DEFENSE OF MARRIAGE ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY

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TUESDAY, MARCH 30, 2004

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

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 acquiesence 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. FEENEY. 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 an epiphany and creates a new 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 underemployed 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:]

PREPARED STATEMENT OF THE HONORABLE BOB BARR

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-&-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-

licly 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 and, yes, tough 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. CHABOT. Mr. McCarthy, you are recognized for 5 minutes.

STATEMENT OF VINCENT P. McCARTHY, THE AMERICAN CENTER FOR LAW AND JUSTICE, INC., NEW MILFORD, CT

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 a 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 as marriage 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:]

PREPARED STATEMENT OF VINCENT P. MCCARTHY

SUMMARY

In 1996, the Congress passed, and President Clinton signed into law, the Defense of Marriage Act.[1] DOMA does two important things. First, DOMA permits States

[1] The Defense of Marriage Act, 110 Stat. 2419 (1996), states:

SECTION 1. SHORT TITLE.

This Act may be cited as the " Defense of Marriage Act" .

SECTION 2. POWERS RESERVED TO THE STATES.

(a) IN GENERAL.—CHAPTER 115 OF TITLE 28, UNITED STATES CODE, IS AMENDED BY ADDING AFTER SECTION 1738B THE FOLLOWING:

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

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

Continued

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 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,[2] 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 (3) substantially relied upon by the States.[3] 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

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under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.".

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.

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 unalike 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.[4] And the known research indicates that the offspring of traditional marital relations also trend toward greater health and more developed social skills.[5]

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.[6]

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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[4] *See* "New Study Outlines Benefits of Marriage," The Washington Times, Oct. 17, 2000.

[5] *See* "New Study," n.4, *supra.*

[6] 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.

Pub. L. 104–199 sec. 2, 100 Stat. 2419 (Sep. 21, 1996) codified at 28 U.S.C. § 1738C (1997).

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.

Pub. L. 104–199, sec 1, 100 Stat. 2419 (Sep. 21, 1996) codified at 1 U.S.C. § 7 (1997).

A. RESERVING STATE DIMENSIONS OF MARRIAGE TO THE STATES

When the 104th Congress considered, and enacted, DOMA, it expressly recognized the uniquely state-law ordered dimensions of marriage. H.R. Report 104–664, at 3. A view to the contrary would be incapable of substantial support. Efforts to modify the meaning of marriage have, perforce, been directed to the States, rather than to the federal government. Judicial decisions reflecting the press for state-based recognition of same-sex marriage abound: in Arizona, *Standhardt* v. *Superior Court*, Case No. 1 CA SA–03–0150 (Ariz. Ct. App.) (judgment affirmed); in Massachusetts, *Goodridge* v. *Massachusetts*, 440 Mass. 309, 798 N.E.2d 941 (2003), in New Jersey, *Lewis* v. *Harris*, Docket No. 15–03, Mercer County Super. Ct. (N.J.) (summary judgment granted, Nov. 5, 2003) , in Alaska, *ACLU* v. *Alaska*, Supreme Court Case No. S–10459 (Ak.), and in Hawaii, *Baehr* v. *Miike*, 994 P.2d 566 (Haw. 1999).

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").[7]

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[7] By no means exhaustive, other articles noting Congress' power to determine the effects of full faith and credit, include: **Congressional Research Service, The Constitution of the United States of America, Analysis and Interpretation** 869–870 (1987); G.W.C. Ross, *Full Faith and Credit in a Federal System* 20 **Minn. L.Rev.** 140, 146 (1936); Timothy Joseph Keefer, Note, *DOMA as a Defensible Exercise of Congressional Power Under the Full-Faith-and-Credit Clause* 54 **Wash. & Lee L.Rev.** 1635 (1997); Daniel A. Crane, *The Original Understanding of the "Effects Clause" of Article IV, Section 1 and Implications for the Defense of Marriage Act* 6

Continued

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. 2Supp. 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?
>
> "3. Whether Bowers v. Hardwick, 478 U.S. 186, 92 L. Ed. 2d 140, 106 S. Ct. 2841 (1986), should be overruled?" Pet. for Cert. i.

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:

Geo. Mason L.Rev. 307 (1998); Jeffrey L. Rensberger, *Same-Sex Marriages and the Defense of Marriage Act: A Deviant View of an Experiment in Full Faith and Credit* 32 **Creighton L.Rev.** 409, 452 (1998); Patrick J. Borchers, *Baker* v. *General Motors: Implications for Interjurisdictional Recognition of Non-Traditional Marriages* 32 **Creighton L.Rev.** 147, 148 (1998); Ralph U. Whitten, *The Original Understanding of the Full Faith and Credit Clause and DOMA* 32 **Creighton L.Rev.** 255, 257 (1998); Lynn D. Wardle, *Williams* v. *North Carolina, Divorce Recognition, and Same-Sex Marriage Recognition* 32 **Creighton L.Rev.** 187, 223 (1998); Maurice J. Holland, *The Modest Usefulness of DOMA Section 2*, 32 **Creighton L.Rev.** 395, 406 (1998); Polly J. Price, *Full Faith and Credit and the Equity Conflict* 84 **Va. L.Rev.** 747 (1998).

[8] The definitions adopted in DOMA have been discussed in just a few reported decisions. *See In re Goodale,* 298 B.R. 886, 893 (W.D.Wash. Bankrptcy Ct. 2003); *United States* v. *Costigan*, 2000 U.S. Dist. Lexis 8625, *13–17 and n.10 (D. Maine 2000) (discussing definition of "spouse" under DOMA).

> 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 foresage 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 only in light of Bowers' validation of laws based on moral choices. Every single one 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.[9]

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 104–664, 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-

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[9] The Defense of Marriage Act has been a point of discussion in a handful of reported decisions; no reported case has concluded that DOMA was unconstitutional. *See In re Goodale,* 298 B.R. 886, 893 (W.D.Wash. Bankrptcy Ct. 2003) (relying on DOMA's amendment of the term "spouse" in allowing a debtor to avoid a lien reflecting support obligations for former partner); *Mueller* v. *CIR*, 2001 U.S. App. Lexis 9777 (7th Cir. 2001) (rejecting equal protection challenge to DOMA because period of assessments and fines predated the effective date of DOMA); *Mueller* v. *CIR*, 39 Fed. Appx. (7th Cir. 2002) (rejecting challenge to constitutionality of DOMA because taxpayer had not sought legal recognition of his relationship as a marriage); *United States* v. *Costigan*, 2000 U.S. Dist. Lexis 8625, *13–17 and n.10 (D. Maine 2000) (discussing definition of "spouse" under DOMA); *Lofton* v. *Kearney*, 157 F. Supp. 2d 1372, 1385 n.19 (S.D. Fla 2001) (noting DOMA's role in precluding the recognition of homosexual marriage in Florida).

sistent with important public policies. That guarantee stands as the principal obstacle 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 Carolina, 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 exported 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 normally 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 daffy. 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 [1]

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] 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 childbearing 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 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 Eleventh Circuit similarly explained in *Lofton*: "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 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 adopting."

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 interest 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 encourage 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 encourages nor discourages States from recognizing same-sex unions. It is scrupulously 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 recognition 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 legitimate 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 congressional action. *Prudential Insurance Co.* v. *Benjamin* (1946).

For the reasons elaborated above, DOMA rationally advances the government interest in optimal conditions for procreation and child nurturing. That Congress did not attempt to address other potential Full Faith and Credit marriage issues is constitutionally undisturbing to either equal protection or due process. Congress may treat problems piecemeal based on the urgency of the evil or experimentation necessary for learning. Wholesale or blanket solutions are not constitutionally mandated. *Williamson* v. *Lee Optical Co.* (1955).

In sum, DOMA is constitutionally irreproachable and contributes to the federalism saluted by the Tenth Amendment and the Full Faith and Credit Clause.

ATTACHMENT

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Contemporary consensus amendment

By Bruce Fein
Published March 16, 2004

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 outlandishness 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 Lichfield Group.

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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 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 license whether or not they intend to have children, nor do we disqualify people who, from the very appearance, couldn't possibly—perhaps they are senior citizens and we can make some presumptions 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 anywhere 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 marital relations also trend toward greater health and more developed social skills." Then you go on to say that "claims that raising children 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 research that cites the benefits of raising children in same-sex families. I would suggest to you that there is a great deal of research that does indicate that two-parent families, including gay and lesbian families, provide greater stability for children than single-parent families. There is hardly a consensus.

I would go further to say, DOMA essentially emerged from a debate that was occurring in the State of Hawaii. There was litigation in the State of Hawaii and the State was arguing against same-sex marriage by saying that it is the State's interest in regulating marriage for the benefit of children and they were allowed to bring expert witnesses of their choosing. Additionally, the plaintiffs 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-

ferent 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. HOSTETTLER. 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. HOSTETTLER. 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. HOSTETTLER. No, the Supreme Court decision.

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

Mr. HOSTETTLER. 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. HOSTETTLER. 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 time table, 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 Massachusett's 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 langauge 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 langauge 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.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE STEVE CHABOT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

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.

Through out 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 Massachussetts 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.

Truly yours,

Vincent P. McCarthy

VPM/lp

Enc.

8 South Main Street
P.O. Box 1629
New Milford, Connecticut 06776
(860) 355-1902
(860) 355-8008 (Facsimile)

EVIDENTIARY BASE I

A universal social institution

As legal institution of the state, marriage dates back to the earliest known legal code, that of Hammurabi ca. 1780 BCE, and contracts exclusively non-incestuous adult unions of men and women —i.e., exactly its present form as in the Commonwealth of Massachusetts, so with respect to age of consent, consanguinity and sex of the spouses without change for nearly 4,000 years.

U.S. Supreme Court Justice Sandra Day O'Connor's recently acknowledged that American courts are increasingly adjudicating with international theory and precedent in mind, and she specifically instanced *Lawrence v. Texas*,[ii] a case with important implications with respect to family and marriage law. It is fitting that the present Statute should therefore reference the Code of Hammurabi among its rational bases, coming as it does from a prototypically matriarchal, by contrast to patriarchal culture, and offering as its rationale for various detailed restrictions on marriage (*inter alia*), a diverse range of arguments that while comfortable in content and tone to a large part of humankind--perhaps the largest part—may seem strange to us. Examples of these, and of additional international and millenial precedents are detailed in the endnote section.[iii]

EVIDENTIARY BASE II

Marriage and Procreation is the foundation of the family

Evidentiary Bases IV – VI discuss the effects on children of family strcutures that deprive them of either a mother or a father. But a separate matter, social science confirms that children suffer *when biological families do not persevere across generations*[iv], that is, when childrens' own households lacks a capacity to reproduce themselves by raising biological children who themselves raise children who go on to establish stable, harmonious families.[v]

The stable, harmonious, *multigenerational family* therefore arises in direct proportion as one man marries one woman who then stay married, raise biological children, who in turn do likewise. Every departure from this standard therefore reduces the likelihood of *multigenerational stability*. Furthermore, the stability of society is directly dependent upon the degree to which such multigenerational families are present within a society.[vi]

Evidentiary Base III

The two sexes are not fungible

III.1. The biology of *homo sapiens* demands both male and female germ cells for procreation; the species is incapable of asexual reproduction (in contrast to lower terrestrial species); embryonic and fetal human central nervous system development, including that of the brain, the organ universally acknowledged as the seat of consciousness, personhood and "identity", has recently been confirmed under normal conditions to be dichotomously differentiated along male and female sexual lines, determined by the fetus itself shortly after conception, as long suspected.[vii] Human (indeed all terrestrial higher biological) anatomy[viii] is starkly dichotomized into two forms of stark *biological heterosexual differentiation*. Thus, 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.[ix, x,xi,xii,xiii]

III.2. *All marriages of one man and one woman are inherently similar entities*, a homogeneous community of such unions, whereas unions of two men and unions of two women fracture into two distinct communities.

A society that validates marriages plus "same-sex marriage," will create three separate-but-equal communities with starkly unequal demographics, differential impact on children (to be documented) and different multigenerational capacity[xiv]:

- male-female families as known throughout human history with the preponderance of children;
- a community of female unions with some minor dependents;
- a community of female unions with the smallest proporton[xv] of minor dependents.

To fracture society in this way represents a massive social experiment most 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 fungible;" nor are they fungible even when divided up by sex into male unions and female unions, so that "a community made up…of one [sex]..is different from a community composed of both [sexes];" and a community composed of one sex is also different from a community composed of the other sex:

1) An extensive, widely-cited nationwide social-science survey devoted to identifying the major differences between male unions and female unions.[xvi]
2) An overview of the extensive dimorphic ("gay *and* lesbian…") sociological literature that, perforce, has *had* to dichotomize both within the wider social science academic and clinical-therapeutic professional disciplines, and the specialized literatures and subspecialties exclusive to and for homosexual pair subpopulations.[xvii]
3) *The Social Organization of Sexuality*, the largest and most well-respected social science study of sexuality ever performed in America, conducted by a team of researchers at the University of Chicago, funded by the National Institutes of Health in response to the AIDS crisis, and referenced repeatedly in Amicus Briefs to United States Supreme Court signed by the all the major health, public health and social science professional organizations as definitive in its findings.

From the first source, we may draw a number of important conclusions. [Additional conclusions will be added from the later two].

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 the gay and lesbian community and published in a peer-reviewed journal of general social science readership) on the differences between 706 male unions and 506 female unions[xviii] (with added comparisons to marriage), the following may be gleaned. (Additional details are tabulated in the endnote section). On average, female unions last 4.9 years, male unions 6.9 years and first marriages 11.0 years[xix]. Of the female unions surveyed, less than 1/5 of 1% endured 40 years or more; of the male unions, slightly more than 2/5 of 1% had. Of all combined male and female unions, fewer than 8% endured 15 years (4 years longer than the average length for a first marriage). Five times as many marriages endure longer than this.
- 22% of female union households are caring for children, with a mean of 0.4 per household; 10% of male union households are caring for children with a mean of 0.17 per household and 69% of married households were caring for children with a mean of 2.1 per household. (The population replacement rate is also 2.1 children for every two adults.)
- In female union households with children, 74% of the children come from prior heterosexual marriages; in male union households with children, 79% of the children come from prior heterosexual marriages; in marriages with children, only 10% of the children come from prior marriages.[xx] For both female unions and male unions, therefore, a major source of children is *divorce*, which has irrefutably been demonstrated to be in itself extraordinarily harmful to children. Thus, in granting legal status to male unions and female unions, for its claimed benefits to adult men and women, the state would be knowingly furthering and encouraging an action with well-established harmful effects on children. That major source, in the case of female unions is nearly four times, and in the case of male unions, nearly fives times as great as all other sources of children combined.

The argument has been made that granting marital status to male unions and to female unions will stabilize both these unions and therefore society. However, data from the same surbey indicates exactly the opposite: It will institutionalize a radically different definition of marriage and is likely therefore to destabilize society to the extent that marriage as properly defined stabilizes it. This is because the survey found that:

- 9% of female unions and 37% of male unions had non-monogamy agreements[xxi]; in marriages, such agreements are so rare as to be immeasurably small and are in fact precluded in all mainstream religious marriage rites.
- 10% of members of female unions and 30% of members of male unions additionally admit to breaking those agreements; By contrast the vast majority of marriages are completely monogamous[xxii], 11% of married individuals have violated their marital vows at some time.
- One of the most carefully researched studies of the most stable male unions, *The Male Couple*, was researched and written by two authors who themselves comprise such a union—a psychiatrist and a psychologist. Its investigators found that of the 156 male unions studied, only seven had maintained sexual fidelity; of the hundred unions that had been together for more than five years, none had been able to maintain sexual fidelity. The authors noted that "The expectation for outside sexual activity was the rule for male couples and the exception for heterosexuals."[xxiii]

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

- 5% of members of female unions and 12% of members of males unions admitted to engaging in frankly unsafe sexual practices outside their unions during the prior year.
- An additional 5% in female unions[xxiv] and 30% in male unions[xxv] engaged in what was termed "safe" practices, but were were either HIV poitiove or not monogamous. In these instances, the CDC uses the term "safer" because the risk of transmitting HIV or sexually transmitted disease I substantially greater than zero, especially among men, regardless.
- An additional 44% of members of female unions and 61% of members of male unions engaged in either frankly "unsafe" or "safer" sexual practices within their relationships.
- 56% of members of female unions and 36% of male unions engaged in sexual practices that placed themselves, each other and individuals outside their relationship at no risk for HIV or sexually transmitted diseases. [xxvi]
- 6% of members of female unions and 19% of members of male unions were unaware of the safety of their partner's outside 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 29% 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 what constitutes an appropriate alteration in the structure of marriage as a *de facto* response, in significant measure, to a medical and public health crisis, if, indeed, any response of such a kind is appropriate. The case may be made, rather, that the pressure to so respond represents a tacit admission that the public health strategies presently in place—having arguably failed, given that the incidence of new HIV infections, and high-risk behaviors among young men is once again rising, as the CDC just reported—themselves require a fundamental re-examination, beginning with the widely held impression that the relationship between male homosexual practice and AIDS is a statistical anomaly, or that homosexuality, the single highest risk factor for AIDS, is innate and irreversible.

The above data, gathered by and for the community of male unions and female unions for the purpose of self-study makes it abundantly clear that the legalization 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 are at risk as well via alternate transmission vectors.

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

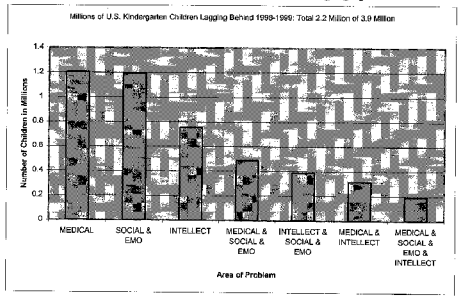
The Early Childhood Longitudinal Study, Kindergarten Class of 1998-1999 (ECLS-K), was sponsored by the National Center for Education Statistics and provides data on children. The ECLS-K base-year sample is composed of survey statistics on ca. 22,000 children enrolled in more than 1,200 kindergarten classes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

Child Trends in Washington, D.C. is a non-partisan, not-for-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. Interim data from the study was assembled by ChildTrends 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 starting in kindergarten of 1998-1999 and they will be followed until 2004, with an eye to making recommendations concerning what can best be done to ensure that these children will catch up to their peers, and to prevent children in the future from falling behind. Preliminary conclusions may be drawn as the data stream nears its conclusion. But the fact that the study was designed to generate data over a six-year period is worth noting: *Significant policy recommendations are awaiting the final results of longitudinal studies, examining large numbers of children (~3,900,000) upon whom the impact of their recommendation will fall most acutely.*[xxvii] As 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 *causal* conditions being studied for its impact on these target areas is *Family Structure*. The chart below combines all the results to date in a single graph:



One feature of the above chart is painfully simple[xxviii]: 5% 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 55% of them do not live with both their biological mother and father.

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

For children, the salient feature of a female union is its *fatherlessness*, for the simple reason that this research has overwhelmingly demonstrated that any and every departure from the standard, often unattainable ideal of a biological mother and father married for a *entire* lifetime raising their own children is 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 fatherless homes come 63% of all youth suicides, 90% of all homeless and runaway children, 85% of all children with with behavioral problems, 71% of all high school dropouts, 85% of all youths in prison, well over 50% of all teen mothers. Not all of these problems can be caused by fatherless alone, but it would be foolish to set outdeliberately to design a social structure that deliberately institutionalizes it.[xxix]

The same is true with respect to male unions and *motherlessness*, but the proportion of male unions with children is much smaller than of female unions with children (see data cited above and following). In addition, only recently has it occurred to anyone to question whether children actually need mothers, so that the research confirming they indeed do, convincing as it is, is smaller than that for fathers, whose necessity was first questioned some forty years ago.

With respect to fatherlessness, quantifiable deficits occur in literally every area of development—social, psychological, intellectual, educational, emotional, relational, medical, even with respect to longevity, as well as with respect to sexuality, likelihood of cigarette use, drug and alcohol abuse, age of onset of sexual activity and likelihood of teen or earlier pregnancy.

