

The legislation recently introduced in Congress would for the first time in our nation's history insert the federal government into matters which have traditionally been left to the states to regulate. As a former governor, the President has serious reservations whenever Congress attempts to legislate in quintessential state issues. The bill also raises serious constitutional issues by attempting to legislate a particular interpretation of the full faith and credit clause of the United States Constitution -- a matter best left to the courts.

While the President has said repeatedly and consistently that he is personally opposed to same sex marriage, this issue is being discussed in many state legislatures and at the local level -- as he believes it should be. Congress has more important things to do than to be in the business of granting marriage licenses.

The institutions of traditional marriage and family face tremendous pressures in today's society. The president believes that we must do everything we can to support these institutions, but this particular legislation does not seem to advance that goal.

George - Steve -

Richard Soccaides came up with this for our thoughts. We'll talk tomorrow.

Lawrence

MEMORANDUM TO GEORGE

cc: Steve Newirth
Jeremy Ben-Ami

FROM: MARSHA
DATE: MAY 9, 1996

More thoughts: I believe that our strongest counter is around states rights. For 200 years the federal government has stayed out of this issue and left it up to individual states to define. Historically there is no need for a federal role on state driven issues unless it is to inspire the states to action. All states already have legislation dealing with marriage and many are adopting same sex legislation. There is no reason for the federal government to act. It can be said that as a former governor, the President has great respect for the right of individual states to define their issues and this issue falls clearly within their prerogative. In the 60's this same argument was proposed around interracial marriages. Some states passed laws others did not. The Congress stayed out and eventually all the regressive laws were thrown out.

Senators Kennedy and Wyden are going to come out in support of same sex marriage. Senator Wyden already did this on numerous occasions during his campaign. Kennedy's argument will be that Church law and State law are separate. One does not have to honor the other so no priest or minister has to marry someone if they don't believe in it. But he will also say that the same benefits should be available to all citizens and that is why he supports marriage.

May 10, 1996

PRIVATE AND CONFIDENTIAL

MEMORANDUM FOR HAROLD ICKES

FROM: Marsha Scott and Richard Socarides

RE: Equal Marriage Rights For Gays

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: JAM DATE: 3/25/13
2013-0028-F

For the last several years gay and lesbian civil rights groups have been litigating in Hawaii the issue of whether under the Hawaii Constitution people of the same sex have an equal protection right to marry. An intermediate decision by the state's highest court dealing with the standard of review in such a case has led many legal scholars to believe that the trial court will eventually rule that there is such a right. The trial of the action will now likely begin in October and a trial court decision would be handed down some time after the election. A final ruling by the Hawaii Supreme Court will likely come in late 1997 or early 1998.

If such a right exists in Hawaii, the thinking goes, that under the full faith and credit clause of the U.S. Constitution, civil marriages validly performed in Hawaii would have to be recognized by other states and by the federal government for purposes of granting benefits and the like.

Up until now our friends in the gay community have generally given us a pass on the President's stated personal opposition to gay marriage. Recognizing that this is an issue on which public opinion runs against them, gay leaders -- while not happy about the President's opposition -- are willing to let the courts be the final arbiter of rights on this issue.

The new bill in Congress, however, would provide that irrespective of what the courts decide, for purposes of federal law only marriages between a man and a woman are to be recognized. Thus, even if state courts held that gay people could marry, the federal government would deny them all the benefits it grants to other married persons (ie. social security rights, joint tax filings, immigration rights -- to name a few). Thus, the gay groups argue, the law is fundamentally

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unfair, violates notions of equal protection and would, in effect, carve out an exception to the full faith and credit clause as it applies to gay people. They argue this is nothing different than if the federal government decided it was not going to extend benefits to married person of a certain race.

I believe that we have been extremely successful in rebuilding our relationships to our friends in the gay communities despite the fiasco of gays in the military, the disjointed handling of the colorado case and the President's stated personal opposition to gay marriage. However, our support for this bill would be taken by many in the gay communities as an expression by the President of deep ceded bias against gay people (ie. they simply should not be entitled to the same benefits as similarly situated straights -- even if they work hard and play by the rules) and as caving in to Republican scapegoating of gays.

I recommend that the President re-state his strong personal opposition to same-sex marriage, talk about our many efforts to support traditional families and persons in traditional marriages, but oppose this bill as an unwarranted intrusion on what for over 200 years has been the sole prerogative of state legislatures (the definition of marriage). Congress has more important things to do than to get in the marriage license business.

Alternatively, the President should state his personal opposition to same-sex marriage, and say that the Justice Department is studying the serious constitutional issues raised by the legislation. If the bill is voted on and passes with overwhelming support by both parties, a different result may be warranted.