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A Proposal for a Feasible, First-Step, Legislative Agenda for Divorce Reform

Alan J. Hawkins*

I. INTRODUCTION

American sociologist Andrew Cherlin argues that the institutional boundaries of marriage have shrunk; marriage no longer effectively governs intimate associations before marriage, or structures “proper” pathways to the desired goal of a healthy, stable marriage.¹ Personal development and individual emotions are at the core of modern marriage, rather than societal expectations and religious and civil norms.² Accordingly, marriages are held together now by internal, psychological forces rather than external, societal forces, and these bonds are substantially weaker.³ As a result, divorce is common, with about one third of first marriages ending within ten years and about half ending within twenty years; second marriages have even higher rates of disruption.⁴ While the divorce rate has decreased since the 1980s,⁵ much of this is due to the fact that a great deal of family dissolution these days occurs outside the legal arrangement of marriage.⁶ Additionally, divorce rates among the less educated in society have actually been increasing.⁷

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1. ANDREW J. CHERLIN, *THE MARRIAGE-GO-ROUND: THE STATE OF MARRIAGE AND THE FAMILY IN AMERICA TODAY* (2009).

2. Andrew J. Cherlin, *The Deinstitutionalization of American Marriage*, 66 J. MARRIAGE & FAM. 848 (2004).

3. STEPHANIE COONTZ, *MARRIAGE, A HISTORY: HOW LOVE CONQUERED MARRIAGE* (2005).

4. MATTHEW D. BRAMLETT & WILLIAM D. MOSHER, NAT'L CTR. FOR HEALTH STATISTICS, *First Marriage Dissolution, Divorce, and Remarriage: United States*, in ADVANCED DATA FROM VITAL & HEALTH STATISTICS no. 323 at 6, 12 (2001), available at <http://www.cdc.gov/nchs/data/ad/ad323.pdf>.

5. *Id.*

6. CHERLIN, *supra* note 1.

7. THE NAT'L MARRIAGE PROJECT, INST. FOR AM. VALUES, *WHEN MARRIAGE DISAPPEARS: THE NEW MIDDLE AMERICA* (W. Bradford Wilcox & Elizabeth Marquardt eds., 2010), available at <http://statcofourunions.org/2010/SOOU2010.pdf>.

While divorce can have positive effects on social and psychological functioning for some adults and children, especially when the divorce ends high-conflict marriages,⁸ empirical research finds that divorce generally puts children at two-to-three times the risk for a host of psychological, social, behavioral, and educational problems.⁹ Adults generally do not fare well in divorce either, especially those who did not initiate the divorce.¹⁰

From a public perspective, divorce is not cheap. One study conservatively estimated the public cost to taxpayers of divorce (and relationship dissolution of unmarried parents) at \$112 billion a year in the United States.¹¹

Despite the fragility of contemporary marriage, especially for more disadvantaged Americans, a happy marriage remains an important life goal for more than 75% of young adults.¹² And about half of U.S. adults, both more- and less-educated, believe that divorce should be harder to get than it is.¹³ One might expect, then, that legislators would be more interested in pursuing reforms that could help couples form and sustain healthy marriages. But this does not seem to be the case. Mark Smith refers to divorce as the missing “culture war” in America, documenting how a divorce reform agenda appears to be missing in action in current pro-family debates and movements.¹⁴ A lengthy analysis of why this is the case is beyond the scope of this Article. Suffice to say there is limited legislative momentum to tackle divorce reform.

A comprehensive review of legislative reform since 1990 documented the limited amount of divorce reform legislation passed.¹⁵

8. PAUL R. AMATO & ALAN BOOTH, *A GENERATION AT RISK* (1997); E. MAVIS HEATHERINGTON & JOHN KELLY, *FOR BETTER OR WORSE: DIVORCE RECONSIDERED* (2002).

9. For reviews, see Paul R. Amato, *The Impact of Family Formation Change on the Cognitive, Social and Emotional Well-Being of the Next Generation*, 15 *FUTURE OF CHILDREN* 75 (2005); HEATHERINGTON & KELLY, *supra* note 8.

10. LINDA J. WAITE ET AL., INST. FOR AM. VALUES, *DOES DIVORCE MAKE PEOPLE HAPPY? FINDINGS FROM A STUDY OF UNHAPPY MARRIAGES* (2002), available at <http://www.americanvalues.org/UnhappyMarriages.pdf> [hereinafter WAITE ET AL., *HAPPY?*]; Linda J. Waite et al., *Marital Happiness and Marital Stability: Consequences for Psychological Well-Being*, 38 *SOC. SCI. RES.* 201 (2009) [hereinafter Waite et al., *Marital Happiness*]; JUDITH S. WALLERSTEIN ET AL., *THE UNEXPECTED LEGACY OF DIVORCE: A 25-YEAR LANDMARK STUDY* (2000).

