



Senator Feinstein Announces Continued Opposition To Constitutional Amendment That Would Prohibit Same-Sex Marriage

June 6, 2006

Washington, DC – U.S. Senator Dianne Feinstein (D-Calif.) today announced her continued opposition to a constitutional amendment that would prohibit same-sex marriage, the Marriage Protection Amendment. The following is the text of Senator Feinstein’s statement on the Senate Floor:

“Mr. President, I rise today to oppose the Marriage Protection Amendment to the Constitution.

With all the problems in the world today, the Senate is spending valuable time debating a bill which we know does not have the votes for cloture, which is divisive, and which, I believe, does not belong on the national agenda.

The fact of the matter is that all family law has historically been relegated to the States.

Marriage, divorce, adoption, custody – all aspects of family law and domestic relations – have been the province of the States.

That’s what the Supreme Court has said in case after case – from *In Re Burrus* in 1890 to *Rose v Rose* in 1982.

In that 1982 case, the court affirmed the holding of *In Re Burrus* that:

‘[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States.’

Similarly, in *Sosna v. Illinois* (1975) the Supreme Court wrote:

‘Domestic relations [is] an area that has long been regarded as a virtually exclusive province of the States.’

And in 1982, then-Associate Justice Rehnquist, dissenting in *Santosky v. Kramer*, wrote:

‘The area of domestic relations...has been left to the States from time immemorial, and not without good reason.’

And just this past November, in a television interview, Justice Stephen Breyer stated very simply: ‘Family law is State law.’

So it’s clear that domestic relations have been the jurisdiction of States – and that’s where they should remain. I deeply believe that this body should not be involved in putting amendments in the Constitution dealing with any aspect of marriage, of divorce, of families, of adoption, of any of those areas. The States reign supreme.

So why is it when Republicans are all for reducing the federal government’s impact on people’s lives – until it comes to these stinging litmus test issues, whether gay marriage or end of life – they suddenly want the federal government to intervene?

For the life of me, I don’t understand why this keeps coming before this body. It is extraordinarily difficult to pass a constitutional amendment. We all know that. Both Houses have to pass it by 67 votes. Then, over a seven-year period, it goes out the States, where it has to be ratified by three-quarters of the States.

The last constitutional amendment that went out to be ratified by the States was the Equal Rights Amendment. A simple 25-word amendment that said:

‘Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.’

And guess what, they were not able to get the necessary $\frac{3}{4}$ of the States over a seven-year period.

So, I don’t believe this constitutional amendment would be successful, even if passed out of this body.

I haven’t seen one passed in the 13 years I have been here. And it is extraordinarily difficult to get one ratified, as I said.

Family law, indeed, is the purview of the States. So, there’s no need for a constitutional amendment.

This proposed constitutional amendment strikes at the heart of States’ rights in the area of family law, and in doing so, actually undermines our Constitution.

Moreover, I believe that Americans believe that the States should deal with same-sex marriage as the States see fit. And so I do.

And, Americans are especially concerned about amending this Constitution if it means closing the door on civil unions.

Now, why do I say this? How do I know this? Fifty-three percent of Americans polled recently would oppose a constitutional amendment that also bans civil unions and domestic partnerships, such as we have established in California.

Many legal experts believe that this amendment would do just that. The language in the second sentence of the amendment is ambiguous, at best, stating that:

‘Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman.’

Now, some on the other side have argued that the amendment would still allow for legal unions passed by the States legislatures, just not those instituted by the courts.

However, when similar amendments were passed in states like Michigan, Ohio, and Utah, domestic violence laws and health care plans for couples – both gay and straight – were taken away.

So, we know that it has an effect. So, I really believe that to put this on the Constitution – if it were to prevail, if it were to be ratified by three-quarters of the States – it is very likely that all domestic partnerships and all unions of any civil kind would be wiped out as well. And I think that doesn’t make any sense at all.

States are well able to handle the issue of marriage on their own – without the heavy-hand of the federal government intervening in people’s private lives.

What is currently happening in the States indicates to me that they are, in fact, actively engaged on this issue.

In fact, the numbers speak for themselves:

- To date, 45 states have acted to restrict marriage to only one man and one woman;**
- 18 of those have done so by amending their State constitutions.**

So, why are we doing this?

- This year, 7 more states are poised to join them when they hold statewide votes on constitutional same-sex marriage bans: Alabama in June, and Idaho, South Carolina, South Dakota, Tennessee, Virginia and Wisconsin in November.**

- In addition, at least 9 other states may take up similar amendments in the not-so-distant future: Arizona, Colorado, Delaware, Illinois, Indiana, Massachusetts, Minnesota, New Jersey and Pennsylvania.
- And in fact, only one State – Massachusetts – recognizes same-sex marriage. One State, that's it.

So, why all the fuss? Why is the Senate devoting its time to this issue when one state has taken action?

I say that based on the laws of this land, that that's the prerogative of that state, or any other state. So there's no need for us to be considering a federal constitutional amendment, particularly when we have important global and national problems to address.

- *Deficit* -- We've got an enormous deficit in this country. We don't spend much time on it.
- *Iraq* -- Things are going from bad to worse -- just this morning we read about of an "unrelenting" kidnapping campaign happening in the streets of Baghdad. Thousands of Iraqi citizens are being snatched from the streets – 56 just yesterday – all rounded up by gunmen dressed in Iraqi police uniforms.
- *North Korea* – has announced that it possesses nuclear weapons.
- *Iran* – is trying to become a nuclear power.
- *Stem Cell Research* -- Passed by the House a year ago, still not on the Floor of the Senate. So, why, why, why, are we doing this now when we could be doing stem cell research? When we could possibly provide the hope for juvenile diabetics, for Alzheimer's victims, for cancer victims, for spinal cord severance victims?
- *Appropriations* -- The Senate has not taken up and approved any of the 12 appropriations bills that it must complete by the end of the session and it is already June. So I can't understand why we're doing this.
- *Defense Authorization and Intelligence Authorization* -- We've got the Defense Authorization and Intelligence Authorization bills. These are critical bills at a time when our nation continues to be fighting in Iraq, Afghanistan, and the Global War on Terror. And we have not passed these bills.
- *Gas Prices*. I was in Los Angeles last week, and it cost more than \$3.50 a gallon to fill up a tank of gas. And we haven't taken steps to deal with that.

So there are dozens of critical issues including the mandatory business of this body in two major authorization bill and 12 major appropriation bill that we haven't addressed. 45 States have taken action.

And yet this body seems pressed to defend the nation, to amend the Constitution, to provide something which is the purview of the States and which the States are handling.

To me it makes no sense, other than this is an election year. It makes no sense other than throwing red meat to a certain constituency. And it certainly is not what the Constitution of the United States is all about.

Mr. President, I hope we will vote no on cloture and I hope we will return to business that is important to the American people. I do not believe that this issue merits the time of this Senate at this time.

Thank you and I yield the floor."

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