

Oversight Hearing on the Defense of Marriage Act
Subcommittee on the Constitution
of the House Committee on the Judiciary

Presented by John Hanes,¹ Chairman
Wyoming Senate Judiciary Committee
March 30, 2004

I am John Hanes, and I greatly appreciate the privilege to appear before this Subcommittee on the Constitution to present my views on the potential effect on the states of any proposed constitutional amendment that would preempt state authority to define marriage.

I am a lifelong Wyoming resident, a lifelong Republican, and a lifelong conservative. I practiced law from 1965 to 1990, served in the military, presided as a judge, and was elected to serve first in the Wyoming House of Representatives, and later and currently in the Wyoming Senate.

As Chairman of the Wyoming Senate Judiciary Committee, I presided over hearings earlier this year to consider legislation that would impose a statutory bar against Wyoming recognizing any marriages between same-sex couples married in other states. The Wyoming Statute already defines marriage as being between one man and one woman. Just last month, our Judiciary Committee voted down the proposed legislation after a long and thoughtful debate.

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I would like to explain why I voted against the legislation, because I believe that some of the same reasoning may be helpful to members of this Subcommittee as you consider a proposed amendment to the U.S. Constitution. My concerns were twofold. First, I have full confidence in the Wyoming courts that they are fully capable of applying longstanding common law and state constitutional principles to any claim that Wyoming has any obligation to recognize any of these marriages performed outside the state. I saw no reason to clutter the Wyoming code when our courts have a long history of deciding how to treat marriages performed outside the state.

Second, the proposed legislation, particularly because it was unnecessary, had the potential to become needlessly divisive. There is no one in Wyoming who would ever describe me as being an advocate of gay rights, and I have never supported marriage rights for same-sex couples. Instead, I opposed the marriage legislation for the very same reason that I spoke out against hate crimes legislation a few years ago. I believe that if we already have laws that take care of an issue, there is no reason to pass a law to simply make a point.

My experience in Wyoming is that we can pull together as a community, acknowledge our differences, and treat each other with respect. When we pass legislation that treats one group either favorably or unfavorably, we may disrupt the very community that we are trying to pull together.

For the same reasons, I urge the Congress to refrain from passing an amendment to the U.S. Constitution preempting the states from making their own decisions on marriage. But more importantly, state courts have over 200 years of experience in deciding which out-of-state marriages they will recognize. The states are already well-equipped to make these determinations for themselves.

If there is no pressing reason for amending the U.S. Constitution, then I would advise against it. There is no reason to push a very divisive issue on the country when the states have the tools now to resolve this issue themselves. Our goal as conservatives should be to avoid creating needless division, and instead let the people alone build their communities without federal interference.

At the most fundamental level, I trust states to make their own decisions on important issues such as who can marry. I trust the people of Wyoming, I trust the Wyoming legislature, and I trust the Wyoming state courts. And I respect and protect the system of checks and balances established in the Wyoming state Constitution, which create roles for our governor, our legislature, and our courts.

Part of the majesty of the U.S. Constitution is that it allows the states to make their own decisions on issues that are closest to the people. For this reason, I urge you to refrain from amending the Constitution to have the federal government

disrupt the ability of the states to decide such an important issue without interference from Washington.

I am proud that the two most prominent Wyoming Republicans in public life have also expressed this view. Our former Senator Alan Simpson, who has been a model for all Wyoming conservatives, wrote:

"In our system of government, laws affecting family life are under the jurisdiction of the states, not the federal government. This is as it should be. After all, Republicans have always believed that government actions that affect someone's personal life, property, and liberty--including, if not especially, marriage--should be made at the level of government closest to the people."

And although he has more recently said that he would support whatever decision the President makes on the issue, another esteemed son of Wyoming, Vice President Dick Cheney, said:

"The fact of the matter is we live in a free society, and freedom means freedom for everybody. . . . And I think that means that people should be free to enter into any kind of relationship they want to enter into. It's really no one else's business in terms of trying to regulate or prohibit behavior in that regard. . . . I think different states are likely to come to different conclusions, and that's appropriate. I don't think there should necessarily be a federal policy in this area."

I believe that these two views represent where most of the people of Wyoming, most conservative Republicans, and most Americans are on the issue.

I urge you to trust the states on this issue. And let us use the tools we already have to resolve this matter by ourselves. Thank you again for this opportunity to testify.