Furthermore, although these deficits can be mitigated by the addition of outside individuals of the opposite sex, and less-so by additional caretakers of the same sex, they can under no circumstances ever be entirely mitigated, regardless of the measures taken. There is no reason whatsoever to think that the mere addition of a legal document will undo the damage that no alternate measure of any other kind has ever been show capable of doing. Nor, given the enormous conservatism of human evolutionary biology, should this be surprising: The human nervous system evolved over four billion years anticipating a lengthy immersion in a physical and emotional environment shaped predominantly by two distinctly different and differently-behaving creatures. However much plasticity that same nervous system also evolved to use creatively, it will stretch only at the cost of increased tension, and every system has its breaking point.

Fatherlessness & a host of difficulties

Table:

On the following page is a table of numbers. The numbers refer to summaries of findings from over 140 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 that the fatherlessness produces problems throughout the lifecycle and into the following generation.

Thus, for example, one may read off from this chart that associated with fatherlessness in the teen years are an increased liklihood of early sexual activity, drug use, delinquency, and much else. Drug use, however, persists into adulthood as well. Following the endote section are summaries from all of the studies as well as the citations and references.[xxx]

PROBLEM	IDENTIFYING NUMBER OF STUDY																												N
academic	13	22	25	34	37	41	44	45	53	57	64	68	82	87	95	102	105	108	111	115	123	128	131	137	138				25
delinquency	6	25	30	43	46	47	54	56	57	64	66	68	84	87	102	105	128	130	132	134	139	141							22
early sex	9	18	21	32	33	37	59	62	74	78	82	83	92	97	98	100	104	113	140										19
health	33	37	38	48	63	65	76	78	82	85	86	90	99	105	107	108	119												17
poverty	4	12	14	34	37	41	44	45	53	58	63	75	80	93	102	112	130												17
illegitimacy	11	32	74	78	82	85	92	97	98	100	104	111	113	114															14
drugs	5	18	21	35	36	47	80	82	99	109	121	129	141																13
depression	10	25	26	35	40	41	44	45	52	66	83	95																	12
relationships	71	72	82	87	111	115	116	118	122	126	127	136																	12
psychological	1	23	33	39	91	78	108	116	119																				9
crime	30	47	99	104	124	131	141																						8
instability	24	27	28	42	55	69	70																						7
alcohol	18	25	47	82	109	131																							6
breastfeeding	39	48	76	85	90	96																							6
absent fathers	20	25	75	91	121																								5
abuse	12	19	99	106	110																								5
self-esteem	13	33	71	95	115																								5
suicide	29	63	131	133																									4
abandoned	3	5	17	90																									4
reading	22	37	115	123																									4
intelligence	3	22	103	139																									4
death	50	57	65	85																									4
STD	78	100	104																										3
gender identity	1	7	83																										3
cynicism	4	91	102																										3
homelessness	14	97	104																										3
divorce	37	49																											2
marital quality	37	70																											2
smoking	80	129																											2
low birth weight	87																												1
SIDS	61																												1
ACQ	67																												1
social norms	73																												1
religion	79																												1
fertility	83																												1
elderly	97																												1

(demographics)	15	27	28	101	112	117	6

infants	38	48	50	57	61	76	85	90	96	107																			10
teens	2	8	9	10	11	16	18	21	22	25	26	29	30	31	32	33	36	74	78	80	92	89	95	97	98				44
"	104	105	108	116	115	115	116	121	122	125	128	129	131	134	135	137	140	141											
young adults	40	71	74	81	82	114	118	121	130	135																			10
adults	41	45	52	60	65	73	79	120																					8

Motherlessness & a host of difficulties.

As noted above, only recently has it been considered that children might not need mothers. Therefore the literature demonstrating they do is sparser than that demonstrating their need for fathers. Nonetheless, it exists and is growing recently[xxxi] in the wake of an increse in the number of single father families generated primarily by divorce. Here, too, the literature results are unsurprising: Children do not do well when they lack mothers[xxxii], a phenomenon that is found in both our cultures and in others, and their 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 ressearchers inclined to discount any differential effect whatsover on the absence of a mother versus that of a father, or indeed, of an absent parent altogether.[xxxiii]

Endnotes

[i] of Iraq, then called "Bavel" or "Shesheq" in Mesopotamia in the region near Tikrit

[ii] "Solicitude for the views of foreign and international courts also appeared in last term's decision in *Lawrence* v. *Texas*. In ruling that consensual homosexual activity in one's home is constitutionally protected, the Supreme Court relied in part on a series of decisions from the European Court of Human Rights. I suspect that with time, we will rely increasingly on international and foreign law in resolving what now appear to be domestic issues, as we both appreciate more fully the ways in which domestic issues have international dimension, and recognize the rich resources available to us in the decisions of foreign courts", Remarks to The Center for International Studies , Atlanta, Georgia, October 28, 2003, Sandra Day O'Connor , Associate Justice, Supreme Court of the United States.

[iii] From the Code of Hammurabi: "Bel, the Lord of Heaven and Earth, called by name me, Hammurabi, to further the well-being of mankind. In future time, through all coming generations, let the king, who may be in the land, observe the words of righteousness which I have written; let him not alter the law of the land which I have given….My words are well considered." Hammurabi also noted that failure to comply with the code, approximately 20% of its nearly 300 articles being devoted to marriage and family-related matters, would be punished not by a divine patriarch, but by the Great Mother Goddess, one of whose major concerns appears evidently from the context of the code to have been family stability, faithfulness, well-being and intergenerational continuity.[i]

Furthermore, the illegality *of contractual same sex marriages has been a settled matter of precedent* for as long as we have written record of the subject—1750 years—and going farther back, redaction of formally-memorized oral disputes regarding precisely this same issue go back 2400 years. We again refer to disputes that took place in the context of the great flourishing of Iraqi legal culture but as later cultivated within the expatriate Judean community antique Pumbedita. The written redaction in Tractate Hullin 92a-b of the Talmud Bavli refer to disputes that occurred in nearby Sura during the early years of exile after the Babylonian conquest, and would have been pertinent both to the expatriate community itself and the surrounding society. The target passage being analyzed is the phrase "*They weighed out my wages, thirty pieces of silver.*" The legal comment by Ulla ben Ishmael (ca. 250 CE) begins, *"The thirty pieces of silver refer to the thirty commandments obligatory for gentiles, of which they always obey three: One, they do not write out a formal marriage contract between men…".*

Thus, while Male Unions have long existed (for at least 2400 years), they have also long been under a legal proscription that is actually obeyed and noted as such by admittedly hostile critics. For the tone of such commentary is something like, "Even *they* don't do *that*," i.e., the tone of a famously conquered group of religious exiles now living among the famously cosmopolitan Babylonians.

The medieval Western European scholar Rashi (Solomon Issac), writing from within an analogous expatriate community in a different, but equally sophisticated, location (Troyes, France, ca. 1080 CE), seven hundred years later, and likewise observing the unchanging nature of developed human society, extends the same legal observation with further details relevant to the present situation in post-Puritan Massachusetts. He expands further by adding this commentary to the above passage in Tractate Hullin:

"Even though they [society at large] *may engage in homosexual behavior, and though some may specifically designate a particular partner* [he here uses the special Hebrew words to designate such partners, terms which we therefore realize must have existed, unremarkably, in France and in third century Iraq, if not hundreds of years earlier as well] *they don't go so far as to grant such relationships legal status.* "We learn therefore that the designation of such unions with specific terms —"Male Unions", "Female Unions"—is scarcely a new idea; nor is it a new idea that society has universally refrained from granting such unions legal status.

To abstract and summarize the above:

First, homosexual activity *per se* is not specifically at issue in this ancient legal discussion of the behavior of society at large—regardless of the fact that it is specifically prohibited for members of the subgroup discussing the issue;

Second, the discussants and their neighbors, who are living some thousands or hundreds of years ago in the two instances described, are scarcely naieve (we are not more sophisticated than they are, it is a conceit of ours to believe so)—the discussants fully recognize that some individuals in their surround choose to live openly with "same-sex partners" and these individuals designate their "same-sex unions" with distinct terms;

Third, a further examination of related passages in the same body of legal texts would reveal a highly nuanced discussion as to the many general differences perceived to exist between male unions and female unions;

Fourth, nonetheless, the *legal* recognition of such unions remains permanently forbidden by the surrounding societies, the prohibition is respected in fact, and the societies are praised for respecting the prohibition.

These points lead to the final legal point, namely, the ancient assessment as to *how severe a breach it would be*, were state sanctioning of such unions to be allowed—fully recognizing that they have always existed, have even had special names, that homosexuality has always existed and that their *not* being legally sanctioned appears to have nothing to do with homosexuality per se.

This point is brought out in much the same fashion as in the preamble to the Code of Hammurabi, that is, in the mythopoeic, as opposed to logical-scientific style peculiar to the culture whence it arose, hence with more a "legendary" than a "rational" basis. (Though keeping in mind Justice's O'Connor's admonition, we should be prepared to be opened-minded in our assignment of truth-value. In any event, a greater weighting of scientific evidence will follow in the subsequent

pages.) We refer here to the legendary claim, central to Western Common Law, that the the legal code governing *all* human beings, arose immediately post-Flood—the so-called "Noahide Code" (also known in some traditions as "Natural Law", that Law of "Nature's God" embedded tacitly in American tradition without reference to the Flood, especially in the form of "Natural Rights", but in content little distinguishable from the "Noahide Laws")

But the Flood itself occurred in consequence of a *specific* legal breach—or so the legend says: Genesis Rabbah 26:5, which is a redacted oral complement to the written legal discussions of the Talmud—explains the precise balance of crime and punishment that lay behind the Flood as follows, *"The generation of the flood was not obliterated from the world until they wrote marriage contracts* [illegible] *for males and males and for males and beasts."*

Although these specifics of the cautionary tale have been lost to in the common retelling, a hint of original intent remains in the pairing of men and women only, of male beasts and female beasts only, walking two by two up the gangplank to their new home, such pairs the only way to preserve life. When we grow too sophisticated to remember ancient legal precedents, such childlike tales serve as visual mnemonics in their stead.

The key word in this passage is [illegible] – *gammeyah*- whose origin is the Greek *gamikos*, meaning marriage. In the passages cited previously the standard Hebrew term for marriage contracts was used—*Ketubbot*. Thus, we understand that this new commentator was most likely writing from within the Greek community. This community, like the those in Assyrian and pre-Christian Babylonian, and the post-Merovingian French communities, was well-known for the sophistication of its cosmopolitan culture. Like the latter two, it was also characterized by an intense phase of development of Jewish legal philosophy and disputation. But the Greek period of ca. 100-200 BCE is especially well-known known for the intense interaction that occurred between the moral philosophy of Judaism—with its concomitant legal code, a code that structured the family as we know it today—and that of the Greeks—whose multiple codes allowed for a family structure that reflected the polymorphism of the intrigues of Olympus.

Lest this material appear too far afield, some final observations are in order. At present, outside of the world of Orthodox Hebrew scholarship, little attention is paid to the legal material contained in the 45-plus volumes of the Talmud proper, and to the many hundreds of thousands of volumes of printed legal commentary and decision that has grown up as continuous cross-referenced organic whole over 2,400 years. But in fact, this body of work represents humankind's oldest and largest continuous record of legal reasoning. It should not be surprising that we find in it reference to the matter at hand.

But it is important to understand *how this body of legal commentary sees itself* (even if it is not necessary to accept that understanding at face value), as well as *the social context of the commentary*:

- In each of the instances referenced above, although the commentators were Jewish scholars performing legal exegesis within that framework, they understood their larger role to be "a light unto the nations". Hence, something that would be seriously harmful to humankind as a whole could not simply be dismissed as immaterial because, after all, "it only affects *them*" Hence the attention paid to the "Laws of Noah", and in particular the seriousness of the punishment associated with the writing of same-sex marriage contracts, reflects a larger obligation the writers considered to have been placed upon themselves. Thus, each commentator knows he must speak not only to his fellow Hebrew-speakers, but to all his fellow men and women: *and they did.* For example, Rashi translated many Hebrew writings into French; the leading Talmudists in every era were routinely consulted by the leading scholars of the surrounding community (Babylonian, Greek, Christian), in spite of the tense relations that comprise the more well-known surface history in each of the associated eras. In this fashion, for example, Talmudic law became the basis for early Church law and subsequent European secular law.
- In each of the instances referenced above (as is inherent in all Talmudic discussions), *the commentators understand themselves specifically to be speaking across the generations*, one legal commentator to the next, no matter that the gap may be hundreds or thousands of years, one reminding the next of his obligation, and of the precedents that have been established, and of the reasons behind those precedents. Each time the discussion is extended somewhat, varied slightly to fit the circumstances, the precise document is perhaps new; the exact language may be different; the supporting references expanded, but the fundamental basis remains unaltered.
- Clearly, there must have arisen a need, at the time, to re-emphasize these particular prohibitions, else they would not have been highlighted. But this is unsurprising, as the eras in question were sophisticated ones. And since the commentators were certainly not speaking *only* to the outside community, there must have been some within their own community, too, pressing up against the traditional restrictions. This is hardly surprising, needless to say.
- In each of the instances referenced above, the discussion does not take place in an isolated esoteric religious community, but in a sophisticated, cosmopolitan community at large. Thus a point-counterpoint is established in each instance between the Jewish position and the larger community within which the Jewish community resides. Tacitly, in such a portrait, each sustains the other.
- Thus the discussants were rarely pedants or navel-gazers; they are in fact directly engaged in the large issues of their community and of the community at large: Rashi, for example, engaged in direct negotiations with Godfroi de Bouilloin, scion of the Merovingians, prior to his leading the first Crusade.

So, too, today. The legal point and counterpoint requires extension once again; the dominant culture is a new one; the issue not, for neither is the level of sophistication new nor what is at risk new. The individuals have changed; but the roles scarcely. The call across the generations is the same and it is for all to hear.

[ix] Mash, E. J. (1984). Families with problem children. In A. Doyle, D. Gold, & D. S. Moskowitz (Eds.), Children in families under stress: New directions for child development, no. 24. San Francisco, CA: Jossey-Bass.

[vi] Kaysan, M., Moore, K. A., & Zill, N. (1990). Identifying successful families: An overview of constructs and selected measures. Washington, DC: Child Trends.

[vii] Kirby, Jill. *Broken Hearts - family decline and the consequence for society* London: Centre for Policy Studies

[viii] As found in *mice mutandes*, though the researcher considers his work valid for human brains as well. Dewing, P., Shi, T., Horvath, S. & Vilain, E. Sexually dimorphic gene expression in mouse brain precedes gonadal differentiation. *Molecular Brain Research*, **118,** 82 - 90, doi:10.1016/S0169-328X(03)00339-5, (2003).

[ix] apart from a small proportion of people with congenital or acquired medical conditions

[x] Although a debate has arisen as to whether there might exist some genetic factor influencing the later adoption of a "homosexual identity" by an individual, to date, in fact, and contrary to a mistaken popular impression, no such genetic factor has ever been identified, and numerous researchers who claimed to have found such a gene or genetic factor (or who were misrepresented as having made such a claim) have subsequently retracted (or denied) their claims. See following references.

[xi] Mann, C. Genes and behavior. *Science* 264:1687 (1994).

[xii] Billings, P. and Beckwith, J. Technology Review, July, 1993. p. 60.

[xiii] "Gay Genes, Revisited: Doubts arise over research on the biology of homosexuality," Scientific American, November 1995, P. 26.

[xiv] Hamer, D. H., et al. Response to Risch, N., et al., "Male Sexual Orientation and Genetic Evidence," Science 262 (1993), pp. 2063-65.

[xv] see references cited above in Base 1

[xvi] references to be cited Following

[xvii] Bryant, S. & Demian (1994). Relationship characteristics of American gay and lesbian couples: Findings from a national survey. *Journal of Gay and Lesbian Social Services. 1*(2), 101-117.

[xviii] This dichotomy has followed inevitably because once pairing takes place *along* sexual lines rather than *across* them, the differentiation of the problems of couples along those same lines is an unavoidable consequence of the fracturing of the *community of couples* likewise along sexual lines.

The clinical literature devoted to the problems of marriages, by contrast, shows no such fracture line, for the evident reason that the potential fracture line between the sexes is "wedded" within the marital relation itself, rather than amplified by an external division along that line.

In his famous tocsin, *1984*, George Orwell imagined separated bands of men and women roaming the streets in sharp mutual antagonism. They shared the name, "anti-sex leagues", though it wasn't sex per se that was stamped out within each group, but rather "cross tribal love" as it were—as though male-female love truly were across tribes (or species). Thus does "same sex marriage" drive a social wedge into the biological division of the sexes, where marriage proper binds over the divide.

It would be natural therefore to ask, then "Are there also quantifiable differences between marriages and male unions, marriages and female unions?" Many of the same researchers who have carefully documented the differences between male unions and female unions *assert* there exist no differences between male unions and marriages, female unions and marriages.

But a moment's reflection makes it apparent that this cannot be: If even a single difference has been discovered between male unions and female unions, then at least one of the two kinds of unions must differ from marriage with respect to that difference between them, and that difference has simply been overlooked—they can't *both* be just like marriage yet different from each other.

In fact, it is notoriously difficult to prove a negative, and the studies attempting to show that male unions or female unions *lack* any salient differences with respect to marriage are extremely sparse and suffer from their inability adequately to cover the necessary bases.

[xix] It has been far easier for researchers dispositively to uncover the differences between male unions and female unions—since they need only consider the differences between men and women—than to uncover the differences between these and marriages, since in the one instance and man is missing and in the other a woman is, and these absences are statistically characteristic.

Thus, when we turn to the clinical literature, we will find that it supplements the survey that had just been discussed with additional differentiating specifics between male unions and female, leaving us with implicit, but solid evidence of a *three* way distinction as well. Nonetheless, this research inevitably does reference marriage as well, highlighting some of the three-way differences explicitly.

It is worth anticipating here that the structural differences in the relationships among the adults are *an entirely separate matter*, and are not necessarily, or indeed, are simply *not*, the cause of the varying impact on any dependent children of being raised in families where the parents are in the form of a marriage, a male union or a female union. As will be documented such a differential impact does indeed exist and is severe.

[xx] Bryant, S. & Demian, op. cit.

[xxi] United States Census Bureau, 2000

[xxii] ibid.

[xxi] The authors have a category called "monogamy with agreed exceptions" that I have combined with their third category, "non-monogamy"

[xxii] See Laumann et. al., *the Social Organization of Sexuality: Sexual Practices in the United States.* Chicago: University of Chicago Press (1994)

[xxiii] D. McWhirter and A. Mattison, *The Male Couple: How Relationships Develop* (Englewood Cliffs, N.J.: Prentice-Hall, 1984), p. 3.

[xxiv] The authors do not quantitate the actual risk associated with this term; it is greater than 0% however.

[xxv] The authors do not quantitate the actual risk associated with this term; it is greater than 0% however.

[xxvi] 0% risk of AIDS assuming non-infected state at start of the year

[xxvii] Before the end of January, we will have assembled a more extensive set of references that will extend the research data available going back further over an additional twenty year period to ca. 1980, as with the fatherlessness studies.

[xxviii] Additional details will be provided in the full version.

[xxix] Aggregated data from the US Census Bureu, National Center for Health Statistics, Americans for Divorce Reform, Institute for Equality in Marriage

[xxx] SUMMARIES & ASSOCIATED REFERENCE NUMBERS:

PSYCHOLOGICAL; GENDER IDENTITY

A psychiatrist at Northside Hospital in Atlanta Georgia, Alfred A. Messer desribes "father hunger" as "the newest syndrome described by child psychiatrists." Dr. Messer reports that this syndrome, which occurs in boys, "consists primarily of sleep disturbances, such as trouble falling asleep, nightmares, and night terrors, and coincides with the recent loss of the father due to divorce or separation... In boys who exhibit the father-hunger syndrome, these sleep disturbances usually begin within one to three months after the father leaves home."

