



Federal Issues Affecting Unmarried America

The Nation's New Unmarried Majority is Burdened by Marital Status Discrimination

Unmarried Households Become a Majority in 13 States, 300 Cities, and Soon the Nation

Reports from the Census Bureau show a continuing increase in the percent of households in the United States headed by unmarried adults.

In 1950, unmarried Americans headed up 22% of the nation's households. The percent increased to 30% by 1970, 40% by 1980, and 44% by 1990. The 2000 Census documented that 48.3% of American households were then headed by unmarried adults. The American Community Survey for 2002 released by the Census Bureau on September 3, 2003, shows that unmarried Americans headed up about 49.4% of all households in the nation.

The 2002 American Community Survey shows that 26 U.S. Senators represent states with "unmarried majority" households, and that 132 members of the House have "unmarried majority" congressional districts. Mayors in more than 300 cities in the nation preside over unmarried majority communities.



Census Bureau Director Louis Kincannon
photo courtesy of U.S. Census Bureau

With unmarried Americans soon heading up a majority of the nation's households, their elected representatives should seek information about the needs of this large voting population. On Sept.

22, 2003, we are conducting an informational briefing in the Gold Room of the Rayburn House Office Building to share important information with members of Congress so they can better serve their communities.

Your constituents will be pleased to learn that you or your staff attended this briefing by Unmarried America.

Supreme Court Rules that U.S. Constitution Protects Liberty of Unmarried Americans

During National Unmarried and Single Americans Week – Sept. 21-27, 2003 – Unmarried America will be in Washington D.C. for a variety of activities, including the filming of an historic documentary: "Unmarried America: A New Majority for the New Millennium."



One segment will film a conversation among members and staff of our organization on the steps of the United States Supreme Court. We will discuss the decision issued this year in *Lawrence v. Texas* in which the court ruled that the United States Constitution guarantees and protects the "liberty" interests

of all Americans regardless of their marital status.

The lead opinion in *Lawrence* was written by Justice Anthony Kennedy. As he and a majority of justices affirmed that unmarried adults have constitutional rights, they quoted with approval the following language written by Justice John Paul Stevens in an earlier ruling:

"Individual decisions by married persons, concerning the intimacies of their physical relationship, even when not intended to produce offspring, are a form of 'liberty' protected by the Due Process Clause of the Fourteenth Amendment. Moreover, this protection extends to intimate choices by unmarried as well as married persons."

The clear import of the court's decision in *Lawrence* is that the promise of liberty applies to everyone regardless of marital status. It is time for all federal elected officials, and candidates for federal office, to embrace this principle and to develop plans to protect all Americans from unfair marital status discrimination.

From a confusing maze of partial protections to a broad national policy on equal rights



Unmarried America frequently receives questions from employees, renters, and consumers about discrimination they have experienced because of their marital status or family status. We are asked if they have any legal protection. Unfortunately, we have to explain that "it depends."

First, it depends on where they live. Some 27 states prohibit one or more

forms of marital status discrimination, which means that if the act of discrimination had occurred in any one of 23 states then they have absolutely no legal recourse.

Then, in those states where there is some legal protection, it may be only in the area of employment, but not in the area of insurance or housing. So, it depends both on location and the type of transaction in which they were treated unfairly.

For example, a woman who lives in Indiana complained that she was denied a job with a private employer because she was a single parent. Indiana law would protect her from housing discrimination but not employment discrimination on the basis of marital status or family status.

The only area of federal law which prohibits private companies from discriminating on the basis of marital status is in the area of credit transactions. Employers, landlords, and business establishments are allowed by federal law to discriminate against unmarried individuals and families.

Federal law is clear when it comes to discrimination on the basis of race, religion, color, national origin, sex, age, and disability. Such discrimination is prohibited – period. Whether an employee lives in Alabama or California, whether a tenant lives in Alaska or New York, and whether a hotel customer wants to rent a room in Idaho or Missouri – it does not matter.



Americans are protected by federal law from most types of discrimination no matter where they live, work, or travel. But if they are unmarried, there is a big legal gap.

Now that unmarried Americans are becoming a new majority in terms of households and living arrangements, it is time for elected federal officials to discuss and plan a clear national policy prohibiting discrimination on the basis of marital status and family status.

It is also time for candidates for federal political offices to address what they would do, if elected, to protect 86 million unmarried Americans from unfair marital status discrimination in employment, housing, and public accommodations.

A new majority deserves equal rights in the new millennium. It's time for Congress to create broad legal protections under federal law. A new majority is looking for leadership.

U.S. Civil Rights Commission lacks power to address marital status discrimination

The U.S. Commission on Civil Rights has a mission:

- To study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, marital status, national origin, or in the administration of justice.
- To appraise federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, marital status, national origin, or in the administration of justice.
- To serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, marital status, or national origin.
- To submit reports, findings, and recommendations to the President and Congress.

