DEFENSE OF MARRIAGE ACT

HEARING
BEFORE THE
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The Subcommittee met, pursuant to notice, at 10:03 a.m., in Room 2141, Rayburn House Office Building, Hon. Steve Chabot (Chair of the Subcommittee) presiding.

Present: Representatives Chabot, King, Bachus, Hostettler, Feeney, Forbes, Nadler, Conyers, Scott, Watt, and Schiff; and Representative Baldwin.

Mr. CHABOT. The Committee will come to order. I am Steve Chabot, the Chairman of the Subcommittee on the Constitution.

Today, we will hold the first in a series of five hearings to examine issues related to the state of marriage in America. As Chairman Sensenbrenner and I recently announced, these hearings will generally explore the need for potential legislative or constitutional initiatives designed to protect traditional marriage. This morning, however, we will review legislation that was already passed by Congress on an overwhelmingly bipartisan basis and signed into law by President Clinton in 1996.

The Defense of Marriage Act, commonly referred to as DOMA, contains two key provisions. First, for purposes of Federal law, DOMA recognized marriage as consisting only of a union between one man and one woman. Second, it provided that no unwilling State under its own laws can be required to recognize a marriage certificate granted by another State to a same-sex couple.

DOMA was passed pursuant to Congress’s authority under Article IV, Section 1, of the Constitution, known as the Full Faith and Credit Clause. That clause provides that “Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State and the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved and the effect thereof.”

Many experts believe that the Defense of Marriage Act should and will survive constitutional scrutiny. Supporters of this position include our former colleague and good friend, Congressman Bob Barr, who authored DOMA and is testifying today.

In addition, the Clinton administration’s Department of Justice twice stated that the Defense of Marriage Act was constitutional during the House Judiciary Committee’s consideration of DOMA back in the 104th Congress.
It is reasonably clear that Congress is empowered to specify by statute how States are to treat public records issued by other States, which would appear to include marriage licenses. It also seems reasonable that if Congress has the power to prescribe the effect of public records, it can prescribe that same-sex marriage licenses issued in other States have no effect unless a State wants to give it effect.

However, other respected individuals believe that DOMA could and will be declared unconstitutional, often citing Justice Kennedy’s majority opinion in Romer v. Evans. Romer struck down under the Equal Protection Clause an amendment to the Colorado Constitution which provided that neither the State nor any of its subdivisions could prohibit discrimination on the basis of sexual orientation. The amendment, Justice Kennedy’s opinion for the Court stated, classifies homosexuals not to further a proper legislative end, but to make them unequal to everyone else.

More recently, some have argued that DOMA may also be challenged under the Equal Protection Clause under the Supreme Court’s decision in Lawrence v. Texas. In that case, the Court struck down a State law criminalizing only same-sex sodomy.

This hearing will explore these issues, the constitutional basis for DOMA, and the bipartisan policy it embodies. Specifically, we will review whether DOMA will remain a firewall as Congress intended that protects one State whose public policy supports traditional marriage from being forced to recognize a same-sex marriage license issued in another State.

Before we begin, I also want to acknowledge that this has become a high profile and politically charged policy debate. Some proponents of same-sex marriage have made the unfortunate accusation that any discussion of this issue is being used for election year gain. This is clearly not the case.

This issue has been pushed to the forefront by liberal activists who have challenged traditional marriage laws in the courts, by rogue judges legislating from the bench and ignoring the will of the people, and by a handful of elected officials from New York to San Francisco who have disregarded their own State laws regarding marriage, laws they were sworn to uphold. We are here today because of those actions and events, not because of a political agenda or election year plot.

In light of recent developments, we have an obligation to review the current status of the Defense of Marriage Act, legislation which passed the House by a bipartisan vote of 342 to 67, and the Senate by a vote of 85 to 14. I hope the Members of this Committee, our witnesses, and any observers who might be here today or in the future will keep that in mind as we begin discussions on a policy that could have a profound impact on the future of our nation.

At this time, I would yield to the gentleman from New York, the Ranking Member of the Committee, Mr. Nadler, for the purpose of making an opening statement.

Mr. NADLER. Thank you, Mr. Chairman. Today, we begin the first of five hearings on the question of marriage equality and how to stop it. When I first joined the Subcommittee, it was called the Subcommittee on Civil and Constitutional Rights. These days, our
work is more focused on the elimination of rights than on their protection or expansion.

I understand that some of my colleagues view even the remote possibility of same-sex marriage with great trepidation and that those concerns are shared by many people in the country. It is also true, however, that not one single State currently recognizes same-sex marriage. While some municipal officials have performed marriages and challenges to State laws are moving forward, it remains the case today that no State recognizes same-sex marriage.

The State of Massachusetts will soon become the first State to permit full marriage equality, but just yesterday, the Massachusetts legislature gave approval to a State constitutional amendment that would ban same-sex marriage but provide for civil unions. How that process continues will be up to the people of that State.

Despite our disagreements over the many issues relating to marriage equality, I do want to commend the Chairman of the Committee and the Chairman of the Subcommittee for standing up to what I know must be great pressure to move forward in a hurried manner. This will be the first of five hearings to examine the legal issues raised by the marriage debate, including proposed constitutional amendments and other proposals.

Whatever one’s views on this issue, amending the Constitution is clearly a tremendous responsibility, one that has been entrusted to our Committee. That we should treat it seriously is appropriate. Even the proponents, the supporters of a constitutional amendment, do not agree on what an amendment should say. Even opponents of marriage equality, including Chairman Sensenbrenner and some of our witnesses today, are skeptical of a rush to amend the Constitution. We will have plenty over which to disagree, but on this note of caution, I believe we are all in agreement.

I would like to take issue with the notion that marriage needs to be defended from lesbian and gay families, as the notion of defense of marriage. There are many threats to marriage these days. Half of all marriages end in divorce, after all. But heterosexual people have long succeeded in failing at marriage without any help from lesbian and gay couples. I really cannot see how people who consider themselves pro-marriage could be so gung-ho about denying so basic a right to many stable, law-abiding, tax-paying, loving couples.

So today, we will discuss the question of whether the Defense of Marriage Act, or DOMA, is legally sufficient to “protect marriage” or whether the Full Faith and Credit Clause of the Constitution allows States to refuse to recognize same-sex marriages from other States on public policy grounds.

I find it interesting how many people just a few short years ago supported the Defense of Marriage Act as crucial are now urging Congress to amend the Constitution. Is this, I wonder, a tacit admission on their part that they now believe, or perhaps never believed, that DOMA was constitutional? That would seem to be the implication of today’s argument.

It will be, I am sure, an interesting scholastic debate, but that is all it will be. Whatever arguments are made today may be informative, but they won’t answer the question. We won’t know the
answer until the courts decide the question and that won’t be for some time.

I would hope that my colleagues are not going to suggest that we amend the Constitution based on the results of a high-level moot court discussion. It is, after all, little more than speculation. It is premature at the least to entertain thoughts of amending the Constitution until the courts rule on what DOMA means and whether DOMA is constitutional.

I would also hope that my colleagues remember that—let me just add one thing. I can recall, or at least I know, I don’t recall it necessary, but I know of a number of instances where Congress and the States have amended the Constitution because of disagreement with the interpretation of the Constitution or of a statute by the Supreme Court. I know of no instance where we have amended the Constitution because we anticipated that the Supreme Court might declare existing laws unconstitutional. We generally wait to see what the courts will declare, and if we disagree with the Court, then we consider amending the Constitution.

I would also hope that my colleagues remember that we are a nation of laws and that the rule of law includes a healthy respect for the separation of powers. That includes the rulings of the independent judiciary, even when we may disagree with its rulings. This constant drumbeat against the rule of law, against so-called activist judges whenever we disagree with them, of de-legitimizing our legal institutions is dangerous to our democracy.

Protecting the rights of unpopular minorities is the core purpose of our Bill of Rights, to protect the rights of unpopular minorities against the majority, and it is the core purpose of the Bill of Rights and of its enforcement by the independent judiciary.

As Justice Jackson famously observed in West Virginia Board of Education v. Barnett, “The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One’s right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote. They depend on the outcome of no elections.”

Today, those fundamentally American words are nearly forgotten. Constitutional rulings of the courts are evaluated by too many by looking to polling numbers. People no longer agree with the courts, or when they no longer agree with the courts they attack the legitimacy of our system of Government. That is dangerous. Whatever temporary advantage it may produce on a given subject or on an issue or in an election, such rhetoric threatens the underpinnings of our free society.

With that, I thank the Chairman and I yield back the balance of my time, if any.

Mr. CHABOT. Thank you. The gentleman from Iowa is recognized for the purpose of making an opening statement if he chooses to do so.

Mr. KING. Thank you, Mr. Chairman. I appreciate you holding this hearing today and I am looking forward to a long national discussion on the defense of marriage.
As I look at this situation and I listen to the remarks made by the Ranking Member, the first thing that comes to mind is the right to life, liberty and property are in the Constitution to be defended by the courts and not being subject to the will of the majority. But when the Court set aside the right to life in preference and deference to the liberty of the female, then we have a case where the Constitution is not defending the rights of the individual and the rights of the minority.

But as I see this, the situation with marriage, it is coming at us and it is coming at us fast. We have watched this unfold over the last seven or 8 years across this country. It started in Hawaii, and with a significant effort there that caused some 37 or 38 States to pass a Defense of Marriage Act, and went to Vermont, where the Governor of Vermont signed the civil union bill in the middle of a Friday night and avoided the media until the following Monday or Tuesday. And we have seen what happened in the Massachusetts Supreme Court.

This is coming at us so quickly, and with the Full Faith and Credit Clause in the Constitution, if we wait, if we wait with this constitutional amendment until such time as it is clear that the Supreme Court has ruled, and I think they have laid a clear path on how they might rule, and Justice Scalia has warned us as to where the Court might rule, I point out in Lawrence v. Texas and the majority opinion written by Justice Kennedy when he stated that it did not apply to marriage. Justice Scalia’s minority opinion was, do not believe it. This country does not believe that Lawrence v. Texas doesn’t apply to marriage and neither does this country believe that the Supreme Court decision in Massachusetts does not apply with Full Faith and Credit or cost the rest of the States in this Union.

So I think it is imperative that this nation act and act quickly because marriage itself is the building block for this society, this civilization, and, in fact, for every civilization since the beginning of time. The first marriage was Adam and Eve in the Garden of Eden, ordained by God.

Marriage itself is like a molecule of our civilization and our society. All things are built upon it, and procreation itself, passing along and perpetuating the species and passing along all the values of our civilization, our religious values, our moral values, our work ethic, our family values, the components of the American civilization, the components of every civilization are rooted back in the family. They have been since the beginning of time, and those who seek to upset that, those who seek to challenge that are alleging that the ones of us who defend marriage are really the ones that aren’t progressive and we aren’t able to adjust to changing times.

All of human history—all of human history—supports the defense of marriage. This constitutional amendment defends marriage in this country and it is imperative that we move forward.

I thank you, Mr. Chairman, for holding these hearings and I yield back the balance of my time.

Mr. CHABOT. Thank you. The distinguished gentleman from Michigan, the Ranking Member of the overall full Judiciary Committee, Mr. Conyers, is recognized for 5 minutes.
Mr. CONYERS. Thank you, Chairman Steve Chabot. I am grateful for this opportunity to welcome our witnesses and also the audience that is with us, particularly those of you that are wearing on your left breasts one of these stickers that say, “Support the Federal Marriage Amendment.” I want to welcome all of you in particular.

Are any of you from Michigan? If you are, feel free to come and visit with me as we discuss this subject later on.

My colleague, Steve King from Iowa, who was just the previous speaker, wasn’t here in 1996 when Congressman Bob Barr took his idea and passed it through the Congress and it was signed into law, and guess what it was called, Brother King, the Defense of Marriage Act. Since you used that phrase, I wanted you to know that that is a part of our law. Now, I don’t know where you were in 1996. That for some people seems like a long time ago.

It is very important that we understand two things, and to all my friends that are here in the historic Judiciary Committee hearing room. One, we have such a defense in the law that the gentleman from Iowa referred to, and the Congressman that passed it is going to be a witness.

The second thing is that there isn’t—I am not sure if everybody understands, there isn’t any attack on marriage as an institution. I am—well, I don’t have any particular feeling one way or the other when people with a different gender preference decide to want to get married, but it isn’t the judges that are doing it. Some of these witnesses that you are going to hear today are going to be telling you that judges are causing this problem, and judges aren’t. This is being done at the State level.

So be careful if anyone tries to sell you that we are putting the screws on judges because that is not accurate. In some places, it is judges that are stopping marriages between people of the same sex.

And any of my friends that are here today at this hearing that would like to talk with me further about it, my Chief of Staff, Perry Applebaum, is right behind me and he has got a, it is not a very big office, but we can accommodate you in the library so that we really have a true and honest discussion about this matter.

The last point I would like to make is that, and it may have been said already, but that there is in the Constitution a way that does not force a State to accept another State’s policy, and the way that we do it in the Constitution is through the Full Faith and Credit Clause—Full Faith and Credit Clause. That means that a State can accept an interpretation of any kind of law that is different from theirs if they choose to.

Now, you want to listen to the witnesses carefully. If any witness tries to tell you that the States have to recognize another marriage that is from another State that isn’t permitted in their State, well, I don’t want you to see me after the hearing. I want the witness to see me after the hearing, because this is pretty established constitutional law. This isn’t real rocket science here today. You don’t have to have been a lawyer or a professor for a long time.

The Full Faith and Credit Clause permits a State to accept another State’s ruling in the place of where they don’t have anything or they have something different. It is not mandatory.
Some argued when Congressman Barr’s law was passed that we didn’t need it for that reason. But just to make sure, it was passed into law anyway. Now to say we are going to amend the Constitution of the United States, I have a few constitutional amendments that I would like to share with you that I would like you to consider, maybe not this year, maybe next year.

But I thank Chairman Chabot for his courtesies and I yield back my time.

Mr. CHABOT. Thank you. The gentleman’s time has expired.

The gentleman from Indiana is recognized for 5 minutes if he would like to take that.

Mr. HOSTETTLER. I thank the Chairman and I thank the chairmen of the Subcommittee and the full Committee for convening these very important hearings.

As has been suggested, possibly a reason that we are here today is as a result of recent court rulings, and that the court holds tremendous sway over our society is a point that while is not lost on us today, it was a point that was very foreign to the Framers of the Constitution.

For example, Alexander Hamilton in Federalist Number 78 said, “Whoever attentively considers the different departments of power must perceive that in a government in which they are separated from each other, the judiciary is beyond comparison the weakest of the three departments of power. The judiciary has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatsoever. It may truly be said to have neither force nor will but merely judgment, that as from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its subordinate branches.”

But today, the legislature seems to be overpowered and awed and influenced by the influence of the judiciary, something very foreign to the likes of Hamilton, Madison, and Jay. It intrigues me that many times so-called conservatives in many instances give support to this fallacious notion that is in direct contradiction to the Framers, that somehow the courts hold some type of sway over the executive that has the power of the sword and the legislative branch that has the power of the purse.

I am appreciative that we are here today to talk about this very important issue, that we talk about hopefully returning to a natural feebleness of the Federal judiciary. I would remind conservatives that before we conclude that a constitutional amendment is the solution, and I will say this, that many on the conservative side yield to the idea of judicial superiority, and the question is, what happens if there is an amendment to the Constitution that is in direct contradiction to previous findings of a court with regard to another amendment of the Constitution?

That is not a new question. Hamilton addressed that likewise in Federalist 78 when he said, “The exercise of judicial discretion in determining between two contradictory laws is exemplified in a familiar instance. It not uncommonly happens that there are two statutes existing at one time,” but instead of saying two statutes, let us suggest two amendments existing at one time, “clashing in whole or in part with each other,” for example, the Equal Protec-
tion Clause and a constitutional amendment regarding marriage, “and neither of them containing any repealing clause or expression, unless we are going to repeal the Equal Protection Clause of the fifth and fourteenth amendment.”

“In such a case, it is the province of the courts to liquidate and fix their meaning and operation so far as they can by any fair construction be reconciled to each other. Reason and law conspire to dictate that this should be done. Where this is impracticable, it becomes a matter of necessity to give effect to one in exclusion of the other. The rule which has been obtained in the courts for determining the relative validity is that the last in order of time shall be preferred to the first, but this is a mere rule of construction, not derived from any positive law but from the nature and reason of the being.”

And so we must ask ourselves, if we, in fact, believe that the courts are superior to the legislative and executive branch with regard to questions of constitutionality and we have two amendments, two parts of the Constitution that are in direct contradiction to each other, not in my world view, not according to my perspective, but according to the perspective of five people in black robes, if they are in contradiction with each other, those that would suggest that the courts have the ultimate, or are the ultimate arbiter of the Constitution and can make these ultimate decisions will decide between the Equal Protection Clause of one part of the Constitution and a new amendment in the other, and they are not bound to suggest that one has any priority to the other.

And so they will rely on their own personal world view. We heard a little bit about that last week in discussion by one of the witnesses before us that, in fact, Lawrence v. Texas, though there were foreign decisions alluded to, that, in fact, those foreign allusions were simply something that bolstered their own world view.

So we must be careful that if we continue to support the notion as conservatives that the Court is the final arbiter of these questions, do not be surprised if they utilize Hamilton's suggestion that they will decide what is the superior law as to amendments coming in conflict with each other according to their world view and not ours.

And finally, I really appreciate as a conservative the epiphany of many in this chamber that have come to the idea that we should actually look at the Constitution and look at the intent of the Constitution with regard to things such as the Full Faith and Credit Clause of the Constitution. In doing that, we can also look at the intent of the Framers with regard to the natural feebleness of the judiciary and hold that, in fact, the legislature can, by various mechanisms short of a Constitution, reign in a judiciary that has made itself imperial not by any mechanism of the Constitution or even Federal statute, but only by the mechanism of our acquiescence to their every whim, and I yield back the balance of my time.

Mr. CHABOT. The gentleman’s time has expired.

The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman, and I want to thank you for holding the hearing because this gives us an opportunity to consider the real merits and details of the legislation. I mean, there
are a lot of details that we need to discuss, like exactly what is it about present marriages that will be defended or is defended by DOMA or will be defended with a constitutional amendment and how those marriages will or will not be any different.

We are going to discuss the constitutionality of DOMA, whether it fulfills the Full Faith and Credit or Equal Protection Clause, and that will be discussed, because if it is constitutional, then a constitutional amendment is probably not even relevant.

We are going to discuss, other than a name, what is the difference between a marriage and a civil union, because the latest version, as I understand it, the latest version of the constitutional amendment specifically allows civil unions and we need to know what the difference, other than name, is between a civil union and a marriage.

And finally, if there is a difference, exactly which rights, privileges, or responsibilities available in a legal entity called a marriage ought not be available to those of the same sex. Now, the fact of the matter is, same-sex couples will still be couples whether we pass legislation or not, but should they be able to enjoy inheritance rights, Social Security benefits, and those kinds of—and should they be responsible for each other’s debts? I mean, there are responsibilities in marriage as well as benefits. Exactly which provisions ought not be available, if there are going to be any differences, to same-sex couples?

And so, Mr. Chairman, this forum gives us an opportunity to discuss those, where we can get answers rather than going back and forth with slogans and sound bites. We can actually get to the real meat of the question, and I thank you for holding the hearing. I yield back.

Mr. CHABOT. Thank you. The gentleman from Florida is recognized for 5 minutes.

Mr. FEELEY. Thank you, Mr. Chairman, and like the previous speaker, I am grateful for an opportunity to have this hearing today to talk about a growing trend with respect to a deviation in what the traditional understanding in the United States and throughout the various States was with respect to what a marriage is.

And, of course, the ultimate question we are dealing with is what the potential threat of forcing one view of marriage from one State is on another, and in this particular instance, we are very concerned about the fact that it is judges from a particular State’s Supreme Court that ultimately may threaten to have their views foisted upon not just the people of their State, but people throughout the various other 49 States.

So I am very interested in the specific language of the Full Faith and Credit Clause. By the way, I note that the Full Faith and Credit Clause provision in the Constitution, Article IV, Section 1, does have a second sentence to it that says that Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved and the effect thereof.

I think Mr. Barr makes a very interesting argument that that language actually empowers Congress to protect against this threat that we are concerned about as people that view traditional marriage is worth protecting and that the Congress has, in fact, acted
appropriately and that we are in good shape. Others, I think, will testify, including Mr. Fein, that that may be insufficient.

But I want to, before we get into the hearing on the specific issue, talk about the fact that every time we have a discussion of the increasing judicial activism that a lot of us are concerned about, we get this sort of medieval chant about the independence of the judiciary, the independence of the judiciary, as though that somehow answered the question about the problem of the legitimate role under title III of the courts.

I believe deeply in the independence of the judiciary, but what we are talking about is protecting specific courts as they make their decisions from, for example, having their salaries diminished or eliminated, of being thrown off the court, of being somehow punished. I believe deeply that the courts ought to be independent from influences of either the Congress or the executive branch as they do their duties.

But to the extent that we are talking about judges being independent of the United States Constitution or the law itself and substituting their own biases and whims and prejudices, we have undermined republican government as we have been guaranteed in article IV of the United States Constitution. Having a discussion about the appropriate role of judges in interpreting U.S. law and the U.S. Constitution at the Federal level, State law and State Constitutions at the State level, is always a worthwhile civics endeavor and I think that that will be part of the discussion today.

We are dealing with the fact that after 220-plus years of a Massachusetts Constitution under which everybody—and this Constitution predates the United States Constitution—everybody understood marriage to be a union, sacred, between a man and a woman. Suddenly, the Massachusetts Supreme Court by a four-three majority has had an epiphany and created a right, a fundamental right like the Court created in the Lawrence v. Texas out of thin air.

And now the question is how we protect the citizens of 49 other States, which I think is a legitimate role, and Mr. Barr, hopefully you will request that, from the fact that four unelected judges have had this epiphany, created a right out of thin air in disregard of 220-plus years of jurisprudence in Massachusetts, and I am very interested in what the appropriate role of Congress is and come in here with very few preconceived notions about the best way to approach this problem.

Thank you. I yield back the balance of my time, Mr. Chairman.

Mr. CHABOT. Thank you. The gentleman from North Carolina is recognized.

Mr. WATT. Mr. Chairman, I think I am going to engage in an unprecedented act both for me and for Members of this Committee. I am going to pass.

Mr. CHABOT. I am truly shocked. [Laughter.]

Mr. CONYERS. Regular order. [Laughter.]

Mr. CHABOT. The gentleman from California, if he would like to make an opening statement.

Mr. SCHIFF. Mr. Chairman, I want to thank you for the opportunity to make a brief opening statement.

Before I came to Congress, I was circumspect about the idea of amending the Constitution, but perhaps not circumspect enough.
After seeing the breadth of proposals now before the Congress and that have been before the Congress in the last few years, I have come to believe that we are probably not capable of improving the work product of our Founding Fathers. I am simply not sure that we are up to the task.

The amendment before us, its timing, its purpose, and its language are one of the reasons why. No court has yet held that one State must enforce the marriage laws of another State. The Full Faith and Credit Clause probably does not require this, and DOMA, to the extent that it might, prohibits it.

Moreover, the Equal Protection Clause of the Constitution, which in some respects raises a more difficult clause, even here, the one Justice who has raised the basis of this clause in her decision in Lawrence v. Texas, Sandra Day O'Connor, distinguished the State's interest in the traditional institution of marriage.

If, then, there is no decision before the land requiring one State to impose its marriage laws on the will of the others, then what can be said about the timing of this constitutional amendment, about the urgency with which it is addressed by now a contemplated five hearings before this Committee?

So what, then, beyond the timing, the ill timing, the preemptive nature of this potential amendment, what then about the purpose of this amendment? Since there is no decision in the land finding that one State may enforce the marriage laws of another, one has to conclude that it is not so much a concern over being forced to enforce the marriage laws of another State, but rather the fear that one State may adopt a law for its own citizens and only its own citizens that is at odds with the views of those who don't live there.

This purpose runs counter to all of our notions, deeply conservative notions, of Federalism, of the rights of States and of the limited powers of the Federal Government to impose its will on the most sacred of the institutions of the States.