11. BENJAMIN SCAFIDI, *THE TAXPAYER COSTS OF DIVORCE AND UNWED CHILDBEARING: FIRST-EVER ESTIMATES FOR THE NATION AND ALL FIFTY STATES* 5 (2008), available at <http://www.americanvalues.org/pdfs/COFF.pdf>.

12. THE NAT'L MARRIAGE PROJECT, *supra* note 7 at 27.

13. W. Bradford Wilcox, *The Evolution of Divorce*, 1 *NAT'L AFF.* 81, 91 (2009).

14. Mark A. Smith, *Religion, Divorce, and the Missing Culture War in America*, 125 *POL. SCI. Q.* 57, 58-59 (2010).

15. Alan J. Hawkins, *Facilitating Forever: A 50-State Profile of Federal and State Government-Supported Efforts to Strengthen Marriage and Reduce Divorce* (2011) (unpublished manuscript) (on file with author).

The most common divorce reform initiative has been to raise the legal age of marriage.¹⁶ Four states—Indiana, Maine, Ohio, and Pennsylvania—have passed “time-out” laws to temporarily halt divorce proceedings, allowing an assertion by one spouse of irreconcilable differences to be challenged by the other spouse, who then can pursue a course of reconciliation (counseling) for a brief period of time.¹⁷ Three states—Arkansas, Arizona, and Louisiana—have passed “covenant marriage” laws allowing couples to choose an alternative set of rules to govern their entry into and any possible exit from marriage, including requiring premarital education before marriage and marital counseling if the marriage is threatened.¹⁸ But only these three states have implemented this law, few couples are choosing it, and those who do have low-risk profiles for divorce.¹⁹ Most states mandate a co-parenting class for divorcing parents to try to encourage cooperative parenting between divorcing spouses.²⁰ While these educational programs appear to have some positive outcomes,²¹ they do not promote the possibility of reconciliation. Only one state, Utah, has mandated a class that explores the potential of reconciliation and provides reasons and resources for careful thought about reconciliation.²²

The few efforts documented above are evidence of the limited legislative agenda to reform divorce laws. Again, the purpose of this Article is not to analyze why this is the case. There are likely professional considerations; legislators are often lawyers, some of whom make a living off of divorce and see it as a needed public service. Others may see divorce as a solely personal matter; government should minimize its involvement rather than intrude further.²³ Some others may see divorce as a personal right not to be constrained and a needed means to terminate unhealthy relationships; if some divorces are unnecessary,

16. *Id.*

17. IND. CODE ANN. 31-12-1-8 (West 2008); ME. REV. STAT. ANN. tit. 19-A § 902(2) (West 2011); OHIO REV. CODE ANN. § 3105.091 (West 2011); 23 PA. CONST. STAT. ANN. § 3301 (West 1990).

18. STEPHEN L. NOCK ET AL., *COVENANT MARRIAGE: THE MOVEMENT TO RECLAIM TRADITION IN AMERICA* (2008).

19. *Id.*

20. Susan L. Pollet & Melissa Lombreglia, *A Nationwide Survey of Mandatory Parent Education*, 46 FAM. CT. REV. 375, 390 (2008).

21. See Tamara A. Fackrell, Alan J. Hawkins & Nicole M. Kay, *How Effective Are Court-Affiliated Divorcing Parents Education Programs? A Meta-Analytic Study*, 49 FAM. CT. REV. 107 (2011).

22. UTAH CODE ANN. § 30-3-11.4 (West 2011); see also ALAN J. HAWKINS & TAMARA A. FACKRELL, UTAH COMMISSION ON MARRIAGE, *Should I Keep Trying to Work It Out? A Guidebook for Individuals and Couples at the Crossroads of Divorce (and Before)* (2009), available at <http://divorce.usu.edu/files/uploads/ShouldIKeepTryingtoWorkItOut.pdf>. This legislation has run into some implementation issues, however, that may reduce its impact.

