Should Same-Sex Couples Be Able to Marry?

Instructions: Type out the answers to the questions below.

Questions:

1. According to the Human Rights Campaign, what are the privileges that homosexuals do not have access to if not allowed to marry?

2. According to the Human Rights Campaign, why can’t same-sex couples go to a lawyer for financial rights normally afforded to married couples?

3. Discuss in detail Cornyn’s primary arguments against same-sex marriages.

4. Do you believe that same-sex couples should be able to marry? What points from either author did you find most compelling?
ISSUE 10

Should Same-Sex Marriage Be Legal?

YES: Human Rights Campaign, from Answers to Questions about Marriage Equality (Human Rights Campaign, 2009)

NO: John Cornyn, from “In Defense of Marriage,” National Review (July 2009)

ISSUE SUMMARY

YES: The Human Rights Campaign (HRC), America’s largest gay and lesbian organization, explains why same-sex couples should be afforded the same legal right to marry as heterosexual couples.

NO: John Cornyn, United States senator from Texas, says a constitutional amendment is needed to define marriage as permissible only between a man and a woman. Senator Cornyn contends that the traditional institution of marriage needs to be protected from activist courts that would seek to redefine it.

Many people believe that a person should have the same rights as anyone else, regardless of their race, age, gender—or sexual orientation. When this discussion moves into the arena of same-sex marriage, however, those beliefs start to waver a bit. The past few years have seen the topic of same-sex marriage rush into the forefront of the news and other media.

Vermont became the first state to make civil unions legal between two people of the same sex. Although a same-sex couple cannot have a marriage license or refer to their union as a marriage, the benefits are the same as they would be for a heterosexual marriage. These unions are not, however, recognized in any other state. This is due in great part to the Defense of Marriage Act, which was signed into law in 1996 by President Bill Clinton. This Act says that no state is required to recognize a same-sex union, and defines marriage as being between a man and a woman only. Therefore, same-sex unions that are legal in one state do not have to be recognized as legal in another. In anticipation of efforts to have state recognition of civil unions, over 30 states have passed legislation saying they would not recognize a same-sex union that took place in another state.
In the 2004 national election, few issues were more hotly debated than same-sex marriage. In that election, 11 states passed constitutional amendments that effectively banned same-sex marriage. President Bush was quoted as saying "The union of a man and a woman is the most enduring human institution, honored and encouraged in all cultures and by every religious faith." Political conservatives claimed that the election results indicated that the country generally rejects same-sex marriage. President Obama also opposes same-sex marriage but does not believe a constitutional ban is necessary. However, beneath the political rhetoric are questions about what is really wrong with gays and lesbians being granted the same legal rights of heterosexual couples.

Those who oppose same-sex marriage believe that marriage is, and always has been, between a man and a woman. They believe that a key part of marriage for many heterosexual couples is reproduction or another type of parenting arrangement, such as adoption. In those cases, they believe that any child should have two parents, one male and one female (see Issue 11). Many do not oppose granting domestic partner benefits to same-sex partners, or even, in some cases, civil unions. They do, however, believe that if lesbian and gay couples were allowed to marry and to receive the legal and social benefits thereof, it would serve only to further erode the institution of marriage as it is currently defined, which, in the United States, boasts one divorce for every two marriages.

Supporters of same-sex marriage believe that if lesbian and gay couples wish to make a lifetime commitment, they should be afforded the same rights, privileges, and vocabulary as heterosexual couples. While some would be as happy with the term "civil union," accompanied by equal rights, others believe that making marriage available to all is the only way to go.

An argument that is raised in this debate is that granting same-sex couples the right to marry would open the door for adult pedophiles to petition to marry the children with whom they engage in their sexual relationships. Most lesbian and gay individuals and their supporters find this offensive, as well as an invalid comparison. What do you think?

As you read, consider what is at the base of each argument. Consider the assertions pertaining to the effects of same-sex couples or their unions on different-sex couples. Do you agree? What effect do you think the relationship status, choices, and behaviors of heterosexual couples have on lesbian and gay individuals and couples?