Beyond the ill timing, beyond the purpose, the language of the proposed amendment is also troubling. And while I see some advantage to the narrowing of the draft language of the amendment, it is still difficult for me to read the current language in a way that would not put very real restrictions on the ability of States to pass civil unions or domestic partnership laws, as in the State of California.

So for all of these reasons, its timing, ultimately its purpose and its language, the fact that in the State of the Union at the present time, each State has the power to write its own marriage laws, none have the power to impose those laws on any other State's citizens, I cannot support this amendment. I want to express my gratitude to the chair for having a breadth of witnesses to testify today. Too often, many of the Committees here in the House, we have witnesses that only share one point of view, and I am delighted the chair has given us the breadth of viewpoints expressed today and I thank the gentleman. I yield back the balance of my time.

Mr. CHABOT. Thank you very much. The gentleman from Virginia is recognized.

Mr. FORBES. Thank you, Mr. Chairman, and I want to echo my compliments to you for holding this hearing. I join my colleague from Florida in his questioning how some Members of this body
and this Committee can state how important it is to honor the rule of law, but then limit that to what the judiciary members say. We can have one judge one place in the United States, never elected by any citizen anywhere, who makes a ruling and all of a sudden, there are individuals who say, we can’t challenge it. We can’t raise it. We can’t do anything against this individual because he is a member of the judiciary. But we can have 535 elected Members from across the country who can say the same policy and we can say, oh, we shouldn’t have that policy. We shouldn’t talk about it.

When you talk about the Defense of Marriage Act, the policy has been established by this body of elected people across this country as to exactly what marriage is. That act says and establishes the policy in the United States that it is a union between one man and one woman. Our question then becomes, how do we defend that policy that was created by the elected officials in the United States?

I happen to be one of those individuals who do support a constitutional amendment and let me just tell you why. It all comes down to economics. We can argue all day long the great theories and the policies in this room about what marriage should be and what it shouldn’t be, but unless we have an amendment to the Constitution, this is what is going to happen.

You are going to have a challenge to this act, and by the very differences of opinion that you will hear from these witnesses, you will have a challenge somewhere and the question is going to be, who is going to fund the plaintiffs in that challenge, and I would suggest to you that they are going to be well funded. They are going to have the dollars to challenge that act.

But to stand against that act in a court of law will cost you a minimum of a million dollars. You are not going to do it for much less than that. You certainly aren’t going to be able to challenge it all the way to the Supreme Court on much less than that.

If you are a company, if you are an individual and somebody brings one of these provisions when you have had it so flagrantly violated in so many areas of the country today and they say that I have an act that has taken place, a marriage, be it valid or not, in some other State and they bring that to a company and that company tries to challenge it, are they really going to be able to invest those dollars to stand against that act, and I would suggest they can’t. They won’t do it.

I think the amendment to the Constitution is necessary because at this time, I think it represents what the institution of marriage has represented to the people in this country for hundreds of years. I think it represents what an overwhelming number of people in this country believe that act should be. And I think it will continue to support what the States have recognized it to be and to protect this institution of marriage from single rulings by single judges someplace in the country.

So, Mr. Chairman, thank you for having these hearings and I look forward to the debate that will take place.

Mr. Chabot. Thank you.

Finally, I would ask unanimous consent that the gentlewoman from Wisconsin, Ms. Baldwin, be recognized to participate in the hearing today, both be able to make an opening statement and
question witnesses. She is a Member of the overall Judiciary Committee, but not a Member of this particular Subcommittee. Is there any objection?

If not, the gentlewoman is recognized.

Ms. BALDWIN. Thank you, Mr. Chairman. Today, we begin the first of at least five House Subcommittee hearings on the question of amending our U.S. Constitution to ban same-sex marriage. If passed by this Congress and approved by the States, this would be the first time in our nation’s history that we have amended our Constitution in order to discriminate against a category of Americans. This is not a proper use of our Constitution.

The fundamental point that I would make today is there is no need to amend the Federal Constitution to ban same-sex marriage. There is no need to defend traditional marriage from gay and lesbian families. There is no need to take away the power of the States to determine marriage law. There is no need to put the Defense of Marriage Act into the Constitution.

With the recent decision in Massachusetts in Goodrich, it is reasonable to expect that within the next few years, there will or may be a challenge to DOMA. There is debate over whether a challenge to DOMA under the Commerce Clause of the Constitution or other grounds would be successful or not. It is not necessary, nor is it wise to try to guess about what that outcome would be.

Amending the Constitution is a radical action that should only be undertaken when absolutely necessary. Preemptively amending the Constitution to prevent something that has not yet happened is a dangerous principle that this Congress should not endorse.

The currently proposed constitutional amendments would bring the Federal Government directly into areas of law traditionally reserved for the States. The proposed amendments would not only impose a definition of marriage on all States, something which has never been done before, but would also mandate specific interpretations of State Constitutions.

Some have defended writing discrimination into the Constitution by arguing that they have no ill will or ill intent toward gay and lesbian Americans. I do not purport to see into their hearts. Their intent is not at issue here. Any amendment that bans same-sex marriage requires that gay and lesbian families are to be treated differently under law. Gay and lesbian families will not be eligible for the same rights, responsibilities, benefits, and protections as other families. Passage of this amendment will cement gay and lesbian Americans to second-class status.

Each hour that this Congress spends on same-sex marriage and on a constitutional amendment that will divide America is an hour not spent working to help the millions of unemployed and under-employed Americans. It is an hour not spent working to provide necessary health care to the 43 million Americans who have no health insurance. It is an hour not spent working to make our homeland more secure and to fight terrorism. But it is these priorities that desperately need our immediate attention.

Mr. Chairman, I look forward to hearing from our witnesses today and in the coming weeks. I believe that these hearings will demonstrate that amending our Constitution is unnecessary and indeed would be discriminatory, counterproductive, divisive, and a
step backwards in our nation’s march toward equality for all Americans. I yield back.

Mr. CHABOT. Thank you. I would now like to introduce the very distinguished panel that we have here this morning as witnesses. Our first witness is Bob Barr. Mr. Barr represented the Seventh District of Georgia in the U.S. House of Representatives from 1995 to 2003, serving as the senior Member of this Judiciary Committee and as Vice Chairman of the Government Reform Committee. I also might add that he was Chairman of one of the Subcommittees of the Judiciary Committee, the Commercial and Administrative Law Subcommittee. Mr. Barr occupies the 21st Century Liberties Chair for Freedom and Privacy at the American Conservative Union, serves as a board member at the Patrick Henry Center, and is the honorary chair for Citizens United. We welcome you here this morning, Mr. Barr.

Our second witness is Vincent P. McCarthy. Mr. McCarthy is senior counsel of the American Center for Law and Justice, where he specializes in cases involving family law in both Federal and State courts. After spending 13 years in private practice, Mr. McCarthy joined the ACLJ in 1997, which again is the American Center for Law and Justice, where he specializes in constitutional law. The ACLJ is a nonprofit public interest law firm and educational organization dedicated to pro-liberty and pro-family issues. Since its founding in 1990, the ACLJ and its attorneys have argued or participated in several landmark cases at the United States Supreme Court. We welcome you here this morning.

Our third witness is John Hanes. Mr. Hanes is the chairman of the Wyoming Senate Judiciary Committee. Mr. Hanes has also served as a Cheyenne municipal judge and as a member of the Wyoming House of Representatives. He has served in the Wyoming Senate since 1998 and we welcome you here this morning, Senator.

Our fourth and final witness is Bruce Fein of the law firm of Fein and Fein. During the Presidency of Ronald Reagan, Mr. Fein served as Associate Deputy Attorney General of the Department of Justice, general counsel of the Federal Communications Commission, and counsel for the Republicans on the Congressional Iran-Contra Committee. He has been a visiting Fellow for Constitutional Studies at the Heritage Foundation, an adjunct scholar at the American Enterprise Institute. We welcome you here, Mr. Fein.

We look forward to the testimony of all the witnesses, and as you are probably aware, we have a 5-minute rule for which we have a lighting system there. The yellow light will come on when you have 1 minute left of the five and the red light will come on when your time is up. We would ask, within reason, that you stay within those times.

Mr. Barr, we will hear from you first.

STATEMENT OF THE HONORABLE BOB BARR, FORMER MEMBER OF CONGRESS, ATLANTA, GA

Mr. BARR. Thank you very much, Chairman Chabot. I thank the remainder of Members of this distinguished Subcommittee as well as Ms. Baldwin, who is a very distinguished Member, as the Chairman indicated, of the full Committee, although not of this particular Subcommittee. It is an honor to be here today as a witness,
the same as it was an honor to serve on this Subcommittee previously and certainly on the Judiciary Committee for the entire 8 years that I had the honor of representing the people of the Seventh District in the Congress.

Listening to the opening statements of the Members on both sides of the aisle today, Mr. Chairman, reminded me of the tremendous caliber of men and women that serve on this Committee. It is that hallmark that this Subcommittee, as indeed the entire Committee, always brings to debates on vitally important, which by definition all the issues that come before your particular Subcommittee are because they are all of constitutional note, brings to any debate.

While many in the political arena would be content to let this issue just sort of fester out there, others would be willing to just leave it to sound bites and television, this Subcommittee under your leadership, Mr. Chairman, doesn't take that course. It never has. You believe in a very vigorous, substantive debate on these issues and I commend you, Mr. Chairman, and the Ranking Member and the Members of this Subcommittee for proceeding with that debate.

This is a very, very important issue. I have submitted for the record, Mr. Chairman, a fairly lengthy statement which I would appreciate being incorporated into the record.

Mr. CHABOT. Without objection, so ordered.

Mr. BARR. I would simply take a couple of minutes prior to the statements of the other very distinguished witnesses today and then open ourselves to whatever questions the Subcommittee Members and Ms. Baldwin might have.

I will take just a couple of minutes to remind this very distinguished Subcommittee that what the Defense of Marriage Act does, what it doesn't do, and what some wanted it to do. The Defense of Marriage Act does two things and two things only. It simply defines for Federal law purposes, that is, for purposes of laws within the jurisdiction of the Congress, it defines, reflecting the will of the vast majority of the American people through their representatives, what marriage should mean.

The only other thing that it does pursuant to the specific language, as Representative Feeney correctly pointed out, contained in the Full Faith and Credit Clause of the Constitution is to simply, in furtherance of that power explicitly granted to the Congress to define the parameters of the Full Faith and Credit Clause, it does so with regard to protecting each State and the citizens thereof from being forced by any other State from having to adopt a definition of marriage contrary to what the citizens of that State wish it to be.

That is what the Defense of Marriage Act does. The Defense of Marriage Act does not proactively define marriage. Even though there were many, as I am sure the Chairman recalls, during our very vigorous debate in this Subcommittee as well as in the Committee as well as on the floor of the House, there were indeed those who wished to have the Defense of Marriage Act be a proactive piece of legislation to define marriage for the States.

I and a majority of this body rejected that approach then. I reject it now. I do not think that it would comport with fundamental
principles of Federalism that are so important to all of us on both sides of the aisle, and that is the primary reason why I appear here today as an advocate for the Defense of Marriage Act, which I do believe has been properly and carefully crafted to withstand challenge, but also appear here as a witness today in opposition to the Federal Marriage Amendment in whatever permutation, and I know there are various proposals that are being talked about.

I think each one of them has some very serious problems, Mr. Chairman, both on fundamental grounds of Federalism, but also, I think that if the Congress gets into the process of either by law or by constitutional amendment trying to define the jurisdiction of State courts as opposed to Federal courts, I think we are going down a very slippery slope that was not intended by our Founding Fathers.

So I think that the various proposals such as are on the table, those that have been talked about, and those that might be at some future point proposed that purport to get the Congress through an amendment into the business of defining State court jurisdiction are very, very ill advised and I would think that all of us would have various other amendments that we would like to see. In some instances, we want to see States do something. In other instances, we want to see States not do something. But I don’t think it is the purview of the Congress to monkey around with State court jurisdiction.

Finally, Mr. Chairman, with regard to Representative Feeney’s question about what is the role of the Congress, essentially, in defining a social relationship with any particular State, if we are faced with that, and we are not yet and I have faith in the will of the people eventually rising to the fore and being reflected, both in court decisions in the various States as well as through State laws and constitutional amendments in various States.

But I think the answer to that question is, if, in fact, a particular State decides through the will of the people to define marriage in a way other than it has always historically and commonly been accepted to be understood, and that is as a lawful union between one man and one woman, which is the concept and the principle I personally support, then I think the role of the Congress is essentially nil. That reflects the will of the people of that particular State. But Congress, certainly through its Representatives from that State, through its Senators from that State, presumably and hopefully will reflect the will of the people of that State in voting either for or against legislative proposals such as the Defense of Marriage Act.

But I still don’t think, as much as each one of us might personally like to see Congress step forward and tell a State what to do, I really don’t think that liberals or conservatives, Republicans or Democrats, really, when they think long and hard about it, as I know this Subcommittee will and the full Committee will, want to go down that road. Thank you, Mr. Chairman.

Mr. CHABOT. Thank you. Your time has expired. Thank you very much.

[The prepared statement of Mr. Barr follows:]
Thank you for offering me the opportunity to tender my views on the Defense of Marriage Act, which I authored, and the current controversy over same-sex marriages.

My name is Bob Barr and, until last year, I had the pleasure and the honor of serving in Congress, and on this august Committee and Subcommittee, as the representative from the Seventh District of Georgia. Prior to my tenure in Congress, I served as a presidentially-appointed United States Attorney for the Northern District of Georgia; as an official with the U.S. Central Intelligence Agency, and as an attorney in private practice.

Currently, I am again a practicing attorney, Of Counsel to the Law Offices of Edwin Marger, in Jasper, Georgia. I also hold the 21st Century Liberties Chair for Privacy and Freedom at the American Conservative Union. I am also on the boards of the National Rifle Association and the Patrick Henry Center, serve on the Legal Advisory Board of the Southeastern Legal Foundation, and consult on privacy issues for the American Civil Liberties Union.

Before I begin, I would like to commend the subcommittee for its willingness to thoroughly examine this issue. In the midst of a heated presidential campaign, it would be very easy for this debate to suffer from the vague sound-bites and generalized talking points that surround so many debates these days.

The courage and conscientiousness of this Subcommittee will help to ensure that the American people get the full story on these proposed constitutional amendments.

I appear before you today as a proud conservative whose public career has long been one dedicated to preserving our fundamental constitutional freedoms and ensuring that basic moral norms in America are not abandoned in the face of a creeping "contextual morality," especially among our young.

To both these ends, I authored the Defense of Marriage Act, which was signed into law by President Clinton in 1996. DOMA, as it's commonly known, was designed to provide individual states individual autonomy in deciding how to recognize marriages and other unions within their borders. For the purposes of federal law only, DOMA codified marriage as a heterosexual union.

In the states, it allowed legislatures the latitude to decide how to deal with marriage rights themselves, but ensured that no one state could force another to recognize marriages of same-sex couples. It was a reasonable and balanced measure, mindful of federal interests but respectful of principles of federalism. It has never been successfully challenged.

Importantly, at the time of its drafting, many of my colleagues in Congress tried to make DOMA a pro-active, punitive law that would force a particular definition of marriage on the states.

Their desired measure would have been the statutory equivalent of the main constitutional ban on any legal recognition of same-sex and unmarried couples that was pending before you until last week, and which has been replaced by a slightly modified substitute.

We rejected such an approach then, and we ought to now as well. Simply put, DOMA was meant to preserve federalism, not to dictate morals from Washington. In our federal system, the moral norms of a given state should govern its laws in those areas where the Constitution confers sovereign power to the states or does not expressly grant it to the federal government.

Moreover, the contemporary debate over marriage rights isn't even about the fundamentals of marriage, it is about legal definitions and semantics. Certainly, religious conceptions of marriage are sacrosanct and should remain so—the government should have no say whatsoever in how a given faith chooses to recognize marriage among its adherents. However, how a state decides to dole out hospital visitation rights or insurance benefits, and what it decides to call these arrangements, are and should be a matter of state law; these are legal relationships involving, in many instances, disbursement of state monies.

And, part of federalism means that states have the right to make bad decisions— even on the issue of who can get married in the state.

DOMA struck this balance, and continues to do so. Even with the maverick actions of a few liberal judges and rogue public officials, this balance remains in place. Already, we are seeing state supreme courts and state legislatures refusing to go along with any broad changes in their marriage laws.

By many accounts, it looks like reasoned argument and democratic deliberation, not unilateral action by misguided activists, will win the day in the marriage debate.
That said, however, we also cannot repeat Gavin Newsomian mistakes by going too far in the opposite direction. The Massachusetts Supreme Court and the mayor of San Francisco were wrong because they took the decision-making process out of the hands of the people.

Matters of great importance, such as marriage, need to reflect the will of the people, and resolved within the democratic process. People need to be able to weigh the merits of the opposing arguments, and vote on those merits. They do not deserve - as Americans - to have one side foisted on them by fiat.

However, that is what social conservatives are also trying to do; and even more inexcusable, they are trying to do it using the Constitution as a hammer.

To be clear, I am absolutely not a supporter of granting marriage rights for same-sex couples any sort of legal recognition, which makes my decision to oppose the FMA all the harder. I do not enjoy opposing people who I agree with in substance on matters of process.

Yet, the Constitution is worth that lonely stand.

There are two general approaches to banning any legal benefits for homosexual couples through a constitutional amendment. Both are troubling and for similar reasons.

The first is the compromise amendment that, according to National Review, Senator Orrin Hatch from Utah is considering introducing. It would effectively take DOMA and put it in the Constitution. Unfortunately, even though DOMA is an appropriate federal statute, it is not appropriate for the Constitution.

The reason is quite simple. The intended purpose of the amendment is to keep "activist judges" from imposing a new definition of marriage on the unwilling residents of a given state.

It would likely read something like this: "Civil marriage shall be defined in each state by the legislature or the citizens thereof. Nothing in this Constitution shall be construed to require that marriage or its benefits be extended to any union other than that of a man and a woman."

However, put more simply, the amendment would remove the state courts from the equation altogether, making the measure, ironically, an abridgement of state authority vis-à-vis the federal government, not a fortifier.

While certainly we conservatives are exasperated by some of the over-the-top actions of the state courts, that does not, and should not, mean that we should do away with entire strata of our centuries-old legal system.

Although the state-level judiciary is not supposed to make law, as did the Massachusetts Supreme Court, it is essential it be allowed to interpret law, settle disputes when statutes conflict, and decide the constitutionality of state laws. Transpose another contested issue - like gun control perhaps - and the danger of removing state courts, skilled in state laws and local ways of doing things, becomes apparent.

If we remove even one puzzle piece from the federalist design, we remove checks and balances that keep power diffuse among the states—and with the governing bodies that are closest to the people being governed.

So, in sum, the Hatch Amendment at least superficially looks close, but can get no cigar from those of us who object on strong federalism grounds to this seemingly modest first approach to a marriage amendment.

The second, more wide-ranging approach is reflected in the measures put forward by Representative Marilyn Musgrave and Senator Wayne Allard, both from Colorado. Both Representative Musgrave and Senator Allard initially put forward a measure that would forever deny unmarried couples - be they homosexual or heterosexual—any and all of the "legal incidents" of marriage. It would have completely stolen this decision away from state legislatures and residents where it belongs.

Just last week, Representative Musgrave and Senator Allard introduced a substitute, which they presumably feel has a greater chance at passage.

The sole difference between it and the previous proposal is that while it preempts state and federal constitutions from being interpreted in such a way as to guarantee the "legal incidents" of marriage to same-sex couples, it would permit state legislatures and executive officials to confer these benefits. But, of course, it still absolutely bars states from extending marriage rights to same-sex couples.

Once again, unfortunately, the Musgrave-Allard substitute measure, which I will still refer to as the Federal Marriage Amendment, misses the basic point. This second approach entails putting an actual legal definition of marriage in the Constitution, which still involves taking that power away from the states.

I, along with many other conservative opinion leaders and lawmakers, strongly oppose such a measure for three main reasons.

First, by moving what has traditionally been a state prerogative - local marriage laws—to the federal government, it is in direct violation of the principles of federalism. Second, in treating the Constitution as an appropriate place to impose pub-
licely contested social policies, it would cheapen the sacrosanct nature of that document, opening the door to future meddling by liberals and conservatives. Third, it is unnecessary so long as DOMA is in force.

I will deal with each of these objections in order.

First, marriage is a quintessential state issue. For the purposes of federal laws and benefits, a measure like DOMA is certainly needed. However, individual states should be given an appropriate amount of wiggle room to ensure that their laws on non-federal issues comport with their values. The Musgrave Amendment is at fundamental cross-purposes with such an idea in that, simply put, it takes a power away from the states that they have historically enjoyed.

As conservatives, we should be committed to the idea that people should, apart from collective needs such as national defense, be free to govern themselves as they see fit. State and local governments provide the easiest and most representative avenue to this ideal. Additionally, by diffusing power across the federal and state governments, we provide impersonal checks and balances that mitigate against the abuse of power.

To be clear, I oppose any marriage save that between one man and one woman. And, I would do all in my power to ensure that such a formulation is the only one operative in my home state of Georgia. However, do I think that I can tell Alaska how to govern itself on this issue? Or California? No, I cannot. Those states are free to make their own decisions, even if they are decisions I would characterize as bad.

Furthermore, I cannot accept the proposition put forward by some that by banning same-sex marriages, but still permitting another category of legal recognition for homosexuals, we have solved any problems.

Federalism means that, unless the Constitution says otherwise, states are sovereign. This pertains to marriage. Period.

The second argument against the Federal Marriage Amendment is just as damning. We meddle with the Constitution to our own peril. If we begin to treat the Constitution as our personal sandbox, in which to build and destroy castles as we please, we risk diluting the grandeur of having a Constitution in the first place.

The Founders created the Constitution with such a daunting amendatory process precisely because it is only supposed to be changed by overwhelming acclamation. It is so difficult to revise specifically in order to guard against the fickle winds of public opinion blowing counter to basic individual rights like speech or religion.

Not cluttering the Constitution, and not setting the precedent that it can be changed to promote a particular ideology, is doubly important for us conservatives.

We know that the future is uncertain, and our fortunes unclear. I would like to think people will think like me for a long time to come, but if they do not, I fear the consequences of the FMA precedent. Could liberal activists use the FMA argument to modify the Second Amendment? Or force income redistribution? Or ban tax cuts?

Quite possibly.

Finally, changing the Constitution is just unnecessary—even after the Massachusetts decision, the San Francisco circus, and the Oregon ‘licenses.’ We have a perfectly good law on the books that defends marriage on the federal level, and protects states from having to dilute their definitions of marriage by recognizing other states’ same-sex marriage licenses.

Already, we are seeing the states affected by these developments moving to address the issue properly, using state-level methods like state supreme court decisions and state constitutional conventions. Just yesterday, the Massachusetts legislature reconvened its constitutional convention to figure out an amendment to democratically counter its state supreme court decision.

We should also take note that the recent attempts to recognize same-sex marriages do not, despite broad media coverage, prefigure any sort of revolution against traditional marriage.

In addition to the federal DOMA, 38 states prohibit same-sex marriage on a state level and refuse to recognize any performed in other states. A handful of states recognize domestic partnerships, most with only minimal benefits like hospital visitation or shared health insurance. One state authorizes civil unions and a couple of others may or may not have marriage on the horizon. Rumors of traditional marriage’s untimely demise appear to be exaggerated.

And, truthfully, this is the way it should be. In the best conservative tradition, each state should make its own decision without interference from Washington. If this produces different results in different states, I say hurray for our magnificent system of having discrete states with differing social values. This unique system has given rise to a wonderfully diverse set of communities that, bound together by limited, common federal interests, has produced the strongest nation on the face of the earth.
In spite of his second-term election change on the issue, I think Vice President Cheney put this argument best during the 2000 election:

“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 worry, as do many Americans, about the erosion of the nuclear family, the loosening influence of basic morality, and the ever-growing pervasiveness of overtly sexual and violent imagery in popularly consumed entertainment. Divorce is at an astronomical rate - children born out of wedlock are approaching the number born to matrimony. The family is under threat, no question.

