

# WebMemo



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## Marriage Amendment Protects Federalism

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In our system of law, the powers of government are divided between the federal and state governments. The framers rightly left marriage policy, as so many other things, with the states.

Yet the fundamental definition of marriage is no mere policy issue. We're talking about the very integrity and meaning of one of the primary elements of civil society.

Nor is this a matter for state-by-state experimentation. Society isn't harmed when high-tax states live side by side with low-tax states. The market adjusts to the inconsistency. Not so with marriage. A highly integrated society such as ours—with questions of property ownership, tax and economic liability, inheritance, and child custody crossing state lines—requires a uniform definition of marriage.

In a free society, certain fundamental questions must be addressed and settled for the good of that society. States can't impair the obligation of contracts, or coin their own money, or experiment with forms of non-republican government. We learned the hard way that the nation could not endure half slave and half free.

If marriage is a fundamental social institution, then it's fundamental for all of society. As such, it is not only reasonable but obligatory that it be preferred and defended in the law and, if necessary, protected in the U. S. Constitution.

This doesn't mean that marriage must be completely nationalized or should become the regulatory responsibility of the federal government. Policy

decisions concerning questions such as degrees of consanguinity, the age of consent, and the rules of divorce should remain with the states.

The wisdom of extending certain benefits that stop well short of marriage—that don't undermine the distinctive status of marriage—are policy questions that should be the responsibility of state legislatures.

But we must protect the integrity of the institution as such by defining the societal boundaries and determining the limits beyond which no part of society can go.

A constitutional amendment that defines marriage would protect the states' capacity to regulate marriage by sustaining it as an institution. In order to guard the states' liberty to determine marriage policy in accord with the principles of federalism, society as a whole must prevent the institution itself from being redefined out of existence or abolished altogether.

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This paper, in its entirety, can be found at:  
[www.heritage.org/research/family/wm531.qfm](http://www.heritage.org/research/family/wm531.qfm)

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