In the following sections, information from the Human Rights Campaign provides facts about same-sex marriages and addresses commonly raised concerns opponents, such as Senator John Cornyn, raise, such as why do we need a federal constitutional amendment, when we already have the Defense of Marriage Act? He argues that the traditional institution of marriage is the "gold standard" for raising children.
Answers to Questions about Marriage Equality

10 Facts

1. Same-sex couples live in 99.3 percent of all counties nationwide.
2. There are an estimated 3.1 million people living together in same-sex relationships in the United States.
3. Fifteen percent of these same-sex couples live in rural settings.
4. One out of three lesbian couples is raising children. One out of five gay male couples is raising children.
5. Between 1 million and 9 million children are being raised by gay, lesbian and bisexual parents in the United States today.
6. At least one same-sex couple is raising children in 96 percent of all counties nationwide.
7. The highest percentages of same-sex couples raising children live in the South.
8. Nearly one in four same-sex couples includes a partner 55 years old or older, and nearly one in five same-sex couples is composed of two people 55 or older.
9. More than one in 10 same-sex couples include a partner 65 years old or older, and nearly one in 10 same-sex couples is composed of two people 65 or older.
10. The states with the highest numbers of same-sex senior couples are also the most popular for heterosexual senior couples: California, New York, and Florida.

Why Same-Sex Couples Want to Marry

Many same-sex couples want the right to legally marry because they are in love—either they just met the love of their lives, or more likely, they have spent the last 10, 20, or 50 years with that person—and they want to honor their relationship in the greatest way our society has to offer, by making a

These facts are based on analyses of the 2000 Census conducted by the Urban Institute and the Human Rights Campaign. The estimated number of people in same-sex relationships has been adjusted by 62 percent to compensate for the widely-reported undercount in the Census.

questions about the Equality

percent of all counties nationwide. 10 percent of all people living together in same-sex couples live in rural settings. Raising children. One out of five children are being raised by gay parents in the United States today. In 96 percent of all families raising children live in households that are composed of two related persons. A partner 55 years old. A partner 65 years old. A senior couple is composed of two persons who are above the age of 65. Same senior couples are...
Why Civil Unions Aren't Enough

Comparing marriage to civil unions is a bit like comparing diamonds to rhinestones. One is, quite simply, the real deal; the other is not. Consider:

- Couples eligible to marry may have their marriage performed in any state and have it recognized in every other state in the nation and every country in the world.
- Couples who are joined in a civil union in Vermont (the only state that offers civil unions) have no guarantee that its protections will even travel with them to neighboring New York or New Hampshire—let alone California or any other state.

Moreover, even couples who have a civil union and remain in Vermont receive only second-class protections in comparison to their married friends and neighbors. While they receive state-level protections, they do not receive any of the more than 1,100 federal benefits and protections of marriage.

In short, civil unions are not separate but equal—they are separate and unequal. And our society has tried separate before. It just doesn't work.

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<tr>
<th>Marriage:</th>
<th>Civil unions:</th>
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<td>• State grants marriage licenses to couples.</td>
<td>• State would grant civil union licenses to couples.</td>
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<td>• Couples receive legal protections and rights under state and federal law.</td>
<td>• Couples receive legal protections and rights under state law only.</td>
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<tr>
<td>• Couples are recognized as being married by the federal government and all state governments.</td>
<td>• Civil unions are not recognized by other states or the federal government.</td>
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<td>• Religious institutions are not required to perform marriage ceremonies.</td>
<td>• Religious institutions are not required to perform civil union ceremonies.</td>
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"I Believe God Meant Marriage for Men and Women. How Can I Support Marriage for Same-Sex Couples?"

Many people who believe in God—and fairness and justice for all—ask this question. They feel a tension between religious beliefs and democratic values that has been experienced in many different ways throughout our nation's history. That is why the framers of our Constitution established the principle of separation of church and state. That principle applies no less to the marriage issue than it does to any other.

Indeed, the answer to the apparent dilemma between religious beliefs and support for equal protections for all families lies in recognizing that marriage has a significant religious meaning for many people, but that it is also a legal contract. And it is strictly the legal—not the religious—dimension of marriage that is being debated now.
Granting marriage rights to same-sex couples would not require Christianity, Judaism, Islam, or any other religion to perform these marriages. It would not require religious institutions to permit these ceremonies to be held on their grounds. It would not even require that religious communities discuss the issue. People of faith would remain free to make their own judgments about what makes a marriage in the eyes of God—just as they are today.

Consider, for example, the difference in how the Catholic Church and the U.S. government view couples who have divorced and remarried. Because church tenets do not sanction divorce, the second marriage is not valid in the church’s view. The government, however, recognizes the marriage by extending to the remarried couple the same rights and protections as those granted to every other married couple in America. In this situation—as would be the case in marriage for same-sex couples—the church remains free to establish its own teachings on the religious dimension of marriage while the government upholds equality under law.

It should also be noted that there are a growing number of religious communities that have decided to bless same-sex unions. Among them are Reform Judaism, the Unitarian Universalist Association, and the Metropolitan Community Church. The Presbyterian Church (USA) also allows ceremonies to be performed, although they are not considered the same as marriage. The Episcopal Church and United Church of Christ allow individual churches to set their own policies on same-sex unions.