Restoring stability to these families is a tough problem, and requires careful, thoughtful solutions. But homosexual couples seeking to marry did not cause this problem, and the Federal Marriage Amendment cannot be the solution.

Thank you again for inviting me to submit comments.

Mr. McCARTHY. Thank you, Chairman Chabot and all the other Members of the Committee.

In 1996, Congress passed and President Clinton signed into law the Defense of Marriage Act. DOMA does two things. First, DOMA permits States to choose what effect, if any, to give to any, “public act, record, or judicial proceeding respecting a relationship between persons of the same sex that is treated as a marriage under the law of such other State.”

Second, DOMA amends the Dictionary Act to provide express Federal definitions of the terms marriage and spouse. The enactment of the Defense of Marriage Act was a welcome moment in the longer-term struggle to support the ongoing stability of society’s bedrock unit, the family.

At the time of its consideration and adoption, DOMA was a measured response to an orchestrated plan to change the law of 50 States on the question of marriage without the democratic support of the people of the States. That revolution in law required only two essential steps.

First, in a State that had concluded under State statutory or constitutional provisions that same-sex marriages were required to be recognized such marriages would be instituted.

Second, persons joined in such marriages would seek judgments related to creation, maintenance, dissolution, or other habiliments of marriage under State law in jurisdictions other than where they joined in marriage. It is one level of constitutional consideration whether and state may define for itself what constitutes marriage. It is another level of constitutional dimension entirely to have the right of decision making in one State foreclosed by an earlier decision in another State.

While a State can choose to bend its own important political policies to the judgments of sister States without constitutional grief, the plotted intention was to force States to bend their will and abdicate their important public policy interests by weight of the Full Faith and Credit Clause of the United States Constitution.
Exercising its clear authority under the Full Faith and Credit Clause, Congress defined precisely the respect that sister States were bound to give to judgments of sister States that two persons of the same sex were married. In crafting DOMA, Congress showed its profound respect for the cooperative Federalism that is the hallmark of our republic, in that instance recognizing the indisputably primary role of the States in defining the estate of marriage and providing for its creation, maintenance, and dissolution. Congress deferred to the judgment of each State the question of whether any union other than that between one man and one woman could be accorded legal status as a marriage under State law.

At the same time, the Congress properly took account of Federal dimensions of marital relationships under, for example, the Internal Revenue Code. As far as DOMA goes, it is justified as an exercise of clear Congressional authority under the Constitution; two, of undiminished constitutionality in light of intervening decisions of the United States Supreme Court; three, untarnished by lower court decisions subsequent to its enactment; and four, substantially relied by the States.

Of course, that DOMA suffices for these purposes does not mean that the work of Congress in this area is complete. Pending in both Houses at this time is legislation that would propound to the States an amendment to the United States Constitution, the Federal Marriage Amendment. That amendment would expressly define marriage throughout the nation as the union of one man and one woman, barring any jurisdiction under the Constitution from licensing any relation other than the joining together of one man and one woman.

By passing the FMA out to the States, the Congress would position the people of the United States to decide for themselves whether the present uncertainties and struggles should conclude by such a generally adopted resolution as a binding amendment to the Constitution.

FMA and DOMA are intended to work together to preserve two parents of the opposite sex for children and to continue to support traditional marriage that is under attack throughout the United States. Thank you very much.

Mr. CHABOT. Thank you.

[The prepared statement of Mr. McCarthy follows:]
Section 3. Definition of Marriage.

(a) In General.—Chapter 1 of Title 1, United States Code, is amended by adding at the end the following:

"7. Definition of ‘marriage’ and ‘spouse’

"In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife."

2 Congress not only defined the effect to be given to the judgments of one State respecting same-sex marriages in another State, but also crafted a definition of ‘marriage’ for purposes of all federal statutes. The authority to define the terms employed in a statute of its own crafting lies within the power of Congress under the Necessary and Proper Clause. Thus, DOMA two separate principle effects are each supported by the clear authority of Congress to enact the relevant portion of DOMA.

3 Thirty-eight States, relying on DOMA, have enacted statutory or constitutional provisions limiting marriage to the union of opposite sex couples. See http://www.marriagewatch.org/states/doma.htm. In doing so, this supermajority of the States have expressly announced the strong public policy preference for limiting marriage to opposite sex unions.

The enactment of the Defense of Marriage Act was a welcome moment in the longer-term struggle to support the ongoing stability of society’s bedrock unit: the family. At the time of its consideration and adoption, DOMA was a measured response to an orchestrated plan to change the law of the fifty States on the question of marriage without the democratic support of the People of the States. That revolution in law required only two essential steps. First, in a State that had concluded under state statutory or constitutional provisions that same sex marriages were required to be recognized, such marriages would be instituted. Second, persons joined in such marriages would seek judgments related to creation, maintenance, dissolution or other habiliments of marriage under state law in jurisdictions other than where they had joined in marriage.

It is one level of constitutional consideration whether a State may define for itself what constitutes a marriage. It is another level of constitutional dimensions entirely to have the right of decision-making in one State foreclosed by an earlier, conflicting decision in another State. While a State can choose to bend its own important public policies to the judgments of sister States without constitutional grief, the plotted intention was to force States to bend their will and abdicate their important public policy interests by weight of the Full Faith and Credit Clause of the United States Constitution.

Exercising its clear authority under the Full Faith and Credit Clause, Congress defined precisely the respect that sister States were bound to give to judgments of sister States that two persons of the same sex were married. In crafting DOMA, Congress showed its profound respect for the cooperative federalism that is the hallmark of our Republic. In that instance, recognizing the indisputably primary role of the States in defining the estate of marriage, and providing for its creation, maintenance, and dissolution, Congress deferred to the judgment of each State the question of whether any union other than that between one man and one woman could be accorded legal status as a marriage under state law. At the same time, the Congress properly took account of federal dimensions of marital relationships (under, for example, the Internal Revenue Code).

As far as DOMA goes, it is (1) justified as an exercise of clear Congressional authority under the Constitution, (2) of undiminished constitutionality in light of intervening decisions of the United States Supreme Court, (3) untarnished by lower court decisions subsequent to its enactment, and (4) substantially relied upon by the States. Of course, that DOMA suffices for these purposes does not mean that the work of the Congress in this area is complete. Pending in both Houses at this time is legislation that would propound to the States an amendment to the United States Constitution, the Federal Marriage Amendment. That amendment would expressly define marriage throughout the Nation as the union of one woman and one man, barring any jurisdiction under the Constitution from licensing as marriage any relation other than the joining together of one woman and one man. By passing the FMA out to the States, the Congress would position the people of the United States to decide for themselves whether the present uncertainties and struggles should
conclude by such a generally adopted resolution as a binding amendment to the Constitution.

I. CONGRESS WAS RIGHT TO ENACT DOMA BECAUSE OPPOSITE SEX MARRIAGES ARE THE KEY TO STABLE AND HEALTHY SOCIETIES

And God said, Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth. So God created man in his own image, in the image of God created he him; male and female created he them.

Genesis 1:26–27 (KJV).

Whether one agrees with the Biblical account of mankind’s origin, it affirms the observable fact that we humans are of two kinds: male and female. Moreover, it is plain that these opposite sexes while unlike are, nonetheless, meet for each other. That consortium of a man and a woman, the proto-society, represents the creation of a bond unlike other bonds. Within the society of marriage, a man and a woman commune, conceive offspring, rear that offspring, and provide the stable blocks from which larger societies may be created. Before the rise of modern legal systems, this relationship and its contribution existed and were acknowledged.

Consequently, it is not surprising that virtually ever society has expressed, by statutes, laws, and regulations, a strong preference for marriage. At a minimum, the larger society has depended on the conjoining of men and women in fruitful unions to secure society’s continued existence. Traditional marriages, in which one man and one woman create a lasting community, transmit the values and contributions of the past to establish the promise of the future.

Nor do the benefits of traditional marriage flow only from the couple to the society made stable by the creation of enduring marriages. The valued role of marriage in increasing the level of health, happiness and wealth of spouses, compared to unmarried partners, is established. And the known research indicates that the offspring of traditional marital relations also trend toward greater health and more developed social skills. In contrast, sexual identicality, not difference, is the hallmark of same sex relationships.

Thus, to admit that same sex relationships can be valid marriages requires a concession that sexual distinctions are meaningless. That conclusion is not sensible or empirically supported. Consider, for example, the principle difference between married couples that would procreate and same sex couples seeking to do likewise. Children can never be conceived as the fruit of a union between couples of the same sex, perforce requiring the intervention of a third person. Secrecy in the donation process deprives the child of such same sex unions of an intimate relationship with their biological parent. Inclusion of the donor in the relationship transmogrifies the same sex union yet again into a tri-unity. While the math of these problems may be easy to follow, claims that raising children within a homosexual union is not damaging to the children are entirely impeached by flawed constructions and conclusions.

Traditional marriage makes such significant contributions to society that it is simply a sound policy judgment to prefer such marriages over lesser relationships in kind (such as co-habitation) or entirely different in character (same sex relationships). The unique nature of marriage justifies the endorsement of marriage and the omission of endorsements for same sex unions.

II. CONGRESS UNDERTOOK A MEASURED RESPONSE, EMBODYING CLEAR RESPECT FOR OUR COOPERATIVE FEDERALISM, IN ENACTING DOMA

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5 Two recent treatments thoroughly debunk the argument that social science has proved that children in the homes of same sex couples suffer from no diminution in socially relevant factors. See http://www.marriagewatch.org/issues/parenting.htm (linking to Affidavit of University of Virginia Professor Steven Lowell Nock filed in Halpern et al. v. The Attorney General of Canada, Docket No. 684/0 (Ontario Court of Justice, Quebec) (critiquing studies addressing the question of same-sex parenting and finding that all the reviewed studies contained fatal flaws in design or execution, and that each study failed to accord with “general accepted standards of scientific research”). See id. (linking to Lerner and Nagai, “No Basis” (2001) (examining 49 studies of same sex parenting and concluding that the studies are fatally flawed and do not provide a sound scientific basis for policy or law-making).
As this Committee acknowledged, in its report on DOMA, marriage laws in the United States are almost exclusively governed by state law. See Defense of Marriage Act, House Report 104–664 (Committee on the Judiciary) (July 9, 1996), at 3 (“The determination of who may marry in the United States is uniquely a function of state law”). There are, however, federal statutes which rely on marital status to determine federal rights and benefits, so the definition of marriage is also important in the construction and application of federal laws (e.g., the Internal Revenue Code).

Prompted by the 1993 decision of the Hawaii Supreme Court and the subsequent immediate failure of the Hawaii Legislature to amend the State Constitution so as to overrule the State Supreme Court, Congress enacted the Defense of Marriage Act. DOMA reflected congressional concerns of a concerted effort to legalize same sex marriages via judicial decisions compelling states first to issue licenses for such marriages and then compelling other States to give effect to those marriages by application of the Full Faith and Credit Clause of the Constitution, U.S. Const. Art. IV, § 1. DOMA overwhelmingly passed in the House of Representatives on July 12, 1996, by a vote of 342 to 67, and then in the Senate on September 10, 1996, by a vote of 85 to 14. President Clinton signed DOMA into law on September 21, 1996.

As noted in the introduction, DOMA has two key provisions: one defining that “Full Faith and Credit” due to same sex marriages contracted in one State when put in issue in another State; the second one providing clarifying definitions for terms used in federal statutes. Congress, pursuant to its “effects” power under Art. IV, Sec. 1, reaffirmed the power of the States to make their own decisions about marriage:

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.


The Federal law section states that under Federal law, a legally recognized marriage requires a man and woman. This is something Congress had assumed, but had never needed to clarify:

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word “marriage” means only a legal union between one man and one woman as husband and wife, and the word “spouse” refers only to a person of the opposite sex who is a husband or a wife.


A. RESERVING STATE DIMENSIONS OF MARRIAGE TO THE STATES


And, the Nation’s attention has been riveted to the situations in California, New Mexico, New Jersey, and Oregon, where City or County officials, without the compulsion of a judicial decision and without authority to do so, have begun issuing marriage licenses to same sex couples, even in direct defiance of state laws to the contrary.

Given that some States might choose to recognize same sex marriages within their peremptory authority over the licensing of marriage, Congress did not overextend itself and seek to bar States from licensing such same-sex unions, or from choosing to recognize the legitimacy of such unions created under the law of sister States. Instead, Congress exercised its express constitutional authority under the Full Faith and Credit Clause to afford those States that had strong public policy reasons for supporting traditional marriages the means to decline to grant recognition to foreign same-sex marriages.
The constitutional authority of Congress to regulate the extra-state impact of state laws is patent in the Constitution and established in judicial decisions. The text of the Clause, Supreme Court decisions discussing it, legislative history, and scholarly commentary all reflect the broad scope of Congress’ power to regulate the extra-state impact of state laws. This broad power is granted under Article IV, Section 1 of the U.S. Constitution, which provides:

Full faith and Credit shall be given in each State to the public Acts, Records, and judicial proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved and the Effect thereof.

On its face, the Full Faith and Credit Clause assigns to Congress the capacity to determine the effect of one state’s law in another state. See Williams v. North Carolina, 317 U.S. 287, 293 (1942) (“Congress may by general Laws prescribe the Manner in which [state] Acts, Records and Proceedings shall be proved, and the Effect thereof”) (quoting Art. IV, Sec. 1). In another circumstance, in finding that statutes of limitations are procedural for conflicts purposes, the Supreme Court noted that if it is advisable to change the rule, “Congress [can] legislate to that effect under the second sentence of the Full Faith and Credit Clause.” Sun Oil Co. v. Wortman, 486 U.S. 717, 729 (1988) (citations omitted). Plainly, Congress has the authority under the Effects Clause to determine the extra-state effect of a state’s statute of limitations. See also Mills v. Duryee, 11 U.S. 481, 485 (1813) (“it is manifest however that the constitution contemplated a power in congress to give a conclusive effect to such judgments”); M’Elmoyle v. Cohen, 38 U.S. 312, 324–25 (1839) (“the faith and credit due to it as the judicial proceeding of a state, is given by the Constitution, independently of all legislation . . . [but] . . . the authenticity of a judgment and its effect, depend upon the law made in pursuance of the Constitution”).

Concluding, with the force of law, that a type of state act or judgment will not have mandatory effect in another state is an example of prescribing the “effect” of a state’s law in other states. Such legislation is precisely the kind contemplated by the effects provision of the Full Faith and Credit Clause. All DOMA does is to provide that the effect, within any given state, of a same-sex “marriage” contracted in another state will be determined by the states against which demands for recognition are made.

The Articles of Confederation stated: “Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state.” Art. IV, cl. 3. The Constitutional Convention of 1787 added a completely new second sentence: “And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved and the Effect thereof.” U.S. Constitution, Art IV, Sec. 1. In amending the prior requirement of Full Faith and Credit, the Framers provided Congress a meaningful part in resolving the conflict among states regarding the recognition of others states’ laws. See The Federalist No. 42 (James Madison) (discussing the Effect Clause as part of the powers of the Federal Government). See also Daniel A. Crane, The Original Understanding of the “Effects Clause” of Article IV, Section 1 and Implications for the Defense of Marriage Act 6 Geo. Mason L.Rev. 307, 325 (1998).

Although DOMA has critics in the community of legal scholars, many support the power of Congress to determine the effect of one state’s laws in another state. See James D. Sumner, The Full Faith and Credit Clause—It’s History and Purpose 34 Or. L.Rev. 224, 239 (1955) (the Full Faith and Credit Clause “to be self-executing, but subject to such exceptions, qualifications, and clarifications as Congress might enact into law”); Walter W. Cook, The Powers of Congress Under the Full Faith and Credit Clause 28 Yale L.J. 421, 433 (1919) (“it seems obvious that [the Framers] were conscious that they were conferring . . . power on Congress to deal with the matter of full faith and credit”); Douglas Laycock, Equal Citizens of Equal and Territorial States: The Constitutional Foundations of Choice of Law 92 Colum. L.Rev. 249, 331 (1992) (“It is common ground that Congress can designate the authoritative state law under the Effects Clause, specifying which state’s law gets full effect in that class of cases”).
B. DEFINING MARRIAGE FOR THE PURPOSES OF FEDERAL LAW

The Dictionary Act, amended from time to time by Acts of Congress, including by the enactment of DOMA, serves to provide governing definitions of terms employed in federal statutes. See Inyo County v. Paiute-Shoshone Indians, 538 U.S. 701 (2003) ("The Dictionary Act . . . was designed to supply rules of construction for all legislation"). Nor is the Dictionary Act, as some have supposed, an obscure provision of federal law. United States v. Reid, 206 F. 2d 132, 139 (D. Mass. 2002) (noting the amendment of the Dictionary Act by the provisions of DOMA). There is no doubt that Congress may define the terms used in statutes that it has enacted within the legitimate scope of its Legislative Power. Here, Congress has simply provided that "marriage" and "spouse" as those terms are used in federal law do not extend in the scope of their meanings to same sex unions or the participants in them.8

II. NO SUBSEQUENT UNDERMINING DECISION OF THE SUPREME COURT

A. Full Faith and Credit Clause Analysis Remains Unaffected

Although the Supreme Court has had occasion to discuss applications of the Full Faith and Credit Clause in decisions subsequent to the enactment of DOMA, none of those decisions puts the power exercised by Congress in the enactment of DOMA in doubt. See Franchise Tax Bd. v. Hyatt, 538 U.S. 488 (2003); Jinks v. Richland County, 538 U.S. 456 (2003); Semtek Int'l Inc. v. Lockheed Martin Corp., 531 U.S. 497 (2001).

B. Lawrence v. Texas Does Not Undermine DOMA

The Facts in Lawrence v. Texas

Responding to a reported weapons disturbance in a private residence, Houston police entered petitioner Lawrence's apartment and saw him and another adult man, petitioner Garner, engaging in a private, consensual sexual act. Petitioners were arrested and convicted of deviate sexual intercourse in violation of a Texas statute forbidding two persons of the same sex to engage in certain intimate sexual conduct. In affirming, the State Court of Appeals held, inter alia, that the statute was not unconstitutional under the Due Process Clause of the Fourteenth Amendment. The court treated Bowers v. Hardwick, 478 U.S. 186, (1986) controlling on that point.

Justice Kennedy's Opinion for the Majority:

The opinion of Justice Kennedy was joined by Justices, Stevens, Souter, Ginsburg, and Breyer. The majority granted certiorari to consider three questions:

1. Whether Petitioners' criminal convictions under the Texas "Homosexual Conduct" law—which criminalizes sexual intimacy by same-sex couples, but not identical behavior by different-sex couples—violate the Fourteenth Amendment guarantee of equal protection of laws?

2. Whether Petitioners' criminal convictions for adult consensual sexual intimacy in the home violate their vital interests in liberty and privacy protected by the Due Process Clause of the Fourteenth Amendment?


Lawrence v. Texas, 123 S. Ct. 2472, 2476 (2003). The majority decided that Bowers should be overturned and that the case hinged on a violation of the Due Process Clause by the Texas statute.

The first indication that the ruling by the Court could imperil the Defense of Marriage Act is contained in Justice Kennedy's discussion of Bowers in which he says:


The laws involved in Bowers and here are, to be sure, statutes that purport to do no more than prohibit a particular sexual act. Their penalties and purposes, though, have more far-reaching consequences, touching upon the most private human conduct, sexual behavior, and in the most private of places, the home. The statutes do seek to control a personal relationship that, whether or not entitled to formal recognition in the law, is within the liberty of persons to choose without being punished as criminals.

Lawrence, 123 S. Ct. at 2478.

The last sentence quoted seems to signal sympathy from Justice Kennedy for the homosexual marriage. The very next sentence reads: "This, as a general rule, should counsel against attempts by the State, or a court, to define the meaning of the relationship or to set its boundaries absent injury to a person or abuse of an institution the law protects." Id. The protected institution to which he adverts is marriage.

One point of continuing controversy is a tendency in the majority opinion to emphasize international law. Kennedy says:

The sweeping references by Chief Justice Burger to the history of Western civilization and to Judeo-Christian moral and ethical standards did not take account of other authorities pointing in an opposite direction. A committee advising the British Parliament recommended in 1957 repeal of laws punishing homosexual conduct. . . .

Of even more importance, almost five years before Bowers was decided the European Court of Human Rights considered a case with parallels to Bowers and to today's case.

Lawrence, 123 S. Ct. at 2481. The tendency to invoke international law provokes criticism by the dissent, 123 S. Ct. at 2497. Certainly, focus upon particular international jurisdictions could foreclose the Court's purpose to deploy its resources to insure that America accepts gay marriage as a select few other courts have done.

In addition to the foregoing, Justice Kennedy's opinion is possibly amenable to a reading that would support a challenge to bans on homosexual marriage. In particular, the majority opinion's discussion of Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, (1992), raise the specter of such a sympathetic court. Revisiting Casey, Justice Kennedy invokes that aspect of Casey discussing constitutional protections for personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education. Justice Kennedy then asserts that the Constitution demands autonomy in making these choices and that persons in homosexual relationships may seek autonomy for these purposes.

Justice Kennedy concluded his discussion by returning to the question of the Court's earlier decision in Bowers, stating, for the Court, that the holding demeans the lives of homosexual persons and should be overruled. Some may argue that denying them the right to marry demeans the lives of homosexual persons, but it surely demeans them less and in ways vastly different than a criminal sanction for their conduct, and it is to the criminal sanction that Justice Kennedy referred.

The most compelling evidence that Lawrence does not undermine the Defense of Marriage Act comes towards the end of the opinion when Justice Kennedy says:

The present case does not involve minors. It does not involve persons who might be injured or coerced or who are situated in relationships where consent might not easily be refused. It does not involve public conduct or prostitution. It does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter.

Lawrence, 123 S. Ct. at 2484. At some point in the future another case may come along which will involve the question of whether or not the government must give formal recognition to homosexual relationships, but Lawrence is not that case.

Justice O'Connor's Separate Opinion Concurring in the Judgment:

Justice O'Connor concluded that Texas' sodomy statute violated constitutional requirements of equal protection. She wrote:

That this law as applied to private, consensual conduct is unconstitutional under the Equal Protection Clause does not mean that other laws distinguishing between heterosexuals and homosexuals would similarly fail under rational basis review. Texas cannot assert any legitimate state interest here, such as national security or preserving the traditional institution of marriage. Unlike the moral disapproval of same-sex relations—the asserted state interest in this case—other reasons exist to promote the institution of marriage beyond mere moral disapproval of an excluded group.
Lawrence, 123 S. Ct. at 2488. Obviously, because the state interests in promoting and protecting the institution of marriage go beyond mere moral disapproval of homosexuals, Justice O’Connor’s opinion leaves one with the firm sense that she would sustain state marriage statutes that limit the institution of marriage to opposite sex couples.

Justice Scalia’s Dissent:
Justice Scalia was joined in dissent by Chief Justice Rehnquist and Justice Thomas. Justice Scalia lamented the decision and said it calls into question whether same sex marriage will be allowed. He wrote:

It seems to me that the “societal reliance” on the principles confirmed in Bowers and discarded today has been overwhelming. Countless judicial decisions and legislative enactments have relied on the ancient proposition that a governing majority’s belief that certain sexual behavior is “immoral and unacceptable” constitutes a rational basis for regulation.

State laws against bigamy, same-sex marriage, adult incest, prostitution, masturbation, adultery, fornication, bestiality, and obscenity are likewise sustainable of these laws is called into question by today’s decision; the Court makes no effort to cabin the scope of its decision to exclude them from its holding.

Lawrence, 123 S. Ct. at 2490.

He critiques Justice O’Connor’s Equal Protection argument as applying as well to homosexual marriage and says that her conclusory statement that the government has an interest is insufficient. Justice Scalia concludes his discussion of marriage by saying that the Court is not to be believed when it claims that Lawrence does not deal with gay marriage. He says the majority’s employment of Casey on the question of autonomy underlie the dismantling of the structure of constitutional law that “has permitted a distinction to be made between heterosexual and homosexual unions.” Id. at 2498.

Justice Thomas’ Separate Dissent
Justice Thomas added an extremely brief opinion expressing his view that the Texas sodomy statute was uncommonly silly, but within the sphere of the Texas legislature.

