Family Watch International

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Why the U.S. Must Pass a Federal Marriage Amendment

In June 2007, the Massachusetts legislature rejected a constitutional amendment that would have given voters the opportunity to overturn the *Goodridge* court decision that imposed same-sex marriage on that state in 2004. The pro-marriage groups in Massachusetts must now start a new petition drive to place a constitutional amendment before the voters. If they are successful, the earliest an amendment could be put in place is 2012.

Meanwhile, the legislatures in two states have voted to legalize same-sex marriage. In California, both houses of the legislature passed a bill that was vetoed by the governor. They will try again in the 2007-2008 session. The New York Assembly passed a bill legalizing same-sex marriage but it is almost certain to die in the Senate. Several court challenges to state marriage laws are also underway.

On the other hand, twenty-seven states have amended their constitutions to define marriage as only between a man and a woman, and marriage amendments are expected to be on the ballot in several more states in 2008. Eighteen other states have laws prohibiting same-sex marriage. And public opinion polls continue to show strong national majority opposition to legalizing same-sex marriage.

Yet unless the U.S. Constitution is amended, it is likely that the federal courts will eventually force same-sex marriage on all the states in the United States. This is because of a provision in the Constitution called "the Full Faith and Credit Clause" which requires that contracts that are legal in one state be recognized as legal in all states. Since marriage is a contract, and since all the U.S. states now recognize heterosexual marriages performed by other states (and even by other countries), it is inevitable that if additional states legalize same-sex marriage, litigants will use the Full Faith and Credit Clause to attempt to get the courts to force same-sex marriage on all states.

There are two reasons why this has not already happened. Massachusetts law prohibits nonresidents from marrying if their marriage would not be recognized as legal in their state of residency. Since no other states recognize same-sex marriage, there has not been a flood of same-sex couples rushing to Massachusetts to marry and then filing lawsuits in their home states. Anti-marriage and anti-family activists in Massachusetts are pushing to repeal that law, and will likely succeed in a year or two.

The other reason is that the federal Defense of Marriage Act (DOMA) protects any state from having to recognize same-sex marriages performed in other states. However, if the U.S. Supreme Court rules that these same-sex marriages must be recognized, the federal DOMA will be struck down. Of course, such a ruling by the Supreme Court would effectively repeal all state constitutional amendments and all state laws prohibiting same-sex marriage as well.

It appears inevitable that there will be a federal definition of marriage. The only question is whether it will be defined democratically by the people or imposed by activist judges. The only democratic way to preserve traditional marriage is to amend the Constitution to specifically define it as only the union of a man and a woman. An amendment to do this has twice gotten a majority vote in the House of Representatives, but not the two-thirds vote required to move a proposed constitutional amendment to the Senate. In the Senate, consideration of the amendment has been blocked twice on procedural votes. Once an amendment is approved by Congress it must be ratified by three-fourths of the states.

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www.familywatchinternational.org *fwi@familywatchinternational.org*