Marital status discrimination is *not included* in the mission.

The nation's leading agency – with a duty to investigate and remedy



unfair practices by government and private businesses – may be aware of discrimination against unmarried Americans but it lacks authority to take action.

A new majority deserves equal rights in the new millennium. Its time for the Civil Rights Com-

mission to be given the power and corresponding resources to protect the rights of 86 million unmarried and single Americans.

Unmarried workers receive no help from the Equal Employment Opportunity Commission

Congress has given the Equal Employment Opportunity Commission jurisdiction to investigate and remedy complaints of discrimination in employment on the basis of race, religion, color, national origin, sex, age, marital status, family status, and disability. The agency has no power to deal with discrimination on the basis of marital or family status.

Only 20 states have laws against marital status discrimination in some employment practices. In the other 30 states, workers who experience such discrimination have no legal recourse since federal law gives them no protection.

The current national policy is that it is legally acceptable for employers to use marital status as a reason to deny employment, deny promotion, fire, give more unwanted overtime, force relocation or travel, pay less wages, give fewer benefits, or give less leave time, to workers because of their marital status. And since "family status" is also omitted from the EEOC's jurisdiction, employers can either treat employees more favorably or discriminate against them because of their family structure. Respect for family diversity is optional.

A new majority deserves equal rights in the new millennium. It's time for the EEOC to be given authority to make sure that millions of unmarried workers are treated fairly. Marital status and family status should neither advantage nor disadvantage a worker in terms of compensation or conditions of employment.

Unmarried tenants can't look to federal law for protection from marital status bias in housing

Legislatures in some 23 states have passed laws against housing discrimination on the basis of marital status.

Congress has enacted the Fair Housing Act which gives the federal Dept. of Housing and Urban Development the authority to receive complaints and remedy acts of housing discrimination "because of race, color, religion, sex, familial status, marital status, or national origin."

Familial status is narrowly defined by federal law to prohibit discrimination because tenants have children under 18 living with them. Other family forms are not protected.

So, because federal law does not protect unmarried individuals, couples, or families without minor children from housing discrimination, landlords in 27 states are free to reject unmarried applicants or evict unmarried tenants because of their unmarried status.

The effects of this legal gap are not inconsequential. There have been many reports from local fair housing agencies and numerous reported court cases documenting that marital status discrimination in housing is a significant problem throughout the nation. It is one that Congress should address.

Unmarried workers pay the same taxes into, but get fewer benefits out of, Social Security



The Social Security system gives a one-time benefit of \$255 payable at the time of death of a qualifying worker. But for a person who does not have minor children at home, the benefit is only available to a surviving spouse.

A surviving adult child, parent, or domestic partner will get no money to help with burial expenses. There is no "means testing" here. A rich fourth spouse gets the benefit but a low-income adult child of an unmarried worker gets nothing!

And that's just the tip of the problematic iceberg since marital status discrimination is hard-wired into the current system.

Everyone pays the same rate of employment tax into Social Security. We are told to look at it as an investment. But if an unmarried worker dies one month prior to retirement, everything that has been paid into the system is forfeited.

A surviving adult child who is destitute, or a surviving domestic partner who is left without the primary source of income, receives no benefit. However, on the death of a married worker at the same age, a surviving spouse can collect a survivor's benefit for years.

Of four different inequities addressed in a report from the Cato Institute, (marital status, gender, age, and income), the authors concluded that marital status is the most significant.



"Rates of return for one-earner couples are up to 40 percent higher than for two-earner couples and up to 85 percent higher than for single males." (Philip Harmelink & Janet Speyer, "Social Security: Rates of return and the fairness of benefits," 14 Cato Journal 37, 1994.)

A report issued by the President's Commission to Strengthen Social Security in Aug. 2001, noted that the current system is geared to redistribute money from single individuals and dual earner married couples to one-income married couples.

With these inequities in mind, it is not surprising that many unmarried workers are interested in proposals to allow a portion of what would be paid into the Social Security system to be placed in private investment accounts instead. These accounts would be owned by workers and therefore, when they die, the funds could be left to a beneficiary of their choice.

So rather than forfeiting everything they have paid in, as can now happen, unmarried workers could leave a death benefit to an adult child, sibling, parent, or domestic partner. If private investment accounts are not a good idea, as some critics claim, then how can the system be made more fair to unmarried workers? That's a challenge for Congress.

A related problem is marital status discrimination built into traditional pension plans. In such programs, the contributions of the employer are forfeited by an unmarried employee if he or she dies prior to retirement age. But a surviving spouse of a married worker who dies before retiring will receive benefits. ERISA and other federal laws allow for such marital status discrimination. This harms unmarried employees who would like to leave these benefits to a beneficiary.