“This Is Different from Interracial Marriage. Sexual Orientation Is a Choice.”

“We cannot keep turning our backs on gay and lesbian Americans. I have fought too hard and too long against discrimination based on race and color not to stand up against discrimination based on sexual orientation. I’ve heard the reasons for opposing civil marriage for same-sex couples. Cut through the distractions, and they stink of the same fear, hatred, and intolerance I have known in racism and in bigotry.”


Decades of research all point to the fact that sexual orientation is not a choice, and that a person’s sexual orientation cannot be changed. Who one is drawn to is a fundamental aspect of who we are.

In this way, the struggle for marriage equality for same-sex couples is just as basic as the fight for interracial marriage was. It recognizes that Americans should not be coerced into false and unhappy marriages but should be free to marry the person they love—thereby building marriage on a true and stable foundation.
“Won’t This Create a Free-for-All and Make the Whole Idea of Marriage Meaningless?”

Many people share this concern because opponents of gay and lesbian people have used this argument as a scare tactic. But it is not true. Granting same-sex couples the right to marry would in no way change the number of people who could enter into a marriage (or eliminate restrictions on the age or familial relationships of those who may marry). Marriage would continue to recognize the highest possible commitment that can be made between two adults, plain and simple.

Organizations That Support Same-Sex Parenting

American Academy of Pediatrics
American Academy of Family Physicians
Child Welfare League of America
National Association of Social Workers
North American Council on Adoptable Children
American Bar Association
American Psychological Association
American Psychiatric Association
American Psychoanalytic Association

“I Strongly Believe Children Need a Mother and a Father.”

Many of us grew up believing that everyone needs a mother and father, regardless of whether we ourselves happened to have two parents, or two good parents.

But as families have grown more diverse in recent decades, and researchers have studied how these different family relationships affect children, it has become clear that the quality of a family’s relationship is more important than the particular structure of families that exist today. In other words, the qualities that help children grow into good and responsible adults—learning how to learn, to have compassion for others, to contribute to society and be respectful of others and their differences—do not depend on the sexual orientation of their parents but on their parents’ ability to provide a loving, stable and happy home, something no class of Americans has an exclusive hold on.

That is why research studies have consistently shown that children raised by gay and lesbian parents do just as well on all conventional measures of child development, such as academic achievement, psychological well-being, and social abilities, as children raised by heterosexual parents.

That is also why the nation’s leading child welfare organizations, including the American Academy of Pediatrics, the American Academy of Family Physicians and others, have issued statements that dismiss assertions that only heterosexual couples can be good parents—and declare that the focus should now be on providing greater protections for the 1 million to 9 million children being raised by gay and lesbian parents in the United States today.
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Support Same-Sex Parenting

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"What Would Be Wrong with a Constitutional Amendment to Define Marriage as a Union of a Man and Woman?"

in more than 200 years of American history, the U.S. Constitution has been amended only 17 times since the Bill of Rights—and in each instance (except for Prohibition, which was repealed), it was to extend rights and liberties to the American people, not restrict them. For example, our Constitution was amended to end our nation's tragic history of slavery. It was also amended to guarantee people of color, young people, and women the right to vote.

The amendment currently under consideration (called the Federal Marriage Amendment) would be the only one that would single out one class of Americans for discrimination by ensuring that same-sex couples would not be granted the equal protections that marriage brings to American families.

Moreover, the amendment could go even further by stripping same-sex couples of some of the more limited protections they now have, such as access to health insurance for domestic partners and their children.

Neither enshrining discrimination in our Constitution nor stripping millions of families of basic protections would serve our nation's best interest. The Constitution is supposed to protect and ensure equal treatment for all people. It should not be used to single out a group of people for different treatment.

TEXT OF PROPOSED FEDERAL MARRIAGE AMENDMENT

"Marriage in the United States shall consist only of the union of a man and a woman.

Neither this [Constitution] nor the constitution of any state, nor state or federal law, shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups."

— H.J. Resolution 56, introduced by Rep. Marilyn Musgrave, R-Colo., in May 2003. It has more than 100 co-sponsors. A similar bill was introduced in the U.S. Senate in November 2003. In February 2004, President Bush said that he would support a constitutional amendment to define marriage as between only a man and a woman.

"How Could Marriage for Same-Sex Couples Possibly Be Good for the American Family—or Our Country?"

"We shouldn't just allow gay marriage. We should insist on gay marriage. We should regard it as scandalous that two people could claim to love each other and not want to sanctify their love with marriage and fidelity."