Dr. Messer explains that "Children recognize the difference between maleness and femaleness as early as 14 months of age and that between the ages of 18 to 36 months a young boy learns to establish his physical and gender role identity. If the young boy is deprived of his father's presence, the result can be deeply traumatic," Messer emphasizes. When the father is absent, the young boy may "remain in a prolonged state of dependence on the mother, with 'sissy' behavior often a concomitant."

He also urges a broader assessment of popular attitudes toward divorce. "Staying together for the children's sake' has lately been decried as one of the worst reasons for prolonging a marriage," he writes. "But when a divorce threatens a young boy's healthy emotional development, informed parents may more readily put aside their differences, at least temporarily, to fulfill one of their child's most crucial needs-to provide him with a father."

3. MESSER source: Alfred A. Messer, "Boys' Father Hunger: The Missing Father Syndrome," *Medical Aspects of Human Sexuality* 23 (January, 1989) 44

TEENS

Teenagers who turn to state officials for shelter typically come from broken families... Professor Shane found that a remarkably low 14 percent of the youth in his study come from "a family with both biological parents." In contrast, in the general population, 75 percent of children under 18 live in either intact or reconstituted families. Nearly all of the youths form one-parent households (34 percent) from female-headed households. Almost a quarter (22 percent) of the youth in this survey come from "a substitute family made up of a variety of persons other than their parents." With understandable concern, Shane concludes that his findings "indicate how serious can be the consequences of the breakdown of families."

4. SHANE source: G. Shane, "Changing Patterns Among Homeless and Runaway Youth," *American Journal of Orthopsychiatry* 59 (1989) 208

THINKING

Children raised in single-parent households are more likely than children raised in intact homes to want to do things their own way. In a study recently completed at Cornell University, researchers examined the thinking patterns of grade-school children from Upstate New York. They discovered that compared to children from two-parent homes "single-parent children prefer to impose their own structure." The researchers interpret their results as evidence that "single-parent children may be more inclined to resist conventional approaches predetermined by others. They may prefer to do things on their own." The distinctively nonconformist thinking of single-parent children may result from their experience of a "loss of control and structure in their lives in being unable to change parental actions and decisions."

The CU and CSU researchers put the most optimistic gloss on their findings by seeing "creativity potential" in single-parent children. It is perhaps more realistic to suspect that single-parent children will have trouble accepting laws, rules, and social order.

5. JENKINS source: Jeanne E. Jenkins, Dale E. Hedlund, and Richard D. Ripple, "Parental Separation Effects on Children's Divergent Thinking Abilities and Creativity Potential," *Child Study Journal* 18 (1988) 149

POVERTY

"Why," Smith asks, "has the likelihood of children being among the poor risen over time? The greater likelihood stems completely from the growth of female-headed families. In all census years, in intact families children were no more likely than adults to be poor when a fully standardized measure was used."

The overall pattern, Smith points out is "the increasing concentration of children's poverty in female headed families." Whereas only 16 percent of children live in these families headed by women, half of all poor children do.

6. SMITH source: James P. Smith, "Children Among the Poor," *Demography* 26 1989, 235

LEAVING

Children reared in stepfamilies and in female headed households plan to move out on their own sooner than children reared in intact families. The Brown team interpreted their findings as evidence of "low intergenerational closeness" in stepfamilies.

7. GOLDSHEIDER Source: Frances K. Goldsheider and Calvin Goldsheider, "Family Structure and Conflict: Nest Leaving Expectations of Young Adults and Their Parents," *Journal of Marriage and the Family*, 1989, 87

DELINQUENCY

Officials document a familiar pattern in a recent survey of almost 2,000 children and adolescents referred by the Circuit Court of Cook County Juvenile division for psychiatric evaluation. This group of troubled children included 84 orphans (4 percent) 1,272 from single-parent homes (65 percent) 269 from stepparent families (14 percent) and just 331 from intact two-parent families (17 percent).

8. ZAGAR Source: Robert Zagar, et. al., "Developmental and Disruptive Behavior Disorders Among Delinquents," *Journal of the American Academy of Child and Adolescent Psychiatry* 28, 1989, 437

GENDER IDENTITY

Femininity fades when mothers of young daughters go to work. In a study recently completed at Harvard University and the University of New Hampshire, psychologists established that college age daughters of mothers who were employed early in their lives regard themselves as "less feminine" than other young women. These same young women regard their mothers as "less child-centered" than do young women whose mothers were not employed when they were young.

9. TOLMAN source: Audrey E. Tolman, Kristina A. Dickmann, and Kathleen McCartney. "Social Connectedness and Mothering: Effects of Maternal Employment and Maternal Absence," *Journal of Personality and Social Psychology* 56 1989, 942

DRUGS

They discovered more drug use among Puerto Rican students living in non-intact households than among students living in intact homes. Among students living in a non-intact household, three quarters live in female headed households, suggesting to the researchers that greater vulnerability to drug use may be one "effect of living in a female headed family."

10. VELEZ source Carmen N. Velez and Jane A Ungemack, "Drug Use Among Puerto Rican Youth: An Exploration of Generational Status Differences," *Social Science and Medicine* 29 1989, 779

EARLY SEX; TEENS

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

81. KAIN Source: Joan R. Kahn and Kay E. Anderson, "Intergenerational Patterns of Teenage Fertility," *Demography* 29, 1 (1992), 39

DEPRESSION; TEENS

Teens living in single-parent or stepparents households are more likely to suffer from persistent depression than teens living in intact families. In a study recently completed at the University of South Carolina, researchers surveyed almost 700 junior high school students to investigate the prevalence of depression. Persistent symptoms of depression showed up significantly less often with both natural parents than among peers living with only one-parent or with one-parent and a step parent.

11. GARRISON Source: Carol Z. Garrison, "Epidemiology of Depressive Symptoms in Young Adolescents," *Journal of the American Academy of Child and Adolescent Psychiatry* 28 1989, 343

TEENS; ILLEGITIMACY

In a study recently completed at the University of California, San Diego, researchers investigated the circumstances and motives of pregnant teenagers.

The UCSD researchers discovered that most of the teen mothers in their study had neither a father nor a husband in their lives. Among the girls pregnant for the first time, only 14 percent lived with both parents: among the girls in a repeat pregnancy, only 2 percent lived with both parents. "The presence of the father in the home usually implies that an adolescent's parents have managed to build a relatively stable relationship and that they value marital ties." Accordingly, they conclude that "an intact family may be a deterrent to repeat pregnancy" among teenage girls.

12. MATSUHASI Source: Matsuhasi et al., "Is Repeat Pregnancy in Adolescents a Planned Affair?" *Journal of Adolescent Health Care* 10 1989, 409

ABUSE; POVERTY

Child abuse typically occurs in impoverished single-parent households. Of 1,050 ongoing substantiated child abuse and neglect cases in Milwaukee county in May 1989, 83 percent involved households receiving Aid to families with dependent Children (AFDC). Since AFDC goes predominantly to single-parent households (generally the households of unmarried mothers), this survey reveals a remarkably high risk of child abuse in such homes.

12. GOOLEY Source: Terence Gooley, Inter-Office communications, county of Milwaukee, AFDC Child Abuse Information, (11 September, 1989)

SELF ESTEEM; ACADEMIC

In a recent study among grade school children in eastern Kansas, researcher John Beer discovered that "children from divorced homes score lower on self concept than do children from non-divorced homes." Beer reasons that "divorce does affect how children view their behavior, intelligence, physical appearance, and happiness. Recent results are consistent with

the idea that divorce affects children adversely."

13. BEER Source: John Beer, "Relation of Divorce to Self-Concepts and Grade Point Averages of Fifth Grade School Children," *Psychological Reports* 65 1989, 164

POVERTY; HOMELESSNESS

Among homeless families seeking refuge in emergency shelters, husbands and fathers are hard to find. In a recent survey of 87 homeless families using an emergency shelter in Detroit during January, February, and March, researchers found that "only 9.2 percent of these families included adult males who were present during the time of admission." Over half 56 percent of the homeless families in the survey were headed by women who had never been married, while another 34 percent were either divorced or legally separated; another 13 percent were widowed. The researchers characterize "the typical homeless family" as one headed by "an adult female about 28, who had custody of one or two minor children."

14. MILLS Source: Gaystal Mills and Hiro Ota, "Homeless Women with Minor Children in the Detroit Metropolitan Area," *Social Work* 34 November 1989, 485

DEMOGRAPHICS

The percentage of all American families headed by women has risen from just 7 percent in 1960 to 23 percent on 1985. "As a consequence of this change," the authors of the new study observe, "the proportion of all children who live in a female headed family is now larger than it has been at any time in the past." Among never married women, the proportion who headed single-parent families rose a stunning 1200 percent among whites and an even more phenomenal 1800 percent among blacks. "A real divergence between blacks and whites in the propensity to bear and raise children outside of marriage."

15. WOJTKIEWICZ Source: Roger A. Wojtkiewicz, Sara S. McLanahan and Irwin Garfinkel, "The Growth of Families Headed by Women: 1980." *Demography* 27 1990, 19

TEENS

When an unmarried mother bears an "only child," that child may suffer severe psychological problems. In a pilot study recently conducted at the University of British Columbia, researchers examined the life patterns of twelve adolescent inpatients, each of whom was an only child in a single-parent household. These twelve teen patients were, in turn, "compared to a control group of adolescent patients matched for sex, family income, and diagnosis. "Minimal families"-single-parent/only child households displayed a higher degree of disturbance than did the control group.

16. BAYRAKAL Source: Bayrakal and Kope, Dysfunction in the Single-parent and Only Child Family," *Adolescence* 25 Spring 1990, 3

ABANDONED

Among American children who have been abducted who have run away from home, or who have been abandoned or evicted by parents, relatively few come from households with two married natural parents. The USDJ researchers remark that runaway children, mostly teenagers, "tended to come disproportionately from step parent type households (where a parent was living with a parent who was not the child's other parent))."

Likewise, the researchers found that "fewer children from households with both natural parents were thrown away or abandoned than would have been expected based on their proportion of the.. population."

(Monograph) FINKELHOR Source: David Finkelhor, Gerald Hotaling, Andrea Sedlak, "Missing, Abducted, Runaway, and Thrownaway Children in America." Executive Summary, US Department of Justice Office of Juvenile Justice and Delinquency Prevention, May 1990.

EARLY SEX, TEENS, DRUGS, ALCOHOL

Sexual activity and marijuana use run significantly higher among young adolescents living in single-parent households and in step families than among young adolescents living in intact families. In a survey of more than 2,100 young adolescents in ten southeastern cities, health researchers from the University of North Carolina discovered that "young adolescents from intact families are consistently less likely to report substance use and sexual intercourse" than peers from single-parent or step families. The researchers found that in intact families only 11 percent of young adolescents had ever engaged in sexual intercourse, compared to 23 percent of young adolescents living with a single mother and 21 percent of young adolescents living with a mother and a stepfather. Similarly, only 6 percent of the young adolescents living in intact families had ever smoked marijuana, compared to 10 percent of their peers living with a mother and 12 percent living with a mother and a step father. similar but less dramatic pattern prevailed for smoking and drinking. Even when age sex, race, and parental education were taken into account, the relationships persisted between family structure and young adolescent involvement in sexual activity, marijuana use, smoking, and drinking.

The authors of the new study interpret their findings as evidence of "the importance of the family environment for infoencing the initiation of potentially detrimental behavioral patterns in children."

19. FLEWELLING source: Robert L. Flewelling and Karl E. Bauman, "Family Structure as a Predictor if Initial Substance Abuse and Sexual Intercourse in Early Adolescence," *Journal of Marriage and the Family* 52 (1990), 171

ABUSE

In a recent study supported by the National Center on Child Abuse and Neglect researchers discovered that the men and women in the survey were particularly likely to report childhood sexual abuse "if their predominant family situation had been one without one of their natural parents." Boys were "primarily at risk only in two family constellations" when they lived with their mothers alone or with two non-natural parents. "Girls showed markedly higher risk under all family circumstances except that of living with two natural parents."

21. FINKELHOR source: David Finkelhor et al., "Sexual Abuse in a National Survey of Adult Men and Women: Prevalence, Characteristics, and Risk Factors," *Child Abuse and Neglect* 14 (1990), 19

ABSENT FATHER

Based upon a nationally representative group of children interviewed in 1976, 1981, 1987, the study found that contact between divorced fathers and children "diminishes sharply over time." Only ten percent of the children surveyed had "regular contact" with their fathers in 1976 and in 1981, while only 5 percent reported regular contact in 1976, in 1981, and in 1986. About a third of the children in contact with their fathers in 1976 had "lost contact" by 1981, "while only 1 in 5 moved from no contact to some contact during the same time period."

Identifying "the only obvious alternative" for "strengthening ties between men and their offspring," the researchers see a need "to strengthen our faltering marriage system-a remedy that may be unappealing to some and unthinkable to others."

20. FURSTENBERG source: Frank F. Furstenberg, Jr. and Kathleen M. Harris, "The Disappearing American Father? Divorce and the Waning Significance of Biological Parenthood," unpublished paper, University of Pennsylvania, March 1990

EARLY SEX; DRUGS; TEENS

Young Americans who live with one-parent appear particularly vulnerable to drug use and to early sexual intercourse. In a study recently conducted at Columbia University, researchers investigated patterns of adolescent sexual behavior and drug involvement using information from a national survey. They found that "early sexual experimentation" was much more common among youth from non-intact families than among peers from intact families. Among young men, 34 percent of those from single-parent households initiated intercourse at age 14 or younger. For young men from intact families, the comparable figure is 14 percent. The same pattern prevails among young women: 9 percent of those from single-parent households have initiated intercourse by age 14, compared to three percent of those from intact families.

The researchers note that "the increase in sexual experimentation over the past two decades has been paralleled by a striking increase in experimentation with illegal drugs." The researchers established that involvement with illicit drugs is "strongly related to early sexual experimentation."

22. KANDEL source: Denise Kandel and Emily Rosenbaum, "Early Onset of Adolescent Sexual Behavior and Drug Involvement," *Journal of Marriage and the Family* 52 (1990), 783

READING; TEENS; ACADEMIC, INTELLIGENCE

In Britain, researchers investigated "the influences of social and family characteristics on individual differences in reading and spelling ability and IQ" for 500 13 year old children, all of whom were twins. The researchers observed "a tendency for children of separated or divorced parents to perform less well on tests of reading and spelling." They found in particular a statistically significant difference (a 5 month difference) in "reading comprehension."

24. STEVENSON Source: Tim Stevenson and Glenda Freedman, "The Social Correlates of Reading Ability," *Journal of Child Psychology and Psychiatry* 31 (1990) 681

PSYCHOLOGICAL

The researchers found that "preschool age children of divorce exhibited an increased level of attachment to the family home as compared with children matched for age and socioeconomic status from intact family units who moved away from the family house." The authors of the new study explain that "for preschoolers living in the family home, the home is an object that for them may have the power to represent the whole family... Seeing the home and living in it in many ways may equate for them with having both parents, as before the divorce. Yet another reality tells them that one-parent is not there, in the same way as before, confusion results... It would seem that the children living in the home the first year after parental divorce could not use its protective, soothing, sustaining power...(T)he main effect of the house for ten at that time was in its contribution to their confusion over the fact of parental separation."

This new study identifies only too clearly part of the emotional cost young children pay for divorce.

25. STIRZINGER Source: Ruth Stirtzinger and Lorraine Cholvat, "Preschool Age children of Divorce: Transitional Phenomena and the Mourning Process," Canadian Journal of Psychiatry 35 (1990), 506

INSTABILITY

Women who bear a child out of wedlock following a first marriage are more likely to fail in a second marriage than women who do not bear an illegitimate child between their first and second marriages. Among whites, Wineberg discovered, unsurprisingly, that "those who had an intermarital birth are significantly more likely to end their second marriage than those not having an intermarital birth." For instance, among white women whose first marriage lasted less than four years and who had subsequently remarried, 26 percent of those who reported an intermarital birth had dissolved their second marriage within four years, compared to 20 percent of those who reported no intermarital birth.

26. WINEBURG Source: Howard Wineberg, "Intermarital Fertility and Dissolution of the Second Marriage," *Sociology and Social Research* 74 (1990) 192

TEENS, DELINQUENCY; DEPRESSION; ALCOHOL; DRUGS

The Simmons College School of social Work in Boston, investigated the lives of almost 400 white 15 year olds. They discovered that "girls and boys from disrupted families, irrespective of when the divorce occurred, were reported as engaging in delinquent behavior more often than adolescents from intact households." Stressing the "vulnerability" of adolescents whose parents had recently divorced, the authors of the new study observe that "the impact of the marital disruption was most pronounced among girls, who skipped school more frequently, reported more depressed behavior, and described social support in more negative terms than did boys from recently disrupted homes." Adolescent girls who had experienced parental divorce when they were younger than six or between six and nine years old reported becoming involved with alco-

hol or drugs in proportions higher than did girls from intact families. Teen girls who had experienced parental divorce when younger than six were also especially likely to skip school.

27. FROST Source: Abbie K. Frost and Bilge Pakiz, "The Effects of Marital Disruption on Adolescents: Time as a Dynamic," *American Journal of Orthopsychiatry* 60 (1990), 544

DEPRESSION; TEENS

Girls who see their parents divorce often suffer from emotional and mental distress as adults. In a recent study of over 3,000 36 year-old men and women, British psychiatrist Byran Rodgers uncovered a remarkable pattern. While Dr. Rodgers found "no evidence that divorce or seperation of parents resulted in later affective disorder for their sons," he discovered a strong relationship between "affective disorder" and parental divorce among daughters. Among the 36 year-old women whose parents had not separated, only 8 per cent suffered from affective disorder. In contrast, affective disorders were diagnosed in 27 per cent of women whose parents separated wch they were younger than five. The incidence of affective disorders ran lower among women whose parents divorced when they were older than five, but such adult disorders still appeared one-and a-half to over two times more often among women whose parents had separated than among women whose parents had not separated.

Rodgers notes that only "weak associations" can be established "between parental death and later disorder." Rather it is "parental divorce or separation" that is demonstrably "associated with neurosis in women."

28. RODGERS Source: Byran Rodgers, "Adult Affective Disorder and Early Environment," *British Journal of Psychiatry* 57 (1990), 539

INSTABILITY

Unmarried men and women are more likely to start drinking heavily than married men and women. Researchers at Kaiser Permanent Medical Care Program in California recently investigated the drinking habits of over 12,000 adults over a 5 year period. They discovered that adults who "substantially increased their drinking" during the five years "were less to be married or remarried" than adults who did not increase their drinking during the same period. The adults who started drinking more heavily were also more likely to report "having no religion" than those who did not increase their drinking.

Despite widespread public concern about alcoholism, few commentators have recognized what this study newly documents-namley, that marriage helps prevent self-destructive habits.

29. MIDANIK Source: Lorraine T. Midanik, Arthur L. Klatsky, and Mary Anne Armstrong, "Changes in Drinking Behaviors: Demographic, Psychological and Biomedical Factors," *The International Journal of the Addictions* 25 (1990), 599

INSTABILITY; DEMOGRAPHICS

Fewer American women live in matrimony than at any time on the past. Demographer Kathryn A. London has recently documented the decline of marriage among American women. Based on a national representative survey of more than 8,400 women, London concludes that "the living arrangements of women of childbearing age in the United States have been changing dramatically: cohabitation has become more widely practiced, men and women have been deferring marriage: the U. S. divorce rate, despite having declined in recent years, remains at a very high level: and the rate at which people remarry after divorce or widowed has fallen."

Among the women surveyed, London found just 50 percent were married. Only one percent of those surveyed were widowed, but 8 percent were divorced and 3 percent were separated. Thirty three percent of the women surveyed had never married. (Only about 40 per cent of the women surveyed under age 30 had ever married.) While only 5 per cent of the women surveyed were currently cohabiting with a male partner outside of marriage, 34 percent acknowledged they had cohabited at some time-indicating a phenomenal rise in a practice once generally recognized as immoral. Among women who had divorced, "the probability of remarriage seems to have declined." Among women who divorced between 1965 and 1969, one third (33 percent) remarried within a year.

