

An oversight hearing on the Defense of Marriage Act—and implicitly whether a constitutional amendment is necessary to prevent same-sex couples from marrying—concluded with gay rights advocates heartened and social conservatives at least mildly disappointed. The Senate Subcommittee on the Constitution of the Judiciary Committee held the hearing Sept. 4.

"I have long opposed government recognition of same-gender marriages, and this legislation [DOMA] is consistent with that position," said chairman John Cornyn, R-Texas, in his opening statement. "The question before us now is whether the popular and bipartisan legislation will remain the law of the land, as the people intend, or be overturned by activist courts."

Those words pleased social conservatives, but Cornyn's tone—the coolness of a bureaucrat, not the visceral fear and loathing that tinges the voices of many on the right in discussing gay marriage—surely must have left many of them wanting more. His framing of the hearing—"Americans instinctively and laudably support two fundamental propositions: that every individual is worthy of respect and that the traditional institution of marriage is worthy of protection"—indicated the balance he brought to the proceedings.

Five Democratic senators actively took on the far-right witnesses. Patrick Leahy of Vermont set the tone for the Democrats when he reviewed the many pressing issues facing the country and said: "I wonder whether this issue really should demand the attention of Congress.... I fear that it may be political acting for some outside of the Congress who want to be able to score political points at the expense of gay and lesbian Americans." Leahy's appearance was noteworthy because, while he is the ranking Democrat on the full committee, he does not serve on the subcommittee.

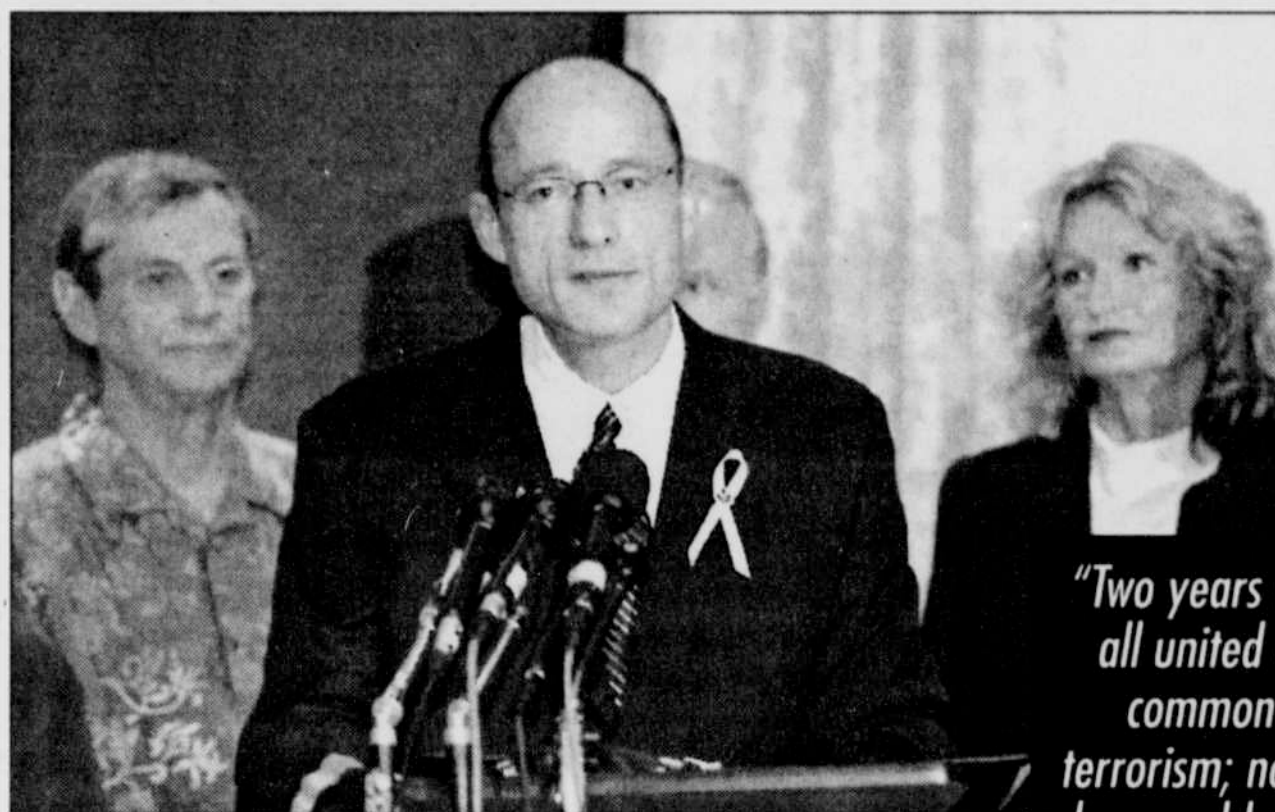
Russ Feingold, D-Wis., said he was one of the few senators who voted against DOMA. Gay marriage was far down the list of concerns raised by his constituents during the 21 town meetings he held in the state during the August recess. He questioned why the body should be devoting time to "a divisive issue that is best left to the states and courts."

