

STATE REGULATIONS ARE FAILING OUR CHILDREN: AN ANALYSIS OF CHILD MARRIAGE LAWS IN THE UNITED STATES

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INTRODUCTION

Sherry Johnson was just ten years old when she was raped and impregnated by her conservative Apostolic church's twenty-year-old deacon.¹ After child welfare authorities began investigating her case, Sherry's family and church officials forced her to marry her rapist to avoid a "messy criminal case."² By the time Sherry turned eleven years old, not only had she been sexually abused, but her own family forced her to marry her abuser.³ What is perhaps most shocking about this case, is that Sherry's story took place right here in the United States.⁴ After a judge in Tampa, Florida, refused to marry Sherry to the adult man, Sherry's family took her to nearby Pinellas County where the judge issued a marriage license with full knowledge that Sherry was just eleven years old.⁵

Sherry's story is not an anomaly in the United States. The United Nations defines "child marriage" as marriage involving at least one party "under the age of eighteen."⁶ Although child marriage is perceived as an issue only affecting developing countries, between 2000 and 2015, an alarming 200,000 children married in the United States.⁷ Further, 87 percent of the children married were girls, and

1. Moni Basu, *Sherry Johnson Was Raped, Pregnant and Married by 11. Now She's Fighting to End Child Marriage in America*, CNN (Jan. 31, 2018, 11:48 PM), <https://www.cnn.com/2018/01/29/health/ending-child-marriage-in-america/index.html> [<https://perma.cc/GH6T-CW36>]; Nicholas Kristof, *Opinion, 11 Years Old, a Mom, and Pushed to Marry Her Rapist in Florida*, N.Y. TIMES (May 26, 2017), <https://www.nytimes.com/2017/05/26/opinion/sunday/it-was-forced-on-me-child-marriage-in-the-us.html> [<https://perma.cc/TQ43-7QG9>].

2. Kristof, *supra* note 1.

3. *Id.*

4. *Id.*

5. Basu, *supra* note 1.

6. See Camellia Burris, Comment, *Why Domestic Institutions Are Failing Child Brides: A Comparative Analysis of India's and the United States' Legal Approaches to the Institution of Child Marriage*, 23 TUL. J. INT'L & COMP. L. 151, 152 (2014) (citing ANJU MALHOTRA ET AL., INT'L CENTER FOR RESEARCH ON WOMEN, SOLUTIONS TO END CHILD MARRIAGE 2, <http://www.icrw.org/files/publications/Solutions-to-End-Child-Marriage.pdf>).

7. TAHIRIH JUSTICE CTR., CHILD MARRIAGE IN THE UNITED STATES: A SERIOUS PROBLEM WITH A SIMPLE FIRST-STEP SOLUTION (2017) (footnotes omitted), <http://www.tahirih.org/wp-content/uploads/2016/11/Tahirih-Child-Marriage-Backgrounder-2.pdf> [<https://perma.cc/AN2Z-C83V>].

86 percent of the young girls⁸ married adult men.⁹ According to a 2011 research report, it is estimated that “over 9.4 million U.S. women had married at age 16 or younger and that nearly 1.7 million had married at age 15 or younger.”¹⁰ Additionally, a 2016 Pew Research Center report found that “[a]bout 57,800 minors in the U.S. ages 15 to 17 were married as of 2014.”¹¹

These statistics are particularly alarming, given that early marriage often leads to young children experiencing devastating, lifelong consequences such as marital instability,¹² decreased likelihood of continuing formal education,¹³ increased likelihood of future poverty,¹⁴ and increased susceptibility to mental¹⁵ and physical health issues.¹⁶

One might wonder how children in the United States are marrying at such alarming rates, despite statutory laws regulating marriage and early child marriage’s well-documented negative consequences. Although almost every state mandates eighteen as

8. Of young girls who were married, 67 percent were seventeen years old, 29 percent were sixteen years old, and 5 percent were fifteen years old or younger. Anjali Tsui, Dan Nolan & Chris Amico, *Child Marriage in America: By the Numbers*, PBS FRONTLINE (July 6, 2017), <http://apps.frontline.org/child-marriage-by-the-numbers/> [https://perma.cc/99ST-FLRE]. Of adult men married to young girls, 60 percent were eighteen to twenty years old, 25 percent were twenty-one to twenty-three years old, 9 percent were twenty-four to twenty-six years old, and 6 percent twenty-seven years old or older. *Id.*

9. *Id.*

10. Tahirih Responds to Pew Report on Child Marriage in the U.S., TAHIRIH JUST. CTR. (Nov. 8, 2016), <https://www.tahirih.org/news/tahirih-responds-to-pew-report-on-child-marriage-in-the-u-s/> [https://perma.cc/8JGA-P7X7].

11. David McClendon & Aleksandra Sandstrom, *Child Marriage Is Rare in the U.S., Though This Varies by State*, PEW RES. CTR. (Nov. 1, 2016), <http://www.pewresearch.org/fact-tank/2016/11/01/child-marriage-is-rare-in-the-u-s-though-this-varies-by-state/> [https://perma.cc/E7XH-AN9M].

12. See INST. FOR AM. VALUES & NAT’L MARRIAGE PROJECT, *THE STATE OF OUR UNIONS: WHEN MARRIAGE DISAPPEARS* 73 (W. Bradford Wilcox et al. eds., 2010), http://nationalmarriageproject.org/wp-content/uploads/2012/06/Union_11_12_10.pdf [https://perma.cc/FB79-9ZSW] (noting that delaying marriage until after the age of 25 reduces the risk of divorce by 24 percent).

13. See Gordon B. Dahl, *Early Teen Marriage and Future Poverty*, 47 DEMOGRAPHY 689, 691 (2010).

14. *Id.* at 711.

15. See Yann Le Strat, Caroline Dubertret & Bernard Le Foll, *Child Marriage in the United States and Its Association with Mental Health in Women*, 128 PEDIATRICS 524, 527 (2011).

16. See MALHOTRA ET AL., *supra* note 6, at 4.

the age of marital consent,¹⁷ forty-eight states have statutory exceptions authorizing early child marriage.¹⁸ Further, because state legislatures have the discretion to make child marriage laws, statutory laws vary significantly from state to state.¹⁹

This Note will discuss the variations in state child marriage laws and argue that such variations create loopholes that increase the vulnerability of children, especially young girls, to coercive and forced marriages. Further, this Note will argue that state statutes do not adequately address the issue of child marriage in the United States, and thus federal action is necessary. Specifically, Congress should use its spending power to condition 10 percent of federal education funding on states' enactment of uniform child marriage laws: eighteen as the minimum age of marriageability without exception.

Part I will discuss child marriage's history and evolution in the United States. Part II will examine current child marriage laws in the United States and discuss the variations in state child marriage laws. Part III will discuss child marriage's negative consequences, and its broader effects on society at large. Part IV will argue that state regulation is insufficient to prevent child marriage. Part V will discuss Congress's spending power under *South Dakota v. Dole* and argue that Congress should use its spending power to incentivize states to enact standardized child marriage regulations. Finally, Part VI will argue that the congressional taxing power would not effectively prevent child marriage, and that the spending power is a more effective tool to address this issue. In sum, this Note demonstrates that state child marriage laws have proven insufficient to protect vulnerable youth in the United States, and federal reform is necessary to ensure the protection of children and vitality of future generations.

17. See Erin K. Jackson, *Addressing the Inconsistency Between Statutory Rape Laws and Underage Marriage: Abolishing Early Marriage and Removing the Spousal Exemption to Statutory Rape*, 85 UMKC L. REV. 343, 354 (2017).

18. See Lynn D. Wardle, *Rethinking Marital Age Restrictions*, 22 J. FAM. L. 1, 11-12 (1983). In 2018, Delaware became the first state to ban marriage under the age of eighteen without exceptions. DEL. CODE ANN. tit. 13, § 123 (2018). New Jersey followed shortly thereafter. N.J. STAT. ANN. § 37:1-6 (West 2018).

19. See Jackson, *supra* note 17, at 351.

I. HISTORY OF CHILD MARRIAGE IN THE UNITED STATES

Child marriage in the United States predates the American Revolution, and it has survived all the way to modern times despite significant transformation.²⁰ This Part provides a brief overview of child marriage laws's evolution in the United States. Next, this Part will discuss the child marriage laws that the Colonies adopted and how the laws developed and modernized over time.

A. Child Marriage Under the English Common Law

Child marriage is a practice that is deeply rooted in U.S. history, dating back to English common law.²¹ English common law permitted some minors to marry, and the law divided children into three groups to determine the legality of marriage: (1) children under the age of seven; (2) children between seven and the “age of discretion”—fourteen for boys and twelve for girls; and (3) children who reached the age of discretion.²² First, English common law considered children under the age of seven incapable of consenting to marriage, and it considered marriages before seven completely void.²³ Second, children between seven and the age of discretion could lawfully marry, but the marriage was “imperfect.”²⁴ Although English common law considered imperfect marriages valid, either party could void the marriage at-will until both parties reached the age of discretion.²⁵ Finally, English common law considered marriages after the child reached the age of discretion presumptively valid.²⁶

Initially, marriage under English common law did not require parental consent; however, in 1753 Parliament enacted Lord Hardwicke's Act which required the minor's father's consent to legally marry; minors were all children under the age of twenty-

20. *See id.* at 349, 351.

21. *See Wardle, supra* note 18, at 5-7.

22. *Id.* at 5-6; *see also* Jackson, *supra* note 17, at 347-48.

23. Wardle, *supra* note 18, at 5-6.

24. *Id.* at 6.