Overall, the pattern is clear: "Compared with earlier decades adults and childre spend more of their lives outside of married couple households."

30. LONDON Source: Kathryn A. London, "Cohabitation, Marriage, Marital Dissolution and Remarriage: United States, 1988," Advance Data from Vital and Health Statistics of the National Center for Health Statistics, US Department of Health and Human Services, Number 194, 4 January 1991, pp. 1-7.

TEENS, SUICIDE

McCall uncovered a significant correlation "between the white male adolescent suicide rate and...family dissolution." She also established a statistical link between suicide among white male teens and the percentage of white children living in poverty. In short, "White male adolescent suicide trends with family dissolution and white children living in poverty."

McCall concludes her study with two warnings. First, "if the percentage of children in families involved in divorce does not decline or if the increasing trend in female-headed families continues...We may anticipate an increase in future white male adolescent suicide trends. "Second, the effects of parental divorce or childhood poverty may be so long lasting that the "problems of today's adolescent population may follow these cohorts throughout their life course and into those years which typically exhibit the highest suicide rates even if economic security is maintained for elderly persons."

31. MCCALL Source: Patricia L. McCall, "Adolescent and Elderly White Male Suicide Trends: Evidence of Changing Well Being?" *Journal of Gerontology: Social Sciences* 46 (1991), 543

TEENS, CRIME

The type of parental divorce most strongly linked to crimes among young men was parental divorce occuring during ado-

lescence, especially if that divorce was followed by further "instability" in the household (i.e., remarriage, second divorce, or other changes in the household). Compared to young men whose parents had never divorced, young men whose parents had divorced when they were 12 or younger and whose households were stable in composition after that divorce were only slightly more likely to commit crime (33 percent compared to 24 percent). In contrast, young men whose parents divorced during their teen years were far more likely to commit crime than peers who did not experience parental divorce during adolescence (53 percent compared to 28 percent). Young men who not only saw their parents divorce during their teen years but who experienced further instability in their households during their teen years were especially prone to commit crime: a remarkable 65 percent of young men with such backgrounds had committed one of more crimes.

32. MEDNICK Source: Birgitte R. Mednick, Robert L. Baker, and Lina E. Carothers, "Patterns of Family Instability and Crime: The Association of Timing of the Family's Disruption with Subsequent Adolescent and Young Adult Criminality," *Journal of Youth and Adolescence* 19 (1990), 201

DELINQUENCY; TEENS; ABANDONED

In a recent analysis of runaway teenagers, Robert W. Sweet, Jr. of the Office of Juvenile Justice and Delinquency Prevention stressed the importance of family background. Noting that "Almost all runaways are teenagers," Sweet observes that "disproportionately, these teenagers are running from families with step parents and live in boy friends or girlfriends.... Runaways reflect the disintegration of the American Family." Sweet sees such disintegretation in a nation in which "half of all children will experience the breakup of their parents' marriage, and 1 in 10 will suffer three such marital dissolutions." Sweet pledges his office to "preventing as well as solving problems of children in crisis," while acknowledging that "strengthening the family is essential to both these worthy goals."

33. SWEET Source: Robert W. Sweet Jr., "Missing Children: Found Facts," *NIJ Reports*, US Department of Justice, No. 222, November/December 1990, 15

EARLY SEX; TEENS

University of Michigan sociologist Arland Thornton discovered a strong linkage between parental divorce and subsequent cohabitation by maturing children. Thornton found "remarkably higher rates of cohabitation" among young adults whose parents had divorced compared to peers whose parents' marriages had endured. The death of a father appeared to increase the likelihood of cohabitation significantly for daughters but not sons, and even among daughters the effects of losing a father through death appeared less pronounced than those of parental divorce. In Thornton's analysis, "a parental marital disruption is associated with at least a doubling of the cohabitation rate." Among young adults reared by continously married parents, half had not cohabited before entering marriage, compared to only 20 percent to 27 percent among the three groups of young adults who had experienced a "marital disruption."

34. THORNTON Source: Arland Thornton, "Influenece of the Marital History of Parents on the Marital and Cohabitational Experiences of Children," *American Journal of Sociology* 96 (1991), 868

TEENS, SELF ESTEEM, PSYCHOLOGICAL; EARLY SEX

Teens living in single-parent or stepparent households suffer from a number of serious problems less commonly seen among peers in intact families. In a recent study in Australia, psychiatrists investigated the well-being of over 2,100 Australian adolescents, many of whom had lost a parent through death or (more commonly, divorce). As in the United States, teens were much more likely (almost three times as likely) to have lost a father through death or divorce than a mother. Among youth who had lost a parent, the most common household situation was that of a teen living with his or her natural mother and "alternative father figure" (normally a stepfather).

Overall, the researchers found that "adolescents from disrupted families reported higher levels of general health problems, were more neurotic, less extroverted, had poorer perceptions of their bodies, were more impulsive, and had more negative views of their school performance. They were also more likely to report both alcohol-related and psychological problems in their families, to have consulted a health professional regarding emotional problems, and to be sexually active." In short, the Australian researchers interpret their findings as evidence that "adolescents who have lost a parent are in many ways different from those from intact families."

35. RAPHAEL Source: Beverly Raphael et al., "The Impact of Parental Loss on Adolescents' Psychological Characteristics," *Adolescence* 25 (1990), 689

POVERTY; ACADEMIC

In both educational and occupational attainment, adults who were raised in single-parent households generally do much worse than adults who were reared by both parents. In a recent study at York University, sociologist Marianne D. Parsons analyzed the life course of 45,000 Canadians between the ages of 18 and 34. Unsurprisingly, she found that adult children from "dual parent families" reported significantly higher "occupational attainment" and "educational attainment" than adult children from either mother only or father only households.

And adult men raised in mother only families reported "the lowest level of occuptional attainment of all offspring from the different family types. "Children raised in one-parent families in Canada," remarks Parsons, "are socioeconomically disadvantaged in adulthood... The lone-parent population has risen dramatically since the early 70's and all indicators point to a worsening situation for the children raised in this family structure." Obviously, this new study holds bleak relevance for the United States as well.

36. PARSONS Source: Marianne D. Parsons, "Lone-parent Canadian Families and the Socioeconomic Achievements of Children as Adults," *Journal of Comparative Family Studies* 21 (1990), 353

ABSENT FATHER; DEPRESSION

Young Black women who have a close relationship with their fathers are typically much happier than young black women

who do not enjoy a close relationship with their fathers. Predictably, however, young black women growing up in female headed households rarely enjoy such close relationships. In a recent study of 219 young black women, sociologist Essie Mannel Rutledge found (unsurprisingly) that those who grew up in one-parent households were much more likely to report that they "seldom" spent time with their fathers than those who grew up in two-parent households (61 percent vs 14 percent). Understandably, also, young black women raised in two-parent households were much more likely to report a "considerably close" relationship with their fathers than were peers raised in one-parent households (64 percent vs. 16 percent). But when Rutledge investigated the "general happiness" of the young women in her study, she found a significant correlation between happiness and "present paternal relationship," with those who were "very happy" significantly more likely to describe their relationship with their fathers as "considerably close" than those who did not consider themselves "very happy". conversely, those who described their relationships with their fathers as "considerably close" were almost twice as likely to say they were "very happy" as those who did not enjoy such close paternal relationships.

Unfortunately, at a time of high divorce and illegitimacy rates among American Blacks, this new study portends weak ties to fathers and low likelihood for happiness for hundreds of thousands of young black women.

37. RUTLEDGE Source: Essie Mannel Rutledge, "Black Parent-Child Relations: Some Correlates," *Journal of Comparative Family Studies* 21 (1990), 369

DRUGS; TEENS

Inner city youth who live in intact families are much less likely to have seen drugs in their homes than inner-city youth who do not live with both parents. In a recent study in Baltimore, researchers from John Hopkins University investigated the relationship between teen drug use and a history of drug use in the family. The analysis focused on 88 youth (ages 12 to 17) all "drawn from the same school and neighborhoods which are quite homogenous for social class." All of the youth were living "in an urban environment with a high degree of environmental exposure to illicit drugs and alcohol." All of the youth were students in inner-city public schools and all had been "referred for participation in the substance abuse prevention program for high risk adolescents." Despite the similarities in student backgrounds, the researchers discovered that students living in intact families were much less likely to have a history of drug use in their homes than students who live in single-parent households or other non-traditional household arrangements. Less than one quarter (24 percent) of the students with a history of drug use in their homes lived in intact families, compared to half (50 percent) of students from households with no history of drug use in the household.

38. GROSS Source: Janet Gross and Mary E. McCauley, "A Comparision of Drug Use and Adjustment in Urban Adolescent Children of Substance Abusers," *International Journal of the Addictions* 25 (1991), 495

DIVORCE; MARITAL QUALITY; POVERTY; ACADEMIC; HEALTH

Adults who saw their parents divorce when they were children are more vulnerable to a number of problems than peers who never experienced parental divorce. In a recent study at the University of Nebraska-Lincoln, sociologists Paul R. Amato and Bruce Keith analyzed the findings of 37 studies involving over 81,000 individuals. They discovered a pattern suggesting that "parental divorce (or permanent separation) has broad negative consequences for quality of life in adulthood."

The cumulative pattern evident in the 37 studies is clear: compared to peers reared in intact families, adults who experienced parental divorce when they were children suffer from more problems in "psychological well being (low marital quality, divorce), socioeconomic well being (low educational attainment, income, and occupational prestige), and physical health." Overall, it appears that "the argument that parents' divorce presents few problems for children's long term development is simply inconsistent with the literature on this topic." It is particularly sobering that divorce appears to be one of the most "robust" findings established by this range of studies. That is, it is well documented that children of parents who divorce are significantly more likely to divorce in adulthood than children whose parents remain married.

39. AMATO Source: Paul R. Amato and Bruce Keith, "Parental Divorce and Adult Well-being: A Meta-analysis." *Journal of Marriage and the Family* 53 (1991), 43

BREASTFEEDING

In a recent study in Georgia, a team of pediatric researchers investigated breastfeeding among 300 low income women receiving assistance from the Special Supplemental Food Program for Women, Infants, and Children (WIC). The researchers found that "The adjusted odds of breastfeeding for mothers who were married or living as married were 3.0 times greater than mothers who were not married or living as married."

40. MACGOWAN Source: Robin J. MacGowan, et al., "Breastfeeding Among Women Attending Women, Infants and Children Clinics in Georgia, 1987," *Pediatrics* 87 (1991), 361

PSYCHOLOGICAL

In a recent study in Indiana public schools, researcher Virginia Smith Harvey investigated the backgrounds of 114 elementary students of average intelligence who had been referred to the school psychologist. In her statistical analysis, Harvey discovered that family background was among "the variables that best discriminated" between these troubled students and peers who had not been referred for psychological therapy. The analysis showed that "having a father with the same last name in the household" significantly reduced the likelihood that a student would be referred for psychological counseling. In interpreting her finding, Harvey especially stressed the psychological risks of "a lack of familial stability" for elementary boys.

41. SMITH Source: Virginia Smith Harvey "Characteristics of Children Referred to School Psychologists: A Discriminant Analysis," *Psychology in the Schools* 28 (1991), 209

DEPRESSION; YOUNG ADULTS
In a recent study at Southeast Missouri State Universisty, a team of researchers investigated the life satisfaction of over 200 undergraduate students. They discovered "there was a lower level of life satisfaction among adult children who were raised in nonintact families" than among peers reared in intact homes. Thirty-eight percent of students from intact families reported "high" life satisfaction, while only 23 percent of students from non-intact homes did. On the other hand, only 28 percent of students from intact families reported "low" life satisfaction compared to almost half (47 percent) of students from non-intact homes.

42. PARDECK Source: John T. Pardeck et al., "Family Structure and Life Satisfaction," *Family Therapy* 18 (1991), 11

DEPRESSION; ACADEMIC; POVERTY; ADULTS; PSYCHOLOGICAL; CYNICISM
Adult children of divorced parents suffer from "more problems and lower levels of well-being than adults whose parents stayed married. They are depressed more frequently, feel less satisfied with life, get less education, and have less prestigious jobs. Even their physical health is poorer." Parental divorce entails such negative consequences for children because it "brings with it a disruption in the lives of all family members that is matched by no other event, not even death....(Death) doesn't happen because of conflict, and it doesn't create the intergenerational complexities often bred by divorce."
Whatever their age when the divorced occurred, "it undermined their sense of security, interrupted their routines, loosened the underpinnings that held their lives together. It introduced them to skepticism about the degree to which anyone can count on anything or anyone."
(Book) BEAL Source: Edward W. Beal and Gloria Hochman, *Adult Children of Divorce: Breaking the Cycle and Finding Fulfillment in Love, Marriage, and Family* (New York: Delacorte, 1991)

INSTABILITY
During a one year period, about 35 out of every 100 cohabiting couples will abuse one another physically, compared to only 15 out of every 100 married couples. "Being in a less committed relationship may create its own dynamics for aggression. Since cohabitors are less likely than married persons to be committed to their relationship, it follows that the costs associated with being aggressive will not be as great for cohabitors compared to the married. When a conflict arises, cohabitors may be more likely to be aggressive because they do not have much invested in the relationship... In this way, being married (or more properly, being committed to a relationship) tends to inhibit aggression, while cohabitation or lack of commitment does not have the same effect."

44. STETS Source: Jan E. Stets, "Cohabiting and Marital Aggression: The Role of Social Isolation," *Journal of Marriage and the Family* 53 (1991), 669

DELINQUENCY
In a recent study supervised by criminologist Arnold Goldstein of Syracuse University, 35 researchers interviewed 250 delinquents from 7 states. New York, Michigan, Ohio, Florida, W. Virginia, South Dakota and Wyoming. When asked to account for their destructive behavior, these youth identified problems in their families ("Family dysfunctions") more than any other cause.
Some of the youth interviewed attributed their law-breaking to their growing up in a single-parent home. For instance, one of the adolescent boys interviewed insisted that living in a mother-only home "makes a big difference. She often gets tired of the same problems and she slacks up on the kid, and the more slack she gives him, he'll take advantage of it."
Another deliquent youth amplified the same theme: "If your father leaves your home, you usually take it upon yourself just to go out and do whatever you want, cause you figure your mother, she ain't gonna do nothing about it. But if your father still lives at home, he lays down the rules and tells you what you can do and what you can;t do, and you usually listen to your father."
"Sometimes your family is broken up, and you think, 'What the hell, I might as well go out and do it anyways. I 've got nothing, my family's already broken up and they've proved me wrong, so I might as well prove them wrong.'"
(Book) GOLDSTEIN Source: Arnold P. Goldstein, *Delinquents on Delinquency* (Champaign, Il. Research Press, 1990), pp. 4,37,33

DEPRESSION
Whitehead and Blankenhorn conclude that because it is based on individualism, and androgny (i.e., the denial of meaningful differences between the sexes), the regnant "public philosophy... undermines families, neglects children and makes individual adult happiness more difficult to achieve." In particular, the authors of this new analysis reject the "individualistic and androgenous 'parenting script'" prevalent today. This contemporary parenting script, developed on the assumption that "motherhood and fatherhood are determined by externally imposed and outmoded socialization processes," is "antithetical to childbearing on both biological and cultural grounds. "For cultural anthropologists and sociobiologist," mothering and fathering appear as sharply differentiated and complementary activities. Fathers protect the vulnerable infant from physical harm by defending the perimeters of the domestic realm. Mothers provide emotional nurture to the child and sustain the domestic realm as the center of nurturance. This role differentiation does not derive primarily from either social convention or individual choice, as current elite discourse would have it. But the nation's cultural elite now generally share a "vision of individual happiness and social progress "that is "increasingly less identified with building a family" and that allows no place for the home as "an independent moral realm containing relationships and values difference from those of the commercial realm." The new vision, observe Whitehead and Blankenhorn, "focuses on achievement in the marketplace. It is rooted above all, in the assumption of a fully mobilized workforce. In this story, both men and women find fulfillment and contribute to the good of society through their participation in the workforce and in their behavior as paid workers and con-

sumers... Our public policy debates on child care is clearly dominated by this economic perspective. The debate centers less on what is best for the parent child relationship than it does on what is best for the labor force. To the degree, for example, that the mother-child relationship conflicts with the mother-job relationship, [the latter] is almost always treated as primary."

(Monograph) WHITEHEAD Source: Barbara Dafoe Whitehead and David Blankenhorn, "Man, Woman, and Public Policy; Difference and Dependency in the American Conversation," an Institute for American Values Working Paper No, WP3 (February 1991)

ADULTS; ACADEMIC; POVERTY; DEPRESSION

Research suggests that "marital dissolution has negative and long lasting effects on behavior, psychological well being, and academic performance." Further, "parental health often suffers as a marriage ends. Poor health and particulary poor psychological health may reduce the capacity to be an effective parent, and this may also be an important factor in children's adjustment." "Some effects of parental divorce may persist into adulthood." For instance among those who see their parents divorce, researchers find "indications of reduced earnings and occupational status in adulthood," compared to peers from intact families.

45. ELLIOTT Source: R. Jane Elliott and Martin P. Richards, "Effects of parental divorce on children," *Activities of Divorce in Children* 66 (1991)

DELINQUENCY

Among the four to six year old children of 521 employed mothers...researchers discovered that "in comparison to mothers of children in stably married households, the mothers who are unmarried, who have married or remarried in the past year, or who have separated or divorced in the last year report elevated behavior problems in their children." "Uncontrolled behavior" appeared linked to the absence or departure of a spouse and to the arrival of a new spouse (stepfather to the child or children).

48. ROGERS Source: Stacy J. Rogers, Toby L. Parcel, Elizabeth G. Menaghan, "The Effects of Maternal Working Conditions and Mastery on Child Behavior Problems," and "Studying the Intergenerational Transmission of Social Control." *Journal of Health and Social Behavior* 32 (1991), 145

DELINQUENCY; CRIME; ALCOHOL; DRUGS

In a recent study at the University of Pittsburgh, researchers followed the behavior over three years of the "30 percent most disruptive children in kindergarten from low socioeconomic neighborhoods." Among those who were rated as "high fighters" at ages 6, 8, and 9 ("stable high fighters") the researchers detected a pattern in home backgrounds. These trouble-prone boys not only tended to come from particularly "disadvantaged" homes, they also "tended to come from nonintact families." The researchers interpreted their findings as evidence that "family disadvantage is strongly associated to physical aggression in young boys."

The researchers noted that the boys who were "stable high fighters also tended to report having generally been involved in more antisocial behaviors such as stealing, vandalism, alcohol and drug use."

49. TREMBLAY Source: Tremblay et al., "Disruptive Boys with Stable and Unstable Fighting Behavior Patterns During Junior High Elementary School," *Journal of Abnormal Child Psychology* 19 (1991), 285

BREASTFEEDING

The authors of the new study further note that women who are working outside the home are much less likely to breastfeed their babies than mothers not so employed. Indeed, "the disparity in breast-feeding between mothers who are employed and those who are not employed has increased markedly in recent years" from an odds ratio of 1.65 in 1984 to 2.43 in 1989."

The Ohio and Massachusetts researchers regard the decline in breastfeeding among American mothers as "a serious public health problem, one to which an effective response appears to be essential."

50. RYAN Source: Alan S. Ryan et al., "Recent Declines in Breast-Feeding in the United States, 1984 through 1989," *Pediatrics* 88 (1991), 719

DIVORCE

In a study conducted at the University of Nebraska-Lincoln, researchers Paul R. Amato and Alan Booth examined "the consequences of divorce (both in one's parents' and one's own marriage) for attitudes toward divorce. "In an eight year study of more than 1,300 men and women, the researchers discovered two clear patterns. First, "individuals who experience parental divorce as children hold more positive attitudes towards divorce in later life than do individuals who grow up in intact families perceived to be happy." This relationship between parental divorce and subsequent attitude towards divorce prevails "among both men and women of varying ages." Second, "experiencing divorce in one's own marriage is associated with more liberal attitudes towards divorce."

