



Fault lines: Is no-fault divorce on unsteady ground in California and nationwide?

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For over half a century, no-fault divorce laws have allowed unhappy spouses to exit their marriages without having to prove wrongdoing or place blame. California led the charge: In 1969, Governor Ronald Reagan signed The Family Law Act, making the Golden State the first to legalize no-fault divorce; New York was the last state to pass it in 2010. Today all 50 states plus the District of Columbia offer no-fault divorce in some form; California is one of 17 “true” no-fault states, meaning all divorces are no-fault, and the court cannot consider grounds in granting a divorce.

But now, no-fault divorce is facing a backlash. Across the country, conservative lawmakers and religious leaders, right-wing influencers, and men’s rights groups are challenging the principle - and while they have not so far succeeded in upending no-fault laws, they are causing a concerning upheaval.

SEVERAL STATES HAVE ALREADY SEEN OFFICIAL EFFORTS TO OVERTURN OR CHANGE NO-FAULT LAWS:

- In Texas and Nebraska, the Republican party amended its platform to call for an end to no-fault divorce.

- In Oklahoma and South Dakota, Republican lawmakers have attempted to remove “incompatibility” or “irreconcilable differences” as grounds for divorce.

- In South Carolina, two Republican lawmakers introduced legislation to require both spouses to file for a no-fault divorce.

- In Louisiana last year, the Republican State Central Committee considered whether to back a resolution to eliminate no-fault divorce. House Speaker Mike Johnson, Republican of Louisiana, is in a state-recognized “covenant marriage” and an outspoken critic of no-fault.

Critics blame no-fault divorce for a “rising” divorce rate (it’s decreased overall in the last two decades), the breakdown of the traditional family unit, a lack of respect for the institution of marriage, general moral and societal decay, increased reliance on government assistance programs, and more.

A lot of inflammatory rhetoric surrounds the issue. During his

2024 Vice Presidential campaign, footage recirculated of J.D. Vance, who lamented in 2021 that modern couples see marriage as “a basic contract, like any other business deal....,” and change “spouses like they change their underwear.” Conservative YouTube host and provocateur Steven Crowder recently railed against divorce laws, publicly blaming Texas’ no-fault law for his wife leaving him because the law permitted her to do so.

A BRIEF HISTORY OF DIVORCE IN THE UNITED STATES AND ITS IMPACTS ON WOMEN

In the United States, before 1969, one needed “grounds” for a divorce - a legally valid reason for wanting to end the marriage, plus evidential proof that their spouse breached the marital contract with wrongdoing such as adultery, abandonment, or cruelty.

Before the Revolutionary War, in England, ending a marriage was almost impossible - it required a Private Act of Parliament. Beginning in the 17th century, the Massachusetts Pur-

itan settlement, the colonies, and then the states began establishing grounds for divorce. This was a New World indeed - in a time when women enjoyed few rights, divorce was a way to exercise some autonomy and independence.

But the process could be grueling and humiliating. Proving marital misconduct required airing extremely private matters in public court. Conflict, drama, finger-pointing, and the lure of scandal often caused a circus around 19th-century divorce proceedings. (When Reagan signed the



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no-fault law, he said he believed it would “do much to remove the sideshow elements in many divorce cases.”

Further, historically, women faced a distinct disadvantage in fault-based divorce. Proving a husband’s philandering, desertion, or violence could be a degrading uphill battle in a male-dominated legal system that generally favored men. Homemakers with little earning power or financial independence faced difficulty affording an attorney. Women could find themselves trapped in abusive marriages while attempting to prove, in costly, drawn-out court battles, that they were being abused,

and the process could expose them to retaliatory harm from their abuser.

No-fault divorce made leaving a marriage much more straightforward, streamlined, and private; less complicated, protracted, expensive, and stressful. Freeing people to unilaterally leave unhappy, hopeless, toxic, or dangerous relationships had a profound and positive broader social impact: studies throughout the era of no-fault divorce have demonstrated its correlation with a decrease in domestic violence (among men and women) and long-term, a 20% reduction in female suicide. Not only does no-fault divorce

help women leave abusive husbands, but research suggests that the possibility of being left may deter potential abusers.

Some women’s advocacy groups point to drawbacks in the no-fault system, arguing that the ability to prove fault added valuable leverage in winning spousal/child support, for example. On balance, however, no-fault divorce represented a vital turning point in women’s empowerment.

So far, there’s no cohesive national movement gaining steam against no-fault divorce; smaller efforts have met resistance even in some conservative circles.

And while marriage is a constitutional right, divorce is not, which means federal lawmakers don’t set policy, states do.

Despite the rumblings, California is likely solid ground for no-fault divorce. Attempts to repeal it would face legal barriers and social and political pushback. Still, vigilance is crucial. As many scholars have pointed out, we once believed *Roe v. Wade* was settled law - but states, communities, and individuals are feeling the very real and on-going shockwaves of the Dobbs decision. It’s sobering to view the current threats to no-fault divorce through the larger lens of rollbacks to women’s rights.