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Legislative Bulletin……………………………….………July 22, 2004

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Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: $0

Effect on Revenue: Reduces revenue by $53 million over 5 years

Total Change in Mandatory Spending: $0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

H.R. 3313 — Marriage Protection Act of 2004 (Hostettler)

Order of Business: The bill is scheduled for consideration on Thursday, July 22, 2004, under a closed rule that provides 90 minutes of debate, equally divided, and one motion to recommit with or without instructions.

Summary: H.R. 3313 removes federal court and Supreme Court jurisdiction over cases involving challenges to or the validity of the Defense of Marriage Act (DOMA). The bill does this by amending 28 USC Chapter 99 by adding the following new section:

> "Sec. 1632. Limitation on jurisdiction
>
> No court created by Act of Congress shall have any jurisdiction, and the Supreme Court shall have no appellate jurisdiction, to hear or decide any question pertaining to the interpretation of, or the validity under the Constitution of, section 1738C or this section."

Section 1738C referenced above is from Section 2 of the Defense of Marriage Act (28 U.S. Code 1738C), which passed the House by a vote of 342-67 and the Senate by a vote of 85-14, and was signed by President Clinton on September 21, 1996, becoming Public Law 104-199. (House roll call vote: http://clerk.house.gov/evs/1996/roll316.xml)

This provision, cross-referenced in H.R. 3313, states:

Sec. 1738C. Certain acts, records, and proceedings and the effect thereof

> "No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship."

Additional Information: According to the Committee, "H.R. 3313 would prevent unelected, lifetime-appointed Federal judges from striking down the protection for states Congress passed in the Defense of Marriage Act ("DOMA")—by the overwhelming margin of 342-67 in the House and 85-14 in the Senate—that provides that no state shall be required to accept same-sex marriage licenses granted in other states.

"H.R. 3313 does not attempt to dictate results: it only places final authority over whether states must accept same-sex marriage licenses granted in other states in the hands of the states themselves. H.R. 3313 stands for the proposition that lifetime-appointed Federal judges must not be allowed to rewrite marriage policy for the states."

Is it Constitutional to Restrict Courts' Jurisdiction?:

- Regarding the Federal courts inferior to the Supreme Court, Article III, Section 1, Clause 1 of the Constitution provides that ''The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts **as the Congress may from time to time ordain and establish''** (emphasis added).

- Regarding the Supreme Court, the Constitution provides that only two types of cases are within the original jurisdiction of the Supreme Court. Article III, Section 2, Clause 2 provides that ''[i]n all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases . . . the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, **with such Exceptions, and under such Regulations as the Congress shall make''** (emphasis added).

EXAMPLE:

Bob and Jim, living in Washington State, go to Massachusetts and get "married." They come back to Washington State and seek to have their marriage validated, which Washington rejects based on a state law saying marriage is between a man and a woman.

Under current law, Bob and Jim have three options:

1. Have the federal courts recognize their Massachusetts marriage by striking the federal DOMA shield as being an unconstitutional use of the power to restrict Full Faith and Credit;
2. Have the federal court declare Washington State's marriage law unconstitutional on equal protection or due process grounds;
3. Have the state courts declare either the federal DOMA or Washington's marriage laws unconstitutional on whatever theory they may choose.

After the Marriage Protection Act becomes law, option number 1 is no longer available, and a case could not be appealed to the Supreme Court. Without the Marriage Protection Act, a federal judge can strike down DOMA, and his ruling will be binding on a multitude of states.

First Case to Challenge DOMA filed this week:

> "(Tampa, Florida) A Tampa area lesbian couple filed suit in Federal court Tuesday against U.S. Attorney General John Ashcroft to have their Massachusetts marriage legally recognized in the rest of the country.
>
> Rev. Nancy Wilson… and Paula Schoenwether …were married July 2 in Massachusetts, the only state where same-sex marriages are recognized. [Their counsel] Rubin currently has five additional suits underway in Florida (story) but this is the first one challenging the Federal Defense of Marriage Act.
>
> …The suit argues that the federal ban on gay marriage is a constitutional issue, which is why Ashcroft is named as a defendant. Hillsborough County Clerk Richard L. Ake is also named because he had declined to issue the couple a Florida marriage license.
>
> **The 1996 Defense of Marriage Act and a 1997 Florida statute that defines marriage as the union between a man and woman violate the equal-protection rights of his clients, Rubin said."**
>
> *—Source: "Ashcroft Sued Over Gay Marriage", July 20, 2004; 365Gay.com*

Committee Action: H.R. 3313 was introduced on October 16, 2003, and referred to the House Committee on the Judiciary. The committee held hearings on the bill and on July 14 considered it and amended it. The bill was then reported out of committee on a 21-13 vote, with one Democrat voting yes.