Actually, Amato and Booth perceive a probable link between these two patterns, since "children who experience parental divorce are more likely to see their own marriages end in divorce than are individuals who grow up in continuously intact families." In summary the researchers write, "the increasing exposure of children and adults to divorce in recent decades is a factor in the liberalization of attitudes toward divorce."

51. AMATO Source: Paul R. Amato and Alan Booth, "The Consequences of Divorce for Attitudes Toward Divorce and Gender Roles," *Journal of Family Issues* 12 (1991), 306

INFANT MORTALITY

"The common denominator to many of the problems that are plaguing infants and older youth today is not just race or poverty, it is family structure. While there are conditions and behavior patterns that make for family success regardless of

family structure, study after study has shown that the presence of both a mother and a father greatly enhances the life chances of infants and children".

52. MASON Source: James O. Mason, "Reducing Infant Mortality in the United States Through 'Healthy Start'" *Public Health Reports* 106 (1991), 479

MOTHERS

" In observing 40 children (20 sibling pairs) at play in their mother's presence and in their mother's absence, researchers found a clear pattern: "When mothers were present, siblings engaged in more attending, helping, interacting and receiving. When mothers were absent, siblings engaged in more disapproval, independent play, ignoring, negative physical contact, talking and teasing."

Musun-Miller reasons that mothers may help foster "prosocial or proper behavior" among their children so that when she is present they are more likely to be attentive, helpful and...cooperative" than when she is absent. In short, the evidence suggests that "who is present does make a difference" in children's lives.

53. MUSUN-MILLER Source: Linda Musun-Miller, "Effects of Maternal Presence on Sibling Behavior," *Journal of Applied Developmental Psychology* 12 (1991), 145

DEPRESSION; ADULTS

In a recent study, sociologist Paul Amato investigated the "long term consequences of parental absence during childhood for adult depression." Among both men and women and both blacks and whites, Amato established a link between parental absence through illegitimacy, divorce, death, or other separations and subsequent depression. Interestingly, the death of a parent was not significantly associated with adult depression among white men or women, though death of a parent was significantly linked to adult depression among blacks. Parental separation through divorce and illegitimacy were associated with adult depression for both balcks and whites.

The best interpretation of the evidence in Amato's view, is that "family disruption during childhood has long-term consequences for the subjective well being of both women and men."

54. AMATO Source: Paul R. Amato, "Parental Absence During Childhood and Depression in Later Life," *The Sociological Quarterly* 32 (1991), 543

ACADEMIC; POVERTY

In a recent analysis of data collected in a national survey, sociologists at the University of Nebraska-Lincoln discovered a clear pattern. Among white females, black females, and ("to a lesser extent") Hispanic females, those who as a child had been separated from a parent, usually the father, reported lower attainments in education and employment. Among white males, for instance, "those who experienced parental absence, compared with those who did not, achieved less education (about one-half year), earned less per year (about 4,000 dollars), attained lower occupational prestige...and had fewer assets." A parallel pattern emerged among white, black and (less markedly) Hispanic females.

Among some groups it appeared that loss of a parent (usually the father) through divorce brought worse consequences than loss through death. For instance, among white males, "no significant associations were observed for death of a parent" while parental separation caused by divorce resulted in significant reductions in educational and occupational attainment. Among white females, those who had lost a parent through divorce achieved less in school and in their occupations than those who had lost a parent through death.

Our results, conclude the researchers, "suggest that some additional factor, other than economic hardship, is responsible for the lowered attainment of children from single-parent families."

55. AMATO Source: Paul R. Amato and Bruce Keith, "Separation from a Parent During Childhood and Adult Socioeconomic Attainment," *Social Forces* 70 (1991), 187

DELINQUENCY

In a recent study in Toronto and Montreal, Canadian psychiatrists investigated the prevalance of behavioral problems among 500 "learning disabled children." The researchers discovered that in this group of slow students, "the likelihood of the presence of a behavior problem was significantly increased if the child was...not living in an intact family. "This pattern persisted even when income, age, and health history were taken into account. Compared to those in broken homes, learning disabled children in intact families were only half as likely (odds ratio of 2.02) to have a "behavioral problem."

56. SCHACHTER Source: Debbie C. Schacter, L Barry Pless, and Maggie Bruch, "The Prevalence and Correlates of Behaviour Problems in Learning Disabled Children," *Canadian Journal of Psychiatry* 36 (1991), 323

COHABITATION; INSTABILITY

Cohabiting unions are much less stable than unions that begin in marriages. "40 percent of cohabiting unions will disrupt before marriage, and marriages that are proceeded by living together have 50 percent higher disruption rates than marriages without premarital cohabitation."

BUMPASS Source: Larry L. Bumpass, James A. Sweet and Andrew Cherlin, "The Role of Cohabitation in Declining Rates of Marriage," *Journal of Marriage and the Family* 53 (1991)

DELINQUENCY

The researchers found that children from non-intact homes received higher teachers' ratings of behavioral problems than did children from intact families. Kindergarten teachers gave more negative behavior scores for children who had attended day care than for children who received "full time care by the mother in the home." In other words, "non-maternal day care appears to be associated with an increase in teachers ratings of behavioral problems." The link between behavior problems and single-parent households however, persisted even after household income was statistically assessed.

57. POTENT Source: G. Michael Potent et al., "Influence of Day Care Experiences and Demographic Variables on Social Behavior in Kindergarten, "*American Journal of Orthopsychiatry* 62 (1992), 137

LOW BIRTH WEIGHT, INFANT MORTALITY; EARLY SEX; DELINQUENCY; ACADEMIC; READING
Recently, sociologists at Case Western Reserve University analyzed those "environments that place children and adolescents at particularly high risk for problems in health and development." The researchers assessed six measures of "risk to children and adolescents": 1) low birth weight rate; 2) infant death rate; 3) teen birth rate 4) juvenile delinquency rate; 5)high school dropout rate; 6)school reading performance. After weighing a number of social and economic trends, the scholars concluded by stressing family life: "The single variable that was the strongest predictor of child and adolescent risk across the board," write the authors of the new study, "was the rate of births to unmarried mothers."
The researchers further noted that the rate for illegitimate births was "highly correlated with the predominance of the female-headed household as a family form. In many of the neighborhoods with the highest risk for children more than three quarters of the families are of this type." In sum, the evidence suggests that the "predominance" of female-headed households "may be associated with a particular ecology in which children and adolescents do not thrive."
58. COULTON Source: Claudia J. Coulton and Shanta Pandey, "Geographic Concentration of Poverty and Risk to Children in Urban neighborhoods," *American Behavioral Scientist* 35 (1992), 238

POVERTY
In a recent essay, Paul E. Peterson of Harvard surveys research on poverty among urban populations. Peterson notes that in "the liberal view" urban poverty derives from "the inadequate development of the welfare state." "Divorce, single-parent families, and out of wed lock births," observes Peterson, are becoming more or less accepted practices in many parts of the United States. "The trend leaves too many children with impaired financial support, inadequate adult supervision and instruction, compromised security, fewer alternatives for establishing intergenerational relationships, and fewer adult role models. The most powerful force contributing to the formation of the urban underclass, perversely enough, may be the changing values of mainstream American society, in which the virtues of family stability, mutual support, and religiously based commitment to the marriage vow no longer command the deference they once did."
PETERSON Source; Paul E. Peterson, "The Urban Underclass and the Poverty Paradox," *Political Science Quarterly* 106 (1992)
EARLY SEX
In a recent investagation at the University of Arkansas and the university of Maryland, researchers assessed surveys foam almost 1,500 adolescents concerning their personal lives. The findings revealed that a teen was more likley to engage in sexual activity if he or she was "from a family where at least one biological parent was missing from the home." Sexual activity was also distinctively high among adolescents who thought "that their parents would not be upset" if they learned of their behavior.
BENDA Source: Brent B. Benda and Frederik A. Blasio, "Comparison of Four Theories of Adolescent Sexual Exploration," *Deviant Behavior* 12 (1991)
ADULTS
In a recent analysis of "parent-child relationships following divorce," researchers found that because the mother ususally receives custody after a divorce, children typically see "a drastic reduction in level of contact with the father." Indeed, "most fathers become less available and nurturant with the passage of time" after a divorce. "Children often miss their fathers tremendously," and "[g]rieving for the lost full-time parent is often intense." The mother-child bond also typically deteriorates after a divorce. However, even ten years later, some adult children of divorced parents "express residual anger and resentment at the mother's emotional and physical unavailability during their growing years."
60. MELNYK Source: Bernadette Marzuek Melnyk, "Changes in Parent Child Relationships Following Divorce." *Pediatric Nursing* 17 (1991), 337

SIDS
In a recent study at the University of Washington, researchers identified "unmarried status" of mothers as one of the "causal pathways for SIDS." Indeed, in an analysis of the birth and death records for the state of Washington between 1989, discovered that children of unmarried mothers were remarkably overrepresented (odds ratio 2.4) among infants who died because of this mysterious malady.
61. LI Source: De-Kun Li and Janet R. Daling, "Maternal Smoking, Low Birth Weight, and Ethnicity in Relation to Sudden Infant Death Syndrome," *American Journal of Epidemiology* 134 (1991), 958

ACADEMIC
In a recent survey of third grades in NYC public schools, officals from the NYC Department of Health found that "special education children were far more likely to be black males whose unmarried mothers lacked formal education beyond high school and who had Medicaid coverage at the time they gave birth." The health department officals noted, however, that the link between special education and marital status was actually even stronger, much stronger, among other races (odds ratio 8.1) than among blacks. he New York officals now believe they can identify children "at risk" for special education.
63. GOLDBERG Source: Donna Goldberg et al., "Which Newborns in New York City are at Risk for Special Education Placement?" *American Journal of Public Health* 82 (1992), 438

POVERTY; HEALTH; SUICIDE
In a recent study at the State University of New York at Albany, Sociologists Scott J. South and Stewart E. Tolnay investigated the well-being of children 14 years old and younger nationwide, as indicated by statistics for poverty, mortality and suicide for recent decades. The researchers discovered that children have suffered as family life has unraveled. The analysis shows that between 1970 and 1980, the percentage of American children living with two-parents fell from 83.3 percent in 1970 to 78.3 percent in 1980. Further, "the percent of children living with two parents is negatively related to poverty. In fact, family structure is by far the best predictor of child poverty." Likewise in both 1970 and 1980, "the degree to which children live in two-parent families is significantly and inversely related to child mortality... In both years, the degree to which children live with two-parents is strongly and inversely related to neonatal and postnatal mortality." Recent decades have witnessed sharply divergent trajectories in the well being of children and the elderly, with social and economic conditions of children generally deteriorating and of the elderly improving." This pattern cannot be understood without recognizing that "the degree to which children reside in tradional families is positively related to their well-being."
64. SOUTH Source: Scott J. South and Stewart E. Tolnay, "Relative Well-Being Among Children and the Elderly; The Effects of Age Group Size and Family Structure," *The Sociological Quarterly* 33 (1992), 115

ACADEMIC; DELINQUENCY
In a recent study at Brigham Young University, researchers invested the relationship between academic achievement and family backgrounds. The new analysis showed a clear pattern. "Students from an intact two-parent families had fewer absences and tardies, higher gradepoint averages and fewer negative and more positive teacher behavioral ratings than did those from reconstituted and single-parent families. In average, the students achieving the least in school and creating the most disruptions were those from single-parent families," while the reports for stepfamilies were "always between those of the intacts and single-parent families." The average grade point average was 3.13 for students from intact families, 2.27 for students form single-parent families, and 2.50 for children from step-families. Teachers awarded "citizenship honors" to 11.8 percent of students from intact families, to 6.4 percent of students from single-parent homes, and 7.2 percent of students from stepfamilies. Stressing the "consistency of findings, " the researchers see a pattern which persists even when social class, race, grade level, and age are all taken into account. For young adolescents, living with both parents "clearly appears advantageous for social-emotional development."
65. FEATHERSTONE Source: Darin R. Featherstone, Burt P. Omdick, and Larry C. Jensen, "Differences in School Behavior and Achievement Between Children From Intact, Reconstituted and Single-parent Families," *Adolescence* 27 (1992), 1

HEALTH; DEATH; ADULTS
Over a 14 year follow-up period for over 8,000 Swedish men who were 18 to 20 years old at the beginning of the period analyzed, authors of a new study found that "relative hazards of hospitalization and death were significantly increased" among those young men with divorced parents compared to peers with married parents. The "relative hazard" of hospitalization was 1.22 among young men with divorced parents compared to peers with married parents, while the relative hazard of mortality was a remarkable 2.73 among young men with divorced parents compared to those with married parents.
66. ROMELSJÖ Source: Anders Romelsjö, et al, "Protective Factors and Social Risk Factors for Hospitalization and Mortality Among Young Men." *American Journal of Epidemiology* 135 (1992), 649

DEPRESSION; DELINQUENCY
Workman and Beer discovered that on standard psychologists tests, "students from divorced homes scored significantly higher on depression than those from nondivorced homes" (16.62 vs 8.85). The researchers also discovered that students from divorced homes had higher scores on agression than did peers from intact families (6.09 vs 4.81).
67. WORKMAN Source: Michael Workman and John Beer, "Depression, Suicide Ideation and Agression Among High School Students Whose Parents are Divorced and Use Alcohol at Home," *Psychological Reports* 70 (1992), 503

ACQ
" A team of researchers analyzed the relationships between family life and "problems and competencies" among 2,700 children nationwide, ages four to sixteen. he researchers determined the extent and magnitude of the problems among the children by using an ACQ survey, which gave "a global index of deviance across many areas." Analysis revealed that "high ACQ problems scores" showed up among children with parents who were separated, divorced, or never married to each other. Interestingly, among children living with widowed parents ACQ problem scores were not distinctively elevated.
68. ACHENBACH Source: Thomas M. Achenbach, et al., "National Survey of Problems and Competencies Among Four to Sixteen year olds: Parents' reports for Normative and Clinical Samples," *Monographs of the Society for Research in Child Development*; Serial No. 225, Vol.56, No.3, 1991, 65

DELINQUENCY; ACADEMIC
Children in intact families were "consistently more scholastically and socially competent, were more socially responsible, and demonstrated fewer behavior problems than children in either restablized, single-mother families or step-families." The contrast between intact families and divorced mother households was particularly remarkable for its strength and consistency: "Every significant difference obtained between the adjustment measures of children from divorced and non-divorced

families was consistent with our overall prediction that children with divorced, unmarried mothers would demonstrate higher levels of behavior problems and lower levels of competence than children from non-divorced families." "Stepchildren," write the authors of the new study, "demonstrated less adaption to the remarriage than we had anticipated...(C)hildren in remarried families continued to demonstrate greater problems in adjustment than children in nondivorced families throughout the 26 months of the study."

69. HETHERINGTON Source: Mavis Hetherington et al., "Coping With Marital Transitions: A Family Systems Perspective," *Monographs of the Society for Research in Child Development* 57 (1992);serial no. 227, 1

INSTABILITY

Analysis of Canadian death records revealed a particularly dramatic rise in the suicide rate among the divorced and separated, especially divorced and separated women. Between 1981, the suicide rate among divorced and separated men rose 95 percent, while the suicide rate among divorced and separated women rose a phenomenal 150 percent. In contrast, the suicide rate among married women rose only 25 percent between 1951 and 1981, while the suicide rate among married men rose only 21 percent. In 1981 the suicide rate among divorced and separated Canadian men stood at over three times the rate among married men. In the same year, the suicide rate among divorced and separated Canadian women ran two-and-a-half times a high as among married women.

Trovato sees in his analysis "overwhelming support for the well established observaton that the married display the lowest risk of suicide." His findings thus fit into the context of "earlier research concerning the protective role of mariage in people's lives."

TROVATO Source: Frank Trovato, "Sex Marital Status, and Suicide in Canada; 1981," *Sociological Perspectives* 34 (1991)

INSTABILITY; MARITAL QUALITY

The authors of the new study stress that "virtually every remarriage attribute... examined is a potential contributor to deteriorated marital quality and stability."

BOOTH Source: Ina Booth and John N. Edwards, "Starting Over: Why Remarriages are More Unstable," *Journal of Family Issues* 13 (1992)

YOUNG ADULTS; SELF ESTEEM; RELATIONSHIPS

"Two-parent families tended to have a positive influence on all kinds of social relationships," including "social relationships with the same sex, and relations with parents." Garg also discovered that undergraduates from two-parent families were more likely to evince a favorable "emotional self concept" than students from single-parent homes. More broadly, students from two-parent families were more likely than students from single-parent households to hold a favorable "over-all non-academic self concept." "One can conclude," Greg remarks, "that family plays a vital role in family non-academic self concept."

70. GARG Source: Garg, "Academic and Nonacademic Self Concepts; Influence of Recent Life Change Experiences and Demographic Social and Health Variables," *Psychological Reports* 70 (1991), 871

RELATIONSHIPS

In a recent study at the University of Michigan and the University of Massachusetts at Boston, researchers investigated the mental health of over 1200 high school students. The researchers discovered that, compared to students in intact families, "children in both step- and single-parent households tend to experience more life stresses and less supportive, more troubled relationships." Compared to their peers in step-and single-parent households, teens in intact families generally suffered from fewer "strained or conflictual family relationships," while enjoying higher levels of "parental affection and support." The researchers also found that "youths in step-parent households report significantly more relationship problems with friends than do those in either single-parent or intact parent households."

71. GORE Source: Susan Gore, Robert H. Aseltine, Jr., and Mary Ellen Colton, "Social Structure Life Stress and Depressive Symptoms in a High School Aged Population," *Journal of Health and Social Behavior* 33 (1992), 97

SOCIAL NORMS

In a recent study at the State University of New York at Albany, sociologists Katherine Trent and Scott J. South investigated "the contemporary liberalization of attitudes toward family and gender roles in the Unites States." After analyzing a survey of over 11,000 adults who had lived with both biological parents are "more likely than those whose parents divorced to agree that it is better to marry, that marriage is for a lifetime, and that children are better off with their biological parents." The researchers discovered "similar patterns" in attitudes toward divorce and illegitimacy; adults whose parents had divorced tended to express more permissive views, while adults from intact families voiced more traditional opinions. Trent and South found that adults who had never lived with their fathers were particularly likely to reject traditional social norms, compared to adults who had lived part or all of their childhood with their fathers.

In light of recent trends in family life, Trent and South predict an erosion of support for "traditional attitudes toward marriage, divorce and unmarried motherhoood" in the years ahead.

72. TRENT Source: Katherine Trent and Scott J. South, "Sociodemographic Status, Parental Background Childhood Family Structure, and Attitudes Toward Family Formation," *Journal of Marriage and the Family* 54 (1992), 427

ILLEGITIMACY; EARLY SEX; YOUNG ADULTS; TEENS

Unmarried women are especially likely to bear children if they live in an area where a relatively high proportion of the women are separated or divorced. The authors conjecture that "a community in which there is a high level of marital instability may give rise to a normative environment where individuals perceive marital preservation as a minor concern." In such

an environment, it is especially likely that a young woman will see her parents divorce, which "in turn, increases the daughter's subsequent risk of an out of wedlock birth."

73. BILLY Source: John O. G. Billy and David E. Moore, "A Multilevel Analysis of Marital and Nonmarital Fertility in the US," *Social Forces* 76 (1992), 977

POVERTY; FATHERLESSNESS

The growing prevalence of female headed households has pushed many children into poverty and its concomitant disintegration of social structures. Even among the middle class, Graham sees a remarkable disappearance of fathers. Nor does it seem likely that a stronger conception of the family responsibilities of manhood will emerge among children living in homes where father and mother both work hours "beyond the traditional work day hours" so that "both parents (are) increasingly unavailable and kids (are) growing up with a lot less definition form either parent."