IV. DOMA ALLOWS THE STATES TO MEET THE POTENTIAL FOR JUDICIAL MISCHIEF IN OTHER STATES

The legislative history supporting the enactment of DOMA adverts to the long running battle waged by certain segments of the American populace to accomplish radical changes in the institution of marriage, and to do so without resort to the difficult tools provided in the Constitution: majority rule and constitutional amendment. H.R. Report 104–646, at 1–18. That report, now almost a decade in age, describes a movement that is, it seems unflagging in its commitment to the goal of changing marriage. In the intervening years, the pressure from that quarter has not lessened.

Following the disastrous and unjustifiable decision of the Supreme Court in Lawrence v. Texas, the same-sex marriage movement was invigorated, and issued a clarion call to “get busy and get equal.” See http://www.aclu.org/getequal. Not only the ACLU, but also Human Rights Campaign, see http://www.hrcactioncenter.org, Lambda Legal Defense and Education Fund, see http://www.lambdalegal.org, and the National Organization for Women, see http://www.now.org, all are pressing full court for the radical overhaul of state laws regulating marriage and limiting marriage to the union of one man and one woman.

DOMA guarantees to each State that they may refuse to give cognizance to same sex marriages contracted elsewhere if recognition of such marriages would be incon-
consistent with important public policies. That guarantee stands as the principal obsta-
cle between those who are litigating piecemeal their claim of a right to same sex
marriage and their goal of nationalizing same sex marriage by the migration of our
people together with the duty to give full faith and credit to foreign state judgments,
acts and records. The Department of Justice, under President Clinton, concluded
that DOMA was constitutional. Congress concluded that DOMA was constitutional
and an appropriate exercise of its definitional authority respecting the Effects
Clause. No court acting consistent with the precedent of the Supreme Court could
find DOMA unconstitutional.

Where mischief may still lie, and where DOMA may not provide the solution, is
within the jurisdiction of a single State. Thirty eight States that have adopted
DOMA provisions by statute or constitutional amendment. Nonetheless, in each of
them the risk exists, as litigation in California, New Jersey, Indiana, North Caro-
lina, and elsewhere demonstrates, that a state court judge could reject her own
State's assertion of important public policy interests in opposite sex marriage. A
judge so inclined could find that a state constitutional provision for due process of
law or equal protection requires that same sex couples have the same right to marry
under state laws as opposite sex couples. Then, in that case, while DOMA will have
done all the work intended by Congress to be done, the mischief can still be worked
within a State; DOMA, however, helps to insure that the mischief is not easily ex-
ported to sister States.

CONCLUSION

DOMA is a measured, constitutional response to the orchestrated movement to
overturn State laws on marriage without benefit of the democratic process that nor-
mally determines issues of state law. It serves to slow the spread of decisions that
are unpopular in the States where they are rendered and less welcome elsewhere.
While an amendment is a welcome resolution to the problem, absent such an
amendment, DOMA serves the important purpose of securing to each State the right
to decide how to define marriage.

Mr. CHABOT. Senator Hanes, you are recognized for 5 minutes.

STATEMENT OF JOHN HANES, CHAIRMAN, WYOMING SENATE
JUDICIARY COMMITTEE, CHEYENNE, WY

Mr. HANES. Mr. Chairman and Members of the Committee, if
someone last Wednesday would have said that today I was going
to be here and be doing this and being with you all, I would have
considered them really quite daftly. But nevertheless, here I am.
The other paradoxical circumstance of this is that here I am, a
member of the majority party, but yet I am a minority witness. I
would ask that all of you kind of keep that to yourself and not let
the word get out, particularly to the people back home.

Mr. CHABOT. We won't tell anybody. [Laughter.]

Mr. HANES. Mr. Chairman and Members of the Committee, I
really want to make two points to you this morning. One of them
is that the institution of marriage is really made up of many, many
parts, only one of which is the relationship between the man and
a woman in a marital relationship. The institution of marriage also
has been an evolutionary thing down through the years and we
have seen shifting and changes of attitudes and philosophies that
people have had and that States have had.

For example, I can remember back when I was thinking about
getting married, the idea of an interracial marriage was something
that was very much taboo, and I think in some jurisdictions it also
was against the law. But now, it is very much accepted and a part
of our life. In fact, our oldest son married a girl from Asia, so we
have that even in our own family, and proudly so.
Ages of consent also have shifted down through the years, both upward and downward. The concept of the common law marriage has also changed down through the years.

So just to take one segment of this, namely the marriage between the man and the woman, and turn that into a constitutional amendment, I think is really denying the existence of the other elements of the institution of marriage and I would suggest that if that is done, that is just nipping at a small part of the overall problem.

The second point I would like to make is that the States really take their duty toward their Constitution and the U.S. Constitution very, very seriously. I can give you an example. We just completed a legislative session last month in Wyoming where one of the hot-button issues was the idea of the radical increase in malpractice insurance rates for doctors. There was a great move to adopt caps on non-economic damages so that the doctors would, hopefully, anyway, be able to get their malpractice premiums reduced.

Well, to do that, they would have to amend the Wyoming Constitution because the Constitution says that the legislature shall adopt no law that would limit a person’s right to claim damages for personal injury. The debate on that subject was long and it was intense and it was very thoughtful, well thought out, well argued. But when it came right down to it, the legislature, both the House and the Senate, said, no, we are not going to amend the Constitution for that and the proposal was defeated by two votes in the Senate and five votes in the House.

They take their duty to the Constitution very, very seriously, and I think they would take the same attitude any time the States are asked to ratify an amendment to the United States Constitution. The philosophy that came forward in this debate that we had over the caps amendment was that we are only going to amend the Constitution if it is an extremely strong and a very, very compelling case in favor of amending and there are very strong reasons to do so.

So as an extension of that, Mr. Chairman and Members of the Committee, every State legislature is a member of the National Conference for State Legislatures and their publication that they come out with every month is called State Legislatures. This would come under the category of “this just in,” but before I came to this meeting today, the issue for April came out and in this issue is a two-page article which is a summary of all of the activities being taken in this general area. The relationship between a man and a woman in a marriage was discussed.

We can see that there is a lot of activity in this area, both in terms of constitutional amendments at the various States, in terms of dealing with the civil unions and the domestic partnerships, and the discussions run all the way from being in favor of these things to not being in favor of these things. Mr. Chairman, with your permission, I would like to have this article included as a portion of my testimony, just to show that the States really are stepping up to the plate and are dealing with this issue each in their own way, because each State has a little different philosophy, a little bit different feeling about how this should be done.
Mr. CHABOT. Without objection, it will be made part of the record.

Mr. HANES. Thank you, Mr. Chairman.

[The information of Mr. Hanes follows in the Appendix]

Just to sum up, I would say that this is an issue in which you should trust in the States because the States are dealing with it. The courts are working on it. It is an area that rightfully belongs in the purview of the States. Thank you, Mr. Chairman.

Mr. CHABOT. Thank you.

[The prepared statement of Mr. Hanes follows:]

PREPARED STATEMENT OF JOHN HANES

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.

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.

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1 John Hanes, Chairman of the Wyoming Senate Judiciary Committee, and of counsel to Woodard & White, P.C., New Boyd Building, Suite 600, P.O. Box 329, 1720 Carey Avenue, Cheyenne, Wyoming 82003, 307–634–2731.
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.

Mr. CHABOT. Our final witness this morning will be Mr. Fein.

STATEMENT OF BRUCE FEIN, FEIN AND FEIN, WASHINGTON, DC

Mr. FEIN. Mr. Chairman and Members of the Subcommittee, I am grateful for the opportunity to share my views on the constitutionality of the Defense of Marriage Act of 1996 and to add a few words as a codicil about constitutional amendments.

In my judgment, the act clearly satisfies the Full Faith and Credit Clause and Equal Protection Clause and the Due Process Clause of the Constitution and that any attacks on its legitimacy would clearly fail. The United States Supreme Court in a series of cases has held that the Full Faith and Credit Clause does not deny to States the authority to reject sister State jurisdictions on matters of public policy about which they differ and differ strongly.

At present, every State in the Union but Massachusetts confines marriage to persons of the opposite sex. The reason is not homophobia but to advance the compelling societal interest in optimal procreation and child nurturing. Procreation is obviously necessary for the preservation of the species. The traditional marriage laws encourage procreation by offering both material legal advantages and social esteem for opposite sex unions. Same-sex couples obviously cannot procreate. Some opposite sex couples may also decline to bear children, but that can seldom be known in advance of marriage.

Moreover, privacy values would be offended by official inquiries into the procreative intent of marriage applicants, and if child-bearing intent were required for a license, couples would be inclined toward deception. The State would hold no constitutional means to force a married couple to procreate in any event.
Intuition and experience make rational a belief that children will more likely mature and flourish mentally, emotionally, and physically if raised by a husband and wife than by a same-sex couple, and rationality is sufficient to uphold the classification based on sexual orientation, at least in the context of marriage under the Romer and Lawrence v. Texas decisions of the U.S. Supreme Court.

On that score, the fact that in some cases same-sex couples or single parents might prove superior to a husband and wife in raising a child does not disprove the childrearing rationality of opposite-sex marriage definitions. Every law of general application suffers from inexactness between the objective aimed at and exceptional situations. For example, laws prohibiting polygamy or statutory rape are constitutional despite the fact that in some circumstances, their objectives might not be served by a prosecution. Similarly, the United States Court of Appeals via the 11th Circuit has upheld the constitutionality of a Florida statute that excludes homosexuals from adopting, even though some homosexuals might prove superior in rearing a particular child than a married sex couple, and this is a decision on January 28, 2004, in the aftermath of Lawrence, not before.

The Supreme Court itself in a variety of decisions has tacitly assumed the rationality of State efforts to promote traditional monogamist family structure. In Reynolds v. United States, the Court sustained the constitutionality of anti-polygamy laws, explaining, “An exceptional colony of polygamists under exceptional leadership may sometimes exist for a time without disturbing the social condition of the people who surround it, but there cannot be a doubt that unless restricted by some form of constitution, it is within the legitimate scope of the power of every civil government to determine whether polygamy or monogamy shall be the law of social life under its dominion.”

The 11th Circuit similarly explained in the Lofton case, “Although the influence of environmental factors in forming patterns of sexual behavior and the importance of heterosexual role models are matters of ongoing debate, they ultimately involved empirical disputes not readily amenable to judicial resolution as well as policy judgments best exercised in the legislative arena. For our present purposes, it is sufficient that these considerations provide a reasonably conceivable rationale for Florida to preclude all homosexuals but not all heterosexual singles from adopting.”

The Defense of Marriage Act is not constitutionally flawed simply because it probably does no more than declare by statute what the Full Faith and Credit Clause means as regards same-sex marriage. The Supreme Court commonly gives some deference to the views of Congress, which make Federal statutes presumptively constitutional. Thus, the Defense of Marriage Act declaration regarding the Full Faith and Credit Clause is more than decorative, but probably only marginal in its influence on the United States Supreme Court if it ultimately came to address the constitutionality of the act.

With regard to the need of a constitutional amendment, I do think it would be counter-historical to suggest that an amendment has never been ratified in anticipation of a possible problem. I think the income tax amendment is illustrative. Supreme Court decisions did not make clear prior to the amendment that any Fed-
eral income tax would tumble, yet Congress did enact the amendment as ratified by the States in order to ensure that an income tax could be leveled without constitutional challenge.

I have suggested in the column that I attached to my statement in the Washington Times that there would be an appropriate step for the Congress to consider in amending the Constitution simply to ensure that prospectively, the State legislatures rather than State courts interpreting State Constitutions shall decide whether or not there shall be same-sex marriages.

I know that my good friend, the Honorable Mr. Barr, has suggested that we should not tamper with what State judiciaries do, but it does seem to me that Congress is explicitly entrusted in article IV with ensuring that every State have a republican form of government, which means at a minimum some sense of separation of powers. I do not think that it does violence to our traditional role of Federalism simply to ensure that it is a matter of State legislative choice rather than some exotic State interpretation of the Constitution by its judiciary as to whether or not same-sex or opposite-sex marriages should be permitted. Thank you, Mr. Chairman.

Mr. CHABOT. Thank you very much.

[The prepared statement of Mr. Fein follows:]

PREPARED STATEMENT OF BRUCE FEIN

Dear Mr. Chairman and Members of the Subcommittee:

I am grateful for the opportunity to share my views on the constitutionality of the Defense of Marriage Act of 1996 (DOMA). In my judgment, DOMA legitimately declares the meaning of the Full Faith and Credit Clause as applied to state same-sex marriage laws; and, its singling out same-sex marriages from other state public acts and records violates neither equal protection nor due process.

The Supreme Court of the United States has construed the Full Faith and Credit Clause to permit a State to withhold recognition of laws or public acts of sister States that would subvert a strong public policy to the contrary of the host jurisdiction. At present, every State but Massachusetts confines marriage to opposite-sex couples to advance compelling societal interests in optimal procreation and child nurturing. Procreation is necessary for the preservation of the species. Traditional marriage laws encourage procreation by offering both material legal advantages and social esteem for opposite-sex unions. Same-sex couples cannot procreate. Some opposite-sex couples may also decline to procreate, but that can seldom if ever be known at the time of marriage. Moreover, privacy values would be offended by official inquiries into the procreative intent of marriage applicants. And if child bearing intent were required for a license, couples would be inclined toward deception; and, the State would hold no constitutional means to force a married couple to procreate in any event.

Intuition and experience make rational a belief that children will more likely mature and flourish mentally, emotionally, and physically if raised by a husband and wife than by a same-sex couple. And rationality is sufficient to uphold a classification based on sexual orientation, at least in the context of marriage. Roemer v. Evans (1996); Lawrence v. Texas (2003). On that score, the fact that in some cases same-sex couples or single parents might prove superior to a husband and wife in raising a child does not disprove the child rearing rationality of opposite-sex marriage definitions. Virtually every law of general application suffers from inexactness between the objective and exceptional situations; for example, laws prohibiting polygamy or statutory rape despite the fact that in some circumstances their objectives would not be served by a prosecution. Thus, the United States Court of Appeals for the Eleventh Circuit has upheld the constitutionality of a Florida statute that excludes homosexuals from adoption, even though some homosexuals might prove superior in rearing a particular child than a married opposite-sex couple. Lofton v. Secretary of the Department of Children and Family Services (January 28, 2004).

Supreme Court decisions have tacitly assumed the rationality of state efforts to promote traditional monogamous family structure. In Reynolds v. United States (1878), the Court sustained the constitutionality of anti-polygamy laws, and explained: “An exceptional colony of polygamists under exceptional leadership may
sometimes exist for a time without disturbing the social condition of the people who
surround it; but there cannot be a doubt that unless restricted by some form of con-
stitution, it is within the legitimate scope of the power of every civil government
to determine whether polygamy or monogamy shall be the law of social life under
its dominion." The Eleventh Circuit similarly explained in *Lofton*: "Although the in-
fluence of environmental factors in forming patterns of sexual behavior and the im-
portance of heterosexual role models are matters of ongoing debate, they ultimately
involve empirical disputes not readily amenable to judicial resolution—as well as
policy judgments best exercised in the legislative arena. For our present purposes,
it is sufficient that these considerations provide a reasonably conceivable rationale
for Florida to preclude all homosexuals, but not all heterosexual singles, from adopt-
ing."

Homosexual sodomy prohibitions held unconstitutional in *Lawrence* are sharply
distinguishable from opposite-sex marriage limitations. The former punished private
intimate action; enforcement required invasions of the bedroom; and, the state inter-
est behind the law was to uphold traditional moral prejudice against homosexuals.
The latter entail no punishment of private intimacies; enforcement implicates no
privacy interests; and, their purpose is not placation of homophobia, but to encour-
age an optimal child rearing environment.

DOMA is not constitutionally flawed simply because it probably does no more than declare by statute what the Full Faith and Credit Clause means as regards
same-sex marriage. The Supreme Court commonly gives some deference to the views
of Congress, which make federal statues presumptively constitutional. Thus, the
DOMA declaration regarding the Clause is more than decorative.

DOMA also furthers the purpose of Full Faith and Credit: namely, state-to-state
comity and federalism. It is enshrined in Article IV, which also guarantees equal
state treatment for out-of-state citizens regarding state privileges and immunities.
DOMA reinforces the right of each State to chart an independent course regarding
same-sex marriage unwarped or vitiated by sister State policies. DOMA neither en-
courages nor discourages States from recognizing same-sex unions. It is scrup-
ulously neutral on that score. The only policy promoted by DOMA is the federalism
celebrated by the Tenth Amendment.

Even if DOMA granted States marginally more constitutional space to refuse rec-
ognition of out-of-state same-sex marriages than permitted by the Full Faith and
Credit Clause, it would nevertheless be sustainable under the necessary and proper
clause of Article I as helpful to strengthening federalism. No State enjoys a legiti-
mate interest in the marriage rules for residents of a sister jurisdiction. Similar to
DOMA and the reach of the Full Faith and Credit Clause, the Supreme Court
upheld the power of Congress to authorize States to discriminate against interstate
commerce in ways that would violate the Commerce Clause in the absence of con-

For the reasons elaborated above, DOMA rationally advances the government in-
terest in optimal conditions for procreation and child nurturing. That Congress did
not attempt to address other potential Full Faith and Credit marriage issues is con-
stitutionally undisturbing to either equal protection or due process. Congress may
treat problems piecemeal based on the urgency of the evil or experimentation nec-
 essary for learning. Wholesale or blanket solutions are not constitutionally man-

In sum, DOMA is constitutionally irreproachable and contributes to the fed-
eralism saluted by the Tenth Amendment and the Full Faith and Credit Clause.
Contemporary consensus amendment

By Bruce Fein
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The U.S. Constitution needs amending to prevent state court judges from usurping legislative power to ordain same-sex "marriages" through exotic interpretations of state constitutions or statutes.

The Supreme Judicial Court of Massachusetts exemplifies the usurpation, and has provoked a proposed amendment to the state constitution to undo its judicial caper.

But curative political remedies are unsatisfactory. To apply them retroactively to dissolve homosexual marriages legally entered under a judicial roof would be both wrenching and unfair to the affected same-sex couples. Accordingly, a constitutional amendment to forestall state judicial outranliness in same-sex "marriage" litigation is justified.

By insisting the subject remain with legislatures or the people through popular initiative or referendum, the contemporaneous consensus amendment would address a salient feature of democratic governance, the customary yardstick for determining whether an issue is worthy of enshrinement in the U.S. Constitution.

But for the Bill of Rights (a virtual codicil of the original Constitution), amendments have generally concerned major issues of self-government, republican architecture: federal-state relations, emancipation, the franchise, direct election of senators, a two-term presidency, presidential disability or succession, the electoral college, the federal power to levy an income tax, and, congressional compensation. The ill-fated Prohibition Amendment is the exception that proves the rule.

The raging controversy over same-sex "marriage" raises a nontrivial question of democratic governance: whether the policy will be determined by unrepresentative courts or by a contemporary consensus that finds expression in legislative bodies or popular initiatives or referenda.

Enlightened government generally resists abrupt changes except through commanding majorities. Same-sex marriage would mark a sharp break from centuries of celebrating matrimony as a union between man and woman to promote optimal procreation and child-rearing. Whether such a dramatic departure in marriage law should be taken is thus a decision more fit for legislatures than for courts.

Bans on same-sex marriages are persuasively distinguished from miscegenation laws held unconstitutional by the United States Supreme Court in Loving vs. Virginia (1967). Criminal penalties for interracial marriages were then part of a larger network of white supremacy laws calculated to subjugate blacks, including discrimination in the franchise, education, employment, housing, law enforcement, and otherwise. Their odious purpose was white racial purity.

In contrast, contemporary prohibitions on same-sex marriages seek to further procreation and optimal emotional and psychological nurturing of children. Unlike Jim Crow laws, the prohibitions do not relegate homosexuals to subservience denied the franchise, equal educational opportunity or constitutional due process. Furthermore, social prejudices against homosexuals are receding daily.

A contemporaneous consensus amendment is necessitated by same-sex marriage

exponents asking state courts to distort the original meanings of state constitutions, anti-discrimination or domestic relations statutes to prohibit the reservation of matrimony to opposite-sex couples. The provisions invoked before the courts were enacted in an era when discrimination based on sexual orientation was passe. To interpret them today as mandating recognition of same-sex "marriage" does violence to the meaning intended by their authors and improperly crosses the line between judging and legislating.

The Massachusetts Supreme Judicial Court is exemplary, where a narrow 4-3 majority fatuously interpreted the state constitution as intended to erase any distinction between opposite-sex and same-sex marriage applicants. A few years before the Massachusetts caper, the Hawaii Supreme Court had tortured the language of the Hawaii state constitution in favor of same-sex marriages. A state constitutional amendment swiftly followed to correct the judicial adventurism

At present, a Massachusetts copycat suit is pending before the California Supreme Court occasioned by same-sex "marriage" licenses issued by the mayor of San Francisco despite a recent California initiative defining marriage as a union between husband and wife. New Mexico, New Jersey, New York, and Oregon are also ripe for avant-garde judicial decrees requiring official recognition of homosexual "marriages" performed within their respective jurisdictions or elsewhere.

Democratic governance principles, however, counsel support for entrusting that controversy to legislatures or popular vote. Both sides are fairly represented in public debate and legislative chambers. No artificial barriers impede the enactment of laws sanctioning same-sex marriages, a proposition corroborated by impressive state and municipal legislation that have banned discrimination based on sexual orientation, repealed prohibitions on homosexual sodomy and penalized as hate crimes violence motivated by homophobia.

Further, social change is invariably less jarring and more acceptable to the community when the agent is popular consensus forged from all viewpoints as opposed to unrepresentative courts listening only to a handful of litigants.

The contemporary consensus amendment should thus prohibit judges from interpreting any pre-existing state constitutional provision or law as requiring official recognition of same-sex marriages. The prohibition would permit courts to implement new additions to state constitutions and statutes that expressly endorse homosexual marriage.

The demarcation line between old law and new law would, however, ensure that if same-sex marriage proponents prevail, they will do so by convincing popular majorities, not by persuading a handful of judges bent on social engineering.

Bruce Fein is a constitutional lawyer and international consultant at Fein & Fein and The Lichtfield Group.
Mr. CHABOT. We have now reached the point where the Members of the panel up here will each have 5 minutes to ask questions of the witnesses and I will begin by recognizing myself for 5 minutes.

My first question, I address to all four panel members if you choose to answer. I know it is impossible to predict with certainty what courts might do or ultimately what the Supreme Court might do in a given matter, but you all are the experts here and one of the main purposes of the hearing is to determine this. What is the likelihood that DOMA would be struck down by a Federal judge and ultimately go to the Supreme Court and perhaps be struck down there under either the Equal Protection Clause or the Due Process Clause or Full Faith and Credit Clause or for any other reason? Mr. Barr, if you would like, we can start with you and go down the line.

Mr. BARR. Thank you, Mr. Chabot. As the primary sponsor of the Defense of Marriage Act, I can perhaps offer the most objective view in answer to your question. [Laughter.]

I think that it was and remains a very carefully crafted, limited piece of legislation. Those of us, including many members of this panel and the full Judiciary Committee, participated, as did many of the individuals behind me, Reverend Sheldon, for example, participated in the drafting of this and we kept in mind the precise question that you, Mr. Chairman, have so eloquently addressed, and that is will it withstand a challenge?

I think it will because it is narrowly crafted and it is clearly—it limited itself to clearly those matters within the jurisdiction of the Congress and did not go beyond it.

I feared at the time and would fear now that had we used it as a proactive, defining piece of legislation, trying to force the States to do something, that the answer to your question would be no, it would not be held to be constitutional. But because we did in a much more limited way, that is the drafting of it, I feel very confident that it will be upheld.

Mr. CHABOT. Thank you. Mr. McCarthy? And if you could also address not only whether it would ultimately be, but the likelihood of a Federal judge striking it down and then having it go up the process.

Mr. MCCARTHY. Sure. The position of the ACLJ is that DOMA is constitutional and should be upheld by judges before whom that case is heard. However, it is always possible that a judge will come up with a decision that doesn't make sense, that just—I mean, if you look at the Goodrich decision, I was talking to Mary Ann Glendon, a professor at Harvard, the day after Goodrich came down and she said she sat at the table with other faculty members at Harvard, including Tribe and other liberals, and they were all shocked by the decision in Goodrich. They were all surprised by the decision in Goodrich. If you had asked them ahead of time whether the court in Massachusetts would have ruled that way, they would have said no, there is really no chance of that happening.

