

The Respect for Marriage Act Should be Called Respect For Gay Marriage Act



By Paul Engel

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- Does the Respect for Marriage defend marriage or is it an attempt to change it?
- Does Congress have the constitutional authority to define marriage?
- What can We the People and the states do in the face of this legislation?

There is legislation working its way through Congress called the Respect for Marriage Act. Does this act truly respect marriage? Let's face it, the definition of marriage has been changing for centuries. Marriages used to include polygamy and other relationships that are no longer legal. Does this act respect the institution of marriage, change it to make it better, or merely open the door to its degradation? Does Congress even have the legal authority to pass such legislation?

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The Respect for Marriage Act was introduced to the House of Representatives by Rep. Jerry Nadler on July 18th, 2022. Let's start by looking at the Constitutional Authority Statement, which is required by House Rule XII.

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Congress has the power to enact this legislation pursuant to the following:

Article IV, Section 1

Fifth Amendment, Section 5

Fourteenth Amendment, Section 5

Article I, Section 8, Clause 18

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Mr. Nadler claims four separate parts of the Constitution authorizes Congress to pass such legislation. Let's look at them in reverse order.

Article I, Section 8, Clause 18 is the Necessary and Proper Clause.

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To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

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If Congress can show that the power they are attempting to legislate is vested by the Constitution into the government of the United States, then the legislation is valid. If however, there is no such power delegated in the Constitution, then the act is void. At least according to the Supreme Court in the Marbury v. Madison opinion..

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Certainly all those who have framed written Constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be that an act of the Legislature repugnant to the Constitution is void.

So this is pretty much a throw-away clause. It doesn't show that Congress has the power unless the other three statements show a power vested in the United States. Next, Mr. Nadler looks to section 5 of the Fourteenth Amendment...

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The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

This section allows Congress to pass legislation related to the Fourteenth Amendment. Since Mr. Nadler doesn't claim that this amendment vests any power to Congress related to this legislation, this too is a throw away reason.

The Fifth Amendment doesn't have a Section 5. Which leaves us with Article IV, Section 1, the Full Faith and Credit Clause.

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Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

This, the only cause given by Mr. Nadler with any possibility of being legitimate, is the crux of the matter. Since the matter of recognizing and licensing marriage was turned over to the state in 1741, America has been sliding down the slippery slope to this point. According to an article from Marriage.com...

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It is widely reported that in 1741 the colony of North Carolina took judicial control over marriages. At the time, the primary concern was interracial marriages.

North Carolina sought to prohibit interracial marriages by issuing marriage licenses to those deemed acceptable for marriage.

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By the 1920s 38 states had similar laws, putting the state in charge not only of sanctioning marriage, but defining it as well. Because of the Full Faith and Credit Clause (Article IV, Section 1), any marriage license issued by a state must be given full faith and credit in all other states. It's in this context that we must look at the language of the Respect for Marriage Act.

If we are going to respect something, we should start by understanding what it is. At our nation's founding, marriage had a simple definition. From Webster's 1828 dictionary..

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The act of uniting a man and woman for life; wedlock; the legal union of a man and woman for life.

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As I've already stated, the definition of marriage has changed over time. Now, according to the Merriam-Webster Dictionary online, marriage is:

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the state of being united as spouses in a consensual and contractual relationship recognized by law

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So which definition of marriage does Mr. Nadler wish to

respect?

Section 2 of the alleged Respect for Marriage Act states...

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Section 1738C of title 28, United States Code, is repealed.

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This legislation would repeal 28 U.S.C. 1738C, which violates the Full Faith and Credit Clause.

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No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

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This legislation would replace §1738C with:

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“(a) In General.—No person acting under color of State law may deny—

“(1) full faith and credit to any public act, record, or judicial proceeding of any other State pertaining to a marriage between 2 individuals, on the basis of the sex, race, ethnicity, or national origin of those individuals; or

“(2) a right or claim arising from such a marriage on the basis that such marriage would not be recognized under the law of that State on the basis of the sex, race, ethnicity, or national origin of those individuals.

In other words, the definition of marriage will effectively be the conglomeration of how all 50 states define marriage. Since the State of New York legally recognized marriage between two people of the same sex, all 50 states would have to recognize it.

Does anyone remember the Defense of Marriage Act? Signed by President Bill Clinton in 1996, this legislation defined marriage as between one man and one woman.

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In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word "marriage" means only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or a wife.

This act was found to be unconstitutional by the Supreme Court of the United States for violating the Due Process Clause in the cases United States v. Windsor and Obergefell v. Hodges.

The Respect for Marriage Act would replace the Defense of Marriage Act with:

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"(a) For the purposes of any Federal law, rule, or regulation in which marital status is a factor, an individual shall be considered married if that individual's marriage is valid in the State where the marriage was entered into or, in the case of a marriage entered into outside any State, if the marriage is valid in the place where entered into and the marriage could have been entered into in a State.

Which means the federal government would have to recognize all of these marriages as well. Should any states legalize marriages between three or more people, all states would have to recognize that as well. Based on recent history, you can assume pretty much any relationship between anyone and anything will one day be considered marriage in some state, and therefore recognized throughout the country.

I guess we have the answer to the question I posed earlier. Which version of marriage does Mr. Nadler wish to respect? The free for all, whatever someone can pass, definition of marriage? Isn't it amazing how, in just 25 years defending marriage as one man and one woman has morphed into respecting whatever some can convince enough people to call marriage. In my mind, this does not bode well for the institution, and that is a problem.

Study after study has shown that children raised in a home where their parents are married to each other have the best outcome overall. Better outcomes in school, fewer instances of legal trouble, drug abuse, and on and on. Is this because the term "marriage" has some special benefit? Or is it the family headed by legally bound parents that provides this blessing? What happens when marriage no longer means one man and one woman, a legally bound couple that can beget children? Sure same-sex couples can adopt children, can be good parents, and raise good children, but the odds are more likely that there will be problems. Who knows what will happen with multiple fathers, mothers, and whatever else the human mind can come up with.

I fear this newfound 'respect' for what anyone wants to call marriage means the further destruction of the family with all of the associated societal issues. It's important that we remember though, the Respect for Marriage Act is not the cause of these issues, but the symptom of the damage that marriage

and the family has already suffered.

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