Cost to Taxpayers: CBO estimates that implementing the bill would not have a significant effect on the federal budget.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Judiciary Committee in Report 108-614 finds authority under Article I, Section 8, Clause 9 (Congressional power to constitute courts inferior to the Supreme Court); Article III, Section 1, Clause 1 (Powers of judiciary of lower courts as the Congress may from time to time ordain and establish); and Article III, Section 2, Clause 2

(Supreme Court jurisdiction, with such exceptions, and under such regulations as the Congress shall make).

Outside Organizations: The following organizations have indicated they are encouraging and scoring a yes vote: Family Research Council, Eagle Forum, and Concerned Women for America, Traditional Values Coalition.

The following organizations have indicated they are *supporting* the bill:
Focus on the Family, Religious Freedom Coalition, United Seniors Association, Campaign for California Families, Maryland Association of Christian Schools, Alabama Christian Education Association, and the Illinois Association of Christian Schools.

The following organizations have indicated they are *opposing* the bill: The Human Rights Campaign, People for the American Way, and the ACLU.

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H.R. 4842—United States-Morocco Free Trade Agreement Implementation Act (DeLay)

Order of Business: The bill is scheduled to be considered on Thursday, July 22nd, subject to a closed rule (H.Res. 738). Under Trade Promotion Authority (Public Law 107-210), bills implementing trade agreements are not amendable (either in committee or on the House floor).

Summary by Title: H.R. 4842 would approve and implement the U.S.-Morocco Free Trade Agreement (FTA), finalized on June 15, 2004 and submitted to Congress on July 15, 2004. The Agreement would be implemented no earlier than January 1, 2005, provided that Morocco has taken the necessary compliance steps. The Agreement would reduce and eventually eliminate virtually all barriers to trade in goods and services and to investment. Goods originating from Morocco would have preferential tariff treatment in the United States and vice versa. 95% of Moroccan tariffs on U.S. manufactured and agricultural goods would be eliminated upon implementation.

According to the United States Trade Representative, the U.S. currently exports an average of $475 million worth of products to Morocco each year--especially aircraft, corn, and machinery. Also, exports of fabrics and pharmaceuticals have increased significantly. Currently, U.S. products entering Morocco face an average tariff of over 20%, while Moroccan products are subject to an average tariff of 4 percent as they enter the United States

Highlights of H.R. 4842 are as follows:

Title I—Approval of, and General Provisions Relating to, the Agreement

- Makes U.S. law paramount to any provision in the Agreement that conflicts with U.S. law. States that the Agreement would not modify or limit the authority under any U.S. law.

- A state law that conflicts with any provision in the Agreement could only be declared invalid by federal government action.

- Prevents private legal actions against any provision of the Agreement.

- Provides for layover procedures for certain actions made by presidential proclamation under the Agreement.

- Authorizes "such sums" as may be necessary for the President to establish an office within the Department of Commerce to administer the Agreement.

Title II—Customs Provisions

- Allows the President to modify any tariffs or tariff-free treatment in the Agreement and to create additional tariffs as necessary (subject to certain limitations).

- Terminates Morocco's status as a beneficiary developing country for trade purposes.

- Allows for additional tariffs on "agricultural safeguard goods" under certain price conditions.

- Defines in detail what an "originating good" is (originating from either the United States or from Morocco) and what "originating materials" are, as they relate to preferential tariff treatment under the Agreement.

- To qualify as an "originating good" imported into the U.S. from Morocco, an apparel product would have to be cut (or knit to shape) and sewn (or otherwise assembled) in Morocco from yarn, or fabric made from yarn, that originates in Morocco, the U.S., or both. Allows for a *de minimis* exception (up to 7%) of fibers from other countries in textiles eligible for preferential tariff treatment under this Agreement.