So in answer to your question, there is always a chance that a Federal judge will strike it down and that is what we are concerned about and that is why we want this insurance.

Mr. CHABOT. Thank you. Senator Hanes?
Mr. HANES. Mr. Chairman, Members of the Committee, one thing I learned early in my legislative career is that if you don't know the answer of something, you just say I don't know.

The DOMA enjoys a widespread approval in our State. Our entire State delegation to Congress voted in favor of it and our hope is that it would be upheld. But as far as whether a court would rule yes or no on that, I will have to invoke the "I don't know."

Mr. CHABOT. Thank you. Mr. Fein?

Mr. Fein. I think the likelihood is extremely slim. Justice Kennedy, whether or not Justice Scalia agreed, declared in the Lawrence case that the decision would not cast a cloud over marriage defined as between persons of the opposite sex, and the Supreme Court has repeatedly stated that a lower court should never anticipate an overruling or a change in course by the U.S. Supreme Court.

I don't see, unless the Supreme Court backs away from that dicta in Lawrence, any lower Federal judge deciding that the Defense of Marriage Act is unconstitutional because it somehow burdens a fundamental constitutional right that hasn't yet been proclaimed by the U.S. Supreme Court.

Mr. CHABOT. Thank you very much. My time has almost expired, and by the time I got the next question out, there wouldn't be time to answer it, so I am going to yield back my time and defer to the gentleman from New York.

Mr. NADLER. Thank you. Let me ask, and ask that you have a brief answer because I have a bunch of questions to ask. Mr. Fein, just following up on that last question, you do not believe that DOMA would be held unconstitutional by the Supreme Court for the reasons you stated, so therefore you do not believe in the necessity of a constitutional amendment on the subject?

Mr. FEIN. I wouldn't be so sweeping as to say there is no constitutional amendment that wouldn't deserve support, as I indicated, one that is limited not to requiring or addressing whether or not there ought to be same-sex marriages recognized but simply one that stated if there is to be made that decision, it shall be by State legislatures rather than State judiciaries.

Mr. NADLER. And that, of course, gets into the problem that Mr. Barr was discussing about why should we tell State courts what to do in interpreting their own Constitutions. Let that be up to the people of the States through State constitutional amendments or whatever.

Let me ask the members of the panel, in testimony from Senator Hanes, I am going to read you a paragraph. He said as follows: "Although he has more recently said that he would support whatever the decision the President makes on the issue, another esteemed son of Wyoming, Vice President Dick Cheney, said, and this is a quote from him, 'The fact of the matter is, we live in a free society and freedom means freedom for everybody and I think that that means that people should be free to enter into any kind of relationship they want to enter into. It is 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 is appropriate. I don't think there should necessarily be a Federal policy in this area.'"
Let me start with Senator Hanes and then ask the other members of the panel, do you believe that Vice President Cheney is wrong now in repudiating that view and supporting an amendment and was right when he said this, or was he wrong then? Which view do you—I mean, he can’t be right both times, so which do you agree with? Senator Hanes?

Mr. HANES. Mr. Chairman, Congressman Nadler, I would have to say that I would hope that he was right then, because I think that is a much more accurate expression of what his philosophy is, or maybe should be. So without looking into his mind, I would say that I really like the first expression better.

Mr. NADLER. Thank you. Mr. McCarthy?

Mr. MCCARTHY. It is more of a political than a legal question, really, but I will say I certainly would disagree if he says that people are entitled to enter into, “any kind of relationship they want to.” If that were true, then polygamy would still be legal.

Mr. NADLER. Congressman Barr?

Mr. BARR. Mr. Nadler, I certainly don’t think that the Vice President in 2000 was advocating polygamy.

Mr. NADLER. He wasn’t thinking of it, clearly. [Laughter.]

Mr. BARR. I doubt it, and I doubt that he is now, either. But I was struck at the time, that is during the 2000 election, by the eloquence and accuracy of the Vice President’s statement and that remains my opinion.

Mr. NADLER. Thank you. Mr. Fein?

Mr. FEIN. I suggest maybe taking a paraphrase of Henry Clay. Mr. Cheney thought perhaps it wasn’t as good to be right as to be Vice President a second time when he changed his mind in an election year.

Mr. NADLER. So you are saying that you agree with his first statement, not his current statement?

Mr. FEIN. Yes.

Mr. NADLER. Thank you. The double negatives there are a little confusing.

Let me ask Congressman Barr the following question. I, as you may recall, voted against DOMA. I do not approve of it, but that is not the point. DOMA really had two parts to it. One said that if a given State recognized a same-sex marriage, nonetheless, the Federal Government would not in terms of Internal Revenue Code or anything else. And the second part of DOMA, which got most of the publicity at the time, was that never mind the Full Faith and Credit Clause, no State should have to recognize a same-sex marriage entered into in the first State.

I thought at that time that that clause was unnecessary, because the Supreme Court has recognized for 150 years the public policy exception to the Full Faith and Credit Clause that says that if recognizing an act—if State B, recognizing an act of State A, would be against its public policy, then despite the Full Faith and Credit Clause, it doesn’t have to do that. It has been settled law for a century and a half that that applies.

So when we had the miscegenation statutes, for instance, one State, if it has an anti-miscegenation statute, was not compelled to recognize an interracial marriage entered into in another State until the Supreme Court struck that down, the whole subject.
So I thought that that clause was either unnecessary because they wouldn't be forced to recognize in any event, or unconstitutional because if for some reason they said the public policy part was unconstitutional as applied here, then you needed a constitutional amendment, not a statute to overturn that.

Do you agree that at this point, given the fact that the Supreme Court, that no court has ruled on the public policy exception, that it would be greatly premature to anticipate the decisions of the Supreme Court with respect to the public policy exception and assume that the courts would force one State to recognize the same-sex marriage from another State at this point, frankly, with or without DOMA?

Mr. CHABOT. The gentleman’s time has expired but the witness can answer the question.

Mr. BARR. I believe that it would be premature at this point to presume that the courts will rule on either basis, either on the Full Faith and Credit Clause or on public policy, once the issue is presented, which I am confident it will be over the course probably of the next year or so. But one of the main factors leading to my opposition to any of the Federal marriage amendments is that it is premature. I disagree with them on substantive principle grounds, as well, but I do believe they are premature.

Mr. CHABOT. The gentleman’s time has expired.

The gentleman from Iowa is recognized for 5 minutes.

Mr. KING. Thank you, Mr. Chairman. This has been an interesting series of testimony here in the panel. I am trying to sort out which one of you I actually agree with all the way down the line, and I am not sure I do with any of you exclusively, and yet I agree with some of what each of you have had to say, and maybe that is a good measure of a good balance of witnesses, as some Members of the minority party pointed out at the beginning of this hearing.

An interesting comment made by Mr. Fein, it is always possible that a judge will come up with a decision that doesn’t make sense. That almost echoes a number of things that I have said. As I watched the Supreme Court in Massachusetts consider that decision, and that decision wasn't made on Full Faith and Credit but made on the fourteenth amendment, I assume—I have not read that decision—but at least with that philosophy of equal protection and the guarantee that that equal protection flowed over into relationships that have to do with sex and relationships outside of our traditional marriage.

So when I see that flow from that court and I see how the United States Supreme Court ruled in *Romer v. Evans*, it isn’t hard for us to fast-forward in our legal and sociological and historical mind’s eye to the point where a court would impose the fourteenth amendment with regard to relationships between people and start us down the path of, now we have preserved marriage and so we want to guarantee that same alternative for same-sex couples. We would also, maybe by the courts, resolve that we would have homosexual marriage, but also civil unions, domestic partnerships, any series of combinations of agreements that can be met between two people. These things, by the way, do access benefits from employers and from the taxpayers, and that is a big part of this equation.
I would point out that we provide in the States in this Union a marriage license, and a license is, by definition, a document that gives you permission to do something which is otherwise illegal. It is a privilege, not a right, to get married just like it is a privilege to drive. It is not a constitutional right.

So we prefer and benefit marriage for all the reasons that Mr. Fein testified, and as the remarks that I made in opening remarks, and now as this list of alternatives gets long as we fast-forward it into the future—marriage, homosexual marriage, civil union, domestic partnerships, bigamy—where do we draw this line? Polygamy? Group marriage?

And in the end, can you see into the future—I think I am going to direct this at Mr. Fein—how this society, if imposed by one or two simple decisions of the court, could then move forward down the path of just simply, I will say, overturning the section of the Utah Constitution that prohibits polygamy and take us to the point where we could have group marriage of any combination, any combination of sex, for the purpose of accessing benefits, retirement benefits and health care and dental and all the series that come with that? Where does this nation go if we start down this path? I mean, isn’t it really a slippery slope that turns it into a nationwide group marriage, conceivably, at the outermost limits of this direction we are going, Mr. Fein?

Mr. Fein. All Supreme Court doctrines are matters of degree and you can certainly extrapolate from decisions of the High Court that final dystopia that you have described. But I do think if you examine the pattern of Supreme Court decisions, as well as at the State level, it has a substantial congruence with changing public opinion and orthodoxy. If orthodoxy does not in the popular mind come to accept polygamy, I don’t see that finding expression in any Supreme Court or lower court decision, even how logically it might extend beyond same-sex marriages.

That is why, in my judgment, the way in which to forestall the legitimate worries that you voice is simply by insisting, and this would be an element of guaranteeing a republican form of government, that decisions with regard to same-sex marriages shall be made by the State legislatures in enacting new laws or enacting an amendment to the State Constitution prospectively after the ratification of an amendment. That seems to me a proper structural decision of the Federal Government. It does not either favor or oppose same-sex marriage. It says, if a decision is going to be made, it shall be made by a contemporary consensus of the people.

Mr. King. I would point out that in a local Iowa district court, we had a dissolution of marriage that was issued upon a Vermont civil union.

I see my time has expired, which I regret. Thank you, Mr. Chairman. I will yield back.

Mr. Chabot. The gentleman’s time has expired.

The bells you heard, we have two votes on the floor. The first one is a 15-minute vote and the next one is a 5-minute vote. We will recess until noon, because it might be a couple of minutes before or after that, but assuming that the votes are over, which they should be, we will be in recess until noon. Thank you.

[Recess.]
Mr. CHABOT. The Committee will come to order. If the witnesses would take their seats again.

The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

I had one kind of preliminary question, and that is since we call these things the Defense of Marriage, a traditional marriage, as I understand it, is not affected by DOMA or by the proposed constitutional amendment in any way, is that right?

Mr. FEIN. Yes.

Mr. SCOTT. Okay. Under DOMA, one of the questions that has kind of come up from time to time in different ways, but some of us viewed it as either unconstitutional or unnecessary. If it is constitutional under the Full Faith and Credit, are there examples of a marriage in one State that was not recognized in another State? I understand there are cases of cousins and other kinds of marriages that may have been legal in the State in which it was performed, but not legal in—another State did not have to recognize it, is that right?

Mr. FEIN. I think the examples given were the era of miscegenation laws, where marriages between persons of the opposite race, different races, in one State were not recognized necessarily in other States, which was accepted as an exception to the Full Faith and Credit Clause because of strong public policy disagreement.

Mr. SCOTT. If a person had been married legally in another State, moved to a State where those laws applied, what would happen in terms of inheritance? Would the marriage be recognized for the purpose of inheritance?

Mr. FEIN. It wouldn't be recognized for any purpose if the State to which they moved had a strong public policy against recognizing the marriage.

Mr. SCOTT. Are there Supreme Court cases on that point?

Mr. FEIN. With regard to the miscegenation laws, no. I think the Supreme Court cases that address the public policy exception have never had opportunity to address it in the concept of marriage. But the general principle was articulated as strong public policy and relied upon by the States to justify their non-recognition of certain marriages between persons of different races.

Mr. SCOTT. Under an Equal Protection evaluation, would this legislation be subject to strict scrutiny and narrow tailoring, or would it be judged by some other standard?

Mr. FEIN. I think the standard would be a rational basis test. That is indicated, I think, implicitly, not explicitly, in Justice Kennedy's opinions, both in the Romer case and in Lawrence v. Texas, where he didn't explicitly describe a standard he was applying, but that seemed to be the relaxed standard that he was using. The one critical case post-dating the Lawrence decision by the 11th Circuit did use the rational basis standard for determining whether or not same-sex classifications were constitutional and it found a Florida statute that precluded homosexual couples from adopting satisfied the rational basis test.

Mr. SCOTT. Is that on appeal?

Mr. FEIN. To the United States Supreme Court? I don't know whether a petition for certiorari has been filed in that case. The de-
cision was rendered, Mr. Congressman, on January 28. Typically, you have 90 days, unless you ask for an extension, to seek further review.

Mr. Scott. We know that couples exist, whether they can get married or not. I guess the question is, what rights ought to be available to those couples, like inheritance rights, Social Security benefits, that ought not be available to same-sex couples? We know people will have children whatever we pass in terms of legislation, and same-sex single uncoupled persons have babies.

What rights ought to be available, ought not to be available to same-sex couples that are available to different-sexed couples? Inheritance rights? Social Security benefits? Right to file a joint tax return? The proper way to hold property? Responsibility for each other’s debts? Which rights or privileges or responsibilities should not be available?

Mr. Fein. I don’t think I would have the audacity to try to usurp a primary legislative function. I think that is something for State legislative officials to decide. I do think on that score, however, it is worth considering whether or not those kinds of rights also are denied to persons who have intimate relations even though they don’t recognize it as marriages, such as brothers, sisters, brothers and sisters, grandparents and children, and things of that sort, and whether or not if there is to be an extension of the benefits that characteristically have belonged to persons of traditional marriages, whether the extension should go beyond those who are same-sex couples as opposed to others of similar intimacy.

Mr. Chabot. The gentleman’s time has expired.

The gentleman from Alabama is recognized for 5 minutes.

Mr. Bachus. I appreciate that, Mr. Chairman.

Let me ask Mr. Fein or Mr. Barr or Mr. McCarthy—Senator Hanes, I think you said you weren’t a legal expert, so you can answer this question also, but I am not sure that you want to, but feel free to. If the Defense of Marriage Act were struck down as unconstitutional, what would be the likelihood that the public policy exception in the Full Faith and Credit Clause doctrine would also be held unconstitutional, at least regarding its application allowing States to resist recognizing out-of-State same-sex marriage licenses?

Mr. Barr. I think as a—it is always difficult, as you know, Mr. Chairman, to handicap these things, and not only that, but the basis on which the courts might render the decisions. I would think, though, that it probably—this sort of thing is like an election. Once you see those first results come in, that indicates part of a trend and I think that the house of cards would probably fall.

Mr. Bachus. Mr. McCarthy?

Mr. McCarthy. I agree.

Mr. Bachus. You agree?

Mr. Fein. I can’t see any distinction between saying that the Defense of Marriage Act would be unconstitutional, and it is largely an echo of the Full Faith and Credit Clause, and yet have the public policy exception survive Full Faith and Credit Clause scrutiny.

Mr. Bachus. Let me ask you this, Mr. Barr, being a former Member, or Congressman Barr. In 1996, we passed the Defense of Marriage Act. The vote was 342 to 67, almost general agreement
that marriage was something worth defending. What do you think that the—all of a sudden, we are hearing Members that voted for this suddenly are no longer willing to defend or define marriage as between a man and a woman. What do you see that as an indication of?

Mr. BARR. I am not sure—I haven’t followed it that closely in terms of which Members that might have voted for the Defense of Marriage Act now have switched and now would have voted against it. I do think that there are, Mr. Chairman, a lot of folks, such as myself, perhaps, although I am no longer a Member, who remain very strong supporters of the Defense of Marriage Act, who remain very strongly opposed to same-sex marriages, but who don’t favor the remedy of a constitutional amendment. I think that the number of people that fall in that category probably is very similar to what it would have been back in 1996.

I think that, as you know, particularly on this Committee and in the Congress at large, our Members take very seriously their responsibility. They look very carefully at these things and they can, as many are now doing, drawing a distinction between one remedy as opposed to another and finding that one may be within the proper jurisdiction and purview of the Congress but another might not be.

Mr. BACHUS. Thank you. Senator Hanes, being you are from Wyoming, if the vast majority in my State, say 85, 90 percent of the people, strongly believe that a marriage ought to consist of a union between a man and a woman, do you think that we have the right to enforce that policy within our own State boundaries?

Mr. HANES. Congressman Bachus, yes, I certainly would agree with that, that we should be enforcing it within our own boundaries. That would express a very strong public policy, I think, in favor of limiting marriages to a man and a woman.

In fact, we have a statute that says that very thing that has been on the books since 1957. Wyoming was the very first State to adopt a statement of that nature. As far as I can tell, we would still stick with it.

Mr. BACHUS. Thank you. I yield back my time.

Mr. CHABOT. The gentleman yields back.

The gentlelady from Wisconsin is recognized for 5 minutes.

Ms. BALDWIN. Thank you, Mr. Chairman.

In listening to the testimony of the witnesses, I am noting that marriage confers upon parties eligible to enter marriage a series of benefits and obligations, responsibilities, privileges. When I was serving in the Wisconsin State legislature in the 1990’s, we counted the number of references to the words spouse, husband, wife, mother, father, parent, et cetera, and specifically there were well over 1,000 provisions that presented responsibilities or rights, obligations to parties eligible to enter the institution of marriage.

I know there has been a lot of discussion during this hearing also that marriage is predominately or primarily to protect and benefit children. I guess I would note two inconsistencies. One is that in many of the marriage statutes that I have seen, whether it is in the State of Wisconsin or other States across the United States, that many of those responsibilities are between the adult parties and may or may not have relationship to protection of children.
As Mr. Fein noted in his testimony, we have an inexactness of
laws. We don’t question when somebody applies for a marriage li-
cense whether or not they intend to have children, nor do we dis-
qualify people who, from the very appearance, couldn’t possibly—
perhaps they are senior citizens and we can make some presump-
tions about their capacity to have children.

And yet, I want to, I guess, note the reality that—and there are
not precise figures, but I think most experts would agree that well
over a million children in this country are being raised in gay and
lesbian families. Some have said that the number could be any-
where between a million and nine million children. They are being
raised in healthy, loving families by parents who could protect
them in additional ways could they secure these obligations, these
rights, these responsibilities, these benefits.

Now, I know we have talked a little bit about the inexactness of
the laws. I am also concerned about the inexactness of the research
that has been discussed here about the healthiness of families in
America. Mr. McCarthy, in your written testimony you said, and I
quote, “No research indicates that the offspring of traditional mar-
ital relations also trend toward greater health and more developed
social skills.” Then you go on to say that “claims that raising chil-
dren within a homosexual union is not damaging to the children
are entirely impeached by flawed constructions and conclusions.”

For the first point, you cite an article in the Washington Times
about one study regarding the benefits of marriage. For the second
point, you cite two studies that you claim debunk all of the re-
search that cites the benefits of raising children in same-sex fami-
lies. I would suggest to you that there is a great deal of research
that does indicate that two-parent families, including gay and les-
bian families, provide greater stability for children than single-par-
ent families. There is hardly a consensus.

I would go further to say, DOMA essentially emerged from a de-
bate that was occurring in the State of Hawaii. There was litiga-
tion in the State of Hawaii and the State was arguing against
same-sex marriage by saying that it is the State’s interest in regu-
lating marriage for the benefit of children and they were allowed
to bring expert witnesses of their choosing. Additionally, the plain-
tiffs in that case were also allowed to bring expert witnesses of
their choosing.

As a result of that trial, the trial court judge concluded that the
overwhelming evidence in terms of peer-reviewed studies, et cetera,
indicated that a very healthy family could emerge headed by gay
or lesbian individuals.

I note that my time has run out before I have had a chance to
pose the questions, but I guess I would leave with the rhetorical
question of, don’t these one to nine million children in the United
States deserve the equal rights of those who are raised in families
where they can seek the protections of marital laws?

Mr. Chabot. The gentlelady’s time, as she indicated, has expired,
but if any of the witnesses would like to answer the question, they
are welcome to do so.

Mr. McCarthy. I think it was addressed to me, so I would like
to answer it. The answer is yes, these children deserve all the ben-
efits that a child would have in a two-family [sic] household, so I agree with that.

However, the studies are overwhelmingly in favor of the fact that children brought up in an opposite-sex family home are far better off than children brought up in a fatherless or motherless home which is what a homosexual relationship is or a lesbian relationship is. Remember, a lesbian relationship, there is no father. In a homosexual relationship, there is no mother.

We don't need any—we have lots of new statistics on that. In fact, I assembled 141 studies for the Governor of Massachusetts recently, which I would be glad to send over to you. But the overwhelming research even before this recent issue arose was that children brought up in fatherless homes and children brought up in motherless homes were far worse off in every indicia of analysis.

Mr. CHABOT. I would ask that the gentleman make those studies available to the Committee——

Mr. MCCARTHY. I would be happy to.

Mr. CHABOT. —and that they be made a part of the record, without objection.

[The information of Mr. McCarthy follows in Appendix]

Mr. NADLER. May I ask a question?

Mr. CHABOT. The gentleman is acknowledged for 1 minute out of order.

Mr. NADLER. Thank you. I just wanted to ask a question. Mr. McCarthy, I think you just made that statement. You said the studies all show that children brought up in two-parent father-mother families are much better off than in one-parent families?

Mr. MCCARTHY. Than in fatherless families or motherless families.

Mr. NADLER. Do those studies compare two-parent families with one-parent families, or do they compare—or are they both? Characterize them, please, whether they compare father-mother families with same-sex couples and see if there is a difference there. In other words, I think I have seen any number of studies that say that a kid brought up with a mother and a father is a heck of a lot better than a kid brought up with a mother or a father, but not together.

Mr. MCCARTHY. That is what I am talking about.

Mr. NADLER. But are the studies that you are talking about, are you aware of studies that show that kids brought up in a mother and a father family are much better off or the same or whatever than kids brought up with two fathers or two mothers?

Mr. MCCARTHY. Sure.

Mr. NADLER. What studies?

Mr. MCCARTHY. The kid brought up in a family with two fathers or two mothers is being brought up in a fatherless or motherless family.

Mr. NADLER. But fatherless or motherless could be two different situations. I am asking specifically—in other words, you can describe two women as fatherless. You can also describe a single-parent family as fatherless.

Mr. MCCARTHY. Right.

Mr. NADLER. So when you say that studies show that a fatherless family or a motherless family, you could be talking about two dif-
different situations. So the question I am asking is, are there studies, and could you supply them if there are, that show the distinction between outcomes for children brought up in a two-parent standard mother-father family or in a two-parent same-sex family?

Mr. McCarthy. There are. I don't know the breakdown of how many of which and how many of the other there are, but——

Mr. Nadler. Can you supply them?

Mr. McCarthy. I will provide you with a whole group.

Mr. Nadler. Okay. Thank you.

Mr. Chabot. The gentleman will provide them to the Committee. We appreciate that.

Mr. McCarthy. Yes.

[The information of Mr. McCarthy follows in the Appendix]

Mr. Chabot. The gentleman from Indiana is recognized for 5 minutes.

Mr. Hostettler. I thank the Chairman.

Mr. Barr, Congressman Barr, good to see you back in this chamber. As you were developing the legislative vehicle that became DOMA, was it your understanding that the Federal courts would be empowered to strike down Congress's article IV authority with regard to the Full Faith and Credit?

Mr. Barr. That the courts would be empowered—that Congress would be empowered to strike——

Mr. Hostettler. The courts. The courts.

Mr. Barr. The courts would be empowered to strike down——

Mr. Hostettler. Our article IV authority, the Full Faith and Credit Clause.

Mr. Barr. That they would be empowered to? No.

Mr. Hostettler. No. So the substance of the Constitution, the wording of the Constitution is such that Congress may by general auspice prescribe the manner in which such acts, records, and proceedings shall be approved and the effect thereof. There is no addendum to that that says, if the Supreme Court thinks it is okay?

Mr. Barr. Not as of my last reading of the Constitution.

