

Statement of

The Honorable Orrin Hatch

United States Senator
Utah
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"Preserving Traditional Marriage:
A View from the States"

Good morning, and welcome to this very important hearing on the status of traditional marriage in the United States. Healthy marriages, and the young citizens reared within them, are the foundation of our country, and for that matter, any stable political community. Traditional marriage, however, is under attack, and in this hearing we will focus on the nature and extent of the threat and how to address the problem.

This battle is being waged on several fronts. Local officials - contrary to the explicit direction of their own elected legislators--have ordered the recognition of same-sex marriage. Eleven states face court challenges to their marriage laws. A lawyer in Florida has launched a challenge to the federal Defense of Marriage Act. And in the most infamous case, the Supreme Judicial Court of Massachusetts rewrote the state constitution in the Goodridge decision to impose same-sex marriage on the citizens of that state.

And by doing so, four unelected judges in effect imposed this experiment on the entire nation. Courts and renegade public officials, not conservative activists, have made this a national issue, and if we are to protect and strengthen the institution of marriage, there appears to be no way around a constitutional solution to this problem.

I am pleased to have the Governor of Massachusetts, Mitt Romney, with us today to provide a report of exactly what is happening in his state and to help us understand the national ramifications of the Goodridge decision.

Eight years ago, when the Defense of Marriage Act, or DOMA, was passed and signed into law by President Clinton, there were no states with same-sex married couples. But thanks to a small minority of local officials flouting the law, and four liberal judges in Massachusetts rewriting the law, same-sex married couples now live in 46 states. My concern is that this pronounced proliferation of states adopting a de facto policy of support for same-sex marriage, may dramatically undermine the role of traditional marriage and families.

Regardless of one's view on the issue--and I understand there are honest differences here--I hope everyone agrees that judges should not have the final word in this debate. The conflict over same-sex marriage involves the question of who decides important matters of public policy in a democracy. Every school age child knows that the legislative branch, not the judiciary, properly makes the laws. I fear that we have lost sight of this essential truth.

Some, including, as I understand it, former Rep. Barr, an original sponsor of DOMA, argue that the Defense of Marriage Act will be sufficient to maintain traditional marriage. I wish I had as much faith that our courts will uphold this legislation. Even many of Mr. Barr's colleagues - including the ACLU, with whom I understand he is now affiliated - do not agree with him on this point.

Let's review just a sampling of liberal commentary on the constitutionality of DOMA. The two senators from Gov. Romney's home state are adamant that this measure is unconstitutional. During the debate on DOMA, Senator Kerry wrote, "DOMA does violence to the spirit and letter of the Constitution."

Senator Kennedy added on the floor of the Senate that "scholarly opinion is clear: [DOMA] is plainly unconstitutional."

The ACLU called it "bad constitutional law...an unmistakable violation of the Constitution," and Evan Wolfson, former director of the Lambda Legal Defense Marriage Project argued that DOMA is "hasty, illogical, and unconstitutional."

Scholars from across the political spectrum believe that DOMA is unlikely to survive and that traditional marriage laws themselves will not likely prevail.

The bottom line is that absent a Constitutional amendment, this issue will be resolved by the United States Supreme Court, and many believe it will likely be resolved in favor of same-sex marriage. I am convinced that after Goodridge the choice is no longer to amend the Constitution or leave the issue to the states.

The choice now appears to be between popular resolution of the effort to protect traditional marriage or judicial resolution of this question in favor of same-sex marriage. I believe that it would be flatly irresponsible for us to sit idly by as courts advance a social experiment explicitly rejected in state after state, and in every region of the country.

The response of the American people to experiments with traditional marriage has been overwhelming. In 1996 the Defense of Marriage Act passed with massive bipartisan majorities, and it was signed by then President Clinton. Since 1996, 40 states have explicitly acted to shore up traditional marriage.

Many believe the single biggest error in the Goodridge decision was its conclusion that there is no rational basis for maintaining marriage as between a man and a woman. In fact, there is a very simple reason that the institution of male-female marriage has been the norm in every society for over 5,000 years. Marriage is not just a personal affirmation. Society has an interest in future generations, and the conjugal act between men and women creates them. This is what underlies laws that promote and protect traditional marriage. Decoupling procreation from marriage ignores the very purpose of marriage.

I am sympathetic to concerns from the gay community that they do not always feel fully accepted by society, and I have worked extensively to pass compromise legislation that protects against discrimination based on someone's sexual orientation. For example, my work on AIDS

legislation taught me many lessons about why it is important not to discriminate against the gay community in health care and other areas. But preserving traditional marriage is not discriminatory. By its very nature, marriage is an institution unique to male and female unions. Marriage is about the well-being of children, and legislatures should be permitted to take reasonable steps to maintain the institutions that support them.

Even leading Democrats in this county understand that there is value in reserving marriage to what it always has been: the union of a man and a woman.

They know something that advocates of the federal marriage amendment know: with the stakes as high as they are, unproven family forms should not be mandated by unelected judges.

When same-sex marriage advocates claim the sky did not fall on May 17 when the Massachusetts court required these marriages to begin, they miss the point. The point is not that civilization will come to a screeching halt, but that people begin an unprecedented and unwise slide into accepting a divorce between marriage and child-rearing. For this reason, many believe same-sex marriage will likely act to undermine the health of families over time. The public policy interest in preventing this development seems obvious to everyone but a few judges and state officials insulated from public opinion.

Those who want to impose this radical change--which has yet to be embraced by any society--have the burden of showing that this experiment will not weaken marriage. In my view, they do not even come close to doing so.

I support the Federal Marriage Amendment sponsored by Senator Allard in the Senate. I urge all of my colleagues and the public to support the FMA when it comes up for a vote.