25. *Id.*

26. *Id.*

one.²⁷ Hardwicke's Act "reinforced the centrality of marriage as the institution through which families controlled property and wealth."²⁸ Thus, Hardwicke's Act allowed families to use marriage as a method to enter into alliances that would produce future heirs to inherit family property.²⁹

Coverture was another important doctrine under English common law. Coverture held that a husband and wife became one person at marriage and thus the wife's legal existence consolidated into her husband's legal existence.³⁰ Therefore, anything a woman earned belonged to her husband: she could not enter a contract, she could not sue her husband, and she was obligated to serve her husband.³¹ Further, a woman could not bring rape charges against her husband because English common law presumed ongoing sexual consent between husbands and wives.³² In turn, the husband was obligated to provide financial support to his wife and children.³³

B. Child Marriage Laws and the American Colonies

Colonial America adopted the English common law view of child marriage; however, Hardwicke's Act did not have a strong influence on American child marriage laws.³⁴ It was not until the colonies began enacting their own statutes to regulate child marriage that the parental consent requirement became prominent in United States marriage laws.³⁵

In the early 1600s, colonial legislatures began passing their own laws to govern marriage in the United States.³⁶ The Colonies'

27. *Id.* at 7. Lord Hardwicke's Act rendered void all marriages entered by parties under the age of twenty-one and without parental consent. *Id.* If a minor's father was deceased, then marriage required the consent of the child's mother or guardian. *Id.*

28. Vivian E. Hamilton, *The Age of Marital Capacity: Reconsidering Civil Recognition of Adolescent Marriage*, 92 B.U. L. REV. 1817, 1827 (2012).

29. *Id.*

30. See NICHOLAS L. SYRETT, *AMERICAN CHILD BRIDE: A HISTORY OF MINORS AND MARRIAGE IN THE UNITED STATES* 19 (2016).

31. *Id.*

32. *Id.*

33. *Id.*

34. See Jackson, *supra* note 17, at 349.

35. See SYRETT, *supra* note 30, at 19.

36. See Hamilton, *supra* note 28, at 1828-29; Jackson, *supra* note 17, at 349; Wardle, *supra* note 18, at 7.

marriage codes often mirrored English common law, including parental consent requirements that prevented “clandestine” child marriages.³⁷ Plymouth Bay passed a statute in 1636 stating that “none be allowed to marry that are under the covert of parent but by their consent and approbation.”³⁸ In 1650, Connecticut passed a similar statute that prohibited child marriage without a parent’s or guardian’s permission.³⁹ These statutes exemplify the colonial marriage laws’s trend to focus on regulating child marriage in order to preserve the parent’s right to control the child for economic reasons rather than regulating to preserve children’s youth and promote their well-being.⁴⁰

Finally, all colonies adopted English common law’s age of legal majority—twenty-one—as the age at which individuals could marry without parental consent; however, courts continued to uphold marriages for individuals who met the English common law age of presumptive consent—fourteen for boys and twelve for girls—because the Colonies did not “explicitly repudiate” the common law.⁴¹

C. Child Marriage Laws and Early States

After the American Revolution, many states modified their marriage laws, and the modifications varied based on region.⁴² For example, northern states placed more emphasis on parental consent,⁴³ whereas southern states focused on the parent’s ability to regulate property through marriage.⁴⁴ In the 1850s, new states forming in the West and Midwest were much more likely to set age minimums

37. See Hamilton, *supra* note 28, at 1828.

38. SYRETT, *supra* note 30, at 23.

39. *Id.* at 24.

40. *Id.* at 16.

41. See Hamilton, *supra* note 28, at 1829.

42. See SYRETT, *supra* note 30, at 27.

43. Maryland enacted a law in 1777 mandating that girls below the age of sixteen, and boys below the age of twenty-one, receive parental consent to marry. See *id.* Similarly, Massachusetts and Delaware mandated that girls below the age of eighteen, and boys below the age of twenty-one, receive parental consent to marry. See *id.*

44. See, e.g., *id.* at 30 (“South Carolina remained intent on punishing men who married underage girls for their fortunes.”). Virginia also enacted a law regulating property control through marriage, mandating that “any girl between the ages of twelve and sixteen who married without parental or guardian permission forfeited her inheritance to her next of kin.” *Id.* at 26.

while still allowing marriage below the minimum age with parental consent.⁴⁵

Despite geographical variation, early marriage laws in the United States typically included four components: (1) the age at which individual consent is sufficient to marry, (2) the age at which an individual can marry with parental consent, (3) the description of “exceptional circumstances in which one can marry below the minimum age of parental permission,” and (4) “regulations establishing the earliest age of marriageability.”⁴⁶

During the mid-nineteenth century, the United States underwent a significant transformation in its views of childhood and marriage. This reform was known as the Social Purity Movement, and reformers began campaigning to raise the age of marital consent and sexual consent.⁴⁷ During this era, society began to view children as innocents needing protection, and childhood was understood as clearly distinct and markedly different from adulthood.⁴⁸ In response to the Social Purity Movement, twenty-two states and Washington, D.C. either instituted minimum age requirements for marriage or raised existing minimum age requirements.⁴⁹

At the end of the twentieth century, most states had enacted statutes that superseded the English common law and raised marital age requirements.⁵⁰ Further, from the late nineteenth century to mid-twentieth century, the majority of states set the minimum age of marital consent at eighteen for girls and twenty-one for boys.⁵¹

45. See, e.g., *id.* at 30 (noting that Ohio, Indiana, and Illinois adopted fourteen and seventeen as the minimum marriageable age for girls and boys respectively, and Minnesota, Michigan, Kansas, Oregon, Nevada, and Missouri similarly adopted minimum age requirements for child marriage). Early marriage was very common in the West and Midwest because men often outnumbered women in these regions, necessitating earlier ages of marriageability. See *id.* at 65; see also Hamilton, *supra* note 28, at 1834.

46. See Jackson, *supra* note 17, at 349.

47. See Hamilton, *supra* note 28, at 1830.

48. See SYRETT, *supra* note 30, at 124. Modern statutory rape laws criminalizing sex between minors and adults also arose from this era. *Id.*

49. *Id.* at 130.

50. See Hamilton, *supra* note 28, at 1830-31.

51. See SYRETT, *supra* note 30, at 134-35 tbl.5.1 (listing states' statutory age of marital consent for 1865 and 1920).

D. Modern Child Marriage Laws

After Congress lowered the draft age from twenty-one to eighteen during World War II, Americans began questioning the validity of laws that restricted legal rights of individuals between the ages of eighteen and twenty-one.⁵² This sentiment extended into the Vietnam War, as the government drafted many young men who felt they should be extended the full rights of citizenship.⁵³

Further, prior to 1971, the majority of states set the age of marital consent at eighteen for women and twenty-one for men.⁵⁴ Because the Women's Rights Movement began making headway during this time, many challenged the lower age of marital consent for women (eighteen) compared with the higher age of marital consent for men (twenty-one).⁵⁵ Further, as women began entering the workforce with increasing equality, marriage began to lose its social value "as the sole socially acceptable path to intimate relationship, economic security, and family life."⁵⁶ In 1971, after Congress granted men and women the right to vote at age eighteen, most states amended their statutory age of marital consent to eighteen for both men and women.⁵⁷

II. VARIATIONS IN CURRENT STATE CHILD MARRIAGE LAWS

Today, although states have generally adopted eighteen as the statutory age of marital consent,⁵⁸ child marriage laws continue to vary widely among states.⁵⁹ Because most states require individuals to be at least eighteen to independently consent to marriage,

52. See Hamilton, *supra* note 28, at 1831.

53. See Wardle, *supra* note 18, at 8.

54. See Jackson, *supra* note 17, at 354 (noting that, prior to 1971, 80 percent of states set the age of marital consent at eighteen for women, and 85 percent of states set the age of marital consent at twenty-one for men).

55. See *id.*; Wardle, *supra* note 18, at 8.

56. Hamilton, *supra* note 28, at 1840.

57. See Dahl, *supra* note 13, at 698.

58. The presumptive age of marital consent is eighteen in every state except Nebraska (where the age of marital consent is nineteen) and Mississippi (where the presumptive age of marital consent is seventeen for males, and fifteen for females). See MISS. CODE ANN. § 93-1-5(1) (2018); NEB. REV. STAT. §§ 42-102, 42-105, 43-2101 (2018).

59. Jackson, *supra* note 17, at 351.

eighteen is considered the “statutory minimum marriage age.”⁶⁰ Despite this statutory minimum age, all states, with the exception of Delaware and New Jersey,⁶¹ allow various loopholes for children wishing to marry before eighteen, such as provisions allowing children below eighteen to marry with either parental or judicial consent (or both).⁶² For example, many states allow underage children to marry with parental consent alone.⁶³ Other states require that underage children have both parental and judicial approval to marry.⁶⁴ Additionally, some states only require children to have judicial consent to marry, which effectively removes the need for parental consent.⁶⁵ States also often give courts authority to approve child marriage for “moral” or “welfare” reasons (for example, pregnancy).⁶⁶

Some states set statutory floors for age of marriageability, meaning a child below the statutorily set age floor cannot marry.⁶⁷ Statutory floors for marriageability vary from state to state.⁶⁸ Eighteen states do not set statutory age floors, meaning there is no minimum age below which a child cannot marry when exceptions

60. TAHIRIH JUSTICE CTR., UNDERSTANDING STATE STATUTES ON MINIMUM MARRIAGE AGE AND EXCEPTIONS 1 (2018), <https://www.tahirih.org/wp-content/uploads/2016/11/2018-State-Marriage-Age-Requirements-Statutory-Compilation.pdf> [<https://perma.cc/9WVD-R8B3>].

61. *See supra* note 18.

62. *Id.* at 2.