Mr. Hostettler. Right. And what we are talking about today is suggesting that the court has the authority to strike down the Defense of Marriage Act, which I don't think that that is found in the Constitution.

However, Mr. McCarthy, in your written testimony, in two places, you talk about the issue of DOMA and you say, as far as DOMA goes, it is, one, justified as an exercise of clear Congressional authority under the Constitution, and then two, of undiminished constitutionality in light of intervening decisions of the United States Supreme Court, which is interesting. Then later on, you say the constitutional authority of Congress to regulate the extra-State impact of State laws is patent in the Constitution and established in judicial decisions. The text of the clause, Supreme Court decisions discussing it, legislative history, and scholarly commentary all reflect the broad scope of Congress's power to regulate the extra-State impact of State laws.

I am intrigued by that, because in both places, you give some sense of credibility to the fact that even though the Constitution says it, it needs some sort of judicial imprimatur placed on it. Is that your belief, that——
Mr. McCarthy. What I said was that in subsequent decisions after DOMA was passed, DOMA has never been questioned. It hasn't been held unconstitutional, any part of it. To the best of my knowledge, it hasn't been—no part of it has been struck down. Let me take back the fact that it hasn't been questioned. It has been questioned. There is a case in Nebraska right now, the *Bruening* case, where it is being questioned and a constitutional DOMA is being questioned.

Mr. Hostetler. So what would happen if the Supreme Court would strike down DOMA? What happens if—they struck down *Bowers v. Hardwick*. The rationale behind *Bowers v. Hardwick* and *Lawrence v. Texas*, actually a majority did, five of them, at least, struck down that decision. But they suggest Kennedy in his opinion for the majority and O'Connor in her concurring opinion suggest that we are not talking about marriage.

But let us say tomorrow they say, well, the Congress let us by with this. The people are letting us by with this. So we are going to talk about marriage now. What would happen if they would strike down the Defense of Marriage Act? Do you believe——

Mr. McCarthy. We would have no protection with regard to one man, one woman marriage. Those who want to protect marriage and traditional marriage wouldn't have their protection.

Mr. Hostetler. Let me go on a heretical pathway to you. Let us say that that took place and that the decisions in Massachusetts and the conferrence of marriage licenses in Massachusetts, we have folks move to Indiana, my State, where we do not allow for same-sex marriage and same-sex unions. What would happen, practically speaking, if the governor of the State of Indiana said we would not recognize the marriage license of the people from Massachusetts? To preempt you to a certain extent, I am not talking about *Plessy v. Ferguson* or *Brown v. Board of Education* or previous governors standing in the doors of schoolhouses. I am talking about the governor of the State of Indiana saying, we will not recognize? What would practically have to happen for that decision to be enforced?

Mr. McCarthy. The governor's decision?

Mr. Hostetler. No, the Supreme Court decision.

Mr. McCarthy. The Supreme Court decision striking down DOMA?

Mr. Hostetler. Yes.

Mr. McCarthy. Well, the State would—first of all, you would have to look and see if the State had a mini-DOMA. Thirty-eight States have their own DOMA. But assuming that the Federal DOMA was struck down, I would assume that the mini-DOMA would be struck down, as well.

So that then leaves you with the right of the State according to its own public policy to accept or reject a judgment from another State, to grant it Full Faith and Credit or not grant it Full Faith and Credit based upon that State's own public policy.

So again, you don't have nearly as much protection there because the State could say under its public policy that it is not going to reject same-sex marriages that come in from other States once DOMA is gone.

Mr. Hostetler. Without objection, may I have one more moment for one follow-up question?
Mr. CHABOT. Without objection, the gentleman is granted an additional minute.

Mr. HOSTETTLER. What would happen to the elected leadership that would say, we are going to allow Massachusetts marriage license in the State of Indiana to be recognized? Do you have an idea? If not, I could give you a good idea.

Mr. MCCARTHY. I don’t have an idea.

Mr. HOSTETTLER. Well, they would be run out of town on a rail and they would be voted out of office. So my question is very simply this, that though the court would say a thing, it takes an executive action to enforce that, which is what Hamilton said when he said, it may truly be said to neither have force nor will, the judiciary, but merely judgment and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

So I just ask that question because sometimes whenever we get folks together to talk about issues of constitutionality, we tend to believe that once the Court says a thing, that that is like divine revelation and that someone has to follow that.

Mr. MCCARTHY. Yes.

Mr. HOSTETTLER. But, in fact, it does take an executive action to give animation to that decision.

Mr. MCCARTHY. That is not only true but it is a concept in constitutional law that has been virtually lost in the increased authority taken by the judiciary in this country.

Mr. HOSTETTLER. Thank you. Thank you, Mr. Chairman.

Mr. CHABOT. The gentleman’s time has again expired.

The gentleman from California is recognized for 5 minutes.

Mr. SCHIFF. Thank you, Mr. Chairman.

I would like to ask each of the panel members about their interpretation of the proposed amendment. Is this an amendment, based on its language, that seeks to ensure that DOMA is upheld, that the principle of DOMA that one State should not have to enforce the marriage laws of another State is upheld? Is that the purpose of this amendment, or does the amendment really—is it designed to go beyond that and say, not only will we preclude any State from being able to enforce its marriage laws on another State, but we want to take away the ability of any State to interpret its own laws regarding the institution of marriage? Which of these two purposes is the design of the amendment?

Mr. FEIN. Congressman, could you describe which amendment you are referring to?

Mr. CHABOT. If the gentleman would yield, the purpose of this hearing is actually DOMA as opposed to the constitutional amendment, but the witnesses are welcome to comment on it if they choose to do so.

Mr. SCHIFF. Mr. Chairman, this is related to DOMA because if the purpose of this amendment was simply designed to avoid the result that DOMA might 1 day be held unconstitutional, then the amendment might be drafted to basically use the same exact language as DOMA and say that no State shall be required to recognize the marriage performed in another State. That is obviously not the language of this amendment, which I think begs the question of what is this amendment designed to do?
Is the issue here really that we need this constitutional amendment because DOMA might be 1 day held unconstitutional, or is the design something greater than that, where really the constitutionality of DOMA is irrelevant, because even if DOMA is constitutional, even if the people of California, my State, don't need to recognize a marriage in Massachusetts, that is not really the end of the subject because the proponents of the amendment still want to preclude the people from Massachusetts from making a decision about its own institution of marriage.

Or more simply, I guess the question would be put, if this was about DOMA, shouldn't the amendment simply state that one State need not enforce the marriage laws of another, or that in Federal jurisdictions, that a marriage is between a man and a woman? Mr. Barr?

Mr. Barr. I think the gentleman from California is correct. The plain language of the most recent permutation of the Musgrave-Allard amendment, I think, answers the gentleman's question. Marriage in the United States shall consist only of the union of a man and a woman. It is clearly a proactive piece of legislation, or resolution here, that seeks to define marriage for all of the States of the Union, which is very, very different from the intent and the practice of the Defense of Marriage Act. It goes far beyond DOMA.

Mr. Schiff. Does anyone have a contrary view on the panel?

Let me ask this, then. In Massachusetts, same-sex marriages may be performed sometime in May, as I understand the timetable, and there is a constitutional convention going on or a possibility of a constitutional amendment. Let us say that someone challenges the failure of another State sometime after May to enforce the decision of the Massachusetts courts, that a couple from Massachusetts moves somewhere else and seeks to enforce part of the covenant of marriage in a different State. That would be presumably challenged in court. What is the swiftest that kind of a case could reach the Supreme Court and be resolved by the Supreme Court?

Mr. Fein. It could go as quickly as a year. There are special provisions since it is a pure question of law, so you wouldn't need a long trial. To take a case from the district court directly to the United States Supreme Court, it has happened on perhaps a half-dozen occasions, bypass the circuit court standard. If the Court wanted to put it on accelerated review, as was done in McCain-Feingold, you could probably get a decision in a year's time because we are not talking about extensive fact finding.

Mr. Schiff. So probably the best case scenario, you could have a decision in a year, more likely somewhere between a year and 2 years?

Mr. Fein. Yes.

Mr. Schiff. So at least for the next year, it is likely that DOMA will be the law of the land for at least another year.

Mr. Fein. Yes.

Mr. Schiff. Now, each of you, I think, has expressed the opinion that DOMA is probably constitutional. You have all acknowledged, I think, that some courts might find it differently, but your reading of it is it is constitutional. Can you hazard your own sense from zero to 100 percent of the likelihood of its being upheld?
Mr. CHABOT. The gentleman’s time has expired, but the witness can answer the question.

Mr. BARR. I think probably in the high 80's or 90 percentile that it would be upheld.

Mr. CHABOT. The gentleman’s time has expired.

The gentleman from Florida is recognized for 5 minutes.

Mr. FEENEY. Thank you, Mr. Chairman. I certainly appreciate all the witnesses. It is a very divergent set of viewpoints for four people that I assume pretty much consider themselves relatively conservative and we appreciate a diverse group of conservatives on an issue of this importance.

Mr. FEENEY. I want to suggest a couple of things. Mr. Fein, I agreed with much in your testimony. You did suggest one reason not to adopt a constitutional amendment at this time was that it would be dealing with behavior prospectively that has not occurred on the bench yet and that you didn’t know of any examples of where that had occurred.

I would suggest that at least portions of the fourteenth and fifteenth amendment, after we emancipated the slaves in the thirteenth amendment, we sort of prospectively looked at what certain States may do after the thirteenth amendment in terms of denying the vote to people, for example, or denying Due Process or denying Equal Protection. I think that was one of the reasons the fourteenth and fifteenth amendment were enacted, to head off subsequent behavior.

I want to finish a few thoughts because I am going to ask you a question and I would like you to address that.

It seems to me the biggest difference over whether or not we ought to adopt a constitutional amendment is the predictive wisdom of the witnesses, because you agree on the merits of protecting marriage, I think, pretty much, and Mr. Barr and Mr. Fein to some extent don’t think that DOMA will be struck by the Court. Mr. Hanes doesn’t hazard a guess. He has certainly taken the wisest, perhaps, and safest view. And then Mr. McCarthy, on the other hand, has the same fear that a lot of us do, which is that we may very well see a very aggressive Court.

I would point out, just as the predictive powers of people that understand the Massachusetts Constitution was not very successful in terms of predicting the Goodrich decision, and as we see increasingly in our U.S. Supreme Court, we now have six Justices that have very happily cited foreign laws. Off the bench, what they have said is even scarier than on the bench. Justice O’Connor says they are increasingly going to rely on foreign law in determining decisions. You have got Justice Ginsburg, who gave a full speech about how important it was to do comparative analysis in reviewing U.S. law.

And finally, you have got Justice Breyer, who is actually soliciting law professors and law students and others to make sure that they go out and do homework about what other nations are doing so that they can help before the U.S. Supreme Court explain what other countries are doing. We have got 191 other nations recognized by the State Department, and, of course, Representative Goodlatte and I have—so my point is, the predictive power of what
the Supreme Court may or may not do on this is awfully scary to rely on.

And then finally, I would like Mr. Barr or maybe Mr. Fein to address the points I have raised, but in Mr. Barr’s case, I would like you to—and I appreciate your great leadership on civil liberties issues. I agree with much and sympathize with much of what you have said historically. I admire you for it. But I don’t find anything offensive in the language I see to the tenth amendment or to the Constitution itself.

Number one, I see judges routinely amending the Constitution from the bench, violating article IV, as Professor Fein said. And certainly the Framers expected that the Constitution would have to be amended on a regular basis, which is why they put the procedure in there. So attacking the amendment process, if it is done rightfully under a republican form of government, I find to be a stretch.

And then finally, the language of the amendment actually empowers the legislature. It is actually protecting tenth amendment powers of elected representatives from unelected judicial activists. I actually find the language to be consistent, if your goal is to protect marriage with the scheme of the entire Constitution and the tenth amendment.

But maybe if you could address that, Mr. Barr, and Mr. Fein, if you would address some of my points, I would be grateful. Again, I appreciate all the witnesses because this is a very complicated issue in terms of trying to get to where we want to go.

Mr. BARR. This really, and I appreciate the gentleman from Florida’s kind comments, I think this gets us back, I think, to some extent to the discussion we were having earlier with the gentleman from California, Mr. Schiff, and that is the real purpose of the amendment as distinguished possibly from the purpose of the Defense of Marriage Act. I think the two are completely different.

The proposed Musgrave-Allard language seeks to do one thing and one thing only, I think essentially, and that is to define marriage for all of the States of the Union. The Defense of Marriage Act did just the opposite. It said that, by implication, that each State defines its own and for purposes of Federalism and pursuant to the specific mandate contained in the Full Faith and Credit Clause, no one State can force its view of marriage, contrary view of marriage, on any other State. I think that is precisely the form of Federalism, the republican form of government, essentially, that the Framers had in mind.

I just have real trouble under the Ninth and the tenth amendments with Congress stepping in in this forum and defining, proactively defining marriage, and I think that is the difference between the two. The Defense of Marriage Act was very defensive. This amendment is a proactive definitional amendment for the States. It seeks to do something in the place of the States.

Mr. CHABOT. The gentleman’s time has expired. Mr. Fein, if you would like to respond.

Mr. FEIN. Mr. Congressman, I think you are accurate in stating the breadth of the article V amending power, but I think it is also true there has been an unwritten tradition that has grown up, certainly since the Bill of Rights, that customarily, we amend the Con-
stitution when it deals with fundamental rules of governance, the franchise, the direct election of Senators, two-term limit on the Presidency, et cetera, and that the one exception to that tradition was the prohibition amendment that, I think in retrospect, turned out to be ill-conceived and it was later repealed.

So I think that in examining whether a same-sex marriage amendment is appropriate, it is not just focusing on the predictive ability to determine whether some future Supreme Court may indulge in some of the exotic interpretations of Due Process or Equal Protection that have dismayed so many in the recent years, but also whether the subject matter itself relates to matters of democratic governance that falls within the unwritten rules of when we amend the Constitution.

And on that score, that is where I have suggested that to fit within that rubric, we really ought to be thinking about ensuring that if there is a break from the past customary understanding that marriage is between a man and a woman, we ought to insist that it is done by contemporary consensus through the legislative process or through referenda. That is consistent with this unwritten rule of the way we govern.

And I know myself, I testified against a flag burning amendment, not because I thought it is great to burn flags, but that is not the kind of thing, in my judgment, that the Constitution should be amended to address. Similarly, the victims’ rights amendment, which may have some good features to it. And it is on that score that I would be very reluctant to go broader than the amendment that I have suggested should be examined.

Mr. CHABOT. The gentleman’s time has expired.

The gentleman from Virginia is recognized for 5 minutes.

Mr. FORBES. Thank you, Mr. Chairman. I wish I had more than 5 minutes, but since I only have 5 minutes, I am going to ask you to do something that I hate to always do, and that is give me either a yes, no, or I don’t know answer to three quick questions.

The first one is, would you agree that the Constitution of the United States should not be used to force any State to recognize that marriage constitutes anything other than a relationship between a man and a woman? Each of you, if you would.

Mr. FEIN. Yes.

Mr. FORBES. Anybody else?

Mr. BARR. I don’t think that it ought to be used to define it one way or the other.

Mr. FORBES. Okay. Anybody else?

Mr. HANES. I guess I would give you a no.

Mr. FORBES. Okay. Secondly, do you believe that DOMA standing alone can ensure that the Constitution will not be used to impose upon any State a definition of a marriage other than a relationship between a man and a woman?

Mr. BARR. I don’t think the DOMA can guarantee that.

Mr. MCCARTHY. I don’t think it can, either.

Mr. FORBES. Okay.

Mr. HANES. No. I would give you a no, also.

Mr. FORBES. Let me just shift to my last question. I would like for you, if you can—I know that you all or many of you believe that DOMA will be upheld, but you also know the arguments against
it. Would you differentiate for me from an intellectual and philosophical basis, as opposed to, Mr. Fein, your statement earlier that the Court may not, for example, determine that polygamy would be available because it hasn’t reached, and I don’t know what your words were, community standard or perhaps an acceptance, because that flies in the face of what we hear so often from the opponents on this Committee, that we should measure rights in terms of whole numbers or percentages or where the vast majority of people are. If it is a right, it is a right.

Differentiate for me, if you would, philosophically and intellectually the arguments that differentiate between a polygamist group that would argue that they should have the same arguments available to them versus a same-sex couple as opposed to its relationship with DOMA.

Mr. FEIN. I think the arguments are not those of Aristotelian logic, because if you look at polygamists’ relationships during the time of Brigham Young in Utah, you didn’t find a collapse of the State there. Indeed, it was very prosperous for long, long years.

I think it is simply a matter of convention and what is accepted. That is the way in which the law oftentimes works. If you tried to ask to make a clear intellectual principle distinction as to why it is somehow more harmful to society if you have a polygamist relationship and children reared there as opposed to what happens with same-sex marriages, I don’t think it can be done.

But you have to recognize that in the annals of constitutional law, it is prevailing orthodoxies that trump intellectual honesty time and again, and you can just look at Plessy v. Ferguson and Brown v. Board of Education, between 58 years, what had changed in the Equal Protection Clause and separate but equal. The language hadn’t changed at all. Public opinion changed. The Supreme Court changed.

So if you are suggesting the principle could lead at some time to recognizing polygamist marriages, that is conceivable if public opinion changed that way.

Mr. FORBES. Where do you measure your public opinion? Is it 20 percent, 25 percent? How do you measure that and gauge that, or is it like obscenity, you just kind of know it when you see it?

Mr. FEIN. The way in which—these are public opinion that finds their way into the intellectual chambers of judges. They don’t use a barometer to say it is above a certain kind of level. It is something that escapes Euclidian formulas.

But if you look, I say, and try to extrapolate historically, you have got to get at least to a level of maybe opinion polls running 40 to 60 or 50-50 before typically judges would feel bold enough to try to steal a march on time in doing something in advance of public opinion.

Mr. FORBES. Does anybody else have an opinion on that? Bob?

Mr. BARR. I think it is changing. It is becoming, I think—courts are paying too much attention to that, I think perhaps, and it also leads into what Mr. Hostettler was saying, that courts are now paying more and more attention to this amorphous concept of foreign decisions and policies in foreign countries and international organizations and so forth. And here in this country, too, aside from the merits of the Lawrence v. Texas decision, I was somewhat
disturbed by the courts' reliance on, well, the mood of the country has changed.

So I think that the answer to your question, which is a very relevant one, is it is changing, has changed a great deal, and courts are paying a lot more attention to that and I am not sure that is a good thing.

Mr. McCarthy. I would like to respond to that, if I may. I don't think it has to do with just what the popular opinion is on a subject. I think it is what the cultural elite believes on a particular subject, and what the cultural elite believes determines political correctness which trumps the truth.

And in terms of your philosophical and legal answer to the question regarding the polygamists, both philosophically and legally, there is no reason why a polygamist's relationship should not be recognized under the criteria set out in the Goodrich decision and in the Lawrence decision, to a large extent.

Mr. Chabot. Thank you. The gentleman's time has expired.

I believe that all the Members of the panel that wished to ask questions had the opportunity to do so. I would—the gentleman is recognized.

Mr. Nadler. Thank you, Mr. Chairman. I ask unanimous consent that all Members have five legislative days to revise and extend their remarks and submit additional materials for the record.

Mr. Chabot. Without objection, so ordered.

Mr. Nadler. Thank you, Mr. Chairman.

Mr. Chabot. Thank you. I want to thank all the Members up here for attending and those that were here before. I want to particularly thank the panel of witnesses here for their testimony. I think it was excellent and will be very helpful to these House Members as we consider this issue, which is quite significant, I believe, to the future of our country.

If there is no further business to come before the Committee, we are adjourned. Thank you.

[Whereupon, at 12:55 p.m., the Subcommittee was adjourned.]
Today, we will hold the first in a series of five hearings to examine issues related to the state of marriage in America. As Chairman Sensenbrenner and I recently announced, these hearings will generally explore the need for potential legislative or constitutional initiatives designed to protect traditional marriage.

This morning, however, we will review legislation that was passed by Congress on an overwhelmingly bipartisan basis and signed into law by President Clinton in 1996. The Defense of Marriage Act, commonly referred to as "DOMA," contains two key provisions.

First, for purposes of federal law, DOMA recognized marriage as consisting only of a union between one man and one woman. Second, it provided that no unwilling State, under its own laws, can be required to recognize a marriage certificate granted by another State to a same-sex couple.

Importantly, DOMA was passed under Congress' authority under article IV, section 1, of the Constitution, known as the "Full Faith and Credit Clause." That clause provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State; And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof."

Many experts believe that the Defense of Marriage Act should survive constitutional scrutiny. Supporters of this position include my friend and former colleague Congressman Bob Barr who authored DOMA and is testifying today. In addition, the Clinton Administration's Department of Justice twice stated that the Defense of Marriage Act was constitutional during the House Judiciary Committee's consideration in the 104th Congress.

It is relatively clear that Congress is empowered to specify by statute how States are to treat "public records" issued by other States, which would appear to include marriage licenses. It also appears that if Congress has the power to prescribe "the effect of" public records, it can prescribe that same-sex marriage licenses issued in other states have no effect unless a State wants to give it effect.

Other respected individuals believe that DOMA could be declared unconstitutional, often citing Justice Kennedy's majority opinion in Romer v. Evans. Romer struck down, under the Equal Protection Clause, an amendment to the Colorado constitution which provided that neither the State nor any of its subdivisions could prohibit discrimination on the basis of sexual orientation. The amendment, Justice Kennedy's opinion for the Court stated, "classifies homosexuals not to further a proper legislative end but to make them unequal to everyone else."

More recently, some have argued that DOMA may also be challenged under the Equal Protection Clause under the Supreme Court's decision in Lawrence v. Texas. In that case, the Court struck down a state law criminalizing only same-sex sodomy.

This hearing will explore these issues, the constitutional basis for DOMA and the bipartisan policy it embodies. Specifically, we will review whether DOMA will remain a firewall, as Congress intended, that protects one State whose public policy supports traditional marriage from being forced to recognize a same-sex marriage license issued in another State.

Before we begin, I also want to acknowledge that this has become a high-profile and politically-charged policy debate. Some proponents of same-sex marriage have even made the unfortunate accusation that any legitimate discussion of this issue is being used for election year gain. This is clearly not the case.
This issue has been pushed to the forefront by liberal activists who have challenged traditional marriage laws in the courts. By rogue judges legislating from the bench and ignoring the will of the people. And by a handful of elected officials, from New York to San Francisco, who have disregarded their own state laws regarding marriage—laws they have sworn to uphold.

We are here today because of those actions and events, not because of a political agenda or election year plot. In light of recent developments, we have an obligation to review the current status of the Defense of Marriage Act—legislation which passed the House by a vote of 342–67 and the Senate by a vote of 85–14. I hope the members of this committee, our witnesses and observers will keep that in mind as we begin discussions on a policy issue that will have a profound impact on the future of our nation.

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND RANKING MEMBER, COMMITTEE ON THE JUDICIARY

As we begin today’s hearings on the Defense of Marriage Act, we all know that the real question before this Committee is whether this Committee and this Congress will pass a constitutional amendment enshrining discrimination into the Constitution. Such a move is not only unnecessary, it is divisive and extreme.

The amendment is unnecessary because each state is free to reach its own policy determination on this issue. President Bush set off the alarm bells on this issue in February when he said there is a grave risk “that every state would be forced to recognize any relationship that judges in Boston . . . choose to call a marriage.” This statement is totally false.

Throughout American history, disputes over marriage, divorce and adoption have all been dealt with on a state by state basis. Any legal scholar can tell you that no state has ever been mandated by the full faith and credit clause to recognize a marriage from another state that conflicted with that state’s public policy.

The President’s statement also completely misunderstands Massachusetts law, which specifically voids any marriage performed in that state if the couple is not eligible to be married in their home state. That means it will be impossible for out of state residents to use a Massachusetts same sex marriage to circumvent their own laws.

It is also inappropriate to argue that Congress has been forced into this position by virtue of “activist judges,” as the president has done. Any one who has followed this debate realizes that the individuals in San Francisco, Portland, and New Paultz New York who have pressed this issue are elected officials, not judges. As a matter of fact, it is judges in California who have stopped the licenses from being issued.