The prospect of a significant change in our laws and customs has often caused people to worry more about dire consequences that could result from the potential positive outcomes. In fact, precisely the same anxiety arose when some people fought to overturn the laws prohibiting marriage between people of different races in the 1950s and 1960s. (One Virginia judge even declared that "God intended to separate the races.")

But in reality, opening marriage to couples who are so willing to fight for it could only strengthen the institution for all. It would open the doors to more supporters, not opponents. And it would help keep the age-old institution alive.

As history has repeatedly proven, institutions that fail to take account of the changing needs of the population are those that grow weak; those that recognize and accommodate changing needs grow strong. For example, the U.S. military, like American colleges and universities, grew stronger after permitting African Americans and women to join its ranks.

Similarly, granting same-sex couples the right to marry would strengthen the institution of marriage by allowing it to better meet the needs of the true diversity of family structures in America today.

"Can't Same-Sex Couples Go to a Lawyer to Secure All the Rights They Need?"

Not by a long shot. When a gay or lesbian person gets seriously ill, there is no legal document that can make their partner eligible to take leave from work under the federal Family and Medical Leave Act to provide care—because that law applies only to married couples.

When gay or lesbian people grow old and in need of nursing home care, there is no legal document that can give them the right to Medicaid coverage without potentially causing their partner to be forced from their home—because the federal Medicaid law only permits married spouses to keep their home without becoming ineligible for benefits.

And when a gay or lesbian person dies, there is no legal document that can extend Social Security survivor benefits or the right to inherit a retirement plan without severe tax burdens that stem from being "unmarried" in the eyes of the law.

These are only a few examples of the critical protections that are granted through more than 1,100 federal laws that protect only married couples. In the absence of the right to marry, same-sex couples can only put in place a handful of the most basic arrangements, such as naming each other in a will or a power of attorney. And even these documents remain vulnerable to challenges in court by disgruntled family members.

"Won't This Cost Taxpayers Too Much Money?"

No, it wouldn't necessarily cost much at all. In fact, treating same-sex couples as families under law could even save taxpayers money because marriage would require them to assume legal responsibility for their joint living expenses and
Marriage Be Legal?

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who are so willing to fight for... 

For example, the... 

If marry would strengthen... 

Lawyer

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Medicaid cover... 

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are granted couples. In... 

issuing marriage licenses to same-sex couples. It began issuing licenses May 17, 2004.

“Where Can Same-Sex Couples Marry Today?”

In 2001, the Netherlands became the first country to extend marriage rights to same-sex couples. Belgium passed a similar law two years later. The laws in both of these countries, however, have strict citizenship or residency requirements that do not permit American couples to take advantage of the protections provided.

In June 2003, Ontario became the first Canadian province to grant marriage to same-sex couples, and in July 2003, British Columbia followed suit—becoming the first places that American same-sex couples could go to get married.

In November: 2003, the Massachusetts Supreme Judicial Court recognized the right of same-sex couples to marry—giving the state six months to begin issuing marriage licenses to same-sex couples. It began issuing licenses May 17, 2004.

In February 2004, the city of San Francisco began issuing marriage licenses to same-sex couples after the mayor declared that the state constitution forbade him to discriminate. The issue is being addressed by California courts, and a number of other cities have either taken or are considering taking steps in the same direction.

Follow the latest developments in California, Oregon, New Jersey, New Mexico, New York and in other communities across the country on the HRC Marriage Center. . . .
Other nations have also taken steps toward extending equal protections to all couples, though the protections they provide are more limited than marriage. Canada, Denmark, Finland, France, Germany, Iceland, Norway, Portugal, and Sweden all have nationwide laws that grant same-sex partners a range of important rights, protections, and obligations.

For example, in France, registered same-sex (and opposite-sex) couples can be joined in a civil “solidarity pact” that grants them the right to file joint tax returns, extend social security coverage to each other and receive the same health, employment and welfare benefits as legal spouses. It also commits the couple to assume responsibility for household debts.

Other countries, including Switzerland, Scotland, and the Czech Republic, also have considered legislation that would legally recognize same-sex unions.

“What Protections Other Than Marriage Are Available to Same-Sex Couples?”

At the federal level, there are no protections at all available to same-sex couples. In fact, a federal law called the “Defense of Marriage Act” says that the federal government will discriminate against same-sex couples who marry by refusing to recognize their marriages or providing them with the federal protections of marriage. Some members of Congress are trying to go even further by attempting to pass a Federal Marriage Amendment that would write discrimination against same-sex couples into the U.S. Constitution.

