Why a Federal Marriage Amendment Is Needed

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By Robert Knight

Rogue judges and legislators are creating counterfeits.

Opponents of a federal constitutional marriage amendment often contend that it's too early, that there is no need for such a measure. Wait until something really big happens, they say.

But events over the past two years clearly illustrate that a federal amendment is overdue. The law is in turmoil. Lots of "big things" have happened.

- **Massachusetts** – May 17, 2004: After a ruling by the Massachusetts Supreme Judicial Court, the state begins issuing marriage licenses to homosexual couples. This leads directly to schools openly promoting homosexuality and to Catholic Charities being forced to stop placing children for adoptions.

- **In 2004, the mayors of several cities,** beginning with San Francisco, issue marriage licenses to same-sex couples (Sandoval County, New Mexico; New Paltz, New York, and Multnomah County, Oregon). State courts rule those "marriages" invalid, but appeals are pending.

- **Nebraska** – May 21, 2005: A federal judge overturns the state's constitutional marriage amendment, which had been enacted by a ballot vote of 70 percent.

- **California** – September 6, 2005: The legislature becomes the first in the nation to pass a law mandating legalization of homosexual "marriages." Gov. Arnold Schwarzenegger (R) vetoes the bill, but proponents say they'll be back.

- **Connecticut** – October, 2005: Connecticut becomes the sixth state (after California, Hawaii, New Jersey, Massachusetts and Vermont) to offer some form of legal recognition to same-sex couples.

- **Maryland** – January 20, 2006: A Baltimore City Circuit Court judge strikes down the state marriage law, and then stays her order pending appeal.

- **Georgia** – May 16, 2006: A county judge overturns the state marriage protection amendment enacted in 2004 by a 76-percent ballot vote.

- **Utah** – May 16, 2006: The state Supreme Court upholds the bigamy conviction of a former police officer, Rodney Holm. He had challenged the marriage law after being convicted in 2002 upon his third "marriage." Chief Justice Christine Durham dissents, saying the state law violates the "privacy of intimate, personal relationships" and religious freedom.

- **Washington** – The state Supreme Court will rule soon on a challenge to that state's marriage law, as will the high court in **New Jersey.** Both courts are dominated by liberals. Unlike Massachusetts, neither Washington nor New Jersey has a law barring marriages to out-of-state couples whose own states do not recognize "gay" marriage. Thus, if either state begins issuing marriage licenses to couples from the other 49 states, the recipients will return to their own states and file lawsuits challenging not only their state laws but the federal Defense of Marriage Act (DOMA). (1)

  Congress passed DOMA in 1996 defining marriage for all purposes as only the union of one man and one woman, and affirming that states may reject claims against their marriage laws that do not conform to their stated public policy. On February 4, CWA filed an *amicus* brief in the Washington Supreme Court urging the court to reverse a trial court decision permitting same-sex "marriage."

- **Lawsuits filed by homosexual activists** seeking to overturn state marriage laws are pending in 10 states: California, Connecticut, Florida, Iowa, Maryland, Nebraska, New Jersey, New York, Oklahoma and Washington.

CWA believes that the only permanent solution for these attacks on the institution of marriage is a federal constitutional amendment protecting marriage for all Americans as only the union of one man and one woman.

CWA also supports enacting state constitutional marriage amendments. Nineteen states now have them, and seven more states – Alabama, Idaho, South Carolina, South Dakota, Tennessee, Virginia and Wisconsin – will have them on the ballot. Alabama will vote in June, and the rest will vote in November.

Efforts are underway to place amendments on the ballot in Arizona, California, Colorado, Florida and Illinois. In Maryland, Del. Don Dwyer (R-Anne Arundel County) introduced a bill on March 6, 2006, to impeach M. Brooke Murdock, the judge who overturned Maryland's marriage law. The measure did not make it out of committee.

In New York, two appeals courts delivered stinging blows to homosexual plaintiffs seeking the "right" to marry by overturning two trial court decisions, but homosexual activists are redoubling their efforts there. They have appealed to the state's highest court, the Court of Appeals. CWA has filed *amicus* briefs in both cases.

Momentum is growing for a federal constitutional amendment. The Marriage Protection Amendment (MPA), sponsored by Rep. Marilyn Musgrave (R-Colorado) and Sen. Wayne Allard (R-Colorado), was approved by the House in 2004 with a 227-186 vote, far short of the two-thirds (290) majority needed for passage. At the same time, a move to stop debate on the MPA for a vote in the Senate got only 48 votes, far short of the 60 needed to stop a liberal filibuster. Sixty-seven Senate votes are needed to pass an amendment.

On May 18, 2006, the Senate Judiciary Committee voted 10-8 to advance the MPA to the Senate floor. Senate Majority Leader Bill Frist (R-Tennessee) has promised a vote on a marriage amendment on June 5. Proponents expect to pick up several more votes based on changes in the Senate in the 2004 election.

Here is the text:

> Marriage in the United States shall consist solely of the union of a man and a woman. Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman.

CWA does not support the Marriage Protection Amendment as currently worded because the second sentence is open to differing interpretations, and its drafters acknowledged that it was specifically crafted that way so state legislators could create civil unions, domestic partnerships and other forms of counterfeit marriage.

CWA believes that legislators should not create incentives in the law that encourage people to remain trapped in homosexuality, and that such laws inevitably result in the degradation of the natural family and the oppression of people who hold traditional views of marriage.

CWA prefers the Institution of Marriage Amendment authored by Home School Legal Defense Association President Michael Farris. That amendment, which has not been introduced by any member of Congress, protects marriage in all aspects:

> *Marriage in the United States shall consist only of the union of a man and a woman. Neither the United States nor any State shall recognize or grant to any unmarried person the legal rights or status of a spouse.*

While CWA believes this is better language than the MPA, we also think a single sentence that does not muddy the constitutional waters on civil unions is the next best option.

Therefore, CWA would support this language:

> *Marriage in the United States shall consist only of the union of a man and a woman.*

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(1) United States Public Law 104-199, 100 Stat. 2419 (Sept. 21, 1996).

Robert Knight is director of the Culture & Family Institute, an affiliate of Concerned Women for America.

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For more information:

Robert Knight, "When Did Defending Marriage Become an Act of Bigotry?" written testimony for Maryland House Judiciary Committee, January 31, 2006.

Jan LaRue, "Talking Points: Why Homosexual 'Marriage' Is Wrong" . Concerned Women for America.

Robert Knight, "The Case for Marriage," Concerned Women for America.

Kavan Peterson, "Washington Gay Marriage Ruling Looms," Stateline.org.

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