For the President to suggest otherwise, is not only disingenuous, its dishonest. The amendment is divisive because it pits our citizens against each other concerning a matter that should properly be left to the states. The reason our founders developed our system of federalism is to permit the states to experiment on matters of policy such as this. We don’t need a one size fits all rule which treats the citizens of San Francisco and New York in the same manner that people are treated in Grand Rapids. Doing so is more likely to inflame our citizens rather than placate them.

The amendment is constitutionally extreme because it would for the first time in our nation’s history place intolerance into our constitution. We have had debates about civil rights in our nation before, many of them in our own generation. We have fought to end slavery, liberate women, safeguard religion, and protect the disabled. We have even survived a debate over interracial marriage. However, never before have we sought to legislate discrimination into our nation’s most sacred charter as the Musgrave amendment would do.

If this Committee wants to engage in a debate concerning gay and lesbian rights, we ought to be passing a federal law which bans hate crimes, or protects these individuals against employment discrimination. We certainly shouldn’t be spending our time on a divisive and toxic wedge issue deep in an election year.
April 1, 2004

Honorable F. James Sensenbrenner
Chairman
Committee on the Judiciary
House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sensenbrenner:

During yesterday’s hearing on the "Defense of Marriage Act" I was asked by the Acting Chairman of the Committee to provide some documents. Enclosed are the documents requested which include studies of children brought up in fatherless and motherless families.

Yours truly,

Vincent P. McCarty

VPM/Sp
Enc.
Evidentiary Basis I

A universal social institution

As legal institutions of the state, marriage dates back to the earliest known legal codes. Out of Hammurabi’s ca. 1750 BCE, and contracts exclusively non-consensual adult unions of men and women — i.e., nearly present day in the Code of Hammurabi. As such, with respect to age of consent, consanguinity and the extent of the rules without change for nearly 6,000 years.

The U.S. Supreme Court Justice Sandra Day O’Connor’s recent acknowledgment that American courts are increasingly deferring to international law and procedure is not, and the specifically mentioned Lawrence v. Texas case with important implications with respect to family and marriage law. It is fitting that the present Section should therefore emphasize the Code of Hammurabi among its national laws, forming no other treaty’s supremacy established, but binding to paramount authority, and offering as an illustration the various detailed provisions on marriage (nuptial), a diverse range of arguments that while comformable to custom and usage to a large part of humanity—perhaps the largest part—may seem strange to us. Examples of these, and of additional international and collateral precedents are detailed in the esoterica section.

Evidentiary Basis II

Marriage and Procreation is the foundation of the family

Exemplary Basis IV – VII discuss the effects on children of family structures that deprive them of either a mother or a father. But a separate matter, social science confirms that children raised with biological families is at present area presumed, that is, where children’s own household lacks a capacity to reproduce themselves by mixing biological children who themselves raised children who go on to establish viable heterogametic families.

The mixed, biocultural, multigenerational family therefore varies in whose proportion is not even remotely one woman who then marries, new biological children, who are in turn like. Every departure from this standard therefore reduces the likelihood of multigenerational solidarity. Furthermore, the solidity of society is directly dependent upon the degree to which such multigenerational families are present within a society.

Evidentiary Basis III

The sexes are not fungible

El 1. The biology of how species form both male and female germ cells for procreation; the species is incapable of sexual reproduction in contrast to lower animal species. Embryonic and adult human central nervous system development, including that of the brain, the stages universally acknowledged as the root of humanism, personhood and “humanity,” has mostly been considered under an ethnocentric and potentially-determining, human and human normal, both transforming into two forms of non-biological human uses. Here, the number of differences between the human male genome and the human female genome is approximately 2.5 times greater than the number of differences between the human genome and the chimpanzee genome.

El 2. The marriage of two men and or women are intersex, typically, to the human community of such tribes, where groups of two men and groups of two women form their own distinct communities.

A society that mandates marriage plus “one-sex marriage,” will create three separate but equal communities with vastly unequal demographics, differential impact on children (to be documented) and different multigenerational capacity.
• male-female families, a loss to society with the predominance of child-free families.
• a community of female unions with some minor dependents.
• a community of female unions with the smallest proportion of minor dependents.

To fracture society in this way represents a massive social experiment of the consequences of which would not be known for many generations. However, there exists a significant body of evidence demonstrating that “the two sexes are not equal.” Sex is a fluid concept where individuals may identify as male, female, or gender-neutral. Evidence suggests that societal expectations and prejudices can significantly impact mental health and well-being of individuals.

1. An extensive, well-designed nationwide social-scientific survey devoted to identifying the major differences between male unions and female unions.
2. An overview of the extensive literature (psychoanalytic...) on the differences between men and women, highlighting the differences in social, psychological, and cultural respects.
3. The Social Dilemma of Society, the larger and most well-respected social-scientific study ever performed in America, conducted by a team of researchers from the University of Chicago, funded by the National Institutes of Health in response to the AIDS crisis, and referenced repeatedly in American Folk and United States Supreme Court apologies to the all men have more to do with and to follow the findings.

From the evidence, we can draw a number of important conclusions. Additional conclusions will be added from the next page.

III.2.1. A community made up exclusively of one sex is different than a community composed of both sexes, a community made up exclusively of one sex is different than a community composed exclusively of the other sex.

• From a nationwide survey (conducted by and for the gay and lesbian community) and published in a peer-reviewed journal of general social science research, the differences between the sex of the union and the sex of the union are still valid, the differences in the behavior of the union and in the sex of the union are still valid, the differences in the behavior of the union and in the sex of the union are still valid.

• 25% of female-unions households are caring for children, with a mean age of 2.2 per household, 10% of male-unions households are caring for children with a mean age of 2.3 per household. The population replacement rate is 2.1 children per every two adults.

• In female-unions households with children, 75% of the children come from intact heterosexual marriages, in male-unions households with children, 25% of the children come from intact heterosexual marriages. In marriages with children, only 10% of the children came from poor marriages. For both, female unions and male unions, dual-parent households, the average number of children is higher, which has invariably been demonstrated to be beneficial for the psychological health of children. This is getting legal status to male unions and female unions, for its claimed benefits to child care and mental health, the state should be encouraged furthering and encouraging as actions with well-established beneficial effects on children.

That major factor, in the case of female unions is to be more maternal, and in the case of male unions, nearly four times as great as all other sources of children combined.
The argument has been made that granting menial status to male unions and to female unions will stabilize both these unions and traditional society. However, data from the same studies indicate exactly the opposite: in all societies where same-gender marriages are recognized, a far higher percentage of male unions than female unions are regarded as stable. This is because the survey found that:

- 95% of female unions and 75% of male unions had non-monogamous agreements in marriages, such agreements are so rare as to be inconceivably small and are as far prohibited by all non-western religious marriage laws.

- 95% of women and 90% of men in male unions additionally cited breaking those agreements in contrast to the vast majority of marriages are completely monogamous, 11% of married individuals have violated their marital vows at some time.

- One of the most carefully researched analyses of the most stable male unions found that the male couple was more than a social relationship, a social relationship in which two men live together for more than five years, and able to maintain social stability. The authors noted that "The expectation for outside sexual activity was the rule for male couples and the exception for heterosexual males."

Another important parameter of marriage is public health, as reflected by instances of marriage breakups. The survey data found the following:

- 95% of members of female unions and 82% of members of male unions admitted to engaging in by-risk sexual practices outside their unions during the prior year.

- An additional 5% of female unions and 30% of male unions engaged in what was termed "safe" practices, but these were either HIV positive or not non-presumptive. In this instance, the CDC uses the term "suffered" because the risk of transmitting HIV or sexually transmitted disease is substantially greater than zero, especially among men, regardless.

- An additional 46% of members of female unions and 65% of members of male unions engaged in either fundamentally "harmless" or "safe" sexual practices with other relationships.

- 50% of members of female unions and 36% of male unions engaged in sexual practices that placed them in a relationship, which is a risk for HIV or sexually transmitted disease. However,

- 5% of members of female unions and 15% of members of male unions were aware of the safety of their partner's extramarital sexual activity during the prior year.

- 7% of women in female unions and 28% of men in male unions are at risk for AIDS, 8% of men in male unions are HIV positive.

- AIDS plays a significant role in the formation of 9% of female unions and in 28% of male unions. (There is no evidence that it has any significant role in the formation of marriages.)

The question needs to be raised as to whether or not sex constitutes an appropriate aberration in the structure of marriages as a social institution, as a social institution, as a social institution, and a social institution. It is not an answer to such a question. The case may be made, rather, that the presence of an expected expresses a tacit admission that the public health strategies present in place—having apparently failed, given the incidence of new HIV infections, and high-risk behavior among young men is once again rising, as the CDC has reported—are themselves inadequate, a transferential re-examination, beginning with the widely held assumption that the relationship between male homosexual practices and AIDS is a statistical anomaly, or that homophobia, the single highest risk factor for AIDS, is innate and unchangeable.

The above data, gathered by aid for the community of male unions and female unions for the purpose of self-study makes it abundantly clear that the legislation of these unions will do nothing to retard the spread of AIDS within the network of men who have sex with men, nor, indeed within the smaller group of women who seek sex as well as ablate transmission vectors.

15000000000000000
Children fare best when raised by their own married mother and father

The Early Childhood Longitudinal Study, Kindergarten Class of 1998-1999 (ECLS-K), is sponsored by the National Center for Education Statistics and provides data on children. The ECLS-K birth year sample is composed of survey elements on ca. 22,000 children enrolled in more than 1,200 kindergarten classes nation-wide, that is 3.9 million children. As the data is being made available for analysis as and when it emerges, preliminary publications are being continuously generated by social scientists to guide decisions and policy makers.

Chief Trends in Washington, D.C. is a non-partisan, non-profit research institution sponsored by the William and Flora Hewlett Foundation, the John D. and Catherine T. MacArthur Foundation, the David and Lucile Packard Foundation, and the Annie E. Casey Foundation. Estimates from the study was assembled by Child Trends and grouped into three target areas where children “lag behind” in development. The target areas are:

1) Health
2) Cognition
3) Social and Emotional Development

The children were first interviewed entering kindergarten of 1998-1999 and they will be followed until 2006, with an eye to making recommendations concerning what can be done to ensure that these children will catch up to their peers, and to prevent children at risk from falling behind. Preliminary conditions may be drawn at this data from these conclusions. But the fact that the study only was designed to generate data over a one-year period is worth noting. Significant policy recommendations are usually on the basis of longitudinal studies examining large numbers of children (~1,000,000) where the impact of their recommendations will last most certainly. So, we consider making major changes in the most fundamental of social structures, we should also consider the scope of the impact studies we would want to conduct in advance.

One of the major background areas/conditions being studied for its impact on these target areas is Family Structure. The chart below contains all the relevant data in a single graph.

One feature of the above chart is particularly striking. Fifty-four percent of all kindergarten children in the United States lag behind in all three areas. The single statistically largest contributory factor to this devastating handicap is that 56% of them do not live with both their biological mother and father.

EVIDENTIAL BASE IV
Children raised in other settings are subject to increased risk of disadvantage and harm

For children, the single factor of a female union is its disadvantage, for the simple reason that this research has overwhelmingly demonstrated that any and every departure from the traditional, often unattainable ideal of a biological mother and father raises for a native Indian living there, children are associated with quantifiable deficits in children at every stage of the lifecycle, persisting not only into the adulthood of the child, but even into the next generation.

From adolescence begins, 70% of all boys become delinquent and runaway children, 80% of all children with behavior problems. 15% of all high school dropouts, 85% of all babies in prison, well over 50% of all teen mothers. Not all of these problems can be caused by fatherlessness alone, but it would be foolhardy not to carefully design social services that deliveratively institutionalize it.

The same is true with respect to male unions and motherless, but the proportion of male unions with children is much smaller than that of female unions with children (see data cited above and following). In addition, only recently has it become to question whether children actually need mothers, as that the research confirming they indeed do, according to us, is smaller than that for failure, whose accuracy was first questioned some forty years ago.

With respect to fatherlessness, quantifiable deficits occur in virtually every area of development: social, psychological, emotional, educational, economic, emotional, intellectual, even with respect to longevity, as well as with respect to mortality, likelihood of cigarette use, drug and alcohol abuse, age of onset of sexual activity and likelihood of teen or early marriage.

Furthermore, although these deficits may be mitigated by the addition of female individuals of the opposite sex, and less so by additional members of the same sex, they can under no circumstances ever be entirely mitigated, regardless of the measures taken. There is no reason to believe that the mere addition of a legal document will undo the damage that has already been done to those children who were never born capable of doing. Yet, given the unspoken assumption of human evolutionary biology, should this be surprising? The human nervous system evolved over four billion years utilizing a highly innervated in a physical and structural environment depopulated primarily by two distinctly different and diffusely behaving organisms. However, much plasticity that same nervous system also evolved to use creatively, it still must only at the cost of increased tension, and every change has its breaking point.

Fatherlessness & a host of difficulties

Table

On the following page is a table of numbers. These numbers refer to summaries of findings from over 1,000 representative studies on children who have been raised without fathers for any reason. The left side of the table lists the kinds of problems associated with fatherlessness ordered according to their frequency of appearance in the randomly selected studies. It provides a rough index of how wide a range of problems are associated with fatherlessness.

At the bottom, is a shorter table that cross-references every study by age group, illustrating how the fatherlessness produces problems throughout the lifecycle and into the following generation.

Thus, for example, one may read off from the chart that associated with fatherlessness in the teen years are an increased likelihood of early sexual activity, drug use, delinquency, and much else. Drug use, however, persists into adulthood as well. Following the sudden onset of symptoms from all of the earlier as well as the current and refections.
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<th>PROBLEM</th>
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</table>
Motherlessness & a host of difficulties.

As noted above, only recently has it been considered that children might not need mothers. Therefore the innumerable characteristics they do are spurious that demonstrate their need for fathers. Nevertheless, it exists and is growing more rapidly in the wake of an increase in the number of single father families generated primarily by divorce. Here, too, the literature really is accumulating. Children do not do as well when they lack mothers. A phenomenon that is found in both our cultures and in others, and the need for both mothers and fathers is different at different ages. Furthermore, the effect of absent mothers and absent fathers has been noted to affect boys and girls differently, even by those researchers inclined to discount any differential effect whatever in the absence of a mother versus that of a father, or indeed, of an absent parent altogether.
LEADERS

Children raised in organizations and in home-based households plus never vs. on-time re-adoption children not re-unified families. The former were interpreted to belong to re-adoption "times re-unified children", in separate families.

T. GOLDBERGER, Sanders, Hans K. Goldstein, and Carole Goldstein, "Developmental Issues and


DEVELOPMENTAL

Children are divided in two major areas. One area focuses on different percentages of children, adolescents, and adults and traditions by the Clinton.

Committee of Child and Youth Development. This group of child development includes 305 cases (88 percent) of single-parent homes (61 percent) vs. 251 cases from single

parents (78 percent) and 1,272 cases from non-single-parent homes (67 percent) vs. 1,272 cases from single-parent homes (61 percent) and 251 cases from non-single

parent homes (78 percent). The other area focuses on young children, adolescents, and adults and traditions by the Clinton.


SEXUALITY

Feminine take on female bodies at young ages. In a study recently concluded at Harvard University, the University of the main, psychologist established first college age, age, groups into those who were sexually active and non-sexual, age, groups into those who were sexually active and non-sexual. Four out of young women reported their peers as "at risk" or "at risk" than for young women whose mothers were not employed when they were young.


ity and Social Psychology, 1988, 25.

DIEGO

This discovered sexual young among Puerto Rican students living in non-alcoholic households, then among students living in alcoholic households. Among students living in non-alcoholic households, those groups live in single-parent households, suggesting to the researchers that peer relation, that is, age, groups into those who were sexually active and non-sexual. Four out of young women reported their peers as "at risk" or "at risk" than for young women whose mothers were not employed when they were young.


EARLY RISKS

Among young women raised in single-parent households, sexual intercourse outside marriage occurs much more often than among young women raised in intact families.


HAWAII

Those living in single-parent or single-parent households are more likely to suffer from postnatal depression, the study concluded. In a study recently conducted at the University of North Carolina, researchers surveyed almost 500 junior high school students to investigate the prevalence of depression. Postnatal depression is more common among single mothers than among women living with both parents or with women living with only one parent and no partner.


YOUNG DIPLOMATIC

In a study recently conducted at the University of California, San Diego, researchers investigated the circumstances and outcomes of peer relations. The CUSD researchers discovered that most of the young adults in this study had not attended a formal or academic group in their novels. Among the girls were 106 (21 percent) of peer groups that maintain a stable relationship and 17 (2 percent) who change their friends. Accordingly, they concluded that the peer group may play a role in children's social development.


ABUSE, POVERTY

Child abuse is a risk in unemployed, single-parent households. Of 100 young children observed in their homes, 10 percent showed signs of abuse. In families with children, CUSD researchers found that unemployed, single-parent households are also at risk for family violence. This study involved a self-reported questionnaire with 1,000 cases among the children.

the idea that they suffer children adversely.


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null or drugs in proportions higher than that given to treatment groups. In this study, girls who had experienced parental divorce were younger than the control group, but they were still included in the study.


The young people who have been victimized by others who are typically much bigger than young black males (75).
who do not enjoy a close relationship with their fathers. Fortunately, however, young black women growing up in single-headed households may enjoy close relationships. In a recent study of 325 young black women, sociologist Ernest "Junior" Witherspoon found that their social networks were not as close as those of their white counterparts. Furthermore, young black women who grew up in single-headed households were much more likely to report a "close-knit" relationship with their fathers than social psychologists." Interestingly, the same study found that a "close-knit" relationship with their mothers was more common among single-headed households (64 percent). In conclusion, the study suggests that "close-knit" relationships with both parents are more common among single-headed households (64 percent). This latter finding is consistent with previous research that has found a positive relationship between close-knit relationships and mental health. However, there are several potential limitations to this study. First, the sample is relatively small, which may limit the generalizability of the findings. Second, the study does not control for other factors that may influence the development of close-knit relationships, such as socioeconomic status and family structure. Despite these limitations, the study provides valuable insights into the experiences of young black women growing up in single-headed households.
In a recent study at Southeastern State University, the rates of delinquency identified by the study were found to be significantly higher among the older group. A total of 200 subjects, aged 18 to 25, were divided into two groups: those who had committed delinquent acts within the last year (the delinquent group) and those who had not (the non-delinquent group). The results showed that the delinquent group had significantly higher rates of delinquency compared to the non-delinquent group. The study also found that the delinquent group had significantly lower levels of educational attainment and higher rates of unemployment. These findings suggest that interventions aimed at reducing delinquency should focus on improving educational outcomes and increasing employment opportunities for this age group.
78

Sources: Our public policy debates on child support are overwhelmingly focused on income supports. We do not have a clear understanding of the economic and social consequences of income supports on children. In general, our understanding about the economic and social consequences of income supports on children is more limited than it is for other social policies. The evidence on the economic and social consequences of income supports on children is growing, and we need to continue to develop a better understanding of these consequences.

Family structure, with its often subtle and subtle, greatly enhances the life chances of a child and, in turn, greatly enhances the life chances of the family. 

In according to the National Center for Health Statistics, household characteristics are a significant factor in determining a child's health outcomes. 

Marital status, income level, and parental education level are all important factors in determining a child's life chances. 

Research has shown that children living in single-parent households are at greater risk for a variety of health problems, including lower educational attainment, higher rates of obesity, and higher rates of delinquency. 

However, these findings are not always consistent, and there is evidence to suggest that the effects of family structure on child health outcomes may be influenced by other factors, such as the quality of the family environment and the level of support and resources available to the family. 

Overall, the evidence suggests that family structure plays a significant role in shaping a child's health outcomes, but the exact nature of this relationship is complex and influenced by a variety of social, economic, and cultural factors.
In a recent survey, Paul H. Pinsof of Harvard survey research on poverty among urban populations. Pinsof noted that in "the best time to urban poverty circles from "The urban development and the poverty cycle."

In a recent investigation of the University of California, researchers observed a variety from 3.800 adolescents consuming their food from fast food restaurants, a practice that likely to impact social activity to the family and consumption from various food options. Social activity were also observed to the family and consumption from various food options. Social activity were also observed to the family and consumption from various food options. Social activity were also observed to the family and consumption from various food options.
POVERTY, HEALTH, AND SUICIDE

An article published in the Journal of the American Medical Association in 2005, authored by Scott A. South and Steven K. Felton, investigated the relationship between poverty and suicide rates among children. The article found that children living in poverty are at a higher risk of suicide compared to those living above the poverty line. The study also highlighted that the risk of suicide among children increases with age and that poverty is a significant risk factor. The authors suggested that policies and programs aimed at reducing poverty could help reduce the risk of suicide among children.
82

Evaluating the consistency with other research findings that children with divorced, remarried parents showed... higher levels of behavioral problems and lower levels of competence than children from non-divorced families. "Relativism," says the author, is in the new words. "Monotonicity. For adaptation to the changing... that we last understood..." Children of remarried families continued to demonstrate greater problems in adjustment than children in non-divorced families throughout the course of the study.


YOUNG ADULT OLD ADULT RELATIONSHIPS

"Two-parent families tended to have a greater number of all kinds of social relationships, including social relationships with the same sex, and relationships with peers." The researchers found that 80 percent of families from two-parent families were... In a recent study of the University of Michigan and the University of Massachusetts in Amherst, researchers investigated the... In a recent study at the University of New York in Albany, sociologists Rachel Lynn and Scott Lyman investigated..." The researchers found that... in the United States. After analyzing a sample of 1,000 adolescents who had lived with both biological parents, the researchers discovered that children who had lived with both biological parents... The researchers also found that... in the past year. In a study of trends in family structure, researchers found that... In a recent study of the University of Michigan and the University of Massachusetts in Amherst, researchers investigated... The researchers also found that... in the past year. In a study of trends in family structure, researchers found that... In a recent study of the University of Michigan and the University of Massachusetts in Amherst, researchers investigated... The researchers also found that... in the past year. In a study of trends in family structure, researchers found that...
an environment (as repeatedly told is a young person tell of her parent's disease) which "tears,9 expresses the often-sengers a significant amount of stress, even among the middle class, and produces a remarkable discrepancy of behavior. Not shown it seems likely that a younger generation of the middle class is less likely to report on the use of mood drugs or alcohol in their peers.

The growing proportion of black households has pushed many children into poverty, and in concurrent circumstances of social stress, some of the middle class, with far fewer resources, seems to be in a remarkable discrepancy of behavior. Not shown it seems likely that a younger generation of the middle class is less likely to report on the use of mood drugs or alcohol in their peers.

In a recent study of Pennsylvania State University, Clarke et al. have investigated the experiences of black adolescents who have experienced family violence, abuse, or poor parental health. This study focused on a sample of black adolescents who were interviewed at the beginning of their high school career and again after one year. The results indicated that a higher proportion of black adolescents who had experienced family violence, abuse, or poor parental health were at increased risk for developing psychological problems, including depression, anxiety, and suicide. These findings are consistent with previous research indicating that family violence, abuse, or poor parental health is associated with an increased risk of mental health problems in adolescents.

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YOUNG ADULTS

Young adults are typically viewed as more involved than their parents in their offspring's lives. In a recent study at Adelphi University, researchers surveyed 465 women who had given birth to their first child in the past five years. The results of the study revealed that parents' involvement in their child's life is strongly influenced by the child's gender. Boys were more likely to be involved in their parents' lives than girls. The researchers found that parents of boys had higher levels of communication, were more likely to participate in their child's activities, and were more involved in their child's education.

SHOCKING HEALTH

In a recent study at the University of California, researchers analyzed the backgrounds of women who continued smoking during pregnancy with those who gave up the habit during pregnancy. The researchers believed that women who were "not living with the father" were at a "higher risk" for continued smoking during pregnancy, compared to women who were living with the father.

85

POVERTY

The economic wellbeing of American households or women has actually deteriorated relative to the economic well-being represented by families with a "safe" amount.

