Civil Marriage Equality

★ The state has the same interest in promoting family stability for same-sex couples as it has in promoting traditional marriage between men and women.

Civil Marriage Equality

Summary

- **State and federal laws routinely discriminate against same-sex couples.**
- **There is a fast-growing movement toward civil marriage and civil union equality.**
- **Civil marriage would build on America's tradition of moving civil rights forward and erasing the inequities of the past.**
- **Civil marriage, and to a lesser extent civil unions, protect couples.**
- **Civil marriage promotes stable, long-lasting relationships between same-sex partners.**
- **Civil marriage strengthens families and safeguards children.**
- **No religious institution would be required to perform a ceremony.**
- **Public support for civil marriage and civil unions is growing.**
- **States have a mixed record on providing benefits to domestic partners.**

State and federal laws routinely discriminate against same-sex couples.

The U.S. General Accounting Office has listed more than 1,000 federal rights, protections and responsibilities automatically granted to married heterosexual couples but denied to same-sex couples.[1] States have similar laws that protect married partners but not same-sex partners, including:

- The right to visit a sick spouse in the hospital.
- The right to make decisions during a medical emergency.
- The right to leave work to care for an ill spouse.
- The right to access pensions, workers' compensation, and survivor benefits.
- The right to sue for wrongful death of a spouse.
- The right to inherit without a will.

There is a fast-growing movement toward civil marriage and civil union equality.

In November 2003, the Supreme Judicial Court of Massachusetts ruled that state law must allow same-sex couples to marry. The state constitution guarantees "the right to marry the person of one's choice" regardless of gender, the Court decided. In June 2003, an Ontario appeals court ruled that the Canadian constitution requires civil marriage equality for same-sex couples, which led to the legalization of same-sex marriage in Canada. In December 1999, the Vermont Supreme Court ruled that it was unconstitutional to deny marriage licenses to same-sex couples in that state, which led to the legalization of same-sex civil unions. More than ten nations, including Belgium, Denmark, Germany, Iceland, Netherlands, Portugal and Sweden, already allow same-sex couples to marry or enter into federally recognized domestic partnerships.

Civil marriage would build on America's tradition of moving civil rights forward and erasing the inequities of the past.

This is not the first time in our country that a group of people has been denied the freedom to marry. African American slaves were not permitted to marry. There was a time when Asian Americans were not permitted to marry in some Western states. And it was not until 1967 that the U.S. Supreme Court struck down Jim Crow state laws that made interracial marriage illegal. Clearly, Americans have the capacity to move beyond discrimination.

Civil marriage, and to a lesser extent civil unions, protect couples.

A state civil union law grants same-sex couples the rights of married couples, but only within that state. Civil marriages would likely be recognized across state lines under the U.S. Constitution's full faith and credit clause.

Civil marriage promotes stable, long-lasting relationships between same-sex partners.

Civil marriage is not just about benefits. Marriage also imposes responsibilities on the partners for each other's welfare and the welfare of their dependents. The state has the same interest in promoting family stability for same-sex couples as it has in promoting traditional marriage between men and women. Married couples are viewed and treated

differently than single individuals by the state, by friends, family and the rest of society, and by each other. Setting aside the issue of discrimination, it is illogical for government to promote marriage for some but not for all.

Civil marriage strengthens families and safeguards children.

Children are more secure if they are raised in homes with two loving parents who have a legal relationship with them and can share the responsibility of parenthood. According to conservative estimates from the 2000 census, there are more than 1 million children being raised by same-sex couples in the United States.[2] Without the ability to establish a legal relationship to both parents, children of same-sex couples are left without important protections, such as survivor benefits. These children should not be penalized just because their parents are gay.

No religious institution would be required to perform a ceremony.

Just as no religious institution can be required by the government to marry an interfaith couple, no religious institution could be told to marry a same-sex couple. Right now, Reform Judaism, Unitarianism, and many United Church of Christ congregations and Quaker meetings do sanction same-sex unions. When the government refuses to honor marriages blessed by these religious groups, it consequently refuses to honor their religious freedom.

Public support for civil marriage and civil unions is growing.

An August 2003 poll jointly conducted by the Democratic polling firm Hart Research and the Republican firm American Viewpoint found that, by a margin of 50 to 47 percent, Americans support granting civil marriage licenses to gay and lesbian couples as long as religious institutions do not have to recognize or perform these marriages. In a September 2003 Gallup poll, only 35% of Americans said that same-sex couples "should not be allowed all the same legal rights as married couples in every state" when given three choices: support, opposition or "it doesn't matter." The concept of same-sex marriage has steadily gained support in recent years, and that support is likely to increase. In 1996, only 27 percent supported same-sex marriage, compared to 50 percent today. When polls are broken down by age group, the younger the respondent, the stronger the support for same-sex marriage.

States have a mixed record on providing benefits to domestic partners.

In 2003, California enacted a law that provides registered domestic partners almost all of the state-conferred rights and responsibilities of spouses. In Hawaii, same-sex couples are able to formalize their relationships under the state's reciprocal beneficiary statute, which entitles registered same-sex couples to many rights available to married spouses, including those associated with survivorship, inheritance, property ownership, and insurance. Ten states (CA, CT, IA, ME, NM, NY, OR, RI, VT, WA) and the District of Columbia offer domestic partner benefits to the same-sex partners of public employees, as do several dozen cities and counties. Nonetheless, 37 states have passed laws that explicitly prohibit the recognition of marriage between same-sex couples. The 13 which have not passed such laws are CT, MD, MA, NH, NJ, NM, NY, OH, OR, RI, VT, WI and WY.