Income tax system gives rewards and imposes penalties based on marital status

The current income tax codes are riddled with rewards and penalties on the basis of marital status and family structure. The code shows no respect for family diversity.

Senator Orrin Hatch (R-UT) and Senator Joe Lieberman (D-CT) both agree that tax codes should be marital status neutral. Lieberman has proposed a "marriage neutral" tax system.



In an interview with PBS News Hour with Jim Lehr, Ray Suarez pointed out to Hatch that the tax law imposes penalties on some married couples and gives bonuses to others. When asked if he favored the bonuses and opposed the penalties, Hatch replied: "I would repeal the marriage tax penalty and have married people treated like everybody else."

But that's not what is happening under the current phase-out of the so-called "marriage penalty" relief laws. Instead, those with penalties are seeing them reduced or eliminated, while those with "marriage bonuses" are keeping them or seeing them increased. That's not marital status neutrality.

A story in the New York Times on June 1, 2003, reported that according to studies released by the Urban Institute and the

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Brookings Institution, President Bush exaggerated when he claimed that all taxpayers would see relief in the tax reform bill he signed into law this year. Millions of single people did not see their taxes reduced by one penny!

The Times said "the taxpayers who get nothing from the tax law are primarily low-income single people who do not have children and lack income from dividends or capital gains."

A bi-partisan effort by Rep. Jim McDermott (D-WA) and Sen. Gordon Smith (R-OR) would remove a different type of marital status penalty from the tax code. Their bills would make health benefits given by employers to adult household members of employees non-taxable, just as spousal benefits are tax-exempt. HR 935 and its Senate counterpart would help single parents who get health benefits for an adult child. They would also help domestic partners.

Artificial restrictions on the "head of household" filing status are also a problem. An unmarried taxpayer may file as "head of household" and substantially lower his or her taxes, so long as the taxpayer has a "qualifying dependent" living in his or her household. But federal tax law says that if the dependent is not related by blood, marriage, or adoption, then he or she is excluded from being considered a "qualifying dependent."

Maya MacGuineas, a fellow at the New America Foundation, a Washington-based think tank, proposed a solution which would appear to satisfy those calling for "marital status neutrality" in the tax codes. Under her proposal, one which she says is used by most developed countries, is "simply to tax individuals rather than couples."

"In such a system, individuals earning the same incomes would pay the same in taxes, and their liabilities would remain unchanged by marriage." ("A simple solution to marriage bonuses and penalties," San Francisco Chronicle, Aug. 31, 2000)

In the meantime, John O. Fox, tax attorney and author of "If Americans Really Understood the Income Tax" says:

"Single people had better start paying attention. The lawmakers' obsession with eliminating the so-called marriage penalty -- could it be because married people tend to vote more often? -- is unaccompanied by any outrage over the singles' penalty -- the obligation of millions of single people to pay income taxes on an appallingly low level of income."

Unmarried federal workers don't get equal pay for equal work when benefits are considered

John and Mary and Bill are hypothetical federal employees. They do the same job, are in the same pay scale, have the same seniority, and perform their jobs at adjacent desks.

Mary and Bill are resentful of the fact that John is receiving thousands of dollars per year more in compensation simply because he is married -- and it's his third marriage at that.

With money supplied by taxpayers (married and unmarried alike) John is able to obtain tax-free benefits for his wife Joan. The lion's share of these benefits is paid for by his employer as part of his overall compensation.

But Mary is not allowed to put her adult son Fred on her health, dental, and vision plan, because Fred is not considered an eligible family dependent. Only spouses (regardless of their income or need) and minor children are eligible. Mary feels that if John can get benefits for his wife Joan, then she should be allowed the same benefits for her son Fred, who lives with her but works at a low-wage job without benefits.

Bill is also upset that he cannot add his domestic partner to the benefits plan. They have lived together as primary family partners for 15 years, and both are in their first relationship. He wonders why his first long-term relationship is excluded while John's third-time relationship is recognized and valued.

The Domestic Partners Benefits and Obligations Act (HR 638) would remedy part of this inequity by giving benefits to Bill for his domestic partner. But, unlike the current program for local government workers in the District of Columbia which allows benefits for an adult blood relatives, HR 638 excludes blood relatives from its scope and protection.

The District of Columbia's model of inclusion, which gained bipartisan support in Congress and was approved by President Bush two years ago, would be a better and more equitable approach to much needed benefit reforms for federal workers.

New Leadership for the New Majority



"Unmarried Americans are becoming a new majority in the new millennium. We deserve equal rights, equal pay, and fair treatment by society. When will elected officials and corporate executives realize that when it comes to marital status, there is no 'them versus us' anymore? We are your relatives, friends, neighbors, and coworkers. And since most Americans will be unmarried for most of our adult lives, 'we are you.' It's time to apply the 'golden rule' to political decisions and corporate policies."

Thomas F. Coleman, Executive Director

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