At the state level, only Vermont offers civil unions, which provide important state benefits but no federal protections, such as Social Security survivor benefits. There is also no guarantee that civil unions will be recognized outside Vermont. Thirty-nine states also have “defense of marriage” laws explicitly prohibiting the recognition of marriages between same-sex partners.

Domestic partner laws have been enacted in California, Connecticut, New Jersey, Hawaii, and the District of Columbia. The benefits conferred by these laws vary; some offer access to family health insurance, others confer co-parenting rights. These benefits are limited to residents of the state. A family that moves out of these states immediately loses the protections.

10 Things You Can Do
Every Family Deserves Equal Protections.
How Can I Help?

1. Urge your members of Congress to oppose the Federal Marriage Amendment, or any constitutional amendment to ban marriage for same-sex couples. Make a personal visit if you can. HRC's field team can help you. Or fax a message through HRC's Action Network.

2. Sign the Million for Marriage petition... and ask 10 friends and family to do the same.
3. Talk to your friends and family members about the importance of marriage for same-sex couples and their children. Recent polls of the GLBT community show that many people have not yet talked to parents, siblings, or other family members about the discrimination they face. Nothing moves the hearts and minds of potential straight allies more than hearing the stories of someone they know who is gay, lesbian, bisexual, or transgender. For more information, download "Talking about Marriage Equality" from HRC's Online Action Center.

4. Write a letter to the editor of your local newspaper saying why you support marriage for same-sex couples and why a constitutional amendment against it is a bad idea.

5. Next time you hear someone say marriage is only meant for heterosexual couples, speak up. If you hear this on a radio program, call in. If you hear it on television, call or send an e-mail. If it comes up in conversation, set the record straight.

6. Host a house party to educate your friends and family about marriage equality. Invite a diverse group and inspire them to write letters to Congress and your state government at your house party.

7. Meet with clergy and other opinion leaders in your community and ask them to join you in speaking out in support of marriage equality and against the Federal Marriage Amendment. Let HRC know the results.

8. Share your story about why marriage equality matters to you and send it to HRC's Family project. Personal stories are what move hearts and minds.

9. Become a member of HRC and support our work on behalf of marriage equality.

10. Register to vote and support fair-minded candidates.

Additional National Resources

Human Rights Campaign

HRC is the nation's largest national organization working to advance equality based on sexual orientation and gender expression and identity to ensure that gay, lesbian, bisexual, and transgender Americans can be open, honest, and safe at home, at work, and in their communities. Of particular interest to people following the marriage issue:

The Human Rights Campaign Foundation’s FamilyNet

Project offers the most comprehensive resources about GLBT families, covering marriage, parenting, aging, and more. HRC's Action Center offers important updates about what's happening in legislatures nationwide and the latest online grassroots advocacy tools.
Other important resources include:

**American Civil Liberties Union . . .**
ACLU works in courts, legislatures, and communities throughout the country to defend and preserve the individual rights and liberties guaranteed by the Constitution and laws of the United States.

**Freedom to Marry Collaborative . . .**
A gay and non-gay partnership working to win marriage equality.

**Children of Lesbians and Gays Everywhere (COLAGE) . . .**
Fosters the growth of daughters and sons of GLBT parents by providing education, support, and community, advocating for their rights and rights of their families.

**Dignity USA . . .**
Works for respect and justice for all GLBT persons in the Catholic Church and the world through education, advocacy, and support.

**Family Pride Coalition . . .**
A national education and civil rights organization that advances the well-being of GLBT parents and their families through mutual support, community collaboration, and public understanding.

**Federation of Statewide LGBT Advocacy Organizations . . .**
The GLBT advocacy network of state/territory organizations committed to working with each other and with national and local groups to strengthen statewide advocacy organizing and secure full civil rights in every U.S. state and territory.

**Gay & Lesbian Advocates & Defenders . . .**
The GLBT legal organization that successfully brought the case that led to the civil union law in Vermont and the recognition of marriage equality in Massachusetts.

**Gay & Lesbian Victory Fund . . .**
Committed to increasing the number of openly gay and lesbian public officials at federal, state, and local levels of government.

**Lambda Legal . . .**
A national legal group committed to achieving full recognition of the civil rights of, and combating the discrimination against, the GLBT community and people with HIV/AIDS through impact litigation, education, and public policy work.
An interfaith movement committed to ending spiritual violence perpetrated by religious policies and teaching against GLBT people through the application of the principle of nonviolence.

Soulforce

Develops critical spiritual leadership of men and women of faith to fight for marriage equality and religious liberty for all people, and to support the rights of GLBT people to express their beliefs in a way that is consistent with their faith.