74. GRAHAM Source: Stanley R. Graham, "What Does a Man Want?" *American Psychologist* 47 (1992) (Presidential Address), 837

BREASTFEEDING; HEALTH

In a recent study at Pennsylvania State University, nutritionists J. Renee Matich and Laura S. Sims investigated the circumstances which distinguish mothers who breastfeed from mothers who do not. Matich and Sims note that (as of 1985) less than six in ten American mothers breastfeed their babies upon discharge from the hospital; fewer than one in four breastfeed for six months. This relatively widespread failure to breastfeed appears all the more remarkable given that the "nutritional, immunological and hygienic merits of breast milk are well established and breastfeeding has been recognized for its developmental, psychological, and social advantages."

The authors of the new study identify fathers as an important source of support for women who do choose to breastfeed. Matich and Sims discovered that among pregnant women, "intended breastfeeders rated the baby's father as providing greater tangible, emotional and informational support than those who intended to bottle feed." "The baby's father appeared to have an important role in providing... support for the intended breastfeeder." Not surprisingly, compared to pregnant women intending to bottlefeed, "a greater number of intended breastfeeders were married, thus the baby's father may have been more available to provide support."

75. MATICH Source: J. Renee Matich and Laura S. Sims, "A Comparison of Social Support Variables Between Women Who Intended to Breast or Bottle Feed," *Social Science and Medicine* 34 (1992), 919

PSYCHOLOGICAL

In a recent investigation at Yale and the University of California at Los Angeles, psychiatrists studied the relationship between marital status and psychiatric disorders among blacks and whites. The researchers documented a clear pattern: "for both races being married is associated woth a lower rate of psychiatric illness." In other words, "for blacks as well as whites, the married are less likely to be psychiatrically impaired than the unmarried."

76. WILLIAMS Source: David R. Williams, David T. Takeuchi, Russell K. Adair, "Marital Status and Psychiatric Disorders Among Blacks and Whites," *Journal of Health and Social Behavior* 33 (1992), 140

HEALTH; PSYCHOLOGICAL; STD; TEENS; EARLY SEX; ILLEGITIMACY

In a recent analysis, researchers from Cornell University Medical College investigated a medical clinic located in a New York City High School in which almost 1300 students made about 8,000 visits for services over the two and a half year study. Almost half (44 percent) of the visits were for an "acute or chronic medical problem," while one-seventh (14 percent) were for a "mental helath concern" and one-sixth (17 percent) were for some "gynecologic or sexually related issue." More specifically, students made "455 visits for contraceptive services, 218 visits for sexually transmitted disease diagnosis and/or treatment, and 357 visits for pregnancy testing." Of the one hundred twenty-five students who were in fact pregnant, over half (55 percent) aborted their unborn children.

When the Cornell researchers inquired more carefully into the home lives of students using the school based clinic, they found that "fewer than one third (27 percent) lived with both natural parents." Most (70 percent) reported living with their mothers.

77. FISHER Source: Martin Fisher et al., "School Based Adolescent Health Care; Review of a Clinical Services," *American Journal of Diseases of Children* 146 (1992), 615

RELIGION; ADULTS

In their statistical analysis of the professed religious attitudes of over 22,000 adults, researchers discovered that "children of divorce" were disproportionately represented among the "disaffiliated." While 8.9 percent of religiously affiliated adults had seen their parents divorce, 13.2 percent of those who had abandoned their faith had witnessed a parental divorce.

Marital status defined an even wider gap between religiously affiliated adults and the disaffiliated: while 62.3 percent of the religiously affiliated were married, only 46.3 percent of the disaffiliated were married. Only 11.6 percent of the religiously active were divorced or separated, compared to 16.5 percent of the disaffiliated.

The authors of the new study conclude that "family strain" may count as a significant cause of religious disaffiliation.

78. FEIGELMAN Source: William Feigelman, Bernard S. Gorman, and Joseph A. Varacalli, "Americans Who Give Up Religion." *Sociology and Social Research* 76 (1992), 138

DRUGS; TEENS

In a recent study at Columbia University and New York State Psychiatric Institute, researchers conducted a two year study of various "psychiatric disorders" including "Substance abuse disorder" among 174 children, mostly adolescent, in 91 families. statistical analysis revealed that "the incidence of substance abuse in offspring was associated with parental divorce." More specifically, among children and adolescents whose parents had divorced, the researchers discovered "seven times the risk for developing substance abuse disorder" when compared to the risk among peers whose parents had not divorced.
79. WITSSMAN Source: Myrna M. Weissman et al., "Incidence of Psychiatric Disorder in Offspring at High And Low Risk for Depression," *Journal of the American Academy of Childhood Adolescent Psychiatry* 31 (1992), 640

CYNICISM; YOUNG ADULTS
Young adults reared by divorced parents typically view marriage less favorably than peers reared in intact families. In a recent study at Auburn University, researchers inquired into the attitudes toward marriage among 340 freshmen. Analysis revealed that students from divorced families had lower scores on a Favorableness of Attitudes Toward Marriage Scale questionnaire than persons from intact families. The authors of the new study interpret their findings as evidence "support(ing) the association between family structure and premarital attitudes" suggested by previous research.
80. JENNINGS Source: A. Marlene Jennings, Connie J. Salts, Thomas A. Smith, Jr., "Attitudes Toward Marriage: Effects of Parental Conflict, Family Structure, and Gender," *Journal of Divorce and Remarriage* 17 (1992), 67
YOUNG ADULTS; TEENS; ALCOHOL; DRUGS; RELATIONSHIPS; HEALTH; ACADEMIC; DEPRESSION; EARLY SEX; ILLEGITIMACY
" In Finland, researchers investigated the "transition to young adulthood" among over 2,000 Finns. Over a six year study, the investigators discovered that the "life trajectories of children in divorced families revealed more stressful paths and more distress in both adolescence and young adulthood."
More specifically, the researchers found that at the beginning of the study, the adolescent Finnish children (average age of 15.9 years) of divorced parents "more frequently reported negative life events and interpersonal problems" than peers in intact families. Besides a higher incidence of "somatic complaints," the researchers found that "alcohol use and smoking were more common among children in intact families. The Finnish scholars further documented "inferior" academic performance among children of divorced parents when compared to peers from intact families.
The problems of children of divorced parents persist into young adulthood. The Finnish researchers found that at age 22, children of divorced parents were significantly more vulnerable to depression than peers from intact homes. While 17.4 percent of the daughters from divorced families "scored for depression" on standard tests, only 11.5 percent of daughters of intact families so scored. Among sons, the respective figures were 14.0 percent vs. 7.8 percent. A distinct propensity toward heavy drinking and smoking persisted among young adults who had seen their parents divorce, compared to peers from intact families. At age 22, both sons and daughters of divorced parents were more likely to have lost a job than peers from intact homes, while daughters were more likely to have experienced "conflict in intimate relationships," reflected in their higher rates of divorce, separation, and abortion. Twenty-two year old sons of divorced parents, on the other hand, reported slightly higher levels of "conflict with teachers or superiors" than sons of intact marriages. The Finnish scholars stress that the pattern of disadvantages for adolescent and young adult children of divorced parents persists even after social class has been taken into account.
82. ARO Source: Hillevi M. Aro and Ula K. Palosaari, "Parental Divorce, Adolescence, and Transition to Young Adulthood: A Follow up Study," *American Journal of Orthopsychiatry* 63 (1992), 421

GENDER IDENTITY; EARLY SEX; ILLEGITIMACY; FERTILITY
A remarkable gap in social beliefs emerged between housewives and wives employed full-time. The "attitudinal gap appeared most pronounced on questions "directly related to appropriate gender roles in the family and the impact of mother's employment on children." Glass further noted a "rapidly growing" divergence in questions of "premarital sexuality and abortion." This "attitude gap" grew wider even when age and income were taken into account.
The evidence thus suggested that "wives' full-time employment more clearly defined a nontraditional lifestyle in 1986 than in 1972," as such wives became increasingly likely to approve of employed mothers of small children and abortion among married women.
In the years head, Glass predicts, the social implications of (the) polarization in women's interests may become profound... [T]he widening fertility differential between housewives and employed wives suggests increased concentration of child rearing in fewer but less affluent and more traditional households."
83. GLASS Source: Jennifer Glass, "Housewives and Employed Wives: Demographic and Attitudinal Change, 1986," *Journal of Marriage and the Family* 54 (1992), 559
DELINQUENCY
In a recent analysis of "moral illiteracy," educator William K. Kilpatrick of Boston College concludes that contemporary moral confusion reflects family breakdown. "Character formation is a difficult task even when we have a clear picture of what it entails," observes Kilpatrick, who warns that "our society has a special structural problem that makes the job even more difficult. The problem is divorce up 700 percent in this century, with most of the rise occurring in recent decades."
Kilpatrick finds that "divorce seems to shake the child's confidence in the existence of a morally ordered, meaningful world," so weakening restraints on unethical and destructive conduct. Accordingly, Kilpatrick concludes that "one of the surest routes for bringing morality back to this society is to bring back marriage."
(BOOK) KILPATRICK Source: William K. Kilpatrick, Why Johnny Can't Tell Right from Wrong (New York: Simon and

Schuster, 1992)

BREASTFEEDING; HEALTH; INFANT MORTALITY
In a recent study at the University of British Columbia, Verity Livingstone surveyed available evidence on the benefits of breastfeeding, while also scrutinizing attitudes and practices "[a]ssociated with failure to initiate breast-feeding or premature termination of breastfeeding." Livingstone stresses that breast-feeding is "the most cost effective and health promoting activity mothers can undertake." Among the health advantages it affords are "optimum nutrition, increased immunologic protection leading to fewer hospital admissions, fewer respiratory and gastrointestinal infections, fewer allergies, less eczema, less childhood cancer and diabetes, and significant psychologic benefits." Livingstone further warned that commercially prepared substitutes for breast milk are "inferior and carry significant health risks, which increase infant morbidity." "Worldwide, millions of infants continue to die from malnutrition, misuse of formula, and a lack of the protective properties of breast milk."
Livingstone notes that since the 1960's "the number of young mothers wishing to breast feed has increased, but recently this trend seems to be reversing worldwide." Indeed, in Canada, "less than 10 percent of mothers follow the recommended Canadian infant breastfeeding guidelines."
Listing a number of "maternal factors" which reduce the likelihood of successful breastfeeding, Livingstone notes that single mothers are less likely to breastfeed successfully. So likewise are mothers often separated from their infants.
LIVINGSTONE Source: Verity H. Livingstone, "Protecting Breast feeding, Family Physicians' Role," *Canadian Family Physician* 38 (1992)

SMOKING; HEALTH
In a recent study at the Uppsala University in Sweden, researchers compared the backgrounds of women who continue smoking during pregnancy with those who give up the habit during pregnancy. The Swedish scholars found that women who were "not living with the infant's father" were at "increased risk for continued smoking during pregnancy" compared to women who were living with the infant's father.
85. CNATTINGIUS Source: Sven Cnattingius, Cinnilla Lindmark, Olav Meirik, "Who Continues to Smoke While Pregnant?" *Journal of Epidemiology and Community Health* 46 (1992), 218
DELINQUENCY; RELATIONSHIPS
In a recent study at Baylor College of Medicine, a team of researchers investigated the long term effects on children of living in stepfamilies. Although most stepchildren are "normal" in their behavior, the researchers identified a clear pattern of risk; "children in stepfamilies had more behavioral problems, less prosocial behavior, and more life stress than children in nuclear families."
"Remarried couples were more negative and less positive than first-marriage couples." Not surprisingly, "stepfamilies reported and were observed to have more negative family relationships and more problematic family processes than nuclear families."
BRAY Source: James H. Bray et al., "Longitudinal Changes in Stepfamilies: Impact on Children's Adjustment," paper presented 15 August 1992 at the Annual Meeting of the American Psychological Association, Washington, D. C.)
POVERTY
The economic well-being of "female headed households or women has actually deteriorated relative to the (economic well-being) experienced by families with a male adult."
87. ENGLAND Source: Paula England and Irene Browne, "Trends in Women's Economic Status." *Sociological Perspectives* 35 (1992), 17
ACADEMIC; TEENS
Adolescents who live in a stepfamily or with a single parent are much more likely to drop out of high school than peers who live in intact families. In a recent study at Princeton, the University of Wisconsin-Madison, and Louisiana State University, researchers analyzed national statistics to determine the link between family background and high school graduation. Analysis revealed that not living with both parents at age 14 has negative consequences for children's high school graduation regardless of whether the child lives with a single parent, a parent and stepparent, or neither parent. "85percent of adolescents who live in intact families between ages 14 and 17 graduate from high school, compared to just. 67 percent of peers living in single-parent homes, 65 percent of peers living in stepfamilies and 52 percent living with either parent."
The effects of family structure on high school graduation rates persisted even when more sophisticated statistical analysis took into account household income. Differences in household income could account for only a small part 15 percent of the wide gap between graduation rates among teens in intact homes and teens not in intact homes. And since household income in stepfamilies was close to that of intact families, the researchers perforce concluded that "remarriages does not recreate the same family situation that exists in stable two-parent families." The researchers view their findings as "consistent with the view that family disruption has harmful effects on educational performance and high school graduation."
88. SANDEFUR Source: Gary D. Sandefur, Sara McLanahan and Roger A. Wojtkiewwicz, "The Effects of Parental Marital Status During Adolescence on High School Graduation," *Social Forces* 71 (1992), 103
BREASTFEEDING; HEALTH
Maternal employment prevents many infants from receiving for very long the numerous benefits of breastfeeding. In a recent article in *Pediatric Annals*, physicians Cynthia R. Howard and Michael Weitzman catalogue the well-established advantages of breastfeeding, but acknowledge that the practice has declined in recent years. Howard and Weitzman point to clear

evidence that breast feeding is the best method of infant feeding. "Breast feeding" they observe "provides enhanced protection against many infectious diseases. It minimizes an infant's exposure to enteropathogens and supplies protection against a host of immunologically active factors." The pediatricians further note that "breast milk is the gold standard after which all infant formulas are modeled." The authors also concede that "future research may elucidate still other currently unrecognized benefits."

But while reminding their colleagues that "breastfeeding should be strongly advocated," Howard and Weitzman report a regrettable decline in the practice. "Currently only 50 percent of infants are initially breast fed, and less than 20 percent are still being breast fed at 6 months." Why are fewer mothers breastfeeding their babies than in the past? "Employment outside the home appears to be associated with a substantially shortened duration of breastfeeding."

89. HOWARD Source: Cynthia R. Howard and Michael Weitzman, "Breast or Bottle: Practical Aspects of Infant Nutrition in the First Six Months," *Pediatric Annals* 21(1992), 619

ABSENT FATHER

But among children whose parents never married in the first place, the typical child will reach age 15 without ever living with his biological father. In contrast, adolescents who had been born to unwed mothers "did not live in mother/father families to any extent." It appears "that if the biological father is not present in the household at birth, he rarely shows up later." Living in a household of a never-wed mother "may have different effects on subsequent life course events" for children than living in the household of a divorced mother.

89. WOJTKIEWICZ Source: Roger A. Wojtkiewicz, "Diversity in Experiences of Parental Structure During Childhood and Adolescence," *Demography* 29 (1992), 59

EARLY SEX; ILLEGITIMACY

Hobart and Grigel view the rising acceptance and practice of nonmarital cohabitation as "derivative from acceptance of premarital intercourse associated with the sexual revolution of the 1960's." Accordingly, statistical analysis showed that "sexual permissiveness of father and of the mother" were "more strongly predictive than the peer group" in determining whether young Canadians would cohabit outside of marriage. Hobart and Grigel see in their findings evidence of "the near total loss of influence of religion on the attitudes and behavior of Canadian young people relating to sexual relationships."

91. HOBART Source: Charles Hobart and Frank Grigel, "Cohabitation Among Canadian Students at the End of the Eighties," *Journal of Comparative Family Studies* 32 (1992), 311

POVERTY

Married couple families continued to have the lowest poverty rate (6.0 percent) in 1991 among all family types, the Census Bureau reports. "The overall poverty rate for families with a female householder, no spouse present, increased significantly in 1991... Families with a female householder represented 12.7 percent of nonpoor families but 54.0 percent of poor families in 1991."

Among families with children under age 18, only 8.3 percent of married couples are living below the poverty line, compared to 47.1 percent of female headed households. Among white families with children under 18, the poverty rate runs only 5.5 percent in married couple homes, compared to 28.4 percent in female headed households. Among black families with children only 11.0 percent of married couple homes are in poverty, compared to 51.2 percent of female-headed households. or Latinos, the comparable figures are 19.1 percent of married couple homes and 49.7 percent of female headed households.

92. U. S. BUREAU OF THE CENSUS Source: U. S. Bureau of the Census, "Poverty in the United States: 1991," *Current Population Reports*, Series p-60, no. 181, August 1992, 5

ELDERLY

"Parents who are in good health and those in intact marriages provide more support (to their adult children) than others." "As with the provision of advice, parents who are no longer married to the child's other parent because of divorce or death are less likely to provide gifts and monetary assistance than are married parents." Likewise, adult children of divorced, separated, or widowed parents are less likely to receive services-including child care-than adult children of still married parents. In general, "reduced chances of parental support are evident if parents are no longer married to each other."

93. COONEY Source: Teresa M. Cooney and Peter Uhlenberg "Support from Parents Over the Life Course: The Adult Child's Perspective," *Social Forces* 71 (1991), 63

DEPRESSION; SELF-ESTEEM; ACADEMIC; TEENS

"The students of divorced parents experienced more depression and lower self esteem and they are earned lower GPAs. Children of nondivorced parents had consistently higher self esteem scores."

94. BRUBECK Source: Dan Brubeck and John Beer, "Depression, Self Esteem, Suicide Ideation, Death Anxiety and GPA in High School Students of Divorced and Non-divorced Parents," *Psychological Reports* 71 (1992), 755

BREASTFEEDING

The analysis reveals that marital status is an important determinant of breastfeeding decisions. "Other things being equal," "married women are 55 percent more likely to breast feed than unmarried mothers. "he RAND team finds that marital status accounts for between 26 percent and 32 percent of the gap between teenage and older mothers in breast feeding rates.