Aside from the mistake of prohibition, "the Constitution has never been amended to limit basic rights," Feingold said,

DEFENDING MARRIAGE

Senate Democrats question necessity of judiciary committee hearing

by Bob Roehr



"We should not seek to amend the Constitution in a way that will reduce its grandeur."



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—John Cornyn

Throughout U.S. history, more than 10,000 amendments to the Constitution have been proposed, but only 17 have been passed in 200-plus years, said Dale Carpenter, University of Minnesota law professor and former national board member of Log Cabin Republicans. "That system has worked enormously well...we ought to be very reluctant to touch that document, essentially on the basis of hypothetical fears and conjecture."

Cornyn reminded the room that the hearing "is not about whether we should adopt a constitutional amendment," which has been introduced in the House but not the Senate. "In my view, that is premature." Discussion of an amendment "is for a future date, or not."

Six witnesses testified in total at the hearing, four of whom support permanently banning gay couples from attaining the rights and protections of civil marriage. The Rev. Ray Hammond, a

member of the Alliance for Marriage in Massachusetts, discussed "the tripling of fatherlessness" in the United States and the importance of stable families in raising children. "Marriage must be seen as an institution that goes beyond the contractual giving of rights and even beyond the emotional celebration of the love of two people for each other."

Maggie Gallagher, president of the Institute for Marriage and Public Policy, asserted, "Marriage is about getting children the mothers and fathers that they need." She acknowledged that the "crisis" of marriage and the family has occurred "for reasons that obviously have nothing to do with gays and lesbians and advocates of gay marriage."

"Unisex marriage is making a powerful statement by law and by our government that children do not need mothers and fathers. That motherless and fatherless families are not only just as good, they are just the same as a mother-father married family," she maintained.

Gregory Coleman, former solicitor general of Texas, reviewed the history of legal challenges on same-sex marriage and two key decisions by the U.S. Supreme Court: the Romer case that struck down Colorado's Amendment 2 and the Lawrence decision that struck down sodomy laws earlier this year. He concluded, "It is likely, though not inevitable, that DOMA itself and

prohibitions on same-sex marriage more generally will be held to be unconstitutional...within the next five to 15 years."

Michael Farris, an attorney and leader in the Christian home schooling movement, charged: "The courts are robbing the American people of their fundamental right to self-government. We are on the verge of a judicial revolution that has got to stop."

Carpenter disagreed. "No person who cares about the Constitution should support this amendment. As a conservative, I believe it is unnecessary, it is unwise, it is contrary to the structure of our federal government, it is anti-democratic, and it is a form of overkill.... It is a solution in search of a problem."

He said the amendment also might negate domestic partnerships, civil unions and other protections. Hundreds of thousands of children are being raised by gay couples in the United States, he noted. "Where are the protections under the law for these children?"

Carpenter added: "The basic question to ask and to answer is: Given that gay people exist in America and are not going to be removed, what is to be done about them? Are we to shunt them to the side, to ostracize, to marginalize them? Or are we bring them into the fabric of American life?"

Keith Bradkowski spoke movingly of his 11-year relationship with Jeff Collman, a flight attendant on the first

plane to slam into the World Trade Center on 9/11, and of the difficulty of everything from obtaining a death certificate to maintaining their house because they were not legally married. "The terrorists who attacked this country killed people not because they were gay or straight but because they were Americans.... Two years ago we were all united against the common threat of terrorism; now I'm sitting here and being told that our relationship was a threat to our country."

Richard Durbin, D-Ill., expressed his support for traditional marriage and noted that he had voted for DOMA. But when it comes to the Federal Marriage Amendment, "I don't want to take a roller to a Rembrandt." He called it "premature to the extreme."

"When I hear Mr. Bradkowski's story, it is one that I've heard over and over again," Durbin said. "There are certain things that we should have done to make your grief and sorrow a little less, and we didn't. And I think we can without assaulting the issue of marriage." ■

BOB ROEHR is a free-lance reporter based in Washington, D.C.

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—Keith Bradkowski

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