23. See Smith, *supra* note 14, at 59.

that is the cost of the liberties needed to end bad marriages. Other reasons for the reform reticence could be raised.²⁴ But the purpose here is to propose a brief, feasible legislative agenda of modest divorce reform for consideration by the states. A feasible agenda should be minimally intrusive, cost-effective, likely to be appealing to most individuals, sensitive to concerns about trapping individuals in bad marriages, and unlikely to create deep controversy or strong opposition from the public. By stressing the feasible, one accepts the inevitable difficulty of establishing new law and social policy, especially when it involves a nexus of mandates, money, and personal liberties.

Before proceeding, the Author acknowledges two caveats. First, a divorce reform agenda needs to be accompanied by a broader legislative and policy agenda of effective, coterminous social and economic policy. Reforms to strengthen marriages and prevent divorces will struggle without the individual's ability to gain a good education, improve job skills, and, in general, participate in a robust economy to support their attempts to build stable and productive lives.²⁵ Similarly, effective social policy that helps prevent unwanted pregnancies, reduce domestic violence and substance abuse, and support responsible fatherhood will make it easier for couples to form and sustain healthy relationships.²⁶ An effective policy agenda that enhances the economic and social ecologies that give individuals the best chance of marital success complements and reinforces the divorce reform agenda proposed in this Article.

Moreover, the agenda proposed here focuses on intervention when marital decisions meet the legal system, that is, when couples marry (and seek state recognition of their relationship) and when couples divorce (and require the state to adjudicate the dissolution of their relationship). The advantage of attaching interventions to the legal system is that the interventions are universal; all who marry or seek a divorce must by law complete or consider certain steps. So this Article will propose additional steps or options to marital formation and dissolution that potentially could reduce the need for divorce. But as the Author has argued elsewhere, there certainly are more points of intervention to consider; a connection to the legal system is not a prerequisite for policy efforts to reduce divorce.²⁷ A positive pathway to a healthy marriage for youth and

24. For an in-depth discussion of the lack of divorce reform efforts, see Smith, *supra* note 14.

25. RON HASKINS & ISABEL SAWHILL, *CREATING AN OPPORTUNITY SOCIETY* (2009).

26. JAMES Q. WILSON, *THE MARRIAGE PROBLEM: HOW OUR SOCIETY HAS WEAKENED FAMILIES* (2002); Jay Fagan et al., *Pathways to Paternal Engagement: Longitudinal Effects of Risk and Resilience on Nonresident Fathers*, 45 *DEVELOPMENTAL PSYCHOL.* 1389 (2009); THEODORA OOMS ET AL., CTR. FOR LAW AND SOC. POLICY, *Building Bridges Between Healthy Marriage, Responsible Fatherhood, and Domestic Violence Programs: A Preliminary Guide* (2006), available at http://www.clasp.org/admin/site/publications_archive/files/0208.pdf.

27. See Alan J. Hawkins, *Promoting Positive Pathways for Youth and Young Adults to*

young adults seems increasingly filled with dangers and detours. And those who are doing the hard relationship work of marriage in a soulmate society with such high expectations for marriage could use some support, as well. More could be done to make couples wiser in their efforts to form and then sustain a healthy marriage. The Author acknowledges the value of such efforts by educational institutions, religious organizations, social service providers, and more in addition to the agenda proposed here that connects divorce reform intervention to the law.²⁸

II. A LEGISLATIVE AGENDA FOR HELPING COUPLES FORM AND SUSTAIN HEALTHY MARRIAGES

A. Premarital Education for Engaged Couples to Strengthen Marital Foundations

The first proposal in this divorce reform agenda seeks to prevent divorce before the marriage begins by encouraging formal premarital education. Research in the United States suggests that only about one third of couples invest in formal premarital education.²⁹ This rate may be increasing somewhat,³⁰ but some of the education may not be of high quality.³¹ Unfortunately, those couples with higher risk profiles for divorce are less likely to participate in premarital education.³² Individuals who have experienced the divorce of their parents should be especially interested in formal preparation as they are two-to-three times more at risk of having their own divorce.³³

Formal premarital education has a long tradition.³⁴ It emphasizes building better communication and problem-solving skills to deal with the inevitable challenges of married life. It also usually addresses a wide range of issues that influence marital quality, from money management

Healthy Relationships and Marriages: A Feasible Public Policy Agenda, in THE WILEY BLACKWELL HANDBOOK OF COUPLE AND FAMILY RELATIONSHIPS: GUIDE TO CONTEMPORARY RESEARCH, THEORY, PRACTICE AND POLICY (Pat Noller & Gary Karantzas eds. 2012).