95. PETERSON Source: Christine E. Peterson Julie DaVanzo, "Why are Teenagers in The United States Less Likely to Breastfeed Than Older Women?" *Demography* 29 (1992), 431

ILLEGITIMACY; TEENS; EARLY SEX
A new study reveals that less than half of the unwed teens aborting their unborn children live in intact families. "Only 38 percent of the minors (in the Guttmacher study) lived with both biological parents, 46 percent lived with their mother but not their natural father, 5 percent lived with their father but not their natural mother, and 12 percent lived with neither."
96. HENSHAW Source: Stanley K. Henshaw and Kathryn Kost, "Parental Involvement in Minors' Abortion Decisions," *Family Planning Perspectives* 24 (September/October, 1992), 196
TEENS; EARLY SEX; ILLEGITIMACY
In a recent study at Arizona State University, psychologists Nancy Russo, Jody D. Horn, and Robert Schwartz analyzed the social backgrounds of women aborting their unborn children nationwide. They found that unmarried pregnant women are far more likely to abort their unborn children than married pregnant women. "Married women have the lowest rates of abortion." In 1987, "more than four out of five women obtaining abortions were unmarried; nearly two out of three were never married." Separated women had an abortion rate five times that that for married women, while divorced women had a rate four times that for married women. "Marital status appears especially important in the decisions of adolescents. The Arizona State scholars report that "more than 98 percent of minors seeking abortion were unmarried."
RUSSO Source: Nancy Felipe Russo, Jody D. Horn, Robert Schwartz, "U. S. Abortion in Context: Selected Characteristics and Motivations of Women Seeking Abortions," *Journal of Social Issues* 48 (1992)
HEALTH; ABANDONED; ABUSE; DRUGS; CRIME; HOMELESSNESS
In a recent analysis, pediatrician Margaret McHugh examined the numerous threats to the health of the inner-city child. These threats include not only certain diseases (such as bacterial meningitis, rheumatic fever and iron-deficiency anemia) which strike inner city children in distressingly often, but also neglect, homelessness, drugs, crime, and abuse. McHugh stresses that these problems "[h]ave the most profound effect on households headed by single mothers."
98. MCHUGH Source: Margaret McHugh, "Child Abuse in a Sea of Neglect: The Inner-city Child," *Pediatric Annals* 21 (1992), 504
STD; EARLY SEX; ILLEGITIMACY
... These conversations may indeed have changed some attitudes among young women who had not engaged in intercourse. 37.7 percent reported that they had not engaged in intercourse because of "parents wishes" In contrast, among young men who had not engaged in intercourse, just 11.6 percent gave "Parents wishes" as the reason. Likewise, although 31.6 percent of young women who were virgins said they had not engaged in intercourse because of "values" or "religion", only 13.7 percent of the young men who had not engaged in sexual relations cited such reasons.
Young men and women respond, however, not only to what parents say, but also to how they live. Among the students Leland and Barth identify as being at "higher risk" of contracting sexually transmitted diseases are "those who did not live with both parents."
99. LELAND Source: Nancy Lee Leland and Richard P. Barth, "Gender Differences in Knowledge, Intentions, and Behaviors Concerning Pregnancy and Sexually Transmitted Disease Prevention Among Adolescents," *Journal of Adolescent Health* 13 (1992), 589
DEMOGRAPHICS
Census officials acknowledge that "the tremendous increase in the number of single parents has been one of the most profound changes in family composition to have occured during the past quarter century." Whereas there were only 3.8 million single parents in 1970, in 1991 there were 16.1 million single-parent households. Analysis reveals that although one-parent households (overwhelming mother-only households) are much more common among blacks than among white, "the single-parent proportions have increased among both races since 1970."
100. U. S. BUREAU OF CENSUS Source: U. S. Bureau of Census, "Household and Family Characteristics, March 1991," *Current Population Reports*, Population Characteristics Series P20, no. 458, February 1992, 1

TEENS; ACADEMIC; DELINQUENCY; POVERTY; CYNICISM
"Today's children are in crisis because today's families are in crisis." So writes physician David A Hamburg of the Carnegie Corporation in a recent analysis of the problems besetting the rising generation. In the three decades between 1960 and 1990, Hamburg sees an unprecedented "social tidal wave" in American family life, a tidal wave that has left many impoverished, damaged, and frustrated children and adolescents among the scattered flotsam. Various psychological academic, social and economic indices indicate "heavy casualties" among American children, and Hamburg points to the "erosion of the family" as a primary reason.
(BOOK) HAMBURG Source: David A. Hamburg, Today's Children: Creating a Future for a Generation in Crisis (New York: Random House/Times Books, 1992)
INTELLIGENCE
Being born to an unwed mother creates part of a "social risk" which typically handicaps a child more than the biological risk of very low birth weight. In a recent study at Case Western University, Emory University, Cleveland State University and the University of Michigan, researchers compared "the biologic risk associated with extreme prematurity" with the "social risk" associated with being born to mothers who are unmarried high school dropouts, or black. In comparing the "neurocognitive abilities at school age" of children from various backgrounds, the researchers found that children whose birth weight was very low received "significantly poorer scores on all tests, with the exception of speech and the total behavior score" than children whose birth weight had been normal. Nonetheless, the researchers found that social risk was a stronger predictor of performance than biologic risk. Indeed, because "social risk was... the major determinant of outcome, " the

biologic risk of very low birth weight appeared to "add only negative impact of a poor psychological environment." Analysis revealed that "children in the lowest social risk group had, on the average, an IQ 28.8 points higher than did children in the highest social risk group. "Statistical tests showed that social risk explained almost a third (31 percent) of the gap in IQ's while very low birth weight merely "added an increment of 2 percent to the explained variance."

HACK Source: Maureen Hack et al., "The Effect of Very Low Birth Weight and Social Risk on Neurocognitive Abilities at School Age," *Developmental and Behavioral Pediatrics* 13 (1992)

TEENS; CRIME; HOMELESSNESS; EARLY SEX; STD; ILLEGITIMACY

In a recent study at the University of Toronto and the University of Victoria, sociologists Bill McCarthy and John Hagan investigated the social backgrounds of 563 teenagers living in the streets, many of them engaging in prostitution, theft and other criminal activities. "The likelihood of leaving home" for the life on the streets "decreases with being in an intact family and having high academic aspirations." This finding persisted in analyses that took social class and home characteristics into account.

103. MCCARTHY Source: Bill McCarthy and John Hagan, "Mean Streets: The Theoretical Significance of Situational Delinquency Among Homeless Youths," *American Journal of Sociology* 98 (1992), 597

DELINQUENCY; ACADEMIC; TEENS; HEALTH

" In a recent study at the John Hopkins University and the University of Pittsburgh researchers investigated the relationship between children's well-being and their "social environment." Among both blacks and whites, children were twice as likely to have behavioral problems if they lived in mother-only families than if they lived with both biological parents. Among whites (but not blacks) children who were growing up with a mother and some other adult (usually a stepfather) were, again, almost twice as likely (odds ratio 1.9) as children living with both biological parents to manifest behavior problems.

Among blacks (but not whites) the researchers discovered a link between failure in school and household composition-if the analysis took into account the age of the children. "Older black children," "who also lived in a mother-headed household, were more likely to fail in school as compared to younger black children in mother/father households." Also among blacks (but not among whites), children living in mother-only households were almost three times (odds ratio 2.8) more likely than children in intact families to spend "excessive" days in bed because of illness.

In general, the researchers interpreted their findings as confirmation of "prior studies... showing the adverse effects of social deprivation" on American children.

104. MCGAUHEY Source: Peggy J. McGauhey and Barbara Starfield, "Child Health and the Social Environment of White and Black Children," *Social Science and Medicine* 36 (1003), 867

ABUSE

"The absence of the natural mother and father from the home" is a circumstance in which "incest is more likely." And although he conceded that, from, a biological perspective, "sexual contact within stepfamilies is not technically incest," Erickson identifies divorce and remarriage as events than can disrupt familial bonding and so "elements of a generational cycle of child abuse are set in place."

105. ERICKSON Source: Mark T. Erickson, "Rethinking Oedipus: An Evolutionary Perspective of Incest Avoidance, " *American Journal of Psychiatry* 150 (1993), 411

BREASTFEEDING; HEALTH; INFANTS

The adverse effect of absent spouses on intention, initiation, and duration of breastfeeding represents another consequence of female headship, even if only temporary. "Whatever the reason for a maternal decision, the effects of infant feeding on the infant and the mother, especially full and partial breastfeeding are profound."

106. ADAIR Source: Linda S. Adair, Barry M. Popkin David K. Guilkey. "The Duration of Breast feeding; How Is It Affected by Biological, Sociodemographic Health Sector, and Food Industry Factors?" *Demography* 30 (1993), 63

TEENS; PSYCHOLOGICAL; HEALTH; ACADEMIC

In a recent investigation at Wright State University and the University of Dayton, psychologists Lawrence A. Kurdek and Mark A. Fine looked at the disciplinary styles and the emotional climate of the homes of more than 800 young adolescents. In statistical comparisons, "adolescents living with both biological parents reported more warmth than did those living with stepfathers." Likewise, "adolescents living with both biological parents reported less conflict than those living with either a stepfather or stepmother." Kurdek and Fine also discovered that "adolescents living with both biological parents reported less permissive parenting than those living with either a divorced father or a multiply divorced parent." These findings appeared valid for both young men and young women.

The authors of this study view their work within the broader context of research demonstrating that "children who experience the divorce and or remarriage of their parents are at greater risk for psychological academic and health problems than are children who live continuously with both parents."

107. KURDEK Source: Lawrence A. Kurdek and Mark A. Fine, "The Relation Between Family Structure and Young Adolescents' Appraisals of Family Climate and Parenting Behavior," *Journal of Family Issues* 14 (1993), 279

TEENS; ALCOHOL; DRUGS

In a recent study at the University of Akron and the University of Miami, sociologists Jan S. Sokol-Katz and Patricia M. Ulbrich investigated the relationship between risk-taking behavior (defined by propensity to use alcohol or drugs) and family structure among Latino adolescents. Sokol-Katz and Ulbrich found that on statistical measures, "Mexican and Puerto Rican adolescents living in single-parent households engage in more risk taking behaviors than those living in two-parent

households." Among Mexicans-by far the largest Latino population in the country and accordingly the most fully represented in this study-the researchers established more specific and complete patterns: "Mexican adolescents living in female-headed households have higher rates of drinking, drug use and overall risk-taking behaviors than adolescents living with both parents."

108. SOKOL-KATZ Source: Jan S. Sokol-Katz and Patricia M. Ulbvich, "Family Structure and Adolescent Risk Taking Behavior: A Comparison of Mexican and Cuban and Puerto Rican Americans," *The International Journal of the Addictions* 27 (1992), 1197

ABUSE

In a recent study at Old Dominion University, child psychologists investigated the disciplinary practices used by "working to middle class African American mothers." The researchers discovered that the absence of the father made a difference in the style of discipline black mother's employ. "Single mothers reported more physical disciplinary practices than did married mothers." In explaining this pattern, the researchers conjecture that "a mother raising a child alone may experience at times additional stress as a result of task overload, financial concerns, and have less time and energy to employ strategies that involve child oriented practices such as reasoning persuasion and modeling. Under these circumstances, it may be adaptive for the mother to employ control practices that quickly and decisively reinforce obedicance."

109. KELLEY Source: Michelle L. Kelley, Janis Sanchez-Hucles and Regina R. Walker, "Correlates of Disciplinary Practices in Working to Middle Class African-American Mothers," *Merrill-Palmer Quarterly* 39 (1993), 252

TEENS, EARLY SEX, ILLEGITIMACY, RELATIONSHIPS

Researcher Stephanie Schamess recently compared the attitudes and personality development of unmarried adolescent mothers with the attitudes and personality development of older married mothers. Schamess not only discovered "lower stages of ego development" among the unwed adolescent mothers, but also documented many problematic attitudes toward men, family roles, and their own fathers. Compared to the older, married mothers, the unwed teen mothers voiced more negative attitudes about relationships with men. Concerning relationships with men, only 25 percent (of the unwed adolescent mothers) gave clearly positive responses, 38 percent were neutral or ambivalent, and 38 percent were negative. Among the in-wedlock mothers, 71 percent of the responses were positive, 8 percent ambivalent and 21 percent negative." Not surprisingly, the unmarried teen mothers were more likely than the older married mothers to express "views of the marital relationship (which) are problematic."

Noting that other researchers have established that "girls reared by single mothers are significantly more likely to become sexually active in their teens than are those raised by two-parents," "paternal unavailability" also makes adolescent girls "particularly vulnerable to involvement with men who would treat them badly."

110. SCHAMESS Source: Stephanie Schamess, "The Search for Love: Unmarried Adolescent Mothers' View of and Relationships With Men," *Adolescence* 28 (1993), 425

POVERTY; DEMOGRAPHICS

"[F]amilies maintained by women with no spouse present experienced declines in real median family income between 1991 much higher than the decline experienced by married couple families." The Census Bureau analysts point particularly to "changes in household composition or living arrangement (i. e., the shift away from married-couple families to single-parent and non-family households) "as developments which have "exerted a downward pressure in incomes and exacerbated income inequality."

The Census Bureau reports that Americans who made "the transition to a married couple family from another type of family" in the late 1980's generally experienced an improvement in their economic well being as measured by income to poverty ratio, a statistical test that takes into account family size and economics of scale. Among Americans who became members of a married couple family during the period analysis, "65.7 percent experienced increases of 5 percent or more in their income to poverty ratios, with 58 percent experiencing increases of 20 percent or more." In contrast, the Census Bureau reports that 58.5 percent of those who changed from being a member of a married couple family to a member of another type of family suffered a decline in economic well being.

111. U. S. BUREAU OF THE CENSUS Source: U. S. Bureau of the Census, "Money Income of Households, Families and Persons in the United States 1991," Series P 60, No. 180 August 1992, ix

TEENS, EARLY SEX, ILLEGITIMACY

In a recent study at the University of Wisconsin, Madison, sociologists Lawrence L. Wu and Brian C. Martinson investigated the social background of young women who bear a child out of wedlock. In statistical analysis of national data the researchers established that "being in a non-intact family at age 14 significantly increases the risk of a premarital birth" for whites, blacks and Hispanics. "The effect is largest for Hispanic women, and smallest for black women.

113. WU Source; Lawrence L. Wu and Brian C. Martinson, "Family Structure and the Risk of a Premarital Birth," *American Sociological Review* 58 (1993), 210

YOUNG ADULTS; ILLEGITIMACY

In a recent study at the Netherlands Interdisciplinary Demographic Institute, researchers Aart C. Liefbroer and Jenny de Jong Gierveld analyzed unmarried cohabitation, a practice especially prevalent in Holland, but one which has seen "a rapid increase in... popularity... among young adults throughout the Western world." The Dutch scholars found that "the level of parental religiosity strongly influences ... the intentions of young adults." Young adult with devout parents are much more

likely than peers with religiously indifferent parents to "intend to marry straight-away" rather than to cohabit. Even if they do choose to cohabit, young adults with devout parents are more likely than peers with religiously indifferent parents to regard "cohabitation as a prelude to marriage, rather than as a more-or-less permanent alternative to it."
Young people who experienced a parental divorce are more likely than peers from intact families to choose "cohabitation without plans of subsequent marriage rather than... marriage without preceding cohabitation." Young adults are also more likely to choose cohabitation if their mothers worked outside the home during their adolescence, because "young adults whose mothers have been working outside the home are less focused on traditional family values that emphasize marriage as the only legitimate type of union and a strong gender-based division of labor." On the other hand, young people who are living in the parental home are much more likely to choose marriage without prior cohabitation than are peers living away from the parental home.
Young people with highly educated mothers were more likely than peers with less educated mothers to choose unmarried cohabitation rather than marriage. Among young people themselves, higher education only "slightly" increased the likelihood of premarital cohabitation, but among those who did cohabit premaritally, the highly educated were those most likely to consider cohabitation as an alternative rather than a prelude to wedlock.
114. LIEFBROER Source: Aart C. Liefbroer and Jenny de Jong Gierveld, "The Impact of Rational Considerations and Perceived Opinions on Young Adults' Union Formation Intentions," *Family Issues* 14 (1993), 213
TEENS; SELF-ESTEEM; READING; ACADEMIC; RELATIONSHIPS
"Adolescents from intact homes have better self-concepts than adolescents from homes in which a parental divorce had occurred." Compared to teens with divorced parents, adolescents in intact families evidence better self-concepts in general and in their attitudes toward "reading, honesty, parents, math... and school."
115. STUDER Source: Jeannine Studer, "A Comparison of the Self-Concepts of Adolescents from Intact, Maternal Custodial and Paternal Custodial Families," *Journal of Divorce and Remarriage* 19 (1993), 219

TEENS; RELATIONSHIPS; PSYCHOLOGICAL
In a recent study at the University of Maine and the University of Miami, researchers Dorothy Tysse Breen and Margaret Crosbie-Burnett investigated the moral development of early adolescents. They discovered that early adolescents whose parents were divorced reported "more family-related moral dilemmas than did early adolescents of intact families." Over one third (35.4 percent) of the young teenagers whose parents had divorced reported family related moral dilemmas, compared to less than one tenth (9.3%) of the young teenagers from intact families. The authors of this new study found that teens with divorced parents are almost twice as likely (30.6% vs. 18.2%) to express concerns about "peer rejection" as peers from intact families. Compared to young teens from broken homes, teens from intact families use "the word 'friend' more often and more positively." "Children and adolescents of divorce face additional psychological tasks in their development process."
116. BREEN Source: Dorothy Tysse Breen and Margaret Crosbie-Burnett, "Moral Dilemmas of Early Adolescents of Divorced and Intact Families: A Qualitative and Quantitative Analysis," *Journal of Early Adolescence* (1993), 168
DEMOGRAPHICS
In a recent study at the Institute for Social Research in Oslo, Norway, feminist researcher Anlaug Leira investigated the effect of welfare state growth on family life-especially motherhood-in Scandinavia since W.W.II. During the 60's and 70's the Scandinavian countries (especially Sweden and Denmark) adopted a number of "welfare state policies that more or less intentionally promoted the employed mother family." As a feminist, Leira sees inconsistencies and inadequacies in some national policies (especially in Norway) but she nonetheless views state sponsored child care as a vital part of the "modernization of motherhood" in Scandinavia, and the "reconceptualization of motherhood." "The introduction of collective child care," she explains, "contributed to a 'deprivatization' of family life, as did the increasing economic activity of mothers." Noting that "the increasing public control of and spending on matters that used to be left to the family" is one of the "central features in the history of the welfare state." "Public takeover of some child care responsibilities" is evidence of a critical "restructuring of boundaries between the state and the family."
In this restructuring of boundaries, mothers are increasingly independent of husbands. "Mothers of the 1980's depend less on husbands for economic provisions and more on the state and the market than did the mothers of the 1960's." "New trends in lifestyles exemplified by the dual-earner family, cohabitation without marriage and increasing divorce rates" is evidence that older patterns of family life based on traditional understandings of marriage are breaking down.
LEIRA Source: Anlaug Leira, "Welfare States and Working Mothers: The Scandinavian Experience" (Cambridge; Cambridge University Press, 1992; pp. 2-3,20,47,97,12,173.)
RELATIONSHIPS; YOUNG ADULTS
The new study further revealed that Indian young women generally perceived "both fathers and mothers as being significantly more loving" than did American counterparts. Indian young women were also less likely to judge their parents as "overprotective" than American young women. Luthar and Quinlan evaluated these findings in light of expectations that "the more family centered Indian culture would yield different results from the more centripetal American culture."
118. LUTHAR Source: Suniya S. Luthar and Donald M. Quinlan, "Parental Images in Two Cultures; A Study of Women in India and America," *Journal of Cross-Cultural Psychology* 24 (1993), 186

HEALTH; PSYCHOLOGICAL
Statistical analysis of national survey data reveals that "[a] mother's working in the labor force negatively affects the physical

health status of children from one and two-parent families." Hong and White-Means observe that this finding is "[c]onsistent with the theory that suggested that working mothers have less time available to enhance their children's health."
Although maternal employment was "negatively related to the physical health of the children of married and non-married mothers," the effect appeared much more pronounced (the statistical coefficient was five times as large) among unmarried mothers. Hong and White-Means accordingly conclude that the "presence of a spouse in the household minimizes the detrimental health effects of maternal employment on child health."
Living in a single-parent home is particularly risky for sons. The authors of this new study report that "male children from one-parent families were found to have more illnesses than female children." It was suspected that "male children of female-headed households may engage in more unsupervised physical activities that might result in injuries or accidents."
Furthermore, for both sons and daughters living with an unmarried mother often means poorer mental health. Hong and White-Means note that "children of married mothers had better mental health than those from one-parent families...[C]hildren from one-parent families tend to be moody, sad, and nervous."
119. HONG Source: Gong-Soog Hong, and Shelley I. White-Means, "Do Working Mothers Have Healthy Children?" *Journal of Family and Economic Issues* 14 (1993), 163

DELINQUENCY; TEENS; ACADEMIC
In a recent study at Arizona State University, researcher Josefina Figueria-McDonough investigated patterns of delinquency in Maricopa County, an area with a large impoverished Latino population. Figueira-McDonough expected to find a statistical link between dropout rates and delinquency rates. "Contrary to most past theory and research, " "dropout rates have no impact on delinquency." This finding is especially important because the dropout rate among Latinos is "extremely high."
"The greater the proportion of single motherhood"... she concludes, "... the higher the delinquency rates." Figueria-McDonough also discovered that "male employment prevents delinquency whereas mother employment facilitates it."
And although she was unable to find the expected link between dropout rates and delinquency rates, her work did show that "[a]mong groups with high delinquency [rates], [the] dropout [rate] varies inversely with male unemployment and directly with single motherhood."
120. FIGUEIRA-MCDONOUGH Source: Josefina Figueira-McDonough "Residence, Dropping Out and Delinquency Rates," *Deviant Behavior* 14 (1993), 109

DRUGS; TEENS; ADULTS; YOUNG ADULTS; ABSENT FATHER
In a recent study at Penn-VA Center for Studies of Addiction, a team of researchers investigated the family backgrounds of opiate-dependent men. Most of these drug abusers identified problems in their families. More particularly, many of them expressed "both an anger toward and a longing for the absent father." Investigation revealed that some of the drug addicts grew up with fathers who were "distant and passive, too tired, and too discouraged by the difficulty of providing for their families to be involved in the day to day events of family life." But even more of the drug addicts in this study grew up in homes where the fathers...were absent from the family altogether."
The Penn-VA researchers believe that growing up without the assistance of their fathers left the men in this study emotionally distressed and, therefore, prone to drug use. "In our society," the researchers remark, "the father has stood as a symbol of protection and financial security, and he has been the gatekeeper of the family, both protecting family members from and connecting them to the outside world."
Perhaps the grimmest finding of this new study is that drug-using sons of "absent fathers" often imitate their fathers' example: over two thirds of the drug addict sons of absent fathers in this study had become absent fathers themselves when they had children.
121. BEKIR Source: Pamela Bekir et al., "Role Reversals in Families of Substance Misusers: Transgenerational Phenomenon," *The International Journal of the Addictions* 28 (1993), 613

TEENS; RELATIONSHIPS
In a recent study at the Universite Laval in Canada, researchers Sylvie Drapeau and Camil Bouchard compared the social circumstances of children ages 6 to 16 from intact families with those of children of divorced parents. Results indicated that children from disrupted families were living in "less dense" social networks than peers from intact homes. The "density of a network" "is an indication of the integration of an individual into a group," so that a high density network "offers more cohesion and a stronger feeling of security" than a low-density network. "A low density network would not be composed of close or significant people."
"Children from disrupted families may appear to be more isolated than children from intact families."
Drapeau and Bouchard discovered that "adults with no blood links to the children (e. g. teachers, counselors, baby-sitters) occupied an important position in the support networks of children from disrupted families. However, these adults were also perceived by the children as sources of conflict. "The researchers also learned that compared to children from intact families," the children from disrupted families reported a higher level of dissatisfaction concerning the support they received from their friends."
122. DRAPEAU Source: Sylvie Drapeau and Camil Bouchard, "Support Networks and Adjustment Among 6-16 year olds from Maritally-disrupted and Intact Families," *Journal of Divorce and Remarriage* 19 (1993), 73
READING

In a recent study at the Battelle Seattle Research Center, researchers Nazli Baydar, Jeanne Brooks-Gunn and Frank F. Furstenberg investigated the functional literacy of blacks born to teenage mothers in Baltimore. "[I]n middle childhood and adolescence... father presence and mother's being married predict higher literacy scores." Likewise, "the number of years the mother was married positively predicted literacy scores in young adulthood."