National Black Justice Coalition

Dedicated to building a national civil rights movement of GLBT people through the empowerment and training of black GLBT leaders, and the development of national policy.

National Gay & Lesbian Task Force

Promotes the health and well-being of GLBT people, their families and friends, through support, education, and advocacy with the intention of ending discrimination and securing equal rights.

Parents, Families & Friends of Lesbians & Gays (PFLAG)

A national association dedicated to promoting the understanding and acceptance of GLBT people, their families and friends, through education, advocacy, and support.

Native American Law Center

A national law center dedicated to protecting the rights of Native American GLBT people and their families, through legal advocacy, education, and community organizing.

National Center for Lesbian Rights

Works to secure the freedom and the right of same-sex couples to engage in civil marriage through a program of education, media campaigns, and community partnerships.

National Lesbian Gay Bisexual "It is not enough that gay men and women according to the principle of limited government, individual liberty, individual responsibility, free markets, and a strong national defense.

Log Cabin Republicans...
Universal Fellowship of Metropolitan Community Churches...

A worldwide fellowship of Christian churches with a special outreach to the world's GLBT communities.
In Defense of Marriage: The Amendment That Will Protect a Fundamental Institution

In 1996, three fourths of the House and Senate joined President Bill Clinton in a strong bipartisan effort to defend the traditional institution of marriage, by enacting the federal Defense of Marriage Act (DOMA). That act defined, as a matter of federal law, the institution of marriage as the union of one man and one woman—reflecting the views of the vast majority of Americans across the country. Today, as it debates a constitutional amendment to defend marriage, the Senate will revisit precisely the same question: Should the institution of marriage continue to be defined as the union of one man and one woman—as it has been defined for thousands of years?

Since the 1996 vote, two things have changed. First, activist courts have so dramatically altered the meaning of the Constitution, that traditional marriage laws are now under serious threat of being invalidated by judicial fiat nationwide—indeed, the process has already begun in numerous states across the country. Second, the broad bipartisan consensus behind marriage that was exhibited in 1996 has begun to fracture. Some who supported DOMA just a few years ago are, for partisan reasons, unwilling to defend marriage today. Although the defense of marriage should continue to be a bipartisan endeavor—and kept out of the hands of activist lawyers and judges—there is no question that both the legal and the political landscapes have changed dramatically in recent years.

Commitment to Marriage

One thing has never changed, however: Throughout our nation’s history, across diverse cultures, communities, and political affiliations, Americans of all stripes have remained committed to the traditional institution of marriage. Most Americans strongly and instinctively support the following two fundamental propositions: Every human being is worthy of respect, and the traditional institution of marriage is worthy of protection. In communities across America, adults form caring relationships of all kinds, while children are raised through the heroic efforts of parents of all kinds—including single parents,
foster parents, and adoptive parents. We admire, honor, and respect those relationships and those efforts.

At the same time, most Americans believe that children are best raised by their mother and father. Mankind has known no stronger human bond than that between a child and the two adults who have brought that child into the world together. For that reason, family and marriage experts have referred to the traditional institution of marriage as the "gold standard" for raising children. Social science simply confirms common sense. Social science also confirms that, when society stops privileging the traditional institution of marriage (as we have witnessed in a few European nations in recent years), the gold standard is diluted, and the ideal for raising children is threatened.

There are a number of important issues facing our nation—and the raising and nurturing of our next generation is one of them. Nearly 120 years ago, in the case of Murphy v. Ramsey, the U.S. Supreme Court unanimously concluded that "no legislation can be supposed more wholesome and necessary in the founding of a free, self-governing commonwealth" than "the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony" (emphasis added). That union is "the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement." Moreover, that same Court unanimously praised efforts to shield the traditional institution of marriage from the winds of political change, by upholding a law "which endeavors to withdraw all political influence from those who are practically hostile to its attainment."

False Arguments

Today, however, the consensus behind marriage appears to be unraveling. Of course, those who no longer support traditional marriage laws do not say so outright. Instead, they resort to legalistic and procedural arguments for opposing a marriage amendment. They hope to confuse the issue in the minds of well-meaning Americans and to distract them from the importance of defending marriage, by unleashing a barrage of false arguments.

For example:

- Why do we need a federal constitutional amendment, when we already have DOMA?

The need for a federal constitutional amendment is simple: The traditional institution of marriage is under constitutional attack. It is now a national problem that requires a national solution. Legal experts and constitutional scholars across the political spectrum recognize and predict that the only way to preserve the status quo—the only way to preserve the traditional institution of marriage—is a constitutional amendment.