28. For a comprehensive portrait of policy efforts to promote educational opportunities to help individuals and couples form and sustain healthy marriages and relationships, see Hawkins, *supra* note 15.

29. Alan J. Hawkins, *Will Legislation to Encourage Premarital Education Strengthen Marriage and Reduce Divorce?* 9 J. L. & FAM. STUD. 79, 86 (2007).

30. *Id.* at 86–87; Scott M. Stanley et al., *Premarital Education, Marital Quality, and Marital Stability: Findings from a Large, Random Household Survey*, 20 J. FAM. PSYCHOL. 117, 122 (2006).

31. Stanley et al., *supra* note 30.

32. Brian D. Doss et al., *Differential Use of Premarital Education in First and Second Marriages*, 23 J. FAM. PSYCHOL. 268, 272 (2009).

33. NICHOLAS H. WOLFINGER, UNDERSTANDING THE DIVORCE CYCLE: THE CHILDREN OF DIVORCE IN THEIR OWN MARRIAGES 55 (2005).

34. Scott M. Stanley, *Making a Case for Premarital Education*, 50 FAM. REL. 272, 272–73 (2001).

to the division of household labor to in-law issues.³⁵ A meta-analytic study of the large body of evaluation research shows that premarital education for engaged couples is effective at increasing middle-class couples' communication skills.³⁶ There is some limited evidence that couples who invest in formal premarital education are less likely to divorce in the early, high-risk years of marriage.³⁷ There is also some early evidence that premarital education may be effective for lower income couples,³⁸ although more research with at-risk populations is needed. Also, practitioners have observed that 10%—15% of couples taking premarital education classes decide to call off the wedding, presumably because they come to believe that the relationship will not succeed.³⁹

Nine states—Florida, Georgia, Maryland, Minnesota, Oklahoma, South Carolina, Tennessee, Texas, and West Virginia—have provided an incentive for participation in premarital education by discounting the cost of a marriage license for those couples who invest in these educational services.⁴⁰ Educational services provided by religious organizations that meet the legislative standards are approved.⁴¹ Fiscally, it may be wise to offset revenue loss from these discounts by increasing marriage license fees for those who do not invest in premarital education, which at least one state, Texas, has done.⁴² No state mandates premarital education; mandates carry a heavier burden and raise issues of access. But state governments could do more to nudge couples towards investments in premarital education, given its potential for reducing divorce in the early years of marriage.⁴³

There is a ready-made infrastructure that requires no public support for delivery of premarital education to engaged couples. In the United States, a large majority of weddings take place in religious rather than

35. *Id.*

36. Elizabeth B. Fawcett et al., *Do Premarital Education Programs Really Work? A Meta-Analytic Study*, 59 FAM. REL. 232, 235 (2010).

37. NOCK ET AL., *supra* note 18; Stanley et al., *supra* note 30, at 117–18.

38. ALAN J. HAWKINS & KAYLENE J. FELLOWS, FINDINGS FROM THE FIELD: A META-ANALYTIC STUDY OF THE EFFECTIVENESS OF HEALTHY MARRIAGE AND RELATIONSHIP EDUCATION PROGRAMS (2011).

39. Stanley, *supra* note 34, at 273.

40. *See, e.g.*, FLA. STAT. ANN. § 741.0305 (West 2011); Ann Laquer Estin, *Golden Anniversary Reflections: Changes in Marriage After Fifty Years*, 42 FAM. L.Q. 333, 345 n.83 (2008); Hawkins, *supra* note 15, at 79; 2012 West Virginia Bill No. 4605. South Carolina offers a one-time tax rebate rather than a license discount. S.C. CODE ANN. § 20-1-230 (2011).

41. *See, e.g.*, OKLA. STAT. ANN. tit. 43, § 5.1(B)(1) (West 2011) (stating the standards for a clergy-taught course).

42. TEX. LOC. GOV'T CODE ANN. § 118.011 (West 2011).

43. *See* RICHARD H. THALER & CASS R. SUNSTEIN, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS (2008) for how principles of behavioral economics embedded in public policies can encourage individuals to make wiser choices.

civil settings. Many clergy offer or even require couples they marry to attend a formal premarital education program.⁴⁴ Research suggests that premarital education delivered by clergy or their designates in religious settings can be as effective as those programs delivered by trained family-life educators or clinicians in secular settings.⁴⁵ States can specify a general set of important topics to be covered, but allow religious organizations latitude in how they address them. In addition, public funds could be used to promote greater use of these services through media campaigns, which some states are doing.⁴⁶