Federal law against same-sex marriage is unconstitutional.

In 1996, Congress passed an anti-gay marriage bill called the Defense of Marriage Act (DOMA). Legal scholars argue that DOMA flagrantly violates the "full faith and credit" clause of the U.S. Constitution. The issue has never been resolved in court.

This policy summary relies in large part on information from Human Rights Campaign, the National Center for Lesbian Rights, and the National Gay and Lesbian Task Force.

Endnotes

[1] U.S. General Accounting Office, "Tables of Laws in the United States Code Involving Marital Status, by Category," 1997.

[2] U.S. Census Bureau, "Married-Couple and Unmarried-Partner Households," 2003.

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For more information...

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The Federation of Lesbian, Gay, Bisexual and Transgender Advocacy Organizations
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www.federationlgbt.org

Human Rights Campaign
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www.hrc.org

Lambda Legal Defense and Education Fund
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Civil Marriage Equality Act

SECTION 1. SHORT TITLE

This Act shall be called the "Civil Marriage Equality Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. The state has a strong interest in promoting marriage to encourage close, stable and lasting families, and to foster strong economic and social support systems among all family members.

2. Marriage brings with it numerous benefits, responsibilities and protections, both for spouses and for their children.

3. Without the protections, benefits and responsibilities associated with marriage, same-sex couples suffer many obstacles and hardships.

(B) PURPOSE—This law is enacted so that same-sex couples shall be eligible to marry in the same manner and with the same requirements as opposite-sex couples, and that same-sex marriages legally performed outside of the state shall be recognized in the same manner and with the same requirements as opposite-sex marriages performed outside of the state.

SECTION 3. CIVIL MARRIAGE EQUALITY

(A) In section XXX, after "The following marriages are prohibited:" delete "a marriage between persons of the same sex."

(B) In section XXX, paragraph XXX [any language that blocks civil marriage equality] is deleted.

(C) In section XXX, insert: "No provision of state or local law shall be construed to prohibit, or prevent the recognition of, marriages between persons of the same gender."

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2004

Civil Marriage Equality

Civil Union Equality Act

SECTION 1. SHORT TITLE

This Act shall be called the "Civil Union Equality Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. The state has a strong interest in promoting marriage to encourage close, stable and lasting families, and to foster strong economic and social support systems among all family members.

2. Marriage brings with it numerous benefits, responsibilities and protections, both for spouses and for their children.

3. Without the protections, benefits and responsibilities associated with marriage, same-sex couples suffer many obstacles and hardships.

4. While a system of civil unions does not bestow the status of marriage, it will significantly improve the legal protections afforded to same-sex couples.

(B) PURPOSE—This law is enacted to provide eligible same-sex couples the opportunity to obtain the benefits, protections, rights and responsibilities afforded to opposite-sex couples by marriage.

SECTION 3. CIVIL UNION EQUALITY

In section XXX, the following new paragraphs shall be inserted:

(A) ELIGIBILITY FOR CIVIL UNION—Two persons may form a civil union if they are of the same sex and otherwise meet the requirements for marriage set forth in section XXX [the section of state law applying to marriage].

(B) RIGHTS AND RESPONSIBILITIES WITHIN A CIVIL UNION

1. A civil union shall provide those joined in it with a legal status equivalent to marriage. All laws of the state, whether they derive from statute, administrative or court rule, policy, common law, or any other source of civil law, that are applicable to marriage shall also be applicable to civil unions.

2. Parties joined in a civil union shall have all the same benefits, protections, rights and responsibilities under law, whether they derive from statute, administrative or court rule, policy, common law, or any other source of civil law, as are granted to spouses in a marriage.

3. Parties joined in a civil union shall be included in any definition or use of the terms "spouse," "family," "immediate family," "dependent," "next of kin," "husband," "wife," or other terms that denote the spousal relationship, as those terms are used throughout state law.

4. The term marriage as it is used throughout state law, whether in statutes, administrative or court rule, policy, common law, or any other source of civil law, shall be read, interpreted, and understood to include marriage and civil union.

5. Parties to a civil union may modify the terms, conditions, or effects of their civil union in the same manner and to the same extent as married persons who execute a pre-nuptial agreement or other agreement recognized and enforceable under the law, setting forth particular understandings with respect to their union.

(C) ADMINISTRATION AND ENFORCEMENT

1. The [state registry of vital statistics] shall provide civil union license and certificate forms to all city and county clerks, and shall keep a record of all civil unions and the dissolution thereof.

2. The [family courts] shall have jurisdiction over all proceedings relating to the dissolution of civil unions. The dissolution of civil unions shall follow the same rules and procedures, and be subject to the same substantive rights and obligations, that are involved in the dissolution of marriage.

3. To the extent that state law adopts, refers to, or relies upon provisions of federal law, parties joined in civil unions shall be treated under the law of the state as if federal law recognized a civil union in the same manner as the law of the state.

4. This section shall be construed liberally in order to secure to eligible couples the option of a legal status with all the attributes, effects, benefits and protections of marriage.

SECTION 4. NONCONFORMING SECTIONS

In section XXX, paragraph XXX [any language that blocks civil union equality] is deleted.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on July 1, 2004.