Immediately after the U.S. Supreme Court announced its decision in Lawrence v. Texas in June 2003, legal experts and commentators predicted that,
We admire, honor, and respect those individuals believe that children are best raised by adults who have brought that child into the world. Family and marriage experts have confirmed common sense. Social science demonstrates that the family, as the traditional institution of marriage, is the “gold standard” for rearing children. Social science confirms common sense. The traditional institution of marriage as the “gold standard” is the most wholesome and necessary to our civilization.

It appears to be unraveling. Of marriage laws do not say so. Religious, moral, and ethical convictions that underlie traditional marriage are not rational reason for the institution’s continued existence. It argued that traditional marriage is a “stain” on our laws that must be “eradicating.” It contended that traditional marriage is “rooted in persistent prejudices” and “invidious discrimination,” rather than in the best interest of children. Amazingly, it even suggested abolishing the institution of marriage outright, stating that “if the Legislature were to jettison the term ‘marriage’ altogether, it might well be rational and permissible.” And for good measure, the court went out of its way to characterize DOMA itself as unconstitutionally discriminatory.

Without a federal constitutional amendment, activist courts, and judges will continue striking down traditional marriage laws across the country—including DOMA itself. Lawsuits challenging traditional marriage laws are now pending in courtrooms across America—including four lawsuits in federal court.

In 2000, Nebraska voters ratified a state constitutional amendment protecting marriage in that state. Yet that state constitutional amendment has been challenged in federal district court as violating federal constitutional law. As Nebraska’s attorney general, Jon Bruning, testified last March, the state
expects the federal district judge to strike down its constitutional amendment. A federal lawsuit has also been filed in Florida to strike down DOMA as unconstitutional under Lawrence. Lawyers are similarly claiming that DOMA is unconstitutional in a pending federal bankruptcy case in Washington state. And in Utah, lawyers have filed suit arguing that traditional marriage laws, such as that state’s anti-polygamy law, must be struck down under Lawrence. And that just covers lawsuits in federal court—in addition, dozens of suits have been filed in state courts around the country.

A representative of the Lambda Legal organization—a champion of the ongoing nationwide litigation campaign to abolish traditional marriage law across the country—recently stated: “We won’t stop until we have same-sex marriage nationwide.” This nationwide litigation campaign also enjoys the tacit, if not explicit, support of leading Democrats—including Sens. John Kerry and Ted Kennedy, Rep. Jerrold Nadler, and former presidential candidate Howard Dean and Carol Moseley Braun. All of them have attacked DOMA as unconstitutional, and thus presumably want DOMA to be invalidated by the courts—and without a constitutional amendment, their wishes may very well come true. The only way to stop the lawsuits, and to ensure the protection of marriage, is a constitutional amendment.

* Why do we need an amendment now?

Last September, the Senate subcommittee on the Constitution, Civil Rights and Property Rights examined the threat posed to the traditional institution of marriage by the Lawrence decision.

Detractors of the hearing scoffed that the threat was a pure fabrication, motivated by partisan politics. But then, just two months later, the Massachusetts Goodridge decision, relying specifically on Lawrence, struck down that state’s traditional marriage law—precisely as predicted at the hearing.

Detractors then scoffed that the Goodridge decision would not stick. They argued that the state’s own constitutional amendment process would be sufficient to control their courts. But then, the Massachusetts court reaffirmed its decision in February. The court even refused to bend after the Massachusetts legislature formally approved a state constitutional amendment—an amendment that can only take effect, if ever, no earlier than 2006.

Detractors then scoffed that DOMA had not been challenged, so there was no reason to take constitutional action at the federal level. But then, lawyers began to challenge DOMA. Cases are now pending in federal courts in Florida and Washington. Additional challenges are, of course, inevitable.

The truth is that, for these detractors, there will never be a good time to protect the traditional institution of marriage—because they don’t want to protect the traditional institution of marriage. The constitutional amendment to protect marriage is not a “preemptive strike” on the Constitution, as detractors allege—it’s a precautionary solution. Parents take responsible precautions to protect their children. Spouses take responsible precautions to protect the marriage. Likewise, government has the responsibility to take precautions to protect the institution of marriage.
...in its constitutional amendment, to strike down DOMA is unconstitutionally claiming that DOMA is a precedent case in Washington state that traditional marriage laws are struck down under Lawrence. In addition, dozens of suits have been filed—a champion of the traditional marriage laws for until we have [same-sex] marriage rights are enjoyed the same as Sens. John Kerry and presidential candidates have attacked DOMA as a law that cannot be invalidated by the other branches of government may be well enough to ensure the protection of the Constitution. Civil marriage was a pure fabrication months later, the Massachusetts, struck down 19 months later, the Massachusetts court of appeals, affirmed its decision in Massachusetts—an amendment passed, so there is no constitutional law in Massachusetts in the constitutional amendment...owed to time to reverse the amendment has detracted from their objections to...a campaign for marriage...Why can't the states handle this? After all, isn't marriage traditionally a state issue?