Some couples, however, will marry civilly or prefer secular options for premarital education. These couples could be reached efficiently through various means. A primary possibility is the Cooperative Extension Service of the U.S. land-grant universities. Every county in every state has a Cooperative Extension Service that delivers research-based educational outreach services to its population at low or no cost. Almost all of these services have extension agents trained to deliver family life education.⁴⁷ Historically, these extension agents have focused primarily on positive youth development programs and parenting education, and greater attention has been given to rural populations than to urban communities. But recently more attention has been devoted to marriage and relationship education⁴⁸ and greater emphasis is being given to urban outreach. Because programs often are widely shared across extension services in the various counties and states, programs developed and tested in one place can be used in many places, helping to stretch resources. Online premarital education programs are emerging,⁴⁹ as well, which could be another way to gain ready access to these services.

B. Divorce-Orientation Education to Prevent Unnecessary Divorce

A second point in this proposed divorce reform agenda

44. See Joe D. Wilmoth & Samantha Smyser, *A National Survey of Marriage Preparation Provided by Clergy*, J. COUPLE & RELATIONSHIP THERAPY 11, 69–85 (2012).

45. Scott M. Stanley et al., *Community-Based Premarital Prevention: Clergy and Lay Leaders on the Front Lines*, 50 FAM. REL. 67 (2001).

46. Hawkins, *supra* note 15 (stating that at least four states—California, Oklahoma, Texas, and Utah—use public funds to promote greater use of premarital education).

47. See <http://www.csrees.usda.gov/nea/family/family.cfm> for information on family life education services and www.nermen.org/statcinit.psh for a list of Cooperative Extension Services providing MRE services.

48. NAT'L EXTENSION RELATIONSHIP & MARRIAGE EDUC. NETWORK, CULTIVATING HEALTHY COUPLE AND MARITAL RELATIONSHIPS (Ted G. Futris ed., 2007), available at http://www.nermen.org/ProgramGuide/NERMEN_Guide.pdf.

49. See UTAH COMMISSION ON MARRIAGE, *Relate Couple Care*, STRONGERMARRIAGE.ORG, available at <http://strongermarriage.org/htm/engaged/relate-couplecare> (last visited Mar. 21, 2012).

acknowledges the reality that many married couples, even couples that built their marriage on a healthy foundation, can experience deep disappointments that threaten to dissolve their marriage. Nevertheless, as shown in this section, it seems that good scholarship now points to the parallel reality that a non-trivial proportion of divorces are unnecessary, meaning that the marriage could be repaired and spouses and children (and their community) would be better off if the spouses were able to reconcile rather than divorce.

To some, the term “unnecessary divorce” connotes an inappropriate personal judgment, but this Article uses the term in the context of public policy considerations rather than personal judgment. Evidence for the existence of unnecessary divorce comes from several recent sources. First, research in the United States documents that about half of divorces come from marriages that are not high-distress or high-conflict relationships.⁵⁰ These marriages earlier were fairly happy, with low conflict and low rates of violence; the spouses did not expect to divorce.⁵¹ The marriages were hard to distinguish from happy marriages that did not lead to divorce.⁵² Importantly, children from these low-conflict marriages that experienced divorce had greater adjustment problems than children who experienced the divorce of their parents that ended a high-conflict marriage.⁵³ Also noteworthy is that the divorcing adults from low-conflict marriages decreased their happiness and well-being in the wake of the divorce.⁵⁴ This is consistent with other research in the United States that documents that, for many, divorce is not an easy or reliable path to a happier life.⁵⁵ For instance, Waite and her colleagues found that individuals in unsatisfactory marriages who divorced did not end up happier five years later compared to those who stayed married; neither were they more depressed.⁵⁶ This was true even for those who remarried.⁵⁷ Moreover, couples who stayed married were not significantly more likely to experience marital violence: 93% reported no physical violence (compared to 96% of happily married individuals).⁵⁸ These surprising findings are better understood in light of their findings that most unhappily married individuals who stayed together reported

50. Paul R. Amato & Brindyl Hohmann-Marriott, *A Comparison of High- and Low-Distress Marriages that End in Divorce*, 69 J. MARRIAGE & FAM. 621, 628 (2007).

51. *Id.* at 635.

52. *Id.* at 628.

53. *Id.* at 636.

54. *Id.* at 635.

55. HEATHERINGTON & KELLY, *supra* note 8; WAITE ET AL., *HAPPY?*, *supra* note 10; Waite et al., *Marital Happiness*, *supra* note 10; WALLERSTEIN ET AL., *supra* note 10.

