Abstract: Covenant marriage may be difficult to understand as a gender issue. However, marriage and divorce are closely linked to workforce participation and child rearing. This piece looks at new proposals for choices in divorce regime from legal, economic, and social perspectives, concluding that the option of contracting a more permanent form of marriage increases the possibilities for women and signals societal interest in promoting more stable families. The article favorably compares Louisiana covenant marriage legislation to other states’ suggestions for returns to fault-only regimes, and pays some attention to the role one state’s marriage and divorce laws play in the federal system.

Introduction: The Problem

Marriage and divorce are critical components of an understanding of women’s issues, since family inevitably interacts with the workplace. Wives in the late 1990s, though they are disserved by divorce in many ways, instigate dissolution of their marriages at a far higher rate than do their husbands (Braver et al., 1993). In Connecticut, for example, more than two-thirds of wives (68.2 percent) filed for divorce during the years 1991–1995, despite the fact that nearly the same
percentage of these marriages (68.6 percent) included minor children. Understanding why wives are dissatisfied with marriage and what might improve family is both important and difficult. This article does not attempt to resolve all of these issues, but it asks whether a change in the laws affecting marriage and divorce might make a difference to married women, their husbands, and their children.

Assaults against no-fault divorce have been mounted before, and they have been universally unsuccessful. Yet we can learn from these earlier trials. When no-fault was limited to a relaxation of the principle that to obtain a divorce the complainant must be blameless, spouses who wanted to escape their marriages left temporarily for states with easier divorce rules (Brinig and Buckley, 1998a). They were able to obtain divorces after meeting relatively short standards for domicile. Their home states, which had more restrictive divorce policies, still had to provide for their abandoned spouses. Under common conflict of laws rules, the spouses left behind sought to maintain that the home states (or states of matrimonial domicile), should be able to govern the prevailing divorce rules for the marriages in question. Not so, declared the Supreme Court in the famous case of *Williams v. North Carolina*, 317 U.S. 287, 63 S.Ct. 207, 213, 87 L.Ed. 279 (1942). Divorce jurisdiction is based upon domicile of either or both of the spouses, since it affects the marital status of husband and wife. The marriage, the res giving the forum subject matter jurisdiction, follows either spouse to a new domicile. As long as the migrating spouse met the divorce state's residence requirements and intended to establish a new domicile, it mattered not that the matrimonial domicile's policy against easy divorce was thwarted. The full faith and credit clause of the constitution requires that a court honor a sister state's valid divorce decree, however painful this might be to the marital domicile's public policy, fisc, or the abandoned spouse (*Williams v. North Carolina II, Williams II*, 325 U.S. 226, 242, 65 S.Ct. 1092, 1101 [1945]).

Divorce laws can always be set (or changed) by legislative action (*Maynard v. Hill*, 125 U.S. 190 [1888]). This is a matter for state, not federal, law, and federal courts decline jurisdiction over divorce and related actions under the "domestic relations exception" (*Ankenbrandt v. Richards*, 112 S. Ct. 2206 [1992]). The legislature may even alter the exit rules for a marriage already contracted.¹ When no-fault divorce laws were enacted, unhappy citizens challenged them unsuccessfully, claiming impairment of their contracts, disruption of valid property rights, or infringement of first amendment religious freedom.² Thus despite a marrying couple's earnest wish to make marriage more permanent or exit less facile, states currently will not enforce contracts between individuals restricting divorce (*Towles v. Towles*, 256 S.C. 307, 182 S.E.2d 53, 55 [1971]).

In some states, though, there may be monetary costs for unilaterally terminat-