This argument borders on the fraudulent. There is nothing that a state can do to fully protect itself against federal courts hostile to its laws except a federal constitutional amendment. Nebraska has already done everything it can, on its own, to defend marriage—up to and including a state constitutional amendment. Yet its amendment has already been challenged in federal court, where it is expected to be struck down. As state and local officials across the country have repeatedly urged, when it comes to defending marriage, the real threat to states' rights is judicial activism—not Congress, and certainly not the democratic process. Moreover, the Constitution cannot be amended without the consent of three-fourths of the state legislatures. States can protect marriage against judicial activism—but only if Congress provides them the opportunity to consider a federal constitutional amendment protecting marriage.

Isn't our Constitution too sacred for such a political issue as defending marriage?

No one is suggesting that the Constitution should be amended lightly. But the defense of marriage should not be ridiculed as a political issue. Nor should we disparage the most democratic process established under our Constitution by our Founding Fathers.

Our Founding Fathers specifically insisted on including an amendment process in the Constitution because they humbly believed that no man-made document could ever be perfect. The constitutional amendment process was deliberately considered and wisely crafted, and we have no reason to fear it. We have amended the Constitution no fewer than 27 times—most recently in 1992 to regulate Congressional pay increases. The sky will not fall if Americans exercise their democratic rights to amend it again. Surely, the protection of marriage is at least as important to our nation as the regulation of Congressional pay, the specific manner in which we coin our money, or the countless other matters that can be found in our nation's charter.

Moreover, there is a robust tradition of constitutional amendments to reverse constitutional decisions by the courts with which the American people disagree—including the 11th, 14th, 16th, 19th, 24th, and 26th Amendments. Opponents of the marriage amendment apparently have no objection to the courts amending the Constitution. Yet the power to amend the Constitution belongs to the American people, through the democratic process—not the courts. The courts alter the Constitution—under the guise of interpretation—far more often than the people have. Because of Lawrence, it is inevitable that the Constitution will be amended on the issue of marriage—the only question is how, and by whom. Legal scholars across the political spectrum agree that a constitutional amendment by the people is the only way to fully protect marriage against the courts.
• Why would we ever want to write discrimination into the Constitution? Why would we ever want to roll back the Bill of Rights?

This argument is offensive, pernicious—and revealing. Marriage is not about discrimination—it is about children. It is offensive to characterize the vast majorities of Americans who support traditional marriage—individuals like Reverend Ray Hammond of the Bethel African Methodist Episcopal Church in Boston, Reverend Richard Richardson of the St. Paul African Methodist Episcopal Church in Boston, and Pastor Daniel de Leon, Sr., of Alianza de Ministerios Evangélicos Nacionales (AMEN) and Templo Calvario in Santa Ana, California—as bigots. It is offensive to characterize the laws, precedents, and customs of all fifty states as discriminatory. And it is offensive to slander the 85 senators who voted for DOMA as hateful.

Moreover, it is precisely because some activists believe that traditional marriage is about discrimination, and not about children, that they believe that all traditional marriage laws are unconstitutional and therefore must be abolished by the courts. These activists leave the American people with no middle ground. They accuse others of writing discrimination into the Constitution—yet they are the ones writing the American people out of our constitutional democracy.

Just last week, representatives of Sens. John Kerry and John Edwards said that the marriage amendment would “roll back rights.” If you believe that traditional marriage is only about discrimination and about violating the rights of adults—as Sens. Kerry and Edwards apparently believe—then you have no choice but to oppose all traditional marriage laws. Any other position is incoherent at best—and deceptive at worst.

Marriage Protection

So the issue has been joined—precisely as it was in 1996. Despite typical Washington Beltway tricks to overcomplicate and confuse matters, the question remains a simple one: Should marriage, defined as the union of one man and one woman, be protected against judicial activism and the will of legal and political elites? If you believe that the answer is yes—as vast majorities of Americans do—then you have no legal option but to support a federal constitutional amendment protecting marriage.

The American people believe that every human being deserves respect, and the traditional institution of marriage deserves protection. As members of Congress continue to debate this issue, we should also remember what else the American people deserve: honesty. . . .
should same-sex marriage be legal?

part of this discussion is that marriage is a civil right, not an inherent or moral one. those supporting marriage rights for lesbian and gay couples cite the struggles of the civil rights movement of the 1960s in their current quest for equality for all couