DOES MARRIAGE MAKE GOOD BUSINESS?
EXAMINING THE NOTION OF EMPLOYER ENDORESEMNT OF MARRIAGE

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George Steinbrenner, owner of the New York Yankees, declared that he would not name Derek Jeter, four-time all-star second baseman and owner of five World Series rings, team captain until Mr. Jeter changed his social life:

“When I read in the paper that he’s out until 3 a.m. in New York City going to a birthday party, I won’t lie. That doesn’t sit well with me. That was in violation of [manager Joe Torre’s] curfew. That’s the focus I’m talking about.”

“I want to see Jeter truly focused. He wasn’t totally focused last year. He had the highest number of errors he’s had in some time . . . . He wasn’t himself.”

Employer Steinbrenner wanted Jeter to gain some stability in his personal and private life by cutting back on his off-field activities. Encouraging Jeter to settle down seemed like the obvious implication.

Steinbrenner indicated that losing the swinging singles lifestyle would make Jeter a more stable and productive member of the Yankees baseball club, and “blamed Jeter’s declining production on the shortstop’s numerous off-field activities . . . .” These activities were arguably a direct result of being unmarried. “As far as trying and being a warrior, I wouldn’t put anyone ahead of [Jeter],” Steinbrenner was quoted as saying. ‘But how much better would he be if he didn’t have all his other activities?’

Steinbrenner offers no apologies for his tactics. In fact, the boss was named, “Most Powerful Person in Sports” by the Sporting News. Mr. Steinbrenner may wish to promote marriage among his employees, particularly his best, most productive employees, in light of claims by legal academics that marriage is not the trend in American culture. Marriage may be an answer to various societal woes, rather than an institution to reassess. The corporate world is often a better barometer for cultural trends than the law or academics. What is currently occurring in corporate America may be one of many indicators that marriage is the answer to higher productivity and greater happiness.

One of the most important recent publications on this subject is The Case for Marriage by Linda J. Waite and Maggie Gallagher, two social scientists writing from differing political perspectives, yet agreeing on one thing—the data suggest that marriage is very important to every area of life.

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2. Id.
3. Id. (adding that Jeter is “not quite ready to be the team’s first captain since Don Mattingly”). Steinbrenner did, eventually, name Jeter the team captain in June of 2003. Associated Press, Steinbrenner Names Jeter Captain, Chi. Sun-Times 137 (June 4, 2003).
4. Steinbrenner Wants Jeter to Be More Focused, supra n. 1, at 82.
Married men make better workers than single guys do, because they lead more settled lives. They have lower rates of absenteeism from work and are less likely to quit or be fired than are single men. When we can measure productivity directly, married men produce more on average than single men at the same job.\footnote{Id. at 103.}

This is exactly what Steinbrenner is talking about. There is strong contemporary evidence that marriage is important and is neither outdated nor obsolete. Recently, Shaquille O’Neal, the Los Angeles Lakers All-Star center, married his longtime girlfriend.\footnote{Bill Scheft, The Show, 98 Sports Illustrated 24 (Jan. 13, 2003).} Additionally, Mel Gibson, one of the most successful and productive actors and directors in Hollywood, has been married to the same woman for twenty-four years, and together they have parented seven children.\footnote{See A&E Biography, Mel Gibson [*12*] <http://www.biography.com/search/article.jsp?aid=9310680> (accessed Feb. 18, 2004) (summarizing the life of Mel Gibson).}

Marriage is not obsolete. According to the Census Bureau, even in the face of the statistic that half of first marriages end in divorce, “nine out of ten Americans are expected to marry at least once in their lives.”\footnote{Geraldine Sealey, ABCNEWS.com, Nation Finds No Consensus on Marriage, Family [¶ 9] <http://www.abcnews.go.com/sections/us/DailyNews/family030113.html> (accessed Feb. 18, 2004).} This is not limited to white middle-class America. African Americans of all income levels value the marital relationship.\footnote{Theodora Ooms, Strengthening Couples and Marriage in Low-Income Communities, in Revitalizing the Institution of Marriage for the Twenty-First Century 87, 88-89 (Alan J. Hawkins et al. eds., Praeger Publishers 2002).} Individuals are continuing to enter into marriage, and benefiting from it. “Marriage is . . . an existing social good.”\footnote{Brian Bix, Reflections on the Nature of Marriage, in id. at 111-12.}

Today, more people are meeting their personal relationship partners at work.\footnote{Andrea C. Poe, Office Romance: HR’s Role, HR Comply Newsletter Abstracts [*1-2*] (Mar. 18, 2003) (copy on file with Whittier Law Review) (“The workplace of today is what singles bars were to the 1970[s], a great place to meet a mate.”).} Although office romances can cause problems for human resources departments,\footnote{Id. at [*5*.] marriages and relationships that burgeon into lifetime commitments can add stability and even productivity to an employee’s life.\footnote{See generally Waite & Gallagher, supra n. 7, at 97-105 (discussing the career benefits of marriage).} So, can employers actively promote the institution of marriage?