63. *See, e.g.*, ALA. CODE § 30-1-5 (2018); COLO. REV. STAT. §§ 14-2-106(1)(a)(I), -108(1) (2018); D.C. CODE § 46-411 (2018); GA. CODE ANN. § 19-3-2(b) (2018); 750 ILL. COMP. STAT. 5/203 (2018); N.D. CENT. CODE §§ 14-03-02, -17(1) (2017); S.C. CODE ANN. § 20-1-250 (2018); S.D. CODIFIED LAWS § 25-1-9 (2018); TENN. CODE ANN. § 36-3-106(a)-(d) (2018); W. VA. CODE § 48-2-301(d) (2018); WIS. STAT. § 765.02(2) (2017).

64. *See, e.g.*, ALASKA STAT. § 25.05.171(b) (2018) (allowing children over fourteen to marry with parental consent and judicial approval); IOWA CODE § 595.2(4) (2018) (requiring the underage child’s parent to consent to the marriage and district court approval); NEV. REV. STAT. § 122.025(1)-(2) (2017) (allowing children under the age of sixteen to marry with parental consent and district court approval).

65. *See, e.g.*, VA. CODE ANN. § 20-48 (2018) (allowing minors to marry only when the minor has been emancipated by court order).

66. *See Jackson, supra* note 17, at 354.

67. *See, e.g.*, N.C. GEN. STAT. § 51-2(a)-(b1) (2018) (disallowing any exception for children under fourteen to marry); UTAH CODE ANN. § 30-1-2(3) (West 2018) (disallowing any exception for children under fifteen to marry); VT. STAT. ANN. tit. 18, § 5142 (2018) (disallowing any exception for children under sixteen to marry).

68. *See e.g., supra* note 67.

are met.⁶⁹ Other states have adopted statutory age floors of either fourteen,⁷⁰ fifteen,⁷¹ sixteen,⁷² or seventeen years old.⁷³ Further, many states have enacted statutes that vary based on gender.⁷⁴ For example, under Arkansas statutory law, girls are permitted to marry with parental consent at sixteen, but boys are not permitted to marry with parental consent until seventeen.⁷⁵

In 2016, Virginia made strides to protect minors from child marriage's harmful effects by enacting stringent child marriage laws: requiring children to reach legal marriage status (eighteen) with a narrow exception for children between sixteen and seventeen if the court emancipated the child.⁷⁶ Finally, in May 2018, Delaware

69. See ARK. CODE ANN. §§ 9-11-102, -103, -209 (2018); CAL. FAM. CODE § 302 (West 2018); COLO. REV. STAT. § 14-2-106(1)(a)(I) (2018); IDAHO CODE §§ 32-202, 32-302(4) (2018); LA. STAT. ANN. § 9:225(A)(2) (2018); LA. CHILD. CODE ANN. arts. 1545(B), 1547-49 (2018); ME. STAT. tit. 19-A, § 652(7)-(8) (2018); MASS. GEN. LAWS ch. 207, §§ 7, 24, 25 (2018); MICH. COMP. LAWS §§ 551.51, 551.103(1), 551.201(2) (2018); MISS. CODE ANN. § 93-1-5(1)(d) (2018); MO. REV. STAT. §§ 451.020, 451.090 (2018); NEV. REV. STAT. §§ 122.020(3), 122.025 (2017); N.M. STAT. ANN. § 40-1-6 (2018); OKLA. STAT. tit. 43, §§ 3(B), 5(A) (2018); 23 PA. CONS. STAT. § 1304(b) (2018); 15 R.I. GEN. LAWS § 15-2-11(b) (2018); WASH. REV. CODE § 26.04.010(2) (2018); W. VA. CODE § 48-2-301(a)-(c) (2018); WYO. STAT. ANN. § 20-1-102 (2018).

70. See, e.g., ALASKA STAT. § 25.05.171(b) (2018) ("A superior court judge may grant permission for a person who has reached the age of 14 but is under age of 18 to marry."); N.C. GEN. STAT. § 51-2.1(a) (2018) (allowing an unmarried girl between fourteen and sixteen to marry if she is pregnant or has given birth to a child, and an unmarried boy to marry if he is the father of the born or unborn child).

71. See, e.g., HAW. REV. STAT. § 572-1(1)-(2) (2018); IND. CODE § 31-11-1-6(b)(1) (2018); KAN. STAT. ANN. § 23-2505(c)(1) (2018); MD. CODE ANN., FAM. LAW § 2-301(c) (West 2018); UTAH CODE ANN. § 30-1-2(3) (West 2018).

72. See, e.g., ALA. CODE §§ 30-1-4, -5 (2018); ARIZ. REV. STAT. ANN. § 25-102(b) (2018); CONN. GEN. STAT. § 46b-20a(b) (2018); D.C. CODE § 46-403(4) (2018); GA. CODE ANN. § 19-3-2 (2018); 750 ILL. COMP. STAT. 5/203(1) (2018); IOWA CODE § 595.2(4) (2018); MINN. STAT. § 517.02 (2018); MONT. CODE ANN. § 40-1-213(1) (West 2017); N.D. CENT. CODE § 14-03-02 (2017); S.C. CODE ANN. § 20-1-100 (2018); S.D. CODIFIED LAWS § 25-1-9 (2018); VT. STAT. ANN. tit. 18, § 5142(2) (2018); WIS. STAT. § 765.02(2) (2018).

73. See, e.g., NEB. REV. STAT. §§ 42-102, 42-105, 43-2101 (2018) (setting a statutory age floor of seventeen for child marriage and requiring parental consent until the child is nineteen); N.Y. DOM. REL. LAW § 15(3) (McKinney 2018) (setting the age floor at seventeen and requiring judicial approval for the marriage of seventeen-year-olds); OHIO REV. CODE ANN. § 3101.02 (West 2019) (setting the age floor at seventeen and requiring judicial approval, but also allowing seventeen-year-olds to marry someone no younger than fourteen and still requiring judicial approval); OR. REV. STAT. § 106.010 (2018) (setting the age floor at seventeen).

74. See, e.g., MISS. CODE ANN. § 93-1-5(1) (allowing underage marriage for girls at age fifteen and boys at age seventeen with parental consent and judicial approval).

75. ARK. CODE ANN. §§ 9-11-102(a), -105(a) (2018).

76. See VA. CODE ANN. § 20-48 (2018) ("The minimum age at which persons may marry shall be 18, unless a minor has been emancipated by court order.").

became the first state to enact a blanket ban against child marriage by requiring children to reach the age of eighteen to marry.⁷⁷ New Jersey followed shortly after.⁷⁸

In sum, there is a great deal of variation in child marriage laws from state to state. Although some states have taken great strides to enact stricter child marriage requirements, others continue to provide exceptions that fail to protect children from child marriage's harmful effects.

III. NEGATIVE CONSEQUENCES OF EARLY MARRIAGE

Early child marriage has devastating and lifelong mental, social, and physical effects on children, especially young girls.⁷⁹ First, this Part will discuss child marriage's negative consequences on family life, as well as the increased risk of intimate partner violence. Next, this Part will discuss early child marriage's ramifications on educational attainment and its risk of future poverty to show the life-long consequences. Finally, this Part will conclude with an analysis of early child marriage's mental and physical effects on young girls.

A. *Family Instability*

According to a report from the Tahirih Justice Center—a non-governmental organization committed to addressing gender based violence—approximately 70 to 80 percent of marriages where at least one party is under the age of eighteen end in divorce.⁸⁰ Researchers have also found that early marriage is one of the best predictors of marital failure.⁸¹ Children who marry in their mid-

77. DEL. CODE ANN. tit. 13, § 123(a) (2018).

78. N.J. STAT. ANN. § 37:1-6 (West 2018).

79. See Burris, *supra* note 6, at 152.

80. TAHIRIH JUSTICE CTR., *supra* note 7.

81. See Hamilton, *supra* note 28, 1819-20; see also TAHIRIH JUSTICE CTR., *supra* note 7 (“Between 70-80% of marriages involving individuals under age 18 end in divorce.”); Tim B. Heaton, *Factors Contributing to Increasing Marital Stability in the United States*, 23 J. FAM. ISSUES 392, 405-07 (2002) (arguing that the recent decline in marital disruptions (for example, divorce) is a result of the reduced incidents of child marriages). A recent study by sociologist Nicholas Wolfinger also recognized that teens experienced a higher risk of divorce compared to adults, and noted that “prior to age 32 or so, each additional year of age at marriage reduces the odds of divorce by 11 percent.” Nicholas H. Wolfinger, *Want to Avoid*

teens experience the highest marital failure rates—approximately 80 percent.⁸² Marriages entered prior to age eighteen experience a 70 percent divorce rate.⁸³ In contrast, individuals who postpone marriage to age twenty-five experience significantly lower marriage dissolution rates, with fewer than 30 percent of marriages ending in divorce.⁸⁴

The judiciary has also recognized early child marriage's negative consequences and the importance of protecting vulnerable youth. In *Moe v. Dinkins*, the Second Circuit Court of Appeals refused to grant permission to two underage couples to marry without parental consent.⁸⁵ The Second Circuit highlighted the State's "important interest in promoting the welfare of children by preventing unstable marriages among those lacking the capacity to act in their own best interest."⁸⁶ Therefore, the Second Circuit acknowledged child marriage's harmful effects and stressed the importance of protecting children from entering into such harmful unions.

