

ISSUE BRIEF

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A Defining Moment for Marriage and Self-Government

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What was once an important debate over the legal status of marriage has emerged as a critical national issue, the resolution of which will shape the future of our society and the course of constitutional government in the United States.

Family is and will always remain the building block of civil society, and marriage is at the heart of the family. Redefining marriage down to a mere form of contract fundamentally alters its nature and purpose and will usher in new threats to the liberty of individuals and organizations that uphold marriage and have moral or religious objections to its redefinition.

With good reason, 41 states continue to recognize marriage as the union of a man and a woman. In the context of democratic government, citizens and their elected

representatives must be able to deliberate and make policy decisions to uphold the institution that forms the basis for civil society.

What Is at Stake. For thousands of years, based on experience, tradition, and legal precedent, every society and every major religion have upheld marriage as the unique relationship by which a man and a woman are joined together for the primary purpose of forming and maintaining a family. This overwhelming consensus results from the fact that the union of man and woman is manifest in the most basic and evident truths of human nature. Marriage is the formal recognition of this relationship by society and its laws. While individual marriages are recognized by government, the institution of marriage pre-exists and is antecedent to the institution of government.

Society's interest in uniquely elevating the status of marriage is that marriage is the necessary foundation of the family, and thus necessary for societal existence and well-being. Family is the primary institution through which children are raised, nurtured, and educated, and developed into adults. Marriage is the cornerstone of the family: It produces children, provides them

with mothers and fathers, and is the framework through which relationships among mothers, fathers, and children are established and maintained.

Moreover, because of the shared obligations and generational relationships that accrue with marriage, the institution brings significant stability, continuity, and meaning to human relationships and plays an important role in transferring basic cultural knowledge and civilization to future generations.

Redefining Marriage. Despite all the changes that law and cultural trends have wrought concerning marriage—laws concerning prenuptial agreements, divorce, tax, and property that treat marriage as a contract—it has never been the case that marriage is simply a contract. Society has changed the form, but never the substance, of marriage; and it is the substance of marriage that continues to give lawmakers strong and reasonable arguments for upholding traditional marriage and protecting it in law.

Redefining marriage does not simply extend benefits or rights to a larger class, but substantively changes the essence of the institution. It does not expand marriage; it alters its core meaning such that it is

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no longer intrinsically related to the relationship between fathers, mothers, and children.

Expanding marriage supposedly to make it more inclusive, no matter what we call the new arrangement, necessarily ends marriage as we now know it by remaking the institution into something different: a mere contract between any two individuals.

In general, fundamental social changes in long-standing traditions and institutions should be seriously considered only where there is a strong consensus for change, as well as clear evidence and powerful reasons for the modification. Change for the sake of social experimentation and perceived “cultural progress” is inherently dangerous and jeopardizes the ordered liberty that is necessary for a free society.

Changing the definition of marriage—or even remaining neutral as to that definition—denies the very nature and purpose that gives marriage its unique and preferable status in society. If marriage becomes just one form of commitment in a spectrum of sexual relationships rather than a preferred monogamous relationship for the sake of children, the line separating sexual relations within and outside marriage becomes blurred, and so does the public policy argument against out-of-wedlock births or in favor of abstinence.

Based on current evidence and settled reasoning, it would be a terrible folly to weaken marriage either by elevating non-marital unions to the same position or by lowering the institution of marriage to the status of merely one form of household.

A New Status Quo. The redefinition of marriage is the legal establishment of a new status quo. While it is not correct to say that the advance of same-sex marriage is solely to blame—traditional marriage

measured in terms of divorce, cohabitation, illegitimacy, and fatherlessness has been in decline for some time—the judicial redefinition of marriage, forced by the push for same-sex marriage, essentially codifies and affirms these trends.

With time, this new legal status quo will be upheld and enforced throughout our laws, with implications that go well beyond the immediate decision. With the establishment of same-sex marriage as a matter of right, a whole host of laws and regulations will be triggered to assure non-discrimination and equal treatment.

Consider a few possibilities:

- **Freedom of association.** Redefining marriage would leave no principled reason to oppose new federal laws forbidding discrimination in hiring based on sexual orientation. Churches, synagogues, mosques, religious schools, and faith-based charities, as well as secular organizations of every kind, would be subject to a new kind of government scrutiny.
- **Free speech.** Redefining marriage would invite an ongoing assault on individuals and organizations that uphold traditional marriage. By definition, all dissenters will find themselves at odds with the new political ethos and are likely to be stigmatized as prejudiced and discriminatory. Such characterizations already have been made by activists, politicians, and judges who are sympathetic to the arguments for same-sex marriage. The legalization of same-sex marriage will greatly accelerate these pressures to marginalize the nation’s religious communities and the values that define them.

- **Education.** Redefining marriage will affect what children are taught in virtually every subject at public schools. Students will be instructed that marriage, like slavery before it, is a vestige of America’s discriminatory past.

All told, these changes represent a significant escalation of the cultural debate that divides our society and could threaten the civil and religious liberty of individuals and organizations that have moral or religious objections to the new status quo.

A Defining Moment. Americans are a greatly tolerant and reasonable people. That continuing character depends on the strength of the American framework of constitutional government and the core principles of self-government—first among those the idea of religious liberty—that allow and encourage that character and our ability to govern ourselves despite our differences. Citizens and their elected representatives must be able to engage in free discussion and deliberation on the importance of the institution of marriage for civil society and popular self-government. Activist judges must not strip them of that freedom.

We should work to rebuild and restore marriage and not allow redefinition to further weaken the institution; break its fundamental connections between husband and wife, parents and child; and thereby sever our primary link to the formation of future generations. We must act in accord with our basic principles and deepest convictions to preserve constitutional government and the foundational structure of civilization by upholding the permanent institution of marriage.

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