



## Legislation Text

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**File #:** Res 0137-2004, **Version:** \*

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### Res. No. 137

Resolution opposing any amendment to the Federal Constitution that would define marriage as a union that can only exist between a man and a woman, opposing the Federal Defense of Marriage Act of 1996, and also opposing any attempts by New York State elected officials to pass similar discriminatory legislation.

By Council Members Brewer, The Speaker (Council Member Miller), Koppell, James, Jackson, Quinn, Gerson, Reed, Palma, Moskowitz, Yassky, Comrie, Liu, Perkins, Lopez and The Public Advocate (Ms. Gotbaum), Baez, Barron, Clarke, DeBlasio, Martinez, Sears and Weprin

Whereas, The founders of our country drafted and signed the Declaration of Independence, a document that says, among other things, "...that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed;" and

Whereas, According to the rights set forth in this document and many others that flow from it, a government created with those rights and liberties in mind should not prohibit its citizens from exercising such rights provided that they do not harm or endanger the freedom or well-being of others, or otherwise endanger national security or quality-of-life; and

Whereas, In his State of the Union address on January 20, 2004, President Bush said, "A strong America must also value the institution of marriage. ...Activist judges, however, have begun redefining marriage by court order, without regard for the will of the people and their elected representatives. On an issue of such great consequence, the people's voice must be heard. If judges insist on forcing their arbitrary will upon the people, the only alternative left to the people would be the constitutional process;" and

Whereas, A January, 2004 ABC News/Washington Post poll showed that only 38 percent of Americans

support a Federal Constitutional amendment banning same-sex couples from marriage and legal incidents thereof; and

Whereas, On May 21, 2003, Rep. Marilyn Musgrave (R-CO) and five co-sponsors introduced a bill (“H.J. Resolution 56”), and on November 25, 2003, Senator Wayne Allard (R-CO) and four co-sponsors introduced a companion Senate bill (“S.J. Resolution 26”) that would amend the U.S. Constitution to define marriage as a union only between a man and a woman; the text of the proposed amendments reads: “*Marriage in the United States shall consist only of the union of a man and a woman. Neither this [C]onstitution [n]or the constitution of any state, nor state or federal law, shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups;*” and

Whereas, Marriage law has traditionally been the purview of individual States, but a Federal Constitutional amendment defining marriage as a union between a man and a woman would effectively prohibit the enactment of any State or local legislation that would provide for same-sex civil marriage, and such Federal legislation may also prohibit same-sex civil unions; and

Whereas, Congress’s earlier efforts to curtail the legalization of same-sex marriage resulted in the 1996 Federal Defense of Marriage Act (DOMA); DOMA essentially provided that no State would be required to give effect to a law of any other State with respect to same-sex marriage, stating in part: “*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;*” and

Whereas, Many civil-liberties groups, including the American Civil Liberties Union, National Organization for Women, People for the American Way, Lambda Legal, The Human Rights Campaign, and many legal scholars believe that the Federal DOMA is unconstitutional for many reasons, including being a possible violation of the Fifth Amendment’s equal protection clause and/or the Fourteenth Amendment’s due

process clause; and

Whereas, New York State Assembly Member Anthony Seminerio (D-Queens) introduced legislation on February 3, 2003 (“A02998”) and State Senator Serphin Maltese introduced legislation on February 21, 2003 (“S2220”) that would amend the State Domestic Relations Law to “[make] a marriage or union absolutely void if contracted by two persons of the same sex regardless of whether such marriage or union is recognized or solemnized in another jurisdiction;” and

Whereas, These bills, which were originally proposed in the New York State Senate and the New York State Assembly in 1997, have received scant support since their introduction, with the State Senate bill having a total of only seven sponsors, and the State Assembly bill having no sponsors other than Assembly Member Seminerio; and

Whereas, According to a recent article by Lawrence C. Moss, Chairman of the Reform Caucus of the of the New York State Democratic Committee, in the view of leading legal authorities, New York State’s matrimonial law does not restrict marriage licenses to opposite-sex couples, and New York’s current Domestic Relations Law is gender neutral; and

Whereas, According to a 1996 study done by the United States General Accounting Office, marriage in our society currently confers over 1,049 Federal protections and benefits promoting the health and stability of its citizens, and according to the Empire State Pride Agenda, marriage confers more than 700 State protections and benefits; this includes tax benefits, health care benefits, the right to hospital visitation, probate, and many others; and

Whereas, Even without legislation that expressly defines marriage as a union between a man and a woman, gays and lesbians are currently penalized for having same-sex relationships, having to fight for basic guarantees that heterosexual couples are automatically given when they receive a marriage certificate; as a result, same-sex couples must pay high fees for legal services to secure power of attorney, inheritance rights, and other similar benefits; and

Whereas, There are many benefits bestowed upon heterosexual couples that similarly situated same-sex couples are denied, including the protections granted under the Family and Medical Leave Act of 1993, immigration rights, and many other rights and benefits, and this ongoing inequity cannot be resolved even by drawing up expensive legal documents; and

Whereas, Numerous rights are also being denied to the more than one million children that the 2000 Census determined are being raised by same-sex households in the United States, including the ability to receive Social Security and veterans' survivor benefits; and

Whereas, For the United States of America and the State of New York to introduce legislation that would categorically deny rights to an entire segment of the population would be a large and unfortunate step backwards in a long history of expanding civil rights, and the City of New York has a long and proud tradition of upholding and fighting for the rights of all of its citizens; now, therefore, be it

Resolved, That the Council of the City of New York opposes any amendment to the Federal Constitution that would define marriage as a union that can only exist between a man and a woman; and, be it further

Resolved, That the Council of the City of New York opposes the Federal Defense of Marriage Act of 1996; and, be it further

Resolved, That the Council of the City of New York opposes any attempts by New York State elected officials to pass similar discriminatory legislation.

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