56. WAITE ET AL., *HAPPY?*, *supra* note 10.

57. *Id.*

58. *Id.* at 10.

after five years that they were happy again.⁵⁹ Moreover, we know that, for many, divorce does not solve conflict and can even increase levels of conflict.⁶⁰

The reasons individuals give for their divorce are generally not the “hard” ones many suspect. Paul Amato and Denise Previti found that most divorces are initiated because of such problems as falling out of love, changing personal needs, lack of satisfaction, and feelings of greater entitlement, especially for more educated individuals.⁶¹ A national survey found that the most common reason given for divorce was “lack of commitment” (73%).⁶² Other significant factors included too much arguing (56%), infidelity (55%), marrying too young (46%), unrealistic expectations (45%), lack of equality in the relationship (44%), lack of premarital preparation (41%), and domestic violence (29%).⁶³ These percentages document that some divorces may be necessary to preserve the physical or psychological safety of an individual. But they also suggest that many divorces are the result of problems that potentially could be resolved.

Research indicates that some couples are ambivalent about divorce. A recent study by William Doherty and his colleagues found that, even when asked at the last stages of the legal divorce process, about 25% of divorcing individuals and 10% of divorcing couples (both spouses) said they thought their marriage could be saved with hard work.⁶⁴ Similarly, 30% of individuals and 10% of couples indicated interest in a reconciliation service if it were available.⁶⁵ Various surveys of divorced individuals indicate that between 10% to 50% wished they had worked harder to save their marriage.⁶⁶

Accordingly, public policy should be oriented toward helping individuals at the crossroads of divorce to carefully consider their decision and, where appropriate, consider the possibility of repairing the relationship. One such policy was recently legislated in Utah, which now

59. *Id.* at 11.

60. Paul R. Amato, *The Consequences of Divorce for Adults and Children*, 62 J. MARRIAGE & FAM. 1269 (2000); David A. Sbarra & Robert E. Emery, *Coparenting Conflict, Nonacceptance, and Depression Among Divorced Adults: Results from a 12-Year Follow-Up Study of Child Custody Mediation Using Multiple Imputation*, 75 AM. J. ORTHOPSYCHIATRY 63 (2005).

61. Paul R. Amato & Denise Previti, *People’s Reasons for Divorcing: Gender, Social Class, the Life Course, and Adjustment*, 24 J. FAM. ISSUES 602, 621–22 (2003).

62. NATIONAL FATHERHOOD INITIATIVE, WITH THIS RING . . . A NATIONAL SURVEY ON MARRIAGE IN AMERICA 10 (2005), available at <http://www.smartmarriages.com/nms.pdf>.

63. *Id.*

64. William J. Doherty et al., *Interest in Reconciliation Among Divorcing Parents*, 49 FAM. CT. REV. 313, 318 (2011).

65. *Id.* at 318–19.

66. For a review, see HAWKINS & FACKRELL, UTAH COMMISSION ON MARRIAGE, *supra* note 22.

requires divorce orientation education for divorcing parents with dependent children.⁶⁷ This brief educational program was intended to help divorcing parents think clearly and make informed decisions about divorce and perhaps prevent unnecessary break-ups.⁶⁸ The legislation specifies that the information presented be research based and fair, including the known positive and negative outcomes of divorce.⁶⁹ There are, however, implementation problems with the legislation. For example, most take the class at the last stages of the legal divorce process.⁷⁰ Mandated divorce orientation education would likely be more effective earlier in the divorce process. It may then be better to make this program a prerequisite to filing for divorce rather than a step in the legal process of divorce. Also, the low dosage of the education (one hour) and the varying quality of the instruction may limit its effectiveness. Nevertheless, this kind of public policy is headed in a positive direction, with the potential to reduce unnecessary divorces while avoiding putting spouses at greater risk for harm. Moreover, given the significant cost to taxpayers of family dissolution,⁷¹ even small increases (1% to 2%) in preventing unnecessary divorces will reduce government costs.