- Textiles or apparel goods classifiable as "goods put up in sets for retail sale" would not be considered to be "originating goods," unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed 10% of the value of the set determined for purposes of assessing customs duties.

- Authorizes the President to take certain actions while a verification of the originating status of a textile or apparel good is taking place. Such actions include suspending preferential tariff treatment to the textile or apparel good for which a claim of origin has been made or, in a case where the request for verification was based on a reasonable suspicion of unlawful activity related to such goods, for textile or apparel goods exported or produced by the person subject to a verification.

Title III—Relief from Imports

- Authorizes the filing (with the U.S. International Trade Commission) by an entity, including a trade association, firm, certified or recognized union, or group of representative workers, of a petition requesting adjustment to the obligations of the United States under the Agreement (and asking for provisional relief). The

Commission would then have to investigate whether "a substantial cause of serious injury or threat thereof to [a] domestic industry" is occurring as a result of the Agreement with Morocco (subject to certain exceptions).

- If the Commission finds injury or threat of injury, it would then have to recommend the amount of import relief necessary to correct or prevent harm. Further, the Commission would have to facilitate the efforts of the domestic industry to make a "positive adjustment to import competition."

- The President would not have to provide the suggested import relief if doing so would have greater economic and social costs than benefits.

- Import relief could entail increasing duties or suspending their reductions and would have to occur progressively in intervals if the relief is to last more than one year.

- Import relief is not to last more than three years, subject to extension (up to two years) under certain circumstances.

- No import relief could be provided for a good that has been given duty-free treatment under the Agreement for five or more years (subject to an exception).

- Enacts similar, yet more stringent, provisions for import relief for the textile and apparel industries.

- Prohibits the President from releasing information that is submitted in an import relief proceeding and that the President considers to be confidential business information, unless the party submitting the confidential business information had notice at the time of submission that such information would be released, or such party subsequently consents to the release of the information. To the extent a party submits such confidential business information to the President, the party would have to submit a non-confidential version of the information in which the confidential business information is summarized or, if necessary, deleted.

Additional Background: To read a **summary of the Agreement**, visit this webpage: http://www.ustr.gov/new/fta/Morocco/2004-03-02-factsheet.pdf

To access the **actual text of the Agreement**, visit this webpage: http://www.ustr.gov/new/fta/Morocco/final/index.htm

Committee Action: On July 15, 2004, the implementation bill was referred to the Ways & Means Committee, which, by a vote of 26-0 on July 20, 2004, ordered the bill reported without amendment (as required by Trade Promotion Authority) to the full House. To access fact sheets from the Ways & Means Committee, visit this webpage: http://waysandmeans.house.gov/legis.asp?formmode=item&number=168

Administration Position: Since the Administration negotiated the Agreement, it is strongly supporting this congressional implementing legislation.

Cost to Taxpayers: CBO estimates that implementing this Agreement would reduce revenues by $5 million in FY2005 and by $53 million over the FY2005-FY2009 period.

Does the Bill Expand the Size and Scope of the Federal Government?: No. This legislation would implement the U.S.-Morocco Free Trade Agreement, which would lower and eliminate tariffs (and other barriers to trade) between the two countries, thereby reducing government involvement in the free market.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Ways and Means Committee, in House Report 108-627, cites constitutional authority in Article I, Section 8, Clause 1 (the congressional power to lay and collect taxes, duties, imposts and excises).

Outside Organizations: The U.S. Chamber of Commerce issued a letter of support for the U.S.-Morocco Free Trade Agreement. The National Council of Textile Organizations issued a statement against the Agreement.

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(The vote on this resolution has been rolled until today, and we include this here because the language of the resolution was modified on the floor last evening. This description details the text that Members are voting on today.)

H.Con.Res. 467—Declaring genocide in Darfur, Sudan (*Payne*)

Order of Business: The resolution is scheduled for consideration on Wednesday, July 21st, under a motion to suspend the rules and pass the bill.