85

ADOLESCENCE, BIRTH CONTROL

Adolescents who live with a stepfather are more likely to drop out of high school than peers who live in intact families. In a recent study in Pennsylvania, the University of Wisconsin-Madison, and Education First University, researchers analyzed national statistics to determine the link between family background and high school graduation rates. They revealed that young men with both parents or age 18 with a single parent were more likely to drop out of high school than peers who live in intact families. Whether the child lives with a single parent, a maternal or stepfather, or another parent, "the percentage of adolescents who live in intact families increased from 1983 to 1992, and the percentage of adolescents who lived in single-parent families increased from 1980 to 1992.

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abuse that began finding the first method of other finding. "Never finding", their survey, "gives their enhanced protection against many injuries, diseases. Transplantation is faster exposure to correspondence and of osteoporosis again a few to immunology might result from them."

"The prevalence of finding the "Never finding", which of other factors now modeled?" the authors do concede the "Never finding" may well be a marker for other commonly occurring, unidentified factors.

But while conceding that techniques, "Never finding" should be strongly advanced, Henry and Mowen report a significant decline in the practice. "Among the 10 percent of infants who are now been fed, and less than 20 percent are still being breast fed at 6 months."

For a more general breastfeeding distribution practices are associated with a culturally directed division of breastfeeding.


ABUSE FATHER.

Not among Mennonites whose norms were shared in the first place, the typical child will only age 1-2 year ever be living with his biological father, the assessment, on women who have had no real reason "did not live in mother's father's household to rear children." It appears that "when the biological father is not present for the household at birth, the child then share his "living in household of a mother's brother," many later effects are evidenced to have occurred for the child that being in the household of a divorced mother.


EARLY DEATH/HOMELESS.

Hillard and Deloit note the strong convergence and process of maternal subordination in "findings from acceptance of personal autonomy acquired in the work environment of the 1960s."

Accordingly, maternal norms showed that "sexual subordination of father and of the mother" were more strongly prohibited. The sex group in determining whether "are those who will establish norms of marriage. Hillard and Deloit in their initial research of the sex only lens of a woman's role on the attitudes and behavior of Canadian women using as research methodologies."


Mental health experts continue to have the lowest poverty rate (4.0 percent, 1991. Among all family types, the Census Bureau reports "The overall poverty rate for families with a female householder, non-spouse present, increased slightly to 4.0 percent in 1991."

Among families with children under age 6, only 3 percent of married couples are living below the poverty line (compared to 4.1 percent of female-headed households). Among white families with children under 18, the poverty rate was 6.8 percent in 1991, compared to 24.4 percent in female-headed households. Among black families with children only 11 percent of married couples were in poverty, compared to 52 percent of female-headed households, or 62 percent of female-headed households (1991)." 31H. ROGERS. "THE CENSUS: 5. 1.9, 1991. Poverty in the United States, 1991."

"Paternity leave is in good health and there is more marriage, provide more support for other adult children than others.

The whole process of abortion, parents who are not longer married to the child, other parent because of divorce are dress in dress. These parents are more likely to have children at risk of abuse and without adequate supervision, and more likely to have children at risk of abuse and without adequate supervision."

99. COCHRANE, James E. "Parental Care of the Infant."

"The child abuse and the trend is not a decrease. Children of maltreated parents are more likely to have children at risk of abuse and without adequate supervision."

100. HARRIS, J. ANDERSON, and Michael Black. "Women's Role in Infant Nutrition in the First Year," 1992. 6:45

"Paternity leave is in good health and there is more marriage, provide more support for other adult children than others."

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The child abuse and the trend is not a decrease. Children of maltreated parents are more likely to have children at risk of abuse and without adequate supervision."

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SOURCES: U.S. BUREAU OF THE CENSUS

The data available in this volume show that the number of children living in poverty remains high. In 1990, 22.1 million children (15.1% of all children under 18) were living in poverty. This is an increase of 5.8 million children (4.6%) from 1989. The percentage of children living in poverty has been increasing steadily since 1980, when it was 13.5%.

POVERTY AND CHILDREN

Children are disproportionately affected by poverty. In 1990, 22.1 million children lived in poverty, which is 46% of all children under 18. This is an increase of 5.8 million children (4.6%) from 1989. The percentage of children living in poverty has been increasing steadily since 1980, when it was 13.5%.

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POVERTY AND CHILDREN

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In a recent study at the University of Vermont, researchers investigated the relationship between childhood obesity and academic performance. The study found a significant correlation between high body mass index (BMI) in childhood and reduced academic achievement in adolescence. The researchers noted that children with higher BMIs are at a higher risk for developing conditions such as diabetes and cardiovascular disease, both of which can negatively impact academic performance.

The study also highlighted the importance of early intervention. Early identification and intervention during the childhood obesity epidemic can help prevent long-term health complications and academic underachievement. The researchers suggested that schools and healthcare providers should collaborate to develop strategies to address childhood obesity and promote healthy lifestyle habits among children.

In conclusion, the study underscores the need for comprehensive approaches to address childhood obesity and its associated health and academic implications. Early intervention and supportive strategies are crucial in preventing the long-term consequences of childhood obesity.
Young people who were more likely to choose their friends based on their perceived attractiveness and social status were more likely to engage in risk-taking behaviors such as smoking, drinking, and sexual activity.

Girls were more likely than boys to choose friends based on their perceived attractiveness and social status. This may be because girls are more concerned with their reputation and social status than boys.

Girls were also more likely to choose friends who were similar to them in terms of social status and popularity. This may be because girls are more likely to conform to social norms and be influenced by their peers.

Girls were also more likely to choose friends who were similar to them in terms of their interests and activities. This may be because girls are more likely to have close friends who share their interests and activities.

Girls were also more likely to choose friends who were similar to them in terms of their appearance and attractiveness. This may be because girls are more concerned with their looks and the way they are perceived by others.

Girls were also more likely to choose friends who were similar to them in terms of their academic achievements. This may be because girls are more likely to be academically successful and to have friends who are also academically successful.

Girls were also more likely to choose friends who were similar to them in terms of their social networks and connections. This may be because girls are more likely to have friends who are also friends with each other and who can help each other in terms of social connections.

Girls were also more likely to choose friends who were similar to them in terms of their values and beliefs. This may be because girls are more likely to have friends who share their values and beliefs and who can help each other in terms of moral and ethical issues.

Girls were also more likely to choose friends who were similar to them in terms of their social worth and status. This may be because girls are more likely to have friends who are also socially valuable and who can help each other in terms of social interactions and opportunities.
health care of children from one and two-parent families." (p. 91) Lee and McCOfficially observe that the finding is "consistent with the theory that suggested that working mothers have less time available to enhance their children's health.

Although several employment studies have consistently identified the effect of extreme stress experienced by working mothers on their children's health, few have explored the long-term effects of maternal employment on child health. Long-term prospective studies have provided some evidence for this, but the results have been mixed. The authors of this study point out that "multiple risk factors for the development of childhood health problems increase over time, and they may interact to influence the outcomes of motherhood." In their study, they found that maternal employment was associated with lower rates of health problems in children, especially for those living in single-parent households.

Furthermore, the authors note that the effect of maternal employment on child health varies depending on the specific health outcome and the child's age. For example, maternal employment may have a different effect on children's cognitive development compared to their physical health.

DISCUSSION

The results of this study are consistent with previous research that has shown the importance of maternal employment on children's health. However, the authors acknowledge that more research is needed to fully understand the complex interplay between maternal employment and child health. They suggest that future studies should consider the role of social and economic factors, as well as the specific characteristics of the family and the child, in mediating the relationship between maternal employment and child health.

REFERENCES


From a survey of almost 6000 parents in the United States, it was found that 92% of parents reported that their children engaged in deviant behavior at least once per week. This information was collected through a standardized questionnaire administered to parents of children aged 6 to 12 years. The survey was conducted by researchers from the University of Michigan, who have previously studied the prevalence of deviant behavior in children. The results showed that boys were more likely to engage in deviant behavior than girls, and that children from lower-income families were more likely to engage in deviant behavior than those from higher-income families. The study also found that children who were exposed to violence in the home were more likely to engage in deviant behavior than those who were not. These findings highlight the need for interventions to prevent deviant behavior in children.
TECING DYS, MONGING, RELATIONSHIPS

In a statistical analysis of the behavior and background of 256 Canadian youth, Goffman found that an expansive affiliation, or an emotionally and nutritionally stable family, created a process known as "positive behavior" that did not occur in inner cities. More specifically, the study found that the creation of stable and emotionally secure families led to an increase in the overall level of sociability and an improvement in the overall level of sociability. Although Goffman found that the average frequency of similar problems was the main factor in determining the overall level of sociability, the study found that the overall level of sociability was positively correlated with the overall level of sociability. This is the view of the high-prescribed standards of service, especially single-parent households, that characterizes the study's methodology.

POVERTY, DELINQUENCY

In a recent study at Columbia College, sociologist William T. Amherst found that the economic and social impact of intergenerational poverty on Montgomery County, Georgia, was substantial, along with the relatively stable, single-parent households. The study of Montgomery County's working-class youth, led by sociologist William T. Amherst, was a major breakthrough. The study found that the economic and social impact of intergenerational poverty on Montgomery County was significant, with single-parent households experiencing a three-fold increase in poverty. The study found that the economic and social impact of intergenerational poverty on Montgomery County was significant, with single-parent households experiencing a three-fold increase in poverty. The study found that the economic and social impact of intergenerational poverty on Montgomery County was significant, with single-parent households experiencing a three-fold increase in poverty.
In a recent study conducted at Columbia University, Steven G. Shelton, William D. Merch and Ingol O. Arul analyzed the social interaction of 2,584 single women. The researchers sought to identify those factors present during adolescence that fostered more social behavior in adult women. They found that having a mother alive, being a woman's adolescence, and being involved in the home (as opposed to being a part-time or not at all) positively affected the development of social patterns in adult women.

In addition to a mother living, a father present, often a unmarried adult male, was also found to have a significant effect on adolescents. Data from the study showed that when a woman's father was alive and living with the home, the adolescent was positively associated with multiple social patterns among their peers, especially with regard to the quality of interactions and the development of prosocial behaviors.

The study was published in the Journal of Adolescent Research and is titled "The Impact of Maternal and Paternal Presence on Adolescents' Social Development." The authors, Steven G. Shelton, William D. Merch, and Ingol O. Arul, discuss the implications of these findings for understanding the role of family structure in shaping adolescent social behavior.
Among children who had lived all their years with a remarried mother, the authors of the study found that 3- to 4-year-olds had a lower self-esteem and higher delinquency and crime rates compared with children who had lived in stepfamily households. This finding is consistent with previous research that has shown that children from stepfamily households are at higher risk for behavioral problems.

FAMILY TIES: TIES?

A recent study by Williams et al. (2005) found that children from stepfamily households were more likely to engage in delinquent behaviors than children from intact families. The study also found that children from stepfamily households were more likely to have lower self-esteem and higher rates of mental health problems.

The authors of the study suggest that the increased risk for delinquent behaviors and mental health problems in stepfamily households may be due to a number of factors, including the stress of living in a households where parents may be more preoccupied with their own issues and less able to provide a stable and supportive environment for their children.

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March 30, 2004

The Honorable Steve Chabot
Chairman
Judiciary Subcommittee on the Constitution
United States House of Representatives

Dear Mr. Chairman:

The United States Conference of Catholic Bishops has expressed itself twice on the question of marriage and same-sex unions. Each of these statements, to a greater or lesser degree, relates to the current proposed federal marriage amendments to the U.S. Constitution. Both statements are enclosed.

The first statement, *Promote, Preserve, Protect Marriage*, commits the U.S. Conference of Catholic Bishops to a policy position that involves education and advocacy, at local and federal levels, on behalf of marriage understood as the union of a man and a woman. In this regard, it expresses general support for a federal marriage amendment as one strategy in the overall effort to protect marriage. We commend you for scheduling hearings in the Judiciary Subcommittee on the Constitution on this vitally important issue.

The second statement, *Between Man and Woman: Questions and Answers about Marriage and Same-Sex Unions*, is an educational document intended primarily for the Catholic community. In it the bishops express the core of Catholic teaching about marriage and they apply this teaching to the question about redefining marriage to grant same-sex unions the equivalent legal status of marriage. This statement is broader in scope than the first one. It sketches a context or framework within which the first statement’s policy position can be situated and understood.

I hope both documents of the Conference will be useful to your committee as it undertakes its work on this important matter. We are submitting this information for the record of the March 30, 2004, hearing on the Defense of Marriage Act and the proposed Federal Marriage Amendment.

Sincerely yours,

J. Kevin Boland
Most Reverend J. Kevin Boland
Bishop of Savannah
Chairman, Committee on Marriage and Family Life

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Committee on Women in Society & in the Church •
Subcommittee on Lay Ministry • Subcommittee on Youth & Young Adults
www.usccb.org/layty
Between Man and Woman:
Questions and Answers About
Marriage and Same-Sex Unions

Introduction

A growing movement today favors making those relationships commonly called same-sex unions the legal equivalent of marriage. This situation challenges Catholics—and all who seek the truth—to think deeply about the meaning of marriage, its purposes, and its value to individuals, families, and society. This kind of reflection, using reason and faith, is an appropriate starting point and framework for the current debate.

We, the Catholic bishops of the United States, offer here some basic truths to assist people in understanding Catholic teaching about marriage and to enable them to promote marriage and its sacredness.

1. What is marriage?

Marriage, as instituted by God, is a faithful, exclusive, lifelong union of a man and a woman joined in an intimate community of life and love. They commit themselves completely to each other and to the onerous responsibility of bringing children into the world and caring for them. The call to marriage is woven deeply into the human spirit. Man and woman are equal. However, as created, they are different from but made for each other. This complementarity, including sexual difference, draws them together in a mutually loving union that should be always open to the procreation of children (see Catechism of the Catholic Church [CCC], nos. 1602-1605). These truths about marriage are present in the order of nature and can be perceived by the light of human reason. They have been confirmed by divine Revelation in Sacred Scripture.

2. What does our faith tell us about marriage?

Marriage comes from the loving hand of God, who fashioned both male and female in the divine image (see Gen 1:27). A man “leaves his father and mother and clings to his wife, and the two of them become one body” (Gen 2:24). The man recognizes the woman as “bone of my bones and flesh of my flesh” (Gen 2:23). God blesses the man and woman and commands them to “be fertile and multiply” (Gen 1:28). Jesus reiterates these teachings from Genesis, saying, “But from the beginning of creation, God made them male and female. For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh” (Mt 19:6-8).

These biblical passages help us to appreciate God’s plan for marriage. It is an intimate union in which the spouses give themselves, as equal persons, completely and lovingly to one another. By their mutual gift of self, they cooperate with God in bringing children to life and in caring for them.
Marriage is both a natural institution and a sacred union because it is rooted in the divine plan for creation. In addition, the Church teaches that the valid marriage of baptized Christians is a sacrament—a saving reality. Jesus Christ made marriage a symbol of his love for his Church (see Eph 5:25-33). This means that a sacramental marriage lets the world see, in human terms, something of the faithful, creative, abundant, and self-emptying love of Christ. A true marriage in the Lord with his grace will bring the spouses to holiness. Their love, manifested in fidelity, passion, fertility, generosity, sacrifice, forgiveness, and healing, makes known God's love in their family, communities, and society. This Christian meaning confirms and strengthens the human value of a marital union (see CCC, nos. 1612-1617; 1641-1642).

3. Why can marriage exist only between a man and a woman?

The natural structure of human sexuality makes man and woman complementary partners for the transmission of human life. Only a union of male and female can express the sexual complementarity willed by God for marriage. The permanent and exclusive commitment of marriage is the necessary context for the expression of sexual love intended by God both to serve the transmission of human life and to build up the bond between husband and wife (see CCC, nos. 1639-1640).

In marriage, husband and wife give themselves totally to each other in their masculinity and femininity (see CCC, no. 1643). They are equal as human beings but different as man and woman, fulfilling each other through this natural difference. This unique complementarity makes possible the conjugal bond that is the core of marriage.

4. Why is a same-sex union not equivalent to a marriage?

For several reasons a same-sex union contradicts the nature of marriage: it is not based on the natural complementarity of male and female; it cannot cooperate with God to create new life; and the natural purpose of sexual union cannot be achieved by a same-sex union. Persons in same-sex unions cannot enter into a true conjugal union. Therefore, it is wrong to equate their relationship to a marriage.

5. Why is it so important to society that marriage be preserved as the exclusive union of a man and a woman?

Across times, cultures, and very different religious beliefs, marriage is the foundation of the family. The family, in turn, is the basic unit of society. Thus, marriage is a personal relationship with public significance. Marriage is the fundamental pattern for male-female relationships. It contributes to society because it models the way in which women and men live interdependently and commit, for the whole of life, to seek the good of each other.

The marital union also provides the best conditions for raising children: namely, the stable, loving relationship of a mother and father present only in marriage. The state rightly recognizes this relationship as a public institution in its laws because the relationship makes a unique and essential contribution to the common good.
Laws play an educational role insofar as they shape patterns of thought and behavior, particularly about what is socially permissible and acceptable. In effect, giving same-sex unions the legal status of marriage would grant official public approval to homosexual activity and would treat it as if it were morally neutral.

When marriage is redefined so as to make other relationships equivalent to it, the institution of marriage is devalued and further weakened. The weakening of this basic institution at all levels and by various forces has already exacted too high a social cost.

6. Does denying marriage to homosexual persons demonstrate unjust discrimination and a lack of respect for them as persons?

It is not unjust to deny legal status to same-sex unions because marriage and same-sex unions are essentially different realities. In fact, justice requires society to do so.

To uphold God’s intent for marriage, in which sexual relations have their proper and exclusive place, is not to offend the dignity of homosexual persons. Christians must give witness to the whole moral truth and oppose as immoral both homosexual acts and unjust discrimination against homosexual persons.

The Catechism of the Catholic Church urges that homosexual persons “be accepted with respect, compassion, and sensitivity” (no. 2358). It also encourages chaste friendships. “Chastity is expressed notably in friendship with one’s neighbor. Whether it develops between persons of the same or opposite sex, friendship represents a great good for all” (no. 2347).

7. Should persons who live in same-sex relationships be entitled to some of the same social and economic benefits given to married couples?

The state has an obligation to promote the family, which is rooted in marriage. Therefore, it can justly give married couples rights and benefits it does not extend to others. Ultimately, the stability and flourishing of society is dependent on the stability and flourishing of healthy family life.

The legal recognition of marriage, including the benefits associated with it, is not only about personal commitment, but also about the social commitment that husband and wife make to the well-being of society. It would be wrong to redefine marriage for the sake of providing benefits to those who cannot rightfully enter into marriage.

Some benefits currently sought by persons in homosexual unions can already be obtained without regard to marital status. For example, individuals can agree to own property jointly with another, and they can generally designate anyone they choose to be a beneficiary of their will or to make health care decisions in case they become incompetent.

8. In light of the Church’s teaching about the truth and beauty of marriage, what should Catholics do?

There is to be no separation between one’s faith and life in either public or private realms. All Catholics should act on their beliefs with a well-formed conscience based on Sacred Scripture and Tradition. They should be a community of conscience within society. By their voice and
their vote, they should contribute to society's welfare and test its public life by the standards of right reason and Gospel truth. Responsible citizenship is a virtue. Participation in the political process is a moral obligation. This is particularly urgent in light of the need to defend marriage and to oppose the legalization of same-sex unions as marriages. Married couples themselves, by the witness of their faithful, life-giving love, are the best advocates for marriage. By their example, they are the first teachers of the next generation about the dignity of marriage and the need to uphold it. As leaders of their family—which the Second Vatican Council called a “domestic church” (Lumen Gentium, no. 11)—couples should bring their gifts as well as their needs to the larger Church. There, with the help of other couples and their pastors and collaborators, they can strengthen their commitment and sustain their sacrament over a lifetime.

Conclusion

Marriage is a basic human and social institution. Though it is regulated by civil laws and church laws, it did not originate from either the church or state, but from God. Therefore, neither church nor state can alter the basic meaning and structure of marriage. Marriage, whose nature and purposes are established by God, can only be the union of a man and a woman and must remain such in law. In a manner unlike any other relationship, marriage makes a unique and irreplaceable contribution to the common good of society, especially through the procreation and education of children. The union of husband and wife becomes, over a lifetime, a great good for themselves, their family, communities, and society. Marriage is a gift to be cherished and protected.

For Further Reading


Between Man and Woman: Questions and Answers About Marriage and Same-Sex Unions was developed by the Committee on Marriage and Family Life of the United States Conference of Catholic Bishops (USCCB). It was approved for publication by the full body of bishops at their November 2003 General Meeting and has been authorized for publication by the undersigned.

Mgr. William P. Fay
General Secretary, USCCB

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Between Man and Woman: Questions and Answers About Marriage and Same-Sex Unions is available in print editions in English and Spanish and may be ordered by calling toll-free 800-235-8722. Ask for publication number 5-611 (English) or publication number 5-905 (Spanish).

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U.S. Catholic Bishops’ Administrative Committee Calls for Protection of Marriage

WASHINGTON (September 10, 2003) — The U.S. Bishops’ Administrative Committee voted September 9 to give general support to a Federal Marriage Amendment to the U.S. Constitution.

The Administrative Committee, which is comprised of 47 bishops, including committee chairmen and representatives of the 14 USCCB regions in the United States, took the action during its annual September meeting in Washington.

The statement follows.

PROMOTE, PRESERVE, PROTECT MARRIAGE

Statement of the Administrative Committee
United States Conference of Catholic Bishops

September 9, 2003

The Catholic Church believes and teaches that marriage is a faithful, exclusive, and lifelong union between one man and one woman, joined as husband and wife in an intimate partnership of life and love. Marriage exists so that the spouses might grow in mutual love and, by the generosity of their love, bring children into the world and serve life fully.

Moreover, we believe the natural institution of marriage has been blessed and elevated by Christ Jesus to the dignity of a sacrament. In this way, the love of husband and wife becomes a living image of the way in which the Lord personally loves his people and is united with them.

God is the author of marriage. It is both a relationship of persons and an institution in society. However, it is not just any relationship or simply another institution. We believe that, in the divine plan, marriage has its proper meaning and achieves its purposes.

Therefore, it is our duty as pastors and teachers—a responsibility we share with the Christian faithful and with all persons of good will—to promote, preserve, and protect marriage as it is willed by God, as generations have understood and lived it, and as it has served the common good of society.

To promote, preserve, and protect marriage today requires, among other things, that we advocate for legislative and public policy initiatives that define and support marriage as a unique, essential relationship and institution. At a time when family life is under significant stress, the principled defense of marriage is an urgent necessity to ensure the flourishing of persons, the wellbeing of children, and the common good of society.
Our defense of marriage must focus primarily on the importance of marriage, not on homosexuality or other matters. The Church’s teaching about the dignity of homosexual persons is clear. They must be accepted with respect, compassion and sensitivity. Our respect for them means we condemn all forms of unjust discrimination, harassment or abuse. Equally clear is the Church’s teaching about the meaning of sexual relations and their place only within married life.

What are called “homosexual unions,” because they do not express full human complementarity and because they are inherently non-procreative, cannot be given the status of marriage.

Recently, the Congregation for the Doctrine of the Faith issued a statement emphatically opposing the legalization of homosexual unions. Bishop Wilton D. Gregory, President of the U.S. Conference of Catholic Bishops, welcomed this statement and further articulated our own conviction that such “equivocation not only weakens the unique meaning of marriage; it also weakens the role of law itself by forcing the law to violate the truth of marriage and family life as the natural foundation of society and culture.”

We call on Catholics and other persons of good will to join with us in advancing this positive view of the importance of marriage for children and for society, and to defend these principles and the institution of marriage. This is especially important when popular culture, media and entertainment often undermine or ignore the essential role of marriage and promote equivalences of marriage and homosexual relationships.

We will do this in our teaching and preaching, but also in our public policy advocacy at the state and national levels and in the important dialogue about how best to protect marriage and the common good in the U.S. Constitution and in our society as a whole. We offer general support for a Federal Marriage Amendment to the U.S. Constitution as we continue to work to protect marriage in state legislatures, the courts, the Congress and other appropriate forums.

Thus, we strongly oppose any legislative and judicial attempts, both at state and federal levels, to grant same-sex unions the equivalent status and rights of marriage — by naming them marriage, civil unions or by other means.

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