
Domenici	Kempthorne	Thompson
Exon	Kyl	Thurmond
Faircloth	Lott	Warner
Ford	Lugar	

NOT VOTING—1

Pryor

The bill (S. 2056) was rejected.

Mr. GRAMM. Mr. President, I move to reconsider the vote.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I voted against S. 2056, the Employment Nondiscrimination Act. I would like to take a few moments of the Senate's time to explain my opposition and concerns with respect to that legislation.

At the outset, however, I would first like to acknowledge the fact that I do not condone employment discrimination based on factors immaterial to the performance of one's duties. I do not practice it in my own office, nor am I aware of any other member of the Senate that does. And, as the proponents of S. 2056 have shown, many employers throughout this nation—both large and small—have adopted nondiscrimination provisions as part of their corporate policies. I applaud that effort.

But the fact that I do not approve of, or practice, employment discrimination does not mean that I believe it is wise for the Senate to pass this bill at this time. On the contrary, I think it is inadvisable, at this late stage of the 104th Congress, for us to shift our focus from the immediate tasks at hand to a matter that is clearly deserving of extended deliberation by way of committee hearings and floor debate.

Mr. President, in my opinion, the legal ramifications that could necessarily extend from enactment of this Act are monumental. I believe this is so because passage of the Act would, for the first time in our history, place sexual conduct on an equitable legal footing with such benign, nonbehavioral factors as race, gender, and national origin—immutable characteristics which each of us possess, but which none of us can alter.

It is my hope, then, that when the 105th Congress convenes next year, hearings may be held that will bring together various legal scholars who will concentrate on this important aspect, and in so doing help us, as Senators, in making a more informed decision.

Until such considerations and debate has taken place, I cannot, in all good conscience, support this measure.

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 1997

The PRESIDING OFFICER. Under the previous order, the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3756) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1997, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1997, and for other purposes, namely:

TITLE I—DEPARTMENT OF THE TREASURY

DEPARTMENTAL OFFICES

SALARIES AND EXPENSES

For necessary expenses of the Departmental Offices including operation and maintenance of the Treasury Building and Annex; hire of passenger motor vehicles; maintenance, repairs, and improvements of, and purchase of commercial insurance policies for, real properties leased or owned overseas, when necessary for the performance of official business; not to exceed $2,900,000 for official travel expenses; not to exceed $150,000 for official reception and representation expenses; not to exceed $258,000 for unforeseen emergencies of a confidential nature, to be allocated and expended under the direction of the Secretary of the Treasury and to be accounted for solely on his certificate; **[**$108,447,000**]** *$111,348,000*: *Provided,* That up to $500,000 shall be made available to implement section 528 of this Act.

AUTOMATION ENHANCEMENT

INCLUDING TRANSFER OF FUNDS

For the development and acquisition of automatic data processing equipment, software, and services for the Department of the Treasury, $27,100,000, of which $15,000,000 shall be available to the United States Customs Service for the Automated Commercial Environment project, and of which $5,600,000 shall be available to the **[**United States Customs Service**]** *Departmental offices* for the International Trade Data System: *Provided,* That these funds shall remain available until September 30, 1999: *Provided further,* That these funds shall be transferred to accounts and in amounts as necessary to satisfy the requirements of the Department's offices, bureaus, and other organizations: *Provided further,* That this transfer authority shall be in addition to any other transfer authority provided in this Act: *Provided further,* That none of the funds shall be used to support or supplement Internal Revenue Service appropriations for Information Systems and Tax Systems Modernization**[**: *Provided further,* That none of the funds available for the Automated Commercial Environment or the International Trade Data System may be obligated without the advance approval of the House and Senate Committees on Appropriations**]**.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, not to exceed $2,000,000 for official travel expenses; including hire of passenger motor vehicles; and not to exceed $100,000 for unforeseen emergencies of a confidential nature, to be allocated and expended under the direction of the Inspector General of the Treasury; $29,319,000 *$30,153,000.*

[OFFICE OF PROFESSIONAL RESPONSIBILITY

[SALARIES AND EXPENSES

[INCLUDING TRANSFER OF FUNDS

[For necessary expenses of the Office of Professional Responsibility, including purchase and hire of passenger motor vehicles, up to $3,000,000, to be derived through transfer from the United States Customs Service, salaries and expenses appropriation: *Provided,* That none of the funds shall be obligated without the advance approval of the House and Senate Committees on Appropriations.**]**

TREASURY BUILDINGS AND ANNEX REPAIR AND RESTORATION

INCLUDING TRANSFER OF FUNDS

For the repair, alteration, and improvement of the Treasury Building and Annex, **[**the Bureau of Alcohol, Tobacco and Firearms National Laboratory Center and the Fire Investigation Research and Development Center, and the Rowley Secret Service Training Center, $22,892,000**]** *$43,684,000,* to remain available until expended: *Provided,* That **[**funds for the Bureau of Alcohol, Tobacco and Firearms National Laboratory Center and the Fire Investigation Research and Development Center and the Rowley Secret Service Training Center shall not be available until a prospectus authorizing such facilities is approved by the House Committee on Transportation and Infrastructure: *Provided further,* That**]** funds previously made available under this title for the Secret Service Headquarter's building shall be transferred to the Secret Service Acquisition, Construction, Improvement and Related Expenses appropriation.

FINANCIAL CRIMES ENFORCEMENT NETWORK

SALARIES AND EXPENSES

For necessary expenses of the Financial Crimes Enforcement Network, including hire of passenger motor vehicles; travel expenses of non-Federal law enforcement personnel to attend meetings concerned with financial intelligence activities, law enforcement, and financial regulation; not to exceed $14,000 for official reception and representation expenses; and for assistance to Federal law enforcement agencies, with or without reimbursement; $22,387,000: *Provided,* That notwithstanding any other provision of law, the