B. Intimate Partner Violence

Not only are young brides more vulnerable to unstable marriages, but this general instability also increases the likelihood that the young girl will fall victim to intimate partner violence.⁸⁷ Girls between the ages of sixteen and twenty-four are most vulnerable to intimate partner violence, and girls between sixteen and nineteen are three times more likely to fall victim to intimate partner violence.⁸⁸ Thus, not only does early child marriage have a negative

Divorce? Wait to Get Married, But Not too Long, INST. FOR FAM. STUD. (July 16, 2015), <https://ifstudies.org/blog/want-to-avoid-divorce-wait-to-get-married-but-not-too-long/> [<https://perma.cc/PLQ2-EENV>]. Wolfinger also found that the risk of divorce within five years of a person's first marriage was higher for younger individuals: 32 percent for individuals under 20 years old, 20 percent for individuals 20-24 years old, and 14 percent for individuals 30-34 years old. *Id.*

82. Hamilton, *supra* note 28, at 1820.

83. *Id.*

84. *Id.*

85. 669 F.2d 67, 68 (2d Cir. 1982) (per curiam).

86. *Id.*

87. See Jackson, *supra* note 17, at 370-71.

88. TAHIRIH JUSTICE CTR., *supra* note 7.

impact on a marriage's stability, but it also makes children more vulnerable to physical harm at the hands of their spouses.

Additionally, because children under the age of eighteen lack legal standing in many states, the child is often unable to obtain a divorce or utilize other resources available to intimate partner violence victims. As one member of the Delaware legislature put it: "Children under 18 have no legal standing—they cannot file for divorce, utilize a domestic violence shelter, apply for a loan or open a credit card."⁸⁹ Therefore, the child is often left trapped in the violent marriage.⁹⁰

Finally, victims of physical and sexual abuse are significantly more likely to become pregnant.⁹¹ The risk of pregnancy increases even further when the young girl's partner is older because younger partners tend to have little control over contraceptive decisions in the relationship, which increases their vulnerability to unexpected pregnancy.⁹² Thus, in addition to divorce, instability, and abuse, early child marriage can leave a young girl with the additional economic and mental burden of having to raise a child either alone or in an abusive relationship.

C. Education and Future Poverty

The negative effects of early marriage on education are well studied and documented. Professor Gordon Dahl, an economics professor at the University of California, San Diego, studied early marriage's effects on high school drop out rates and future poverty and found that "women who marry before the age of 19 are 50 percent more likely to drop out of high school" than their peers.⁹³ Further, women who marry young are four times less likely to graduate from college.⁹⁴ Dahl's study also found that early marriage is a better indicator of future poverty than dropping out of high

89. Bethlehem Feleke, *Delaware Becomes First US State to Fully Ban Child Marriage*, CNN (May 12, 2018, 9:09 AM), <https://www.cnn.com/2018/05/12/us/delaware-child-marriage-ban/index.html> [https://perma.cc/63ZN-8B4G].

90. *See id.*

91. *See Jackson, supra* note 17, at 343.

92. *See id.* at 375.

93. *See Dahl, supra* note 13, at 691.

94. *Id.*

school.⁹⁵ Early marriage increased the likelihood that the child would live in poverty in the future by 31 percent.⁹⁶ In contrast, dropping out of high school increased the likelihood that the child would live in poverty in the future by 11 percent.⁹⁷ The high school drop out rate also varies depending on how young the child marries.⁹⁸ Dahl reported that 87 percent of early teen brides—fifteen or younger—did not graduate from high school, compared with 66 percent of children between the ages of sixteen and seventeen, and 29 percent of children eighteen to nineteen.⁹⁹ However, these statistics only apply to young girls, because it is significantly less likely that a young girl's husband will drop out of high school.¹⁰⁰

Early marriage interrupts a young girl's education, limits her ability to become financially independent, and increases her likelihood of living in poverty in the event of divorce.¹⁰¹ These factors also limit the young girl's ability to leave if the marriage becomes violent.¹⁰²

Early child marriage's negative implications—such as high school drop out rates and the likelihood of future poverty—also have wide reaching implications on third parties and society. Early marriage leads to higher divorce rates, lower wages, and larger family sizes,¹⁰³ which “increases the number of children living in poverty and receiving state assistance,” thus raising welfare expenditures and the taxpayer's burden.¹⁰⁴ Therefore, early child marriage has negative external costs on both society at large and the individual child.

95. *Id.* at 711 tbl.7.

96. *Id.* at 707, 714.

97. *Id.*

98. *Id.* at 713.

99. *Id.*

100. *See id.* at 713-14.

101. *See* TAHIRIH JUSTICE CTR., *supra* note 7.

102. *See id.*

103. Teen brides tend to have more children, as well as have children at a younger age. Dahl, *supra* note 13, at 691.

104. *Id.* at 690-91.

D. Mental and Physical Health

Early marriage has extreme negative consequences for the young bride's mental health. Yann Le Strat, Caroline Dubertret, and Bernard Le Foll studied early marriage's effects on women's mental health, after controlling for sociodemographic factors.¹⁰⁵ The study found that the majority of women who married young had a history of mental health disorders (53.09 percent), whereas a smaller percentage of women who married as adults reported a history of mental health disorders (49.05 percent).¹⁰⁶ Specifically, women who married as children had higher rates of depression, nicotine dependence, specific phobias, dysthymia, and antisocial personality disorder.¹⁰⁷ In general, the study found that child brides were significantly more likely to experience a psychiatric disorder in their lifetimes.¹⁰⁸ Another study found that girls who married at age eighteen or younger had higher depression rates compared to women who married at twenty-one or older.¹⁰⁹

Early marriage also has negative consequences on young girls' physical health. There is a strong correlation between early child marriage and early childbirth.¹¹⁰ This is concerning because girls who give birth at a young age face serious health consequences, including higher maternal morbidity rates, higher risks of obstructed labor, pregnancy-induced hypertension, and suffering from obstetric fistula (a condition where the vagina, bladder, and/or rectum tear during childbirth which may cause severe consequences if left untreated such as leakage of bladder and feces).¹¹¹ Girls suffer these

105. See Le Strat et al., *supra* note 15, at 527.

106. *Id.*

107. *Id.*

108. *Id.* at 527-28.

109. See Jeremy Elliot Uecker, *Early Marriage in the United States: Why Some Marry Young, Why Many Don't, and What Difference It Makes* 169-71 (May 2010) (unpublished Ph.D. dissertation, University of Texas at Austin) (available at <https://repositories.lib.utexas.edu/bitstream/handle/2152/ETD-UT-2010-05-1158/UECKER-DISSERTATION.pdf?sequence=1&isAllowed=y> [<https://perma.cc/65NX-YVZE>]).

110. SARANGA JAIN & KATHLEEN KURZ, INT'L CTR. FOR RESEARCH ON WOMEN, *NEW INSIGHTS ON PREVENTING CHILD MARRIAGE* 7 (2007), http://lastradainternational.org/lisdocs/icrw_child_marriage_0607.pdf [<https://perma.cc/7A3V-PBYJ>].

111. *Id.*

health consequences because the girl's body is not mature enough for childbirth at such a young age.¹¹²

Young girls are also at an increased risk of contracting sexually transmitted diseases because girls who enter into early marriages usually lack adequate information about important sexual and reproductive health issues (for example, contraception, sexual intercourse, sexually transmitted diseases, pregnancy, and childbirth).¹¹³ Further, a girl's lack of power in the relationship compounds the lack of information, which leads to higher rates of violence, unwanted pregnancy, and sexually transmitted disease.¹¹⁴ Child brides often marry much older men, and the girls often have little negotiating power in the relationship over sexual behavior, such as using condoms or other contraceptives.¹¹⁵ Finally, researchers have noted a correlation between child marriage and an increased risk of heart attack, diabetes, cancer, and stroke for women due to lack of resources; yet, researchers did not find a correlation between early child marriage and negative physical health implications for males.¹¹⁶

Early child marriage's negative health consequences extend to the young girl's infant as well. A teen mother's infant is twice as likely to die before the infant's first birthday compared to infants of mothers in their twenties.¹¹⁷ Further, one million teen mothers' infants die every year from pregnancy and child-birth complications.¹¹⁸ The child also has an increased risk of lower birth weight and premature birth,¹¹⁹ as well as an increased likelihood that the child will receive inadequate nutrition.¹²⁰ Even if the infant survives

112. *Id.*

113. *See id.* at 7-9.

114. *Id.* at 8.

115. SANYUKTA MATHUR, MARGARET GREENE & ANJU MALHOTRA, INT'L CTR. FOR RESEARCH ON WOMEN, TOO YOUNG TO WED: THE LIVES, RIGHTS, AND HEALTH OF YOUNG MARRIED GIRLS 9 (2003), <https://www.issue4lab.org/resources/11421/11421.pdf> [<https://perma.cc/TYE3-97HV>].

116. Hamilton, *supra* note 28, at 1848 ("[T]he negative impact of early marriage on women's health [is] unsurprising, 'given that these females may forfeit important health resources and often face a greater likelihood of divorce.'" (citation omitted)).

117. JAIN & KURZ, *supra* note 110, at 8.

118. *Id.* ("Currently, 1 million infants of young mothers die every year worldwide as a result of pregnancy and childbirth related causes.").

119. *Id.*

120. *Id.* ("After birth, infants of teen mothers are more likely than infants born to older mothers to have poorer health care and inadequate nutrition as a result of their young

past one year, teen mothers' infants are more likely to experience developmental delays than older mothers' infants, including behavioral problems and educational underachievement.¹²¹ Further, because older parents often have greater financial resources, higher educational attainment, and are usually more emotionally mature, older parents are generally more likely to stimulate child development than younger parents.¹²² These negative effects have lifelong consequences on the children, including an increased chance of future poverty which perpetuates the cycle of poverty.¹²³

IV. STATE CHILD MARRIAGE LAWS ARE INSUFFICIENT

Leaving child marriage laws up to state discretion has proven insufficient to protect vulnerable youth in the United States, specifically young girls. In 2010, Dahl tested strict state marriage laws' impact on the probability of early child marriage.¹²⁴ Dahl studied whether teens traveled to states with a lower age of marriageability to evade their state of residence's marriage requirement.¹²⁵ If teens were traveling to states with lower age of marriageability requirements, this would suggest that strict child marriage laws were imposing costs on children who wished to marry early.¹²⁶

Dahl's analysis used Tennessee as a case-study because Tennessee is a long, narrow state that borders many different states with different age of marriageability requirements.¹²⁷ In 1968-69, Tennessee's age of consent was sixteen,¹²⁸ and Tennessee was

mothers' poor feeding behavior.").