A natural infrastructure to deliver this kind of educational intervention already exists in many areas. In the United States, most states mandate that divorcing parents take a brief course to learn how to be better parents in the context of divorce and how to avoid mistakes that divorcing parents commonly make.⁷² Nevertheless, these courses do not include curricula that seriously consider the possibility of reconciliation.⁷³ These programs could be modified to include a realistic and sensitive consideration of reconciliation. Also, some religious organizations try to provide educational services to help congregant couples on the brink of divorce, such as the Retrouvaille program based on Catholic doctrine. Again, the Cooperative Extension Service and its staff of family life educators could be tapped to provide divorce orientation education. Online programs should also be considered so that individuals at the crossroads of divorce have ready, private access to these programs.⁷⁴

67. UTAH CODE ANN. § 30-3-11.4 (West 2011).

68. HAWKINS & FACKRELL, UTAH COMMISSION ON MARRIAGE, *supra* note 22, at 1–8.

69. UTAH CODE ANN. § 30-3-11.4 (West 2011). The legislation also requires information about the benefits of divorce mediation and collaborative law. *Id.*

70. Carma M. Needham, *At the Crossroads of Divorce: A Formative Evaluation of a Self-Directed Intervention for Participants of Utah's Divorce Orientation Education Class for Divorcing Parents* 40 (Apr. 2010) (unpublished Master's thesis, Brigham Young University), *available at* <http://contentdm.lib.byu.edu/cdm/singleitem/collection/ETD/id/2446>.

71. SCAFIDI, *supra* note 11.

72. Pollet & Lombreglia, *supra* note 20.

73. Fackrell, Hawkins & Kay, *supra* note 21.

74. For an illustration, see Utah Divorce Orientation, *available at* <http://divorce.usu.edu/> (last

C. Marriage License Fee Surcharge to Help Fund Educational and Promotion Efforts

In an extended era of fiscal austerity, it will be difficult to pass legislation that has a significant price tag. While much of what I have proposed in this agenda will not have costs, some actions will benefit from a supply of funds. To support various services intended to help couples form and sustain healthy marriages and prevent unnecessary divorces, states should consider adding a small user fee to the marriage license fee. Minnesota currently is the only state that does this.⁷⁵ A funding stream such as this could be used to support training efforts for licensed therapists to extend their skills in helping distressed couples that are thinking about divorce but still interested in possible reconciliation. In addition, the funds could be used to support efforts directly associated with divorce orientation education as well as premarital education. The funds should be used in a manner that gives special consideration to efforts to help lower income individuals and couples gain access to services to help them form and sustain healthy marriages. Also, a portion of the funds should be used to support research to evaluate the effectiveness of these educational efforts, an often overlooked but important policy task.

In addition, a portion of these funds should support a sustained media campaign to increase awareness of the available services. An important and obvious component to the success of this agenda—to help couples form and sustain healthy marriages—is that couples become aware of the educational resources discussed here and sense that they can be helpful. Because recruitment is a constant challenge for family life educators, a skilled media campaign should be wrapped around this agenda. There is good evidence that social marketing campaigns can impact attitudes and behaviors.⁷⁶ A number of organizations⁷⁷ have used government funds to build creative, well-received campaigns to promote the use of premarital education and other relationship education services. The costs for a widespread, sustained campaign could be shared among communities, states, non-governmental organizations, philanthropists,

visited Apr. 2, 2012), based on HAWKINS AND FACKRELL, UTAH COMMISSION ON MARRIAGE, *supra* note 22.

75. MINN. STAT. ANN. §§ 137.32, 517.08 (West 2011). The funds from a \$5 marriage license surcharge are retained and managed by the “Couples on the Brink” project at the University of Minnesota.

76. For a review, see Robert C. Hornik, *Introduction: Public Health Communication: Making Sense of Contradictory Evidence*, in PUBLIC HEALTH COMMUNICATION: EVIDENCE FOR BEHAVIOR CHANGE (Robert C. Hornik ed., 2002).

77. These organizations include the following: National Healthy Marriage Resource Center, California Healthy Marriage Coalition, Oklahoma Marriage Initiative, Utah Healthy Marriage Initiative, and First Things First.

and private organizations with an interest in public efforts to strengthen marriages. But a baseline public funding stream will also be important.

D. What Is Left Out?

The divorce reform agenda proposed here emphasizes feasible reforms that promote delivery of educational services, using existing educational infrastructures, to help more couples form a stronger foundation for their marriage, or recognize dangerous cracks in it, before trouble begins—and helps some couples carefully consider whether reconciliation would be a better path forward than divorce. This proposal is not likely to engender a great deal of public controversy. Promoting educational services that do not require much government funding or oversight but may help couples form and sustain healthy marriages and prevent some unnecessary divorces is unlikely to spur marches on state capitols by angry citizen groups. Accordingly, this agenda seems a feasible first step.

