

Executive Summary Backgrounder



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A Defining Moment: Marriage, the Courts, and the Constitution

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The debate over the nature, purpose, and legal status of marriage has emerged as a critical national issue, the resolution of which will shape the future of our society and the course of constitutional government in the United States.

A series of significant judicial decisions has brought the issue of homosexual "marriage" to the forefront of our nation's attention. Last November, a 4-3 decision of the Massachusetts Supreme Judicial Court declared that traditional marriage upholds persistent prejudices and that couples of the same sex have a right to marry in that state. Despite numerous efforts to block or delay the Massachusetts court's controversial edict, the Commonwealth of Massachusetts has been forced to issue marriage licenses to same-sex couples since May 17.

These judicial decisions—as well as the actions of local officials who, intentionally contrary to state law, have issued thousands of fraudulent marriage licenses to same-sex couples—seek to redefine the institution of marriage by judicial fiat and affirm homosexual "marriage" as a fundamental civil right that the federal government has a constitutional obligation to secure nationwide.

Faced with such a concerted legal and political effort to deconstruct and thereby undermine one of the most basic institutions of civil society, policy-makers must now take immediate steps at both the state and federal levels to protect marriage, prevent judicial usurpation, and uphold the rule of law.

What is happening is not a slight change in degree that merely extends benefits or rights to a larger class, but a substantive change in the essence of the institution. It does not *expand* marriage; it *alters* its core meaning, for to redefine marriage so that it is not intrinsically related to the relationship between fathers, mothers, and children would sever the institution from its nature and purpose.

The institution of traditional marriage can be protected through actions taken in the following arenas.

Public Education. Concerted efforts must be made at every level to educate the public, policy-makers, and political leaders generally about marriage and current threats to the institution of marriage.

Legal Policy. Many significant legal battles are yet to be fought at the state and federal levels. Judicial decisions in Massachusetts and other localities are but the opening moves in a long-term legal strategy to impose homosexual "marriage" through the courts, circumventing lawmakers and the people before they have an opportunity to react through legislation or the electoral process.

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Above and beyond defending existing state laws and legal precedents that uphold traditional marriage, a primary objective of legal policy is to defend the federal Defense of Marriage Act (DOMA) from inevitable constitutional challenge.

State Policy. It should be kept in mind that, while the marriage debate is now a national issue, it is not primarily a federal policy matter. By tradition, and in accord with our constitutional division of power between the federal government and the states, marriage is recognized and regulated by state law. Most of the key battles, therefore, will occur at the state level.

- **State Marriage Statutes.** The first line of defense is for states to review their laws concerning marriage and clarify and strengthen public policy preferences that favor traditional marriage.
- **State DOMAs.** If states want to avoid being forced to recognize the validity of same-sex "marriages" originating in other states, they must clearly and unambiguously declare their state policy and their refusal to recognize those "marriages."
- **State Constitutional Amendments.** The best way to defend against a state court that might seek to overturn state public policy or force recognition of another state's marriage policy is to amend the state constitution to establish a clear constitutional policy that favors marriage.
- **State Petitions.** States concerned about the growing threat to marriage ought to petition the U.S. Congress to voice their concerns and express their views about federal legislation and a constitutional amendment to protect marriage.

Federal Legislation. There are several things that Congress could do to support and defend marriage. Consistent with DOMA, Congress could call on the states to clarify their marriage statutes and define in state law, and in state constitutions if necessary, that marriage is the union of one man and one woman. Congress could also take steps to enforce the definition of marriage established in DOMA when it reauthorizes federal programs and otherwise enforces federal policy, ensuring that all federal policies are consistent with that definition. Having authority over the District of Columbia, which currently has no laws defining marriage and has no DOMA, Congress could pass legislation consistent with the federal DOMA that protects the institution of marriage in the District of Columbia.

The most important and responsible step Congress can take to preserve marriage is to send a constitutional amendment that protects the institution of marriage to the states for ratification. While the amendment process should never be taken lightly, and although it is extremely difficult, it is now the prudent and timely course to amend the U.S. Constitution to preserve marriage as the legal union between one man and one woman. If the options are either to allow a few activist judges to redefine marriage by judicial fiat or to amend the Constitution to reflect the established will of the people, the choice is clear. It is imperative, for the sake of constitutional government, that we proceed with the democratic process of amending the Constitution.

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