One legal theory supervisory body appears to be endorsing marriage. The American Law Institute (ALI) has published its most recent recommendations on family law,\footnote{Press Release from The American Law Institute, American Law Institute Publishes Principles of the Law of Family Dissolution (May 15, 2002) (copy on file with Whittier Law Review).} directing that unmarried cohabitants be afforded marriage-like benefits.\footnote{Sealey, supra n. 11, at [*4*.] Major corporate employers should question this}

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\footnote{One study of naval-reserve recruiters found that married men succeeded in getting 9 percent more recruits, on average, than did single men. Two researchers used personnel records from a single firm to compare the work output of married and single men. They found that married white male managers and professionals were more likely to be promoted, entirely because married men received higher performance ratings from their supervisors.}
approach because research indicates that marriage, rather than a marriage-like relationship, is a major factor in the performance of employees.\textsuperscript{19} In fact many would argue that a happy marriage is quite important to the productivity of employees.\textsuperscript{20} Some proffer, however, that the ALI is actually promoting the imposition of marriage-like duties on those who have not necessarily chosen them.\textsuperscript{21} Under the cohabitation guidelines of the ALI, obligations akin to marriage should be created.\textsuperscript{22} The scholars and experts of the ALI may be promoting marriage through non-marital relationships. This makes some sense because marriage is a good thing. But, is there anything wrong with promoting marriage? Is there anything right about promoting marriage? Should an employer endorse marriage? Ought an employer meddle in an employee’s private life and marital status? Can companies encourage marriage from within? This article will deal with these important and timely questions.

Part I sets out, in detail, the reasons why marriage ought to be promoted, discussing the most recent medical and social science data on the topic, as well as reviewing government support for marriage initiatives. Part II discusses whether it is legal for any employer to promote marriage, setting out the federal guidelines, statutory framework, and case law on marital status discrimination. This section clearly details and distinguishes the case law on marital status discrimination, revealing that marital status discrimination is not the same as endorsing or promoting marriage. Part III questions whether an employer can be concerned about the private lives of its employees. This section discusses concerns about fostering a sexually charged workplace and the problems surrounding a sexually charged corporate culture. Setting forth the corporate effects of fraternization, sexual promiscuity, divorce and cohabitation, this section reveals why a company may want to promote marriage. Finally, Part IV sets forth the case for employer endorsement of marriage. This section offers legal guidelines and suggestions that promote productivity among employees by encouraging them to enter into healthy relationships and healthy marriages. Ultimately, employer endorsement of marriage yields happy and productive employees.

This is an important article because “[c]ommentators have written extensively about marital status discrimination, both in the context of housing and employers’ anti-nepotism policies,”\textsuperscript{23} but not in the context of endorsing marriage. This article clarifies that the case for corporate endorsement of marriage is legal, compelling, healthy and economically sound. Corporate institutions should heed these findings and be persuaded by the abundance of positive arguments and practical methods for marriage endorsement within the corporate structure.

\textit{Id.} at ¶ 2, 4. Some sociology experts claim that, if adopted, the guidelines herald doom for American marriage:

“Anyone who cares about the state of marriage, which is weak enough already, if you want it to become weaker still, knock away legal protections marriage enjoys,” said David Blankenhorn, author of \textit{Fatherless America} and president of the Institute for American Values.

\textit{Id.} at ¶ 5.

20. \textit{Id.} at 103.
21. Sealey, supra n. 11, at ¶ 3.
22. \textit{Id.} at ¶ 12. The ALI insists their only concern is with the law:

“Our job is the law. The task we were given is to figure out what do you do when the family breaks down,” said Grace Ganz Blumberg, a law professor at UCLA Law School. “We don’t encourage cohabitation. We’re not alternative lifestyle people. We’re not promoting homosexuality.”

\textit{Id.} at ¶ 21.