This agenda does not include some other reforms that have been proposed because they are more controversial and would likely slow down first-step reforms. Elsewhere, scholars and activists have advocated, for instance, allowing the judicial system to consider fault in divorce settlements,⁷⁸ as well as lengthening divorce waiting periods.⁷⁹ In addition, a handful of states allow one spouse to temporarily challenge an assertion of irreconcilable differences to pursue a course of reconciliation.⁸⁰ While such proposals have intellectual merit, they will produce heated, lengthy debates among legal practitioners and the public.⁸¹ Society should move forward with a more feasible set of reforms while the debate over other controversial reforms continues.

III. CONCLUSION

Admittedly, the first-step divorce reform agenda proposed here puts much faith in the power of education. Emerging research points to the positive potential of premarital education,⁸² but the merits of divorce

78. See Karen Turnage Boyd, *The Tale of Two Systems: How Integrated Divorce Laws Can Remedy the Unintended Effects of Pure No-Fault Divorce*, 12 *CARDOZO J. L. & GENDER* 609 (2006); Wilcox, *supra* note 13, at 93.

79. COAL. FOR DIVORCE REFORM, PARENTAL DIVORCE REDUCTION ACT, available at http://www.divorcereform.info/images/stories/flyersPDFfiles/dr_thelegislation.pdf (last visited Mar. 21, 2012); Wilcox, *supra* note 13.

80. Hawkins, *supra* note 15.

81. See Lynn D. Wardle, *Divorce Reform at the Turn of the Millennium: Certainties and Possibilities*, 33 *FAM. L.Q.* 783 (1999).

82. Fawcett et al., *supra* note 36; Stanley, *supra* note 34.

orientation education have not been evaluated yet. Voluntary educational interventions may seem weak in the face of powerful historical and cultural forces working against individual hopes for life-long marriage.⁸³ Certainly, prominent scholars doubt the ability of government efforts to change how we form and sustain marriage in our societies. For instance, the late U.S. sociologist James Q. Wilson argues that “restoring the value of marriage is not something that can be done by public policy.”⁸⁴ Broad cultural change is needed, he asserts, but this must be done privately by individuals, families, churches, neighborhoods, and the media.⁸⁵ But he does not consider the possibility that extensive educational efforts over time, encouraged by modest public policy efforts, could help to shift the cultural current. This is a realistic possibility. For example, we have made significant progress with smoking attitudes and behaviors alongside a sustained educational campaign.⁸⁶

Others commentators have also thought about the merits of publicly funded efforts to increase the use of relationship and marriage education services to help couples form and sustain healthy marriages. For instance, Paul Amato, one of the most prominent U.S. scholars of marriage and divorce, generally supports the concept of government efforts to provide more relationship education services, especially to lower income couples.⁸⁷ Amato, however, does not outline as specific an agenda as has been done in this Article. In addition, Andrew Cherlin, another prominent U.S. family sociologist, implies the need for better education for young adults, especially around the issue of cohabitation and family formation.⁸⁸ “We don’t want a cohabitation tax or a marriage police,” Cherlin says, but he does imply the need for educational efforts to send stronger messages to young adults to “slow down” and think carefully about rushing into relationships, especially when children’s lives are at stake.⁸⁹ Cherlin’s recommendations for how to get this message out, however, are missing. Legal scholars Naomi Cahn and June Carbone intellectually tackle the culture wars around family formation and dissolution, concluding that marriage and relationship education should be a part of the solution: “While those who prize autonomy may be wary of celebrating traditional marriage, most do not begrudge efforts to encourage commitment, educate young people in the qualities that

83. See COONTZ, *supra* note 3.

84. WILSON, *supra* note 26, at 221.

85. *Id.*

86. Hornik, *supra* note 76.

87. Paul R. Amato, *Tension Between Institutional and Individual Views of Marriage*, 66 J. MARRIAGE & FAM. 959, 964 (2004).

88. CHERLIN, *supra* note 1, at 194.

89. *Id.*

effectively promote relationship stability, or establish voluntary marriage [education] promotion programs.”⁹⁰

Divorce should be available to end destructive marriages. Restrictions to personal liberties must be carefully considered and based in strong logic. Nevertheless, this Article has provided that logic for some carefully considered first steps to divorce reform. Society and government could be doing more to value the institution of marriage and support people’s foundational desires to form and sustain healthy, stable marriages.

90. NAOMI CAHN & JUNE CARBONE, RED FAMILIES V. BLUE FAMILIES: LEGAL POLARIZATION AND THE CREATION OF CULTURE 168 (2010).