121. See Hamilton, *supra* note 28, at 1848-49.

122. *Id.* at 1849 (citing NAOMI CAHN & JUNE CARBONE, RED FAMILIES V. BLUE FAMILIES: LEGAL POLARIZATION AND THE CREATION OF CULTURE 55 (2010)). However, studies on the brain development of teen mothers' infants have not isolated the mother's marital status, and some researchers argue that infants of young mothers display fewer developmental issues if the parents are married. See *id.*

123. See *id.* at 1849-50.

124. Dahl, *supra* note 13, at 702.

125. *Id.* at 702-04.

126. *Id.* at 702 ("Some young teens will cross state lines, while others will be deterred by these costs. The extent to which teens cross state lines to marry in states with more permissive laws can be examined using the resident state and marriage state information.").

127. *Id.*

128. *Id.* Dahl used data from 1968-69 because it was the period for which the Vital Statistics data were available. *Id.*

bordered by eight states with varying child marriage laws.¹²⁹ Dahl hypothesized that if stricter child marriage laws actually prevented early child marriage, he would expect to see children under the age of sixteen traveling to states such as Alabama, Mississippi, or Missouri, which had lower child marriage age requirements.¹³⁰ Dahl also noted that he would not expect to see children traveling to Georgia, Kentucky, or Virginia to marry, where the age of marriageability was also sixteen.¹³¹

Dahl found that “[t]he pattern of out-of-state marriages strongly supports the idea that Tennessee teens traveled to bordering states with more permissive laws in order to marry young.”¹³² Of girls in Tennessee who married under the age of sixteen, 22 percent traveled to Alabama, Mississippi, or Missouri to marry, and only 4 percent traveled to Georgia, Kentucky, or Virginia.¹³³ This evidence suggests that young teens traveled to states with less restrictive child marriage laws to avoid the higher age threshold in Tennessee.¹³⁴

Dahl then extended his study to all states and found that 15.3 percent of children who married between ages twelve and fifteen and lived in states with sixteen as the age of consent traveled to states with lower age of marriageability requirements to get married.¹³⁵ In comparison, in states with age of marriageability requirements between thirteen and fifteen, only 5 percent of children below the age of sixteen traveled outside their state to marry.¹³⁶

This is not to say that strict child marriage laws are altogether ineffective. Dahl’s study also found that there was a large jump in the number of children married immediately after the state-

129. *Id.*

130. *Id.*

131. *See id.*

132. *Id.* at 703 (finding that children under the age of sixteen traveled to Alabama, Mississippi, and Missouri to avoid Tennessee’s more stringent marriage laws).

133. *Id.* Dahl did not find that teens were traveling to Alabama, Mississippi, and Missouri to marry because those states were favorable wedding destinations; rather, Dahl found that Georgia, Virginia, and Kentucky were actually more favorable wedding destinations. *Id.*

134. *Id.* at 702-03 (concluding that teens do in fact travel to states with lower age requirements to get married).

135. *Id.* at 703.

136. *Id.*

specified age of marriageability, which suggests that state laws are effective in preventing child marriage within the state.¹³⁷ Dahl observed that “[i]n states with legal minima of 12-13, 14, 15, and 16+, the percentage of women who [were] early teen brides [was], respectively, 6.5 percent, 4.3 percent, 3.5 percent, and 2.9 percent.”¹³⁸ This, combined with the drastic jump in the number of teens married immediately after they reach the marital consent age,¹³⁹ suggests that marriage laws are effective when teens are not able to travel to neighboring states with less restrictive child marriage laws to evade their residence states’ stricter requirements.¹⁴⁰

V. FEDERAL SPENDING POWER AND UNIFORM CHILD MARRIAGE STANDARDS

Because children can travel to states with less stringent requirements, and thus so easily bypass strict child marriage laws, federal reform is vital to protect the United States’ youth. This Part will discuss Congress’s ability to use its spending power to enact uniform child marriage laws. First, this Part will discuss the standard that the Court laid out in *South Dakota v. Dole*.¹⁴¹ Then it will apply the *Dole* test to child marriage laws and argue that conditioning federal education funds on states enacting certain child marriage laws is well within Congress’s spending power.

A. *South Dakota v. Dole*

South Dakota v. Dole involved a challenge to Congress’s enactment of 23 U.S.C. § 158, which required states to establish twenty-one as the minimum alcohol consumption and possession age, or risk losing federal highway funds.¹⁴² At the time, South Dakota

137. For example, if child marriage laws are effective at preventing early marriage, one would expect to see a large jump in the number of teens married the year after the age of marriageability (that is, if the age of marriageability is sixteen, Dahl would expect to see a large jump in the number of children marrying at sixteen or seventeen in that state). See *id.* at 700.

138. *Id.*

139. *Id.* at 701 fig.3.

140. See *id.* at 700-02.

141. 483 U.S. 203, 207-08 (1987).

142. *Id.* at 205.

permitted individuals nineteen or older to purchase beer containing up to 3.2 percent alcohol, so it challenged the statute as a violation of the Twenty-First Amendment.¹⁴³

The Court in *Dole* made clear that the “Twenty-[F]irst Amendment grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system.”¹⁴⁴ However, the Court concluded that the Act was within Congress’s constitutional authority because Congress acted indirectly under its spending power to regulate state drinking age requirements.¹⁴⁵

The Constitution explicitly gives Congress the power to “lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common Defen[s]e and general Welfare of the United States.”¹⁴⁶ The Court concluded that “[i]ncident to this power, Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power ‘to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives.’”¹⁴⁷

However, the Court went on to say that Congress’s spending power is limited.¹⁴⁸ The Court then laid out five general restrictions on Congress’s spending power, which make up the *Dole* test.¹⁴⁹ First, Congress must exercise its spending power in pursuit of the general welfare, and the Court should give great deference to Congress’s decision about whether the expenditure serves the general welfare.¹⁵⁰

143. *Id.*

144. *Id.* (quoting *Cal. Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 110 (1980)).

145. *See id.* at 206.

146. U.S. CONST. art. I, § 8, cl. 1.

147. *Dole*, 483 U.S. at 206 (quoting *Fullilove v. Klutznick*, 448 U.S. 448, 474 (1980)); *see also Lau v. Nichols*, 414 U.S. 563, 569 (1974) (holding that Congress can condition federal financial assistance on institutions’ compliance with § 601 of the Civil Rights Act); *Ivanhoe Irrigation Dist. v. McCracken*, 357 U.S. 275, 295 (1958) (holding that it “is the power of the Federal Government to impose reasonable conditions on the use of federal funds”); *Oklahoma v. U.S. Civil Serv. Comm’n*, 330 U.S. 127, 144 (1947) (“The offer of benefits to a state by the United States dependent upon cooperation by the state with federal plans, assumedly for the general welfare, is not unusual.”).

148. *See Dole*, 483 U.S. at 207 (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17, 17 n.13 (1981)) (“The spending power is of course not unlimited, but is instead subject to several general restrictions articulated in our cases.”).

149. *See id.* at 207-08, 211.

150. *See id.* at 207.

Second, if Congress uses its spending power, it “must do so unambiguously ..., enabl[ing] the States to exercise their choice knowingly, cognizant of the consequences of their participation.”¹⁵¹ Third, there must be a nexus between the expenditure and the condition Congress imposes.¹⁵² Fourth, the condition imposed on the expenditure must not violate individuals’ Constitutional rights.¹⁵³ Finally, the “financial inducement offered by Congress [must not] be so coercive as to pass the point at which ‘pressure turns into compulsion.’”¹⁵⁴

In *Dole*, the Court concluded that Congress’s main goal with respect to highway funds was safe interstate travel, and varying drinking ages amongst states frustrated that goal.¹⁵⁵ The Court adopted findings of a Presidential Commission appointed to study road accidents and deaths relating to alcohol and concluded that the “lack of uniformity in the States’ drinking ages created ‘an incentive to drink and drive’ because ‘young persons commute[d] to border States where the drinking age [was] lower.’”¹⁵⁶ The Court further found that conditioning highway funding on whether the state established a minimum drinking age of twenty-one was not coercive because the state only risked losing a relatively small percentage of highway safety funds.¹⁵⁷ Finally, the fact that the condition was successful at achieving its objective—encouraging states to set the minimum drinking age requirement at twenty-one to lower the

151. *Id.* at 207 (alteration in original) (quoting *Halderman*, 451 U.S. at 17).

152. *See id.* at 207-08; *see also* *Massachusetts v. United States*, 435 U.S. 444, 461 (1978) (plurality opinion) (holding that conditions imposed under the spending power must be “reasonably related to the federal interest in particular national projects or programs”); *Ivanhoe Irrigation Dist.*, 357 U.S. at 295 (“[T]he Federal Government may establish and impose reasonable conditions relevant to federal interest in the project and to the over-all objectives thereof.”).

153. *See Dole*, 483 U.S. at 208; *see also* *Lawrence County v. Lead-Deadwood Sch. Dist. No. 40-1*, 469 U.S. 256, 269-70 (1985) (noting that Congress cannot use the spending power to impose conditions that violate the Constitution); *Buckley v. Valeo*, 424 U.S. 1, 90-91 (1976) (holding that Congress’s spending power is not limited by express grants of legislative power in the Constitution).

