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To: Marriage Activists
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How to Reform State Law to Cut Divorce Rates In Half

Relatively few people are aware of the extent state laws have increased divorce rates. This trend is not a given. Laws could be changed that could put the state on the side of marriage preservation, instead of marriage destruction, reward responsible spouses and parents, and penalize errant ones. Reforms will be challenging to sell to state legislators, especially their Judiciary Committees, which are dominated by attorneys. Consequently, I propose a federal law to nudge states to enact reforms which could cut America's divorce rate in half, preventing a half million children a year from experiencing parental divorce.

Five Proposed Reforms of State Law to Preserve Marriage

1. Replace No Fault Divorce with Mutual Consent

Last week New York's Legislature voted to become the 50th state to adopt No Fault Divorce, removing NY's requirement for Mutual Consent of both spouses to divorce (unless major fault is proven). Ironically, New York had virtually the lowest divorce rate of any state (38.7% with only 52,000 divorces vs. 135,000 marriages in 2008). In the attached column published by the New York Daily News I asked, "Would New Yorkers like to swap their divorce rate for the 56% rate of its neighbor, New Jersey, and have 75,900 divorces per year? Or Connecticut's rate of 60%, yielding 81,000 divorces in New York?" Sadly, New York's answer is YES.

The solution I propose is that a divorce not be granted unless both spouses agree – at least in cases involving children. No Fault Divorce should be called "Unilateral Divorce" because one spouse can file for divorce unilaterally, though the divorce is opposed by the other spouse in 4 out of 5 cases, according to *Divided Families* by Frank Furstenberg and Andrew Cherlin.¹ No Fault is also unconstitutional. The 5th and 14th amendments guarantee that "no person be deprived of life, liberty or property without due process of law." How can there be "due process" if one side always wins?

How would Mutual Consent change things? "By giving the spouse who wants to save the marriage an equal voice with an unhappy mate, many marriages could be restored, perhaps saving most of them," says Catholic Bishop Gerald Gettelfinger." In my book, *How To Cut America's Divorce Rate in Half: a Strategy Every State Should Adopt*², I quote Divorce

¹ Frank Furstenberg and Andrew Cherlin, *Divided Families* (Cambridge, MA, Harvard University Press, 1991, p. 22. They write, "Four of five marriages ended unilaterally."

² Mike McManus, *How to Cut America's Divorce Rate in Half: A Strategy Every State Should Adopt*, with a Foreword by Gov. Mike Huckabee, 2008, Marriage Savers, Potomac, MD,

Attorney John Crouch, President of Americans For Divorce Reform, stating that states should adopt Mutual Consent because “The law would guide people to postpone the decision until they had worked out the details of how the divorce would actually work. A large proportion of divorces would be avoided altogether, and most of the rest would be settled out of court. Divorces would be fairer to both parties with less legal fees. **I believe it could reduce divorce rates as much as 50 percent.** Changing the rules about ending a marriage would prevent a a lot of marriages from breaking down in the first place. They would not only influence the decision to divorce but the behavior and choices that lead to divorce,”³ Crouch asserted.

Thus, both religious leaders and legal experts agree that Mutual Consent could prompt half of couples contemplating divorce to resolve their differences. The New York case provides evidence. If its divorce rate rises to that of neighboring Connecticut, those additional 29,000 divorces would be an alarming 55% hike in New York’s divorce rate.

2. Lengthen the Time a Divorcing Couple Must Live Apart.

Why Is America’s Divorce Rate Triple that of Britain and France? One major reason is that U.S. state No Fault Law favors the person who files for divorce, even most spouses are opposed. In Britain and France if one partner wants a divorce and the other does not, they must live apart **five or six years** to get divorced.⁴ That is a long enough time for most couples to reconcile. In 32 states, there is a **zero waiting period** for Unilateral Divorce. However, MD, IL and PA require divorcing couples to live apart for a year, if there is consent, and up to two years if it is contested. Their divorce rates, averaging 2.8 per 1,000 people, are almost half the 4.8 per 1,000 average of nine states with a **zero** requirement to live apart: DE, ID, KY, TN, OK, FL, ME, MS and WY.⁵ Clearly even a year’s waiting period gives time for much reconciliation.