Summary: H.Con.Res. 467 resolves that Congress:

(1) declares that the atrocities unfolding in Darfur, Sudan, are genocide;

(2) reminds the Contracting Parties to the Convention on the Prevention and Punishment of the Crime of Genocide (signed at Paris on December 9, 1948), particularly the Government of Sudan, of their legal obligations under the Convention;

(3) declares that the Government of Sudan, as a Contracting Party, has violated the Convention on the Prevention and Punishment of the Crime of Genocide;

(4) deplores the failure of the United Nations Human Rights Commission to take appropriate action with respect to the crisis in Darfur, Sudan, particularly the failure by the Commission to support United States-sponsored efforts to strongly condemn gross human rights violations committed in Darfur, and calls upon the United Nations and the United Nations Secretary General to assert leadership by calling the atrocities being committed in Darfur by their rightful name: "genocide";

(5) calls on the member states of the United Nations, particularly member states from the African Union, the Arab League, and the Organization of the Islamic Conference, to undertake measures to prevent the genocide in Darfur, Sudan, from escalating

further, including the imposition of targeted sanctions against those responsible for the atrocities;
(6) urges the Administration to call the atrocities being committed in Darfur, Sudan, by their rightful name: "genocide";
(7) commends the Administration's leadership in seeking a peaceful resolution to the conflict in Darfur, Sudan, and in addressing the ensuing humanitarian crisis, including the visit of Secretary of State Colin Powell to Darfur in June 2004 to engage directly in efforts to end the genocide, and the provision of nearly $140,000,000 to date in bilateral humanitarian assistance through the United States Agency for International Development;
(8) commends the President for appointing former Senator John Danforth as Envoy for Peace in Sudan on September 6, 2001, and further commends the appointment of Senator Danforth as United States Ambassador to the United Nations;
(9) calls on the Administration to continue to lead an international effort to stop genocide in Darfur, Sudan;
(10) urges the Administration to seriously consider multilateral or even unilateral intervention to stop genocide in Darfur, Sudan, should the United Nations Security Council fail to act;
(11) calls on the Administration to impose targeted sanctions, including visa bans and the freezing of assets of the Sudanese National Congress and affiliated business and individuals directly responsible for the atrocities in Darfur, Sudan; and
(12) calls on the United States Agency for International Development to establish a Darfur Resettlement, Rehabilitation, and Reconstruction Fund so that those individuals driven off their land may return and begin to rebuild their communities.

Additional Background: According to the resolution, in Darfur, Sudan, "an estimated 30,000 innocent civilians have been brutally murdered, more than 130,000 people have been forced from their homes and have fled to neighboring Chad, and more than 1,000,000 people have been internally displaced."

Article 1 of the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide states that "the contracting parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish." Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide declares that "in the present Convention, genocide means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; and (e) forcibly transferring children of the group to another group." Article 3 of the Convention on the Prevention and Punishment of the Crime of Genocide affirms that the "following acts shall be punishable: (a) genocide; (b) conspiracy to commit genocide; (c) direct and public incitement to commit genocide; (d) attempt to committed genocide; and (e) complicit in genocide."

For more information on the situation in the Sudan and international humanitarian efforts, click here: http://www.usaid.gov/locations/sub-saharan_africa/sudan/darfur.html. USAID estimates that **$139 million** has been provided by the United States for the Darfur situation in FY03 and FY04 thus far.

Committee Action: The resolution was introduced on June 24, 2004, and referred to the Committee on International Relations, which did not consider the resolution.

Administration Position: Below are recent comments by Secretary of State Colin Powell on genocide in Sudan:

> **SECRETARY POWELL:** The issue of genocide is a legal determination and my counsel, Will Taft, as well as Pierre Prosper, who you all know, are examining this carefully. Ambassador Prosper testified last week that we see indicators and elements that would start to move you toward a genocidal conclusion. But, we're not there yet. And, frankly, I hope we don't get there.
>
> Whether you call it genocide or whether somebody prefers to call it ethnic cleansing or some people think, as a technical matter, it doesn't reach the level of either ethnic cleansing or genocide. I will let Ambassador Prosper and all the lawyers argue about that. What we are seeing is a disaster, a catastrophe, and we can find the right label for it later. We've got to deal with it now. That's my focus. (http://www.state.gov/secretary/rm/34033.htm)

Cost to Taxpayers: The resolution does not authorize any expenditure.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

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