154. *Dole*, 483 U.S. at 211 (quoting *Steward Mach. Co. v. Davis*, 301 U.S. 548, 590 (1937)).

155. *Id.* at 208-09.

156. *Id.* at 209 (citation omitted).

157. *Id.* at 211.

rates of alcohol-related accidents and fatalities—did not render the condition coercive.¹⁵⁸

B. Applying Dole to Uniform Child Marriage Laws

Next, this Part will apply the *Dole* test to argue that Congress should use its spending power to enact rigorous uniform child marriage laws. Like state drinking age requirements, child marriage laws lack uniformity and frustrate Congress's goal and duty to protect children and ensure that every child has access to a quality education.¹⁵⁹ Lack of uniformity in child marriage laws state-to-state has created an end-run around stricter laws, allowing children to enter into early marriages.¹⁶⁰ Whether by force or by choice, early marriages have long-lasting and devastating implications for the child and society at large.¹⁶¹ Thus, federal reform is necessary to address these inconsistencies and ensure the safety of young and vulnerable children. Applying the five-part *Dole* test, Congress should utilize its spending power to condition receipt of federal education grants on states enacting rigorous child marriage laws similar to what Delaware and New Jersey recently implemented.¹⁶² Specifically, Congress should condition the receipt of 10 percent of the states' federal education funding on the requirement that states set the minimum age of marriageability at eighteen, with no exceptions (even for judicial emancipation or parental consent).

In 2018, Delaware became the first state to ban child marriage when it set the minimum age of marriage at eighteen, with no exceptions; New Jersey followed shortly after.¹⁶³ Delaware's and New Jersey's child marriage laws have effectively removed parental consent, pregnancy, and judicial emancipation from the decision regarding whether a child should marry, recognizing that minors have insufficient legal capacity to enter into certain agreements, so child

158. *Id.*

159. *See infra* Part V.B.3.

160. *See, e.g.,* Dahl, *supra* note 13, at 702-04 (studying how young couples evaded child marriage age restrictions in Tennessee by crossing the state's border).

161. *See supra* Part III.

162. *See* DEL. CODE ANN. tit. 13, § 123(a) (2018); N.J. STAT. ANN. § 37:1-6 (West 2018).

163. DEL. CODE ANN. tit. 13, § 123(a); § 37:1-6.

marriage should not be treated any differently.¹⁶⁴ However, two states bordering Delaware—Pennsylvania and Maryland—vary in their minimum age of marriageability requirements.¹⁶⁵ Similarly, two states bordering New Jersey—Pennsylvania and New York—also have varying child marriage requirements.¹⁶⁶ Therefore, despite Delaware’s and New Jersey’s laudable efforts to protect vulnerable children, it remains all too easy for children to travel to a neighboring state to get around Delaware’s and New Jersey’s strict state marriage laws.

This Part argues that (1) uniform child marriage laws increase the general welfare of society, (2) the condition is unambiguous, (3) conditioning federal education funds on strict child marriage requirements has a close nexus to federal education funding, (4) stricter child marriage laws do not infringe on either children’s or parents’ constitutional rights, and (5) conditioning federal education funds on strict child marriage requirements does not rise to the level of coerciveness necessary to invalidate the law.

1. General Welfare and Child Marriage Laws

It is worth repeating that the Court has historically shown great deference to Congress regarding the welfare-maximizing capacity of conditions attached to expenditures.¹⁶⁷ Further, it is not hard to argue that strict child marriage requirements further society’s general welfare. As previously discussed in Part III, child marriage has numerous negative consequences: increased high school drop-out

164. See Feleke, *supra* note 89.

165. Pennsylvania has no minimum age of marriageability, and allows children under sixteen to marry if the court decides it is in the “best interest” of the child. 23 PA. CONS. STAT. § 1304(b) (2018). Maryland sets the minimum age of marriageability at fifteen, and allows children to marry with parental consent if the child is pregnant. MD. CODE ANN., FAM. LAW § 2-301(b)-(c) (West 2018).

166. N.Y. DOM. REL. LAW § 15(3) (McKinney 2018) (setting seventeen as the minimum age of marriageability); 23 PA. CONS. STAT. § 1304(b) (setting no minimum age of marriageability).

167. See *South Dakota v. Dole*, 483 U.S. 203, 207 (1987); see also *Helvering v. Davis*, 301 U.S. 619, 640-41 (1937) (discussing the fluidity of general welfare and the need for Congressional discretion to determine what is in the general welfare).

rates, increased chance of future poverty,¹⁶⁸ and negative mental and physical health implications.¹⁶⁹

Further, child marriage's negative effects are not limited to forced child marriages because even consensual child marriages can lead to serious and long-term consequences. For example, marriages between couples in their mid-teens have approximately an 80 percent chance of divorce.¹⁷⁰ Because it is extremely likely that the young female partner will drop out of school, rather than the young male,¹⁷¹ if the couple divorces later in life (which is statistically probable)¹⁷² then the young girl will likely be left without the education or financial means to support herself or her children.¹⁷³ Further, most teens are not capable of accurately assessing short-term benefits versus long-term costs, which leads to teens engaging in risky behaviors.¹⁷⁴ Because early child marriage's long-term effects are well studied and documented,¹⁷⁵ and teens cannot reliably consider the long-term implications of their short-term actions,¹⁷⁶ it is necessary for Congress to use its spending power to urge states to enact stricter child marriage laws for children's general welfare.

Uniform child marriage laws are also a vital benefit to educating the United States' youth. As previously discussed, early child marriage has detrimental effects on young girls' future educational attainment, including a decreased likelihood of graduating high school and attending college.¹⁷⁷ Further, the United States has

168. See generally Dahl, *supra* note 13.

169. See Hamilton, *supra* note 28, at 1847-48 (noting the increased risk of domestic violence in early marriages); Le Strat et al., *supra* note 15, at 527-30 (discussing the increased risk of mental health issues associated with child marriage); MATHUR ET AL., *supra* note 115, at 6-9 (discussing the risk of physical harm to child brides and risks of early childbirth).

170. See Heaton, *supra* note 81, at 407 fig.2.

171. See Hamilton, *supra* note 28, at 1846.

172. See *id.* at 1820.

173. Cf. Dahl, *supra* note 13, at 690 ("Both teenage marriage and dropping out of high school are closely associated with a variety of negative outcomes, including poverty later in life.").

174. See Ted O'Donoghue & Matthew Rabin, *Risky Behavior Among Youths: Some Issues from Behavioral Economics*, in RISKY BEHAVIOR AMONG YOUTHS 29, 63 (Jonathan Gruber ed., 2001) (arguing that legislatures must create incentives for teens to consider the link between short-term decisions and long-term costs).

175. See *supra* Part III.

176. See O'Donoghue & Rabin, *supra* note 174, at 63.

177. TAHIRIH JUSTICE CTR., *supra* note 7.

historically considered providing strong public education as one of the most important government functions.¹⁷⁸ The state and federal government have a strong interest in ensuring the vitality of future generations, and a strong public education system is arguably the most important factor in achieving this objective.¹⁷⁹ Thus, regulating child marriage to reduce the risk of young girls dropping out of school would further society's general welfare, and help further the strong government interest in providing adequate education to future generations.

2. Conditions Imposed by Congress Must Be Unambiguous

In *South Dakota v. Dole*, the Supreme Court held that “we have required that if Congress desires to condition the States’ receipt of federal funds, it ‘must do so unambiguously ..., enabl[ing] the States to exercise their choice knowingly, cognizant of the consequences of their participation.’”¹⁸⁰ In other words, Congress must clearly and explicitly tell the states what condition Congress is placing on receipt of federal funds.¹⁸¹

In *Dole*, the Court held that conditioning federal highway funds on states setting the minimum drinking age at twenty-one “could not be more clearly stated by Congress.”¹⁸² Similarly, Congress could enact legislation conditioning receipt of federal public education funds on states enacting legislation setting the minimum age of marriageability at eighteen, with no exception. This would clearly and explicitly lay out what states must do; otherwise, the state risks losing federal public education funding. This clear condition would allow states to “exercise their choice knowingly, cognizant of the consequences of their participation.”¹⁸³ In sum, Congress should not have difficulty meeting *Dole*’s “unambiguous” requirement.

178. See *infra* note 189 and accompanying text.

179. See *infra* note 189 and accompanying text.

180. 483 U.S. 203, 207 (1987) (alteration in original) (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)).

181. See *Pennhurst*, 451 U.S. at 17.

182. *Dole*, 483 U.S. at 208.

183. See *Pennhurst*, 451 U.S. at 17.

3. *Nexus Between Child Marriage and Education*

When utilizing its spending power, Congress must also satisfy the nexus requirement.¹⁸⁴ The Court has not significantly elaborated on the nexus requirement to provide significant guidance for this analysis,¹⁸⁵ and the Court in *Dole* stated that its “cases have not required that [the Court] define the outer bounds of the ‘germaneness’ or ‘relatedness’ limitation on the imposition of conditions under the spending power.”¹⁸⁶ The Court in *Dole* found that the States frustrated Congress’s goal to provide interstate highway safety because the states lacked uniformity in minimum drinking age requirements.¹⁸⁷ Thus, Congress sufficiently met the nexus requirement because it conditioned federal funds on a method “reasonably calculated to address [the] particular impediment to a purpose for which the funds [we]re expended.”¹⁸⁸

Similarly, lack of uniformity amongst state child marriage laws frustrates Congress’s interest in educating future generations. Historically, public education has been regarded as one of the most important government functions.¹⁸⁹ In *Brown v. Board of Education*, the Supreme Court declared:

[Education] is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today, it is a principal instrument in awakening the child to cultural values, in preparing

184. *Dole*, 483 U.S. at 207-08 (quoting *Massachusetts v. United States*, 435 U.S. 444, 461 (1978) (plurality opinion)) (“[C]onditions on federal grants might be illegitimate if they are unrelated ‘to the federal interest in particular national projects or programs.’”).