Thus, lengthening the time divorcing couples must live apart is a second way to nearly cut the divorce rate in half. If combined with a Mutual Consent reform of No Fault, America could surely save a half million marriages or more a year. **The human impact would be huge.** As I wrote in the *Daily News*, “A divorced man will live 10 years less than a married man; a woman, four years less.”⁶ On average, each divorce involves one child. A child of divorce is three times as likely as one from an intact home to be expelled from school or to become pregnant as a teenager and three times more likely to end up in jail by age 30. Is that a legacy New York wants for its children – more poverty, more academic failure, more unwed births, more crime?” Sadly, it is a legacy that has been in place in all 49 other states for four decades.

³ McManus, *How to Cut America’s Divorce Rate in Half*, page 5.

⁴ After five years of marriage, only 8% of British or French have divorced compared to 23% of Americans, reports Andrew Cherlin in his book, *The Marriage-Go-Round: The State of Marriage and the Family in America Today*, Alfred A. Knopf, New York, 2009.

⁵ The data is for divorce rates in 2007, the source of which is Table 126 of the *Statistical Abstract of the United States: 2010*.

⁶ Linda Waite and Maggie Gallagher, *The Case For Marriage: Why Married People Are Happier, Healthier and Better Off Financially* (New York) Doubleday, 2000, p. 48.

3. Give Both Parents One-Third to One-Half Custody Time

Unless there is proof a person is an unfit parent, both parents should get at least one-third time with their kids instead of a day or two every other weekend. The spouse with primary custody would have the children during the week, but every weekend would be with the other parent. And if a child is 8, he/she might live with the mother during the week till age 13, and then with the father, as the primary custodian if he is willing, until age 18.

4. Add Fault Grounds Back to Divorce Law.

As I note in my book, *How to Cut America's Divorce Rate in Half*, 22 states have made it impossible to sue for divorce on grounds of adultery, abandonment, abuse, etc. (AZ, CA, CO, DE, DC, FL, HI, IA, KS, KY, MI, MN, MO, MT, NE, NV, NC, OH, OR, WA, WI, WY). Imagine not being able to file for divorce if your spouse runs off with a lover, abandoning the family. Surely, as a matter of justice, the law should include fault grounds for divorce.

5. Stiffen Penalties for Fault-Based Divorce

I believe a spouse who is physically abusive or adulterous, should not get more than 25% of family assets. Others argue the judge should have the freedom to limit the guilty party to a range of 0 to 40%. However, No Fault generally awards a 50-50 split, regardless of the guilt of one spouse. The principle here is that the law should penalize those who are at fault, and reward Responsible Spouses who are faithful to the marriage.

Should Federal Law Be Used to Nudge State Action?

These ideas are very hard to sell. There have been few state legislators willing to stick their necks out and risk being told, "Are you condemning me to live in an unhappy marriage for life?" Further, conservatives often oppose federal action in areas usually reserved to the states.

However, when Welfare Reform was passed in 1996 and signed by a reluctant President Clinton, the governors insisted that the Federal share of public assistance, \$16.5 billion, be converted into a block grant that would *not* decrease as welfare rolls fell. Welfare rolls did drop by 60% due to other provisions of the law, which is giving the states a \$10 billion "Welfare Reform Surplus." Why not withhold 10% of that surplus, until each state gives *both* parents a voice on divorce?

Mothers Against Drunk Driving persuaded Congress to withhold 10% of Highway funding until the states passed a law raising the age at which liquor could be sold to 21, while many states were at 18. Every state flipped. MADD used the technique again in 2000 to have states define drunk driving as .08 Blood Alcohol Content, when most were at 1.0 and Massachusetts and others were at 1.5. Again, all states changed the law, and the number of drunk driving deaths dropped from 30,000 to 13,000. No state lost any federal funding.



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Why shouldn't a federal law be passed that would nudge the states to give every divorcing spouse (or every parent) a voice on a divorce wanted by an unhappy mate? And why shouldn't the law require divorcing couples to live apart for a year, mandate Shared Parenting, add fault grounds to law and impose a financial penalty to those guilty of adultery, abuse, etc.?