That literacy among blacks born to teenage mothers is affected by paternal presence and maternal marital status is an important and for these researchers unexpected finding. The authors of this new study had hypothesized that "family environmental factors w(ould) affect literacy only through early childhood developmental level and educational achievement." Contrary to initial expectations, maternal marital status and paternal presence turn out to be "predictive of later literacy."

123. BAYDAR Source: Nazli Baydar Jeanne Brooks-Gunn, Frank F. Furstenberg, "Early Warning Signs of Functional Illiteracy: Predictions in Childhood and Adolescence." *Child Development* 64 (1993), 815

CRIME

Through a survey of almost 14,000 prisoners in state correctional facilities, officials from the U.S Bureau of Justice investigated the family backgrounds of inmates. "[M]ost inmates did not live with both parents while growing up," "an estimated 14 percent had lived in households with neither parent," while 43 percent of the inmates (had) lived in single-parent households, 39 per cent with their mother and 4 percent with their father.

124. BECK Source: Allen Beck et al., "Sources of State Prison Inmates, 1991," The Bureau of Justice, *Statistics Marsh, 1993*, NCJ-136949, pp. 3,9,32

DELINQUENCY, TEENS

Children living in single-parent households are more likely to engage in troublesome behaviors than their peers in intact families even when the single parent is living with another adult upon whom she can call for assistance. In a recent study at the University of Nebraska-Lincoln, sociologists Andrea Stolba and Paul R. Amato investigated behavioral patterns among children of single parents. Including single parents who live with an "additional adult, single mothers tend to describe their children's behavior less positively than do mothers in continuously intact two-parent households-at least when children are five years or older." The results of the study, "do not support the notion that an additional adult is beneficial to children of single mothers."

The authors of the new study did find that "single mothers of adolescents" report more positive child behavior when a grandparent of the child lives in the home than when no other adults are present. Stolba and Amato conjecture that "the presence of grandparents in the household may reinforce generational boundaries and help to maintain beneficial hierarchical structures" in such cases. On the other hand, "for children in middle childhood, the presence of a grandparent was associated with more negative behavior ratings." "The returning home of divorced or separated offspring, especially when they bring children with them, decreases grandparents' satisfaction with living arrangements."

125. STOLBA Source: Andrea Stolba and Paul R. Amato, "Extended Single-Parent Households and Children's Behavior," *The Sociological Quarterly* 34 (1993), 544

RELATIONSHIPS

"Children from intact families mentioned nurturance as a trait of a father significantly more than children from divorced families'.

126. HORM-WINGERD Horm-Wingerd Source: Diane M. Horm-Wingerd, Melissa M. Graves and Deanna L. Nekovi, "Children From Divorced and Intact Homes: Similarities and Differences in Perceptions of Family," *Child Study Journal* 22 (1992), 185

DEMOGRAPHICS

In a recent analysis, Rutgers sociologist David Popenoe took exception with what he calls "the establishment position" among his colleagues, namely the view "family decline is a myth," and that "the family is not declining, it is just changing." Popenoe marvels that, in spite of a mountain of evidence indicating an erosion of family life, "there is still a reluctance among many scholars of the family to admit that the family is declining. 'The preferred term is 'change,' leading to 'diversity.' This may seem to be a mere terminological quibble, but it reflects deep ideological differences."

Citing a wide range of statistical measures, Popenoe argues that "the family trends of the last 30 years... clearly signal the widespread decline of the institution of the family. "Statistics show that American marriages are becoming more fragile, that fewer Americans are accepting the burdens of parenthood, and that Americans are spending less time than ever before with their families." In short, "Americans today are less willing than ever before to invest time, money, and energy in family life." Explaining the retreat from home life, Popenoe remarks that "familism as a cultural value has weakened in favor of such values as self-fulfillment and egalitarianism....(T)he value placed on the family in our culture, compared to competing values, has diminished."

The family has, of course, changed and evolved throughout recorded history. But Popenoe insists that "recent family decline is unlike historical family change. It is something unique and much more serious... It is 'end of the line' family decline." In violation of contemporary academic orthodoxy, "I see the family as an institution in decline and believe that this should be a cause for alarm."

127. POPENOE Source: David Popenoe, "American Family Decline, 1990: A Review and Appraisal," *Journal of Marriage and the Family* 55 (1993), 527

ACADEMIC; TEENS

In a recent study at the Louisiana State University, sociologist Roger A. Wojtkowiewicz analyzed the effect of family background on the academic success or failure of American young people. Statistical analysis of national data revealed that teen-

ages who lived in almost any type of non-intact home-that of a never married mother, a divorced mother, a divorced father, a divorced mother and stepfather, or grandparents-were significantly less likely to graduate from high school than peers raised by both parents in intact marriage.

Furthermore, the longer a child lives in a broken home, the more adverse the academic consequences. Statistical tests show that "any year spent in a non-intact family had a negative effect" and that "a year in any one of these types of non-intact families, no matter which one, will have the same effect on high school graduation.... In particular, the effects of mother only and of mother-stepfather, the two most frequent (non-intact) situations, do not differ significantly...(A) year in a mother stepfather family is as negative for educational attainment as a year in a mother-only family."

Further parsing of the statistics enabled Wojtkiewicz to identify "[s]ignificant negative effects on high school graduation for being born into a mother only family as well as for a transition from living with mother-father to living with mother only. These two negative effects are almost equal." Overall, "the effect of living in a non-intact family is of the same magnitude as the effect of having parents with at most a high school education rather than having parents with some college."

Wojtkiewicz believes his findings are particularly important "as more and more children experience non-intact families because of non-marital birth or parental marital disruption."

128. WOJTKIEWICZ Source: Roger A. Wojtkiewicz, "Simplicity and Complexity in the Effects of Personal Structure on High School Graduation," *Demography* 30 (1993) 701

TEENS, DRUGS, SMOKING, RELATIONSHIPS

In a statistical analysis of the behavior and background of 236 Canadian teens, Gfellner found that "as expected, adolescents in mother-only and mother/step-father families showed greater involvement in problem behavior" than did peers in intact families. More specifically, the study found that teens in mother-only or mother/step-father families held "more permissive attitudes toward drug use" and had "more friends who used cigarettes and marijuana."

Although Gfellner found that white adolescents living in non-intact homes were the most likely to view their families as unsupportive and unresponsive to their needs, she found it especially "alarming" that "Indian adolescents in these (non-intact) configurations indicated the greatest use of marijuana and the most liberal peer attitudes toward adolescent drug use." "In view of the high proportion of non-intact families, especially single mother households, that characterize Indian youth living in cities."

129. GFELLNER Source: Barbara M. Gfellner, "A matched Group Comparison of Drug Use and Problem Behavior Among Canadian Indian and White Adolescents," *Journal of Early Adolescence* 14 (1994), 24

POVERTY; DELINQUENCY

In a recent study at Columbus College, economic analyst William J. Arthur assessed "the economic and social impact of nontraditional families" on Muscogee County, Georgia. First, Arthur established that, along with the elderly, single-parent households consume a vastly disproportionate portion of welfare funds. In August, 1992, fully 98% of the households in Muscogee County receiving assistance through Aid to Families with Dependent children (AFDC), the nation's largest welfare program, were single-parent households, "predominately" female headed households. 97% of the households in public housing in Muscogee county in 1993 were headed by single parents. Clearly, "the single-parent household... uses more public resources than traditional households. "Arthur concedes that it might be "too late to change many of the single parents today or to do much to make their life easier." Nonetheless, he hopes that something may be done "to renew hopes of children and stem the tide of economic decline, eroding family values and social disorder in the long run."

132. ARTHUR Source William J. Arthur, "Crisis in Our Families (Focus on Muscogee County): A Study of the Economic and Social Impact of Nontraditional Families in Muscogee County," Columbia College, Columbus Georgia, January 1994

TEENS; YOUNG ADULTS; DRUGS; ALCOHOL; SUICIDE; CRIME; ACADEMIC

Stickler and Salter deplore the breakdown of discipline among American adolescents, among whom "drug or alcohol addiction, suicidal behavior, sexual promiscuity, and school failure" are frighteningly common. "Homicide is the leading cause of death for males between the ages of 18 & 25 years," they note. Stickler and Salter speculate that the loss of "the executive function of parents in the family" may reflect "the impact of both parents' working, single parenthood, the threat of divorce, and the breakdown of supportive extended families."

STICKLER Source: Gunnar B. Stickler and Margery Salter, "Have Parents Lost Control of Their Children?" *Clinical Pediatrics*, April 1994

DELINQUENCY

In a recent study in Albuquerque, public health researchers investigated the social background of elementary school children involved in violent behavior. Statistical analysis revealed that "compared with matched control students, children who exhibited violent misbehavior in school were 11 times as likely not to live with their fathers and 6 times as likely to have parents who were not married," and that "boys from families with absent fathers (and) divorced parents... are a higher risk for violent behavior" than boys from intact families.

The findings of this new study are especially significant in light of previous research establishing a link between "violent misbehavior" in elementary school and subsequent delinquency, which is likewise linked to elevated adult rates of crime and violence.

133. SHELINE Source: Jonathan L. Sheline, Betty J. Skipper, W. Eugene Broadhead, "Risk Factors for Violent Behavior in Elementary School Boys: Have You Hugged Your Child Today?" *American Journal of Public Health* 84 (1994), 661

TEENS; EARLY SEX; ILLEGITIMACY; ADULTS
In a recent study conducted at Columbia University, Stuart N. Seidman, William D. Mosher and Sevgi O. Aral analyzed the sexual conduct of 3,378 single women. The researchers sought to identify those factors present during adolescence that foretell risky sexual behavior in adult women. They found that "having a mother who, during a woman's adolescence, worked outside the home full time (as opposed to part-time or not at all) is positively associated with having multiple partners in white women."

In addition to a working mother, a broken home often predicts a promiscuous adult life. "Not living with both parents when 14 years old compared to living with both parents is positively associated with multiple recent partners among white women." Further nearly 20% of adolescent girls who surrendered their virginity at an early age (15 years and younger) reported "Multiple recent partners" (two or more within a three month period)

134. SEIDMAN Source: Stuart N. Seidman, William D. Mosher and Sevgi O. Aral, "Predictors of High Risk Behavior in Unmarried American Women: Adolescent Environment as Risk Factor," *Journal of Adolescent Health* 15 (1994), 126

TEENS; DELINQUENCY
Only 13 percent of delinquents come from families in which the "biological mother and father are married to each other." By contrast, 33 % have parents who are either divorced or separated, and 44% have parents who were never married. In other words, the relatively small fraction of parents who are either divorced or who have never been married are producing the vast majority of delinquents.

WISCONSIN DEPARTMENT OF HEALTH AND SOCIAL SERVICES Source: Wisconsin Department of Health and Social Services, division of Youth Services, "Family Status of Delinquents in Juvenile Correctional Facilities in Wisconsin," April 1994

TEENS; SUICIDE; YOUNG ADULTS
"Between 1946 and 1985, the suicide rate for adolescent white males ages 15 to 19 rose from approximately 3.5 to 19.5 per 100,000 population." The suicide rate for young adult white males ages 20 to 29 rose from just over 10 per 100,000 in 1946 to about 29 per 100,00 in 1977, settling only slightly since then.

In a series of statistical tests, McCall and Land discovered that unemployment among young men is (contrary to their own expectations) not a good predictor of suicide rates. Instead, the researchers found that "the family structure index" a composite index based on the annual rate of children involved in divorce and the percentage of families with children present that are female headed-is a strong predictor of suicide among young adult and adolescent white males. McCall and Land interpret the link between family dissolution and suicide rates as evidence that "anomic and social disintegration influence suicide."

140. MCCALL Source: Patricia L McCall and Kenneth C. Land, "Trends in White male Adolescent, Young Adult and Elderly Suicide: Are There Common Underlying Structural Factors?" *Social Science Research* 23 (1994), 57

RELATIONSHIPS
In a recent study at Wright State University, a team of psychologists investigated the social backgrounds of popular and unpopular students in elementary school. In their analysis of almost 270 fifth and sixth graders, the authors of this new study found that "children who were rejected by their peers were more likely than average children to have experienced parental divorce."

141. BAKER Source: Angela K. Baker, Kimberly J. Bartholemy and Lawrence A. Kurdek, "The Relation Between Fifth and Sixth Graders' Peer Related Classroom Social Status and Their Perceptions of Family and Neighborhood Factors," *Journal of Applied Developmental Psychology* 14 (1993), 547

TEENS; ACADEMIC
In a recent study at Columbia and the University of Michigan, a team of researchers investigated the effects of neighborhood characteristics upon adolescent behavior. Statistical tests showed that the family structure of households in the neighborhood could be used to predict "who will drop out of high school." The authors of this new study suggest that perhaps teenagers are especially likely to drop out of school in neighborhoods with large numbers of single parents because the "inability of the neighborhood to monitor the teenage behavior." More broadly, the researchers acknowledge that the presence or absence of "two-parent families" may be one of the "key dimensions" of neighborhood social structure "most likely to affect children and adolescent behavior over and above family resources."

142. BROOKS-GUNN Source: Jeanne Brooks-Gunn et al., "Do Neighborhoods Influence Child and Adolescent Development?" *American Journal of Sociology* 99 (1993), 353

ACADEMIC
~ Unless they are highly placed professional women, mothers employed outside the home are likely to see their children fall behind in school compared to the children of homemakers. In a recent study published in the *American Sociological Review*, Dutch sociologist Matthijs Kalmijn scrutinized the relationship between maternal employment and children's academic success in the United States. Kalmijn found a "positive effect of maternal employment on children's educational outcomes... when mothers hold high status jobs." But because relatively few employed mothers hold such jobs, the overall pattern is quite different.

143. KALMIJN Source: Matthijs Kalmijn, "Mother's Occupational Status and Children's Schooling," *American Sociological Review* 59 (1994), 257

INTELLIGENCE; DELINQUENCY
In a recent study at Columbia and the University of Michigan, researchers investigated patterns of early child development among most 900 young children, most living in urban areas, over the first 60 months of life. Statistical analysis of the be-

havior and intelligence of these children revealed "significant detrimental effects" of living in a female headed household.
Among children who had lived all five years with a never-married mother, the authors of the new study found "5 point lower IQ's (i.e., one third of a standard deviation) and 4 point higher internalizing and 3 point higher externalizing scores on the behavior problem index" than among peers in intact families. Further statistical parsing suggests that the adverse effects on IQ of living with a never married mother are "due mostly to the lower family incomes of female headed families." But the researchers report that growing up in a female headed household remains a statistical predictor of behavior problems "even after we adjust for differences in family income."
144. DUNCAN Source: Greg J. Duncan, Jeanne Brooks-Gunn, Pamela Kato Klebanov, "Economic Deprivation and Early Childhood Development," *Child Development* 65 (1994), 296
EARLY SEX; TEENS
In a recent study investigation at the University of North Carolina and the Battelle centers for Public Health Research and Evaluation, scholars analyzed the effects of social context on the sexual behavior of adolescent women. Their findings indicate that divorce and maternal employment foster fornication, while religious commitment discourages it.
Among white females ages 15 to 19, the authors of the new study found that having "a working mother and not having both parents present in the household at age 14 increase the likelihood of sexual activity." The broader social context may also be influential: adolescent white females are especially likely to engage in premarital intercourse if they live in neighborhoods with relatively high rates of female labor force participation, or if they live in neighborhoods in which a high percentage of women are divorced or separated. The researchers reason that maternal employment fosters sexual activity among adolescent women because "young women who live in neighborhoods where few adults are present during the day are less closely supervised and, therefore, have more opportunity to engage in sexual behavior." Further, they argue that sexual intercourse is more common among teens who live in areas where the divorce rate is high because "the psychic costs adolescents associate with sexual behavior are lower where the norms regulating marital unions appears more tenuous."
145. BILLY Source: John O. G. Billy, Karin L. Brewster, and William R. Grady, "Contextual Effects on the Sexual Behavior of Adolescent Women," *Journal of Marriage and the Family* 56 (1994), 387
TEENS, CRIME, DELINQUENCY
Statistical tests revealed that "incarcerated adolescents were more likely to come from mother-only families, while non-incarcerated adolescents came form real mother/real father families."
The University of Maryland scholars report that "social skills attainment for incarcerated adolescents was influenced by family structure." More specially, "the more traditional family structures are associated with better social skills in each case."
The authors of this new study believe their findings should receive attention in the context of "the alarming increase in the incarceration of adolescents for delinquent and criminal behaviors... one of society's most complex problems."
146. MATLACK Source: M. Eileen Matlack et al., "Family Correlates of Social Skill Deficits in Incarcerated and Non-incarcerated Adolescents," Adolescence 29 (1994), 117

- Studies of over 50,000 individuals in single-study research
- Additional metanalyses and large scale studies ranging from 8,000 individuals to 81,000 individuals per study
- Estimated 400,000 individuals in total sample, excluding demographic or epidemiological surveys

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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

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 wondrous 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 Gn 1:27). A man "leaves his father and mother and clings to his wife, and the two of them become one body" (Gn 2:24). The man recognizes the woman as "bone of my bones and flesh of my flesh" (Gn 2:23). God blesses the man and woman and commands them to "be fertile and multiply" (Gn 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'" (Mk 10:6-8).

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

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General Secretary, USCCB

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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 "equivalence 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 equivalence between 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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