185. *See id.* at 207; *see also Massachusetts*, 435 U.S. at 461 (“We have repeatedly held that the Federal Government may impose appropriate conditions on the use of federal property.”); *Ivanhoe Irrigation Dist. v. McCracken*, 357 U.S. 275, 295 (1958) (“The lesson of these cases is that the Federal Government may establish and impose reasonable conditions.”).

186. *Dole*, 483 U.S. at 208 n.3.

187. *Id.*

188. *Id.* at 209.

189. *See, e.g., Plyler v. Doe*, 457 U.S. 202, 221 (1982) (“[E]ducation has a fundamental role in maintaining the fabric of our society.”); *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972) (“[S]ome degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence.”); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (“The American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted.”).

him for later professional training, and in helping him adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.¹⁹⁰

Although the Court in *San Antonio Independent School District v. Rodriguez* held that children do not have a fundamental right to education, the Court went on to state that “[n]othing this Court holds today in any way detracts from our historic dedication to public education.”¹⁹¹ Thus, public education remains a vital duty of the American government.¹⁹²

Despite the importance of providing adequate education to all children in the United States, state legislatures have failed to address one of the most significant impediments to education: child marriage. Despite some states’ efforts to implement stricter child marriage requirements,¹⁹³ the child’s ability to travel to a neighboring state with looser child marriage requirements and evade the stricter laws frustrates individual state efforts.¹⁹⁴ Therefore, despite some states’ advancements, lack of uniformity is a major impediment to preventing child marriage and ensuring all children receive an adequate education.

Because lack of uniformity among states’ child marriage laws allows children to evade stricter marriage requirements, and child marriage frustrates Congress’s important government function to provide public education to all youth, federal education funding and minimum age of marriageability laws are sufficiently linked to meet the *Dole* nexus requirement.

4. Uniform Child Marriage Requirements Do Not Violate Children’s or Parents’ Constitutional Rights

Next, the Court has held that “constitutional provisions may provide an independent bar to the conditional grant of federal funds.”¹⁹⁵

190. 347 U.S. 483, 493 (1954).

191. 411 U.S. 1, 30 (1973).

192. *See id.*

193. *See, e.g.*, VA. CODE ANN. §§ 20-45.1(c), 20-48, 16.1-331 (2018).

194. *See Dahl, supra* note 13, at 702-03.

195. *South Dakota v. Dole*, 483 U.S. 203, 208 (1987).

The Court further interpreted this provision to mean that Congress cannot condition federal funds on a provision that requires states to engage in activity that violates individuals' constitutional rights.¹⁹⁶ This Part argues that constitutional challenges to federal child marriage reform will fail, including (1) federalism challenges, (2) Fourteenth Amendment Due Process challenges, and (3) First Amendment Free Exercise of Religion challenges.

a. Federalism and Uniform Child Marriage Laws

First, states could argue that marriage is an issue traditionally under state jurisdiction;¹⁹⁷ thus, it is improper for Congress to use its spending power to regulate child marriage laws. However, the Twenty-First Amendment explicitly reserved to states the power to set minimum drinking and alcohol possession requirements.¹⁹⁸ Although the Court in *Dole* found that states reserved the power to set the minimum drinking age in their respective jurisdictions, the Court held that the Twenty-First Amendment did not bar Congress from using its spending power to condition federal highway funds on states setting the minimum drinking age at twenty-one.¹⁹⁹ The Court stated that "the constitutional limitations on Congress when exercising its spending power are less exacting than those on its authority to regulate directly."²⁰⁰ In other words, although Congress cannot directly regulate state minimum drinking age requirements, it can achieve the objective indirectly through its spending power.²⁰¹ Similarly, although it might be improper for Congress to directly regulate states' child marriage requirements, Congress can still regulate child marriage under the spending power's "less exacting" standards.²⁰²

196. See *id.* at 210 ("[T]he [spending] power may not be used to induce the States to engage in activities that would themselves be unconstitutional.").

197. See *Loving v. Virginia*, 388 U.S. 1, 7 (1967) ("[T]he state court is no doubt correct in asserting that marriage is a social relation subject to the State's police power.").

198. U.S. CONST. amend. XXI, § 2 ("The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.").

199. See *Dole*, 483 U.S. at 209.

200. *Id.*; accord *United States v. Butler*, 297 U.S. 1, 66 (1936).

201. *Dole*, 483 U.S. at 209.

202. *Id.*

Second, states could also argue that federal regulation of child marriage laws would violate the Tenth Amendment,²⁰³ however, this argument was clearly rejected in *Dole*.²⁰⁴ The Court “held that a perceived Tenth Amendment limitation on congressional regulation of state affairs did not concomitantly limit the range of conditions legitimately placed on federal grants.”²⁰⁵ In other words, the Tenth Amendment does not bar Congress from using federal funds to encourage states to enact certain requirements,²⁰⁶ such as minimum child marriage standards. Therefore, the Tenth Amendment does not prohibit Congress from utilizing its spending power to encourage states to enact uniform child marriage laws.

b. Fourteenth Amendment and Uniform Child Marriage Laws

The United States Supreme Court has historically recognized marriage’s social value.²⁰⁷ In the 1967 landmark case *Loving v. Virginia*, the Supreme Court recognized marriage as a fundamental right.²⁰⁸ The *Loving* Court invalidated a Virginia statute that prohibited interracial marriage.²⁰⁹ In 2015, the Supreme Court decided another landmark case, *Obergefell v. Hodges*, which extended the fundamental right to marry to same-sex couples.²¹⁰

203. See U.S. CONST. amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”).

204. See *Dole*, 483 U.S. at 210.

205. *Id.*

206. See *Oklahoma v. U.S. Civil Serv. Comm’n*, 330 U.S. 127, 143 (1947) (“While the United States is not concerned with, and has no power to regulate, local political activities as such of state officials, it does have power to fix the terms upon which its money allotments to states shall be disbursed.”).

207. See, e.g., *Maynard v. Hill*, 125 U.S. 190, 205 (1888) (describing marriage as “creating the most important relation in life” and “as having more to do with morals and civilization of a people than any other institution”).

208. See 388 U.S. 1, 12 (1967) (“Marriage is one of the ‘basic civil rights of man,’ fundamental to our very existence and survival.... To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes ... is surely to deprive all the State’s citizens of liberty without due process of law.” (citation omitted)).

209. *Id.* at 2, 12.

210. See 135 S. Ct. 2584, 2608 (2015).

Because marriage is considered a fundamental right in the United States, a child could argue that restricting child marriage under any circumstances violates the child's fundamental right to marry under the Fourteenth Amendment's Substantive Due Process Clause.²¹¹ However, courts have continuously rejected these challenges and upheld the constitutionality of child marriage restrictions.²¹²

In *Moe v. Dinkins*, the plaintiffs challenged a New York statute requiring parental consent for children under the age of eighteen to marry.²¹³ The Court upheld the New York statute: "While it is true that a child, because of his minority, is not beyond the protection of the Constitution, the Court has recognized the State's power to make adjustments in the constitutional rights of minors."²¹⁴ The Court also noted that marriage is a topic that, despite its fundamental importance, has been subject to regulations and limitations.²¹⁵ Here, the Court declined to subject the statute to strict scrutiny—the standard that typically applies to state actions that deprive individuals of fundamental rights—because the unique position of minors and marriage under the law lends itself to a need for regulations enacted for society's general welfare.²¹⁶ The Court ultimately applied rational basis scrutiny to conclude that the New York statute was "rationally related to the State's legitimate interests in mature decision-making with respect to marriage by minors and preventing unstable marriages."²¹⁷

Challenging the validity of child marriage restrictions under the Fourteenth Amendment's Substantive Due Process Clause would also fail because the minimum age of marriageability requirement is rationally related to the federal government's interest in preventing children from evading states' child marriage requirements.²¹⁸ The uniform child marriage restrictions are also rationally related to the government's interest in ensuring that children continue to be educated, preventing unstable marriages, and

211. See Hamilton, *supra* note 28, at 1861-62.

212. See, e.g., *Moe v. Dinkins*, 533 F. Supp. 623, 630-31 (S.D.N.Y. 1981).

213. *Id.* at 625.

214. *Id.* at 628 (citation omitted).

215. See *id.* at 629.

216. See *id.*

217. *Id.* at 630-31.

218. See *supra* Part IV.

protecting young girls' physical and mental well-being.²¹⁹ In sum, uniform restrictions on child marriage in the United States will not violate a child's constitutional rights under the Fourteenth Amendment.

It is also possible that the parents of children who wish to marry under the age of eighteen could challenge uniform minimum age of marriageability requirements under the Fourteenth Amendment, alleging that the restriction infringes on the "liberty of parents and guardians to direct the upbringing and education of children under their control,"²²⁰ which is also a fundamental right.²²¹ However, it is well established that the state has the capacity to enact regulations to ensure children's well-being,²²² and states have been regulating child marriage since the colonial era.²²³

Finally, *Maynard v. Hill* sums up the government's power to regulate child marriage despite the individual's fundamental right to marry:

Marriage, as creating the most important relation in life, as having more to do with the morals and civilization of a people than any other institution, has always been subject to the control of the legislature. That body prescribes the age at which parties may contract to marry, the procedure or form essential to constitute marriage, the duties and obligations it creates, its effects upon the property rights of both, present and prospective, and the acts which may constitute grounds for its dissolution.²²⁴

In sum, given the long history of government regulated marriage laws, it is unlikely that a child or parent will prevail on a Fourteenth Amendment Substantive Due Process challenge against Congress using its spending power to encourage states to enact uniform child marriage requirements.

