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SENATE JOINT RESOLUTION NO. 91
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the House Committee on Rules
 on February 25, 2004)

(Patron Prior to Substitute—Senator Cuccinelli)

Memorializing the Congress of the United States to propose a constitutional amendment to protect the fundamental institution of marriage as a union between a man and a woman.

WHEREAS, marriage is a unique cornerstone of the family, which is the foundation of human society; and

WHEREAS, only marriage between one man and one woman has been permitted or recognized historically throughout the United States; and

WHEREAS, history has shown marriage between a man and a woman to be the best context for the reproduction of the human race and for raising children to be responsible adults; and

WHEREAS, marriage provides lower risk of infant mortality, better physical health for the children and has numerous health benefits for the father and mother; and

WHEREAS, religious and civil laws have granted marriage special recognition, benefits, responsibilities and legal protections since at least the beginning of recorded history; and

WHEREAS, the Commonwealth accords marriage more responsibilities and legal protections than other partnerships of unrelated individuals; and

WHEREAS, the Full Faith and Credit Clause in the United States Constitution provides that states must recognize the laws and judicial acts of every other state in the Union; and

WHEREAS, in 1996, Congress enacted the Defense of Marriage Act to exempt states from being required to afford full faith and credit to laws recognizing marriages between persons of the same sex; and

WHEREAS, in light of the Full Faith and Credit Clause of the United States Constitution, there is significant risk that the federal courts may hold the 1996 federal Defense of Marriage Act unconstitutional; and

WHEREAS, 37 states, including the Commonwealth, have enacted laws, commonly known as Defense of Marriage Acts, that ban same-sex marriages; and

WHEREAS, the unique legal status of marriage in the Commonwealth is in danger from constitutional challenges to these state marriage laws and the federal Defense of Marriage Act, which may succeed in light of the recent decisions on equal protection from the United States Supreme Court; and

WHEREAS, challenges to state laws have been successfully brought in Hawaii, Alaska, Vermont, and most recently in Massachusetts on the grounds that the legislature does not have the right to deny the benefits of marriage to same-sex couples and the state must guarantee the same protections and benefits to same-sex couples as it does to opposite-sex couples absent a constitutional amendment; and

WHEREAS, the Vermont legislature chose to preserve marriage as the "legally recognized union of one man and one woman," but at the same time enacted a dual system of "civil unions" for same-sex couples that goes beyond existing "domestic partnership" and "reciprocal beneficiaries" laws that exist in California and Hawaii and in many localities in the United States today; and

WHEREAS, the Massachusetts ruling, by declaring that civil marriage means "the voluntary union of two persons as spouses, to the exclusion of all others," represents the most far-reaching decision in its erosion of the states' right to define marriage; and

WHEREAS, the Massachusetts court has given the Massachusetts legislature 180 days to comply with the court's ruling, which is not sufficient time for the state to adopt a constitutional amendment to overturn the decision; and

WHEREAS, in light of the Massachusetts decision, many states are scrambling to determine what actions are needed to protect their state's Defense of Marriage Act from future court challenges; and

WHEREAS, H.R.J. Res. 56, 108th Cong. and S.J. Res. 26 108th Cong. proposed an amendment to the Constitution of the United States to declare that "marriage in the United States shall consist only of the union of a man and a woman"; and

WHEREAS, a federal constitutional amendment is the only way to protect the institution of marriage and resolve the controversy created by these recent decisions by returning the issue to its proper forum in the state legislatures; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Congress of the United States be urged to propose a constitutional amendment to protect the fundamental institution of marriage as a union between a man and a woman; and, be it

RESOLVED FURTHER, That the Congress of the United States be urged to initiate an amendment

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60 to the Constitution of the United States to provide:

61 "Marriage in the United States, whether entered into within or outside of the United States, shall
62 consist only of the legal union of one man and one woman. The uniting of persons of the same or
63 opposite sex in a civil union, domestic partnership, or other similar relationship as a substitution for
64 such marriage shall not be valid or recognized in the United States"; and, be it

65 RESOLVED FINALLY, That the Clerk of the Senate transmit copies of this resolution to the
66 Speaker of the United States House of Representatives, the President of the United States Senate, and
67 the members of the Virginia Congressional Delegation so that they may be apprised of the sense of the
68 General Assembly of Virginia in this matter.