219. See *supra* Part III.

220. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534-35 (1925).

221. See *Troxel v. Granville*, 530 U.S. 57, 66 (2000) ("[W]e have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children."); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected.").

222. See Hamilton, *supra* note 28, at 1862.

223. See *supra* Part I.B.

224. 125 U.S. 190, 205 (1888).

c. First Amendment and Child Marriage

It is also possible that an individual could raise a First Amendment Free Exercise of Religion challenge against the government using its spending power to encourage uniform child marriage laws. In fact, former New Jersey Governor Chris Christie stated that religion was a major concern when he decided to veto a 2017 New Jersey bill that would have made New Jersey the first state to enact a blanket ban on child marriage.²²⁵ Specifically, Governor Christie commented that “[a]n exclusion without exception would violate the cultures and traditions of some communities in New Jersey.”²²⁶

However, the First Amendment Free Exercise of Religion Clause does not bar Congress from using its spending power to encourage states to enact uniform child marriage laws. First, as previously noted, the Supreme Court has already held that “[m]arriage ... has always been subject to the control of the legislature.”²²⁷

Second, the Court has held that laws that are (1) generally applicable, and (2) neutral toward religion, are presumptively constitutional and subject to rational basis scrutiny.²²⁸ In *Employment Division v. Smith*, the Court articulated this present standard stating that “the right of free exercise does not relieve an individual of the obligation to comply with a ‘valid and neutral law of general applicability.’”²²⁹

The Court already validated legislative restrictions on marriage in *Reynolds v. United States*, despite First Amendment Freedom of Religion challenges to state laws that criminalized polygamous marriages.²³⁰ Like in *Reynolds*, it is well within the legislature’s spending power to regulate the age at which children can marry without

225. See Matt Friedman, *Ban on Child Marriages Conditionally Vetoed by Christie*, POLITICO (May 11, 2017, 1:13 PM), <https://www.politico.com/states/new-jersey/story/2017/05/11/ban-on-child-marriages-conditionally-vetoed-by-christie-111987> [<https://perma.cc/W5RZ-DCS6>].

226. Michael Booth, *Christie, Citing Religious Custom, Vetoes Under-18 Marriage Ban*, N.J. L.J. (May 12, 2017, 4:12 PM), <https://www.law.com/njlawjournal/almID/1202786075555/?slreturn=20171017160343> [<https://perma.cc/D4LD-WJSC>].

227. See *Maynard*, 125 U.S. at 205.

228. See *Emp’t Div. v. Smith*, 494 U.S. 872, 879 (1990).

229. *Id.* (quoting *United States v. Lee*, 455 U.S. 252, 263 n.3 (1982) (Stevens, J., concurring in judgment)).

230. See 98 U.S. 145, 168 (1878).

violating the Free Exercise Clause under the *Smith* standard.²³¹ Here, the government is enacting a neutral law with the secular purpose—to protect child welfare. The state marriage requirements also apply to all children, irrespective of their religious beliefs. Because uniform child marriage laws are both neutral towards religion and generally applicable, it would not violate the Free Exercise Clause to enact such laws.

5. *Conditioning Federal Education Funds on Child Marriage Regulations Is Not Coercive*

The final requirement articulated in *Dole* is that “the financial inducement offered by Congress [cannot] be so coercive as to pass the point at which ‘pressure turns into compulsion.’”²³² Thus, the funds conditioned on a particular requirement cannot be such that states realistically have no other choice than to abide by congressional demands.²³³ However, the Court has offered little guidance on establishing a threshold to determine coerciveness. In *Steward Machine Co. v. Davis*, the Court suggested that a funding condition becomes coercive when a state accepts the funding “under the strain of a persuasion equivalent to undue influence,” and that courts should use common sense to make this determination.²³⁴ In *Dole*, Congress conditioned 5 percent of federal highway funds on states setting the drinking age at twenty-one, which the Court found too minimal to consider coercive.²³⁵ In contrast, in *National Federation of Independent Business v. Sebelius*, Congress had conditioned states’ federal Medicaid funding—which represented approximately 10 percent of each state’s *overall budget*—on states expanding their Medicaid programs to include all individuals with income below 133 percent of the poverty line.²³⁶ In that case, the Court determined that this condition was too coercive to leave states with any real choice, thus invalidating the condition.²³⁷

231. See *Smith*, 494 U.S. at 879.

232. *South Dakota v. Dole*, 483 U.S. 203, 211 (1987) (quoting *Steward Mach. Co. v. Davis*, 301 U.S. 548, 590 (1937)).

233. See *id.*

234. See 301 U.S. at 589-90.

235. *Dole*, 483 U.S. at 211.

236. See 567 U.S. 519, 542 (2012).

237. See *id.* at 581-82.

Here, federal funding makes up approximately 8 percent of states' total education budgets.²³⁸ In fact, the majority of funding for education comes from state and local funding (approximately 92 percent at the elementary and secondary level).²³⁹ Because federal education funding makes up such a small percentage of *overall* education spending, it is unlikely that the Court would find that withholding 10 percent of the otherwise available federal education funds coercive. In contrast, in *National Federation of Independent Business v. Sebelius*, 50-83 percent of Medicaid funding came from the federal government.²⁴⁰ Therefore, states relied heavily on federal funds to sustain their Medicaid programs, and withholding federal funds from the program left states with no choice other than to accept Congress's condition.²⁴¹

Because States do not substantially rely on federal education funds in the first place, withholding a mere 10 percent of otherwise available federal education funds is not so coercive as to leave states with no real choice other than to set the minimum age of marriageability at eighteen, without exception. States are still free to enact their own child marriage law requirements and forfeit a mere 0.8 percent of their overall education budget.

VI. WHY THE TAXING POWER IS INSUFFICIENT TO ADDRESS CHILD MARRIAGE

An alternative to Congress using its spending power is Congress using its taxing power to disincentivize child marriage. However, this Part argues that the taxing power is an ineffective mechanism for preventing child marriage and would leave too much state variation to effectively prevent child marriage.

The Constitution gives Congress the power to "lay and collect [t]axes."²⁴² The Supreme Court has interpreted this provision as granting Congress broad power to tax in order to raise revenue.²⁴³

238. *The Federal Role in Education*, U.S. DEP'T EDUC., <https://www2.ed.gov/about/overview/fed/role.html> [<https://perma.cc/V78G-ZH8F>] (last modified May 25, 2017).

239. *Id.*

240. *Sebelius*, 567 U.S. at 682 (Scalia, J., dissenting).

241. *See id.* at 581-82 (majority opinion).

242. U.S. CONST. art. 1, § 8, cl. 1.

243. *Cf. Sebelius*, 567 U.S. at 564 (noting that an "essential feature of any tax" is that "[i]t produces at least some revenue for the Government").

However, Congress can only use its taxing power to raise revenue, and cannot impose a penalty through the taxing power.²⁴⁴ However, the incidental purpose of influencing conduct will not invalidate Congressional taxation.²⁴⁵ Therefore, Congress could enact a tax on marriage licenses for children marrying under the age of eighteen, as long as the tax was not so high as to qualify as a penalty. In this context, the taxing power would be insufficient to prevent child marriage. The current system of states setting the minimum age of marriageability is problematic because lack of uniformity allows children to evade strict marriage laws.²⁴⁶ The taxing power would not address this issue, because the power does not allow Congress to encourage uniform laws; rather, the taxing power simply creates a monetary disincentive for early child marriage.²⁴⁷ Although this disincentive might prevent a handful of child marriages, it is unlikely that it will prevent forced child marriages or marriages entered into because of strong religious beliefs. Children under the age of eighteen would still be allowed to marry, but the child or parent would have to pay a tax to do so. This practice would not protect children from early child marriage's harmful consequences, and would not be an effective method to prevent child marriage.

CONCLUSION

After enduring years of horrific sexual and physical abuse at the hands of her adult husband, Sherry Johnson escaped her abusive marriage.²⁴⁸ Now, Ms. Johnson is working with the Florida legislature to pass an absolute ban on child marriage to protect children in her home state of Florida.²⁴⁹

Despite success stories such as Ms. Johnson's, child marriage continues to plague the United States and creates devastating, lifelong consequences for children. Although some states have taken action

244. In *Bailey v. Drexel Furniture Co.*, the Court invalidated Congress's implementation of a tax on companies that did not comply with child labor standards. 259 U.S. 20, 34, 44 (1922). In that case, the Court found Congress crossed the line from raising revenue and was instead imposing a penalty. *Id.* at 39, 44.

245. *Sebelius*, 567 U.S. at 537.

246. *See supra* Part VI.

247. *See supra* note 244 and accompanying text; *cf. Sebelius*, 567 U.S. at 585.

248. Basu, *supra* note 1.

249. *Id.*

to slow this devastating trend, a lack of uniformity among state laws frustrates their efforts. Therefore, national uniformity in state marriage laws is necessary to protect the welfare of future generations. To achieve this national uniformity, Congress must condition 10 percent of states' federal education funds on enacting statutes setting the minimum age of marriageability at eighteen, with no exceptions. As previously discussed, this requirement is well within the parameters that the Supreme Court established in *South Dakota v. Dole*: (1) child marriage laws are for children's and society's general welfare, (2) the requirement is unambiguous, (3) there is a close nexus between lower educational attainment and child marriage's negative effects, (4) there are no independent constitutional bars to the condition, and (5) the financial incentive is not so coercive as to invalidate the requirement.²⁵⁰ Therefore, Congress should use its spending power to achieve uniformity among state child marriage laws. Only after the United States has achieved uniformity in child marriage laws will it be able to protect children from child marriage's horrific consequences and increase society's well-being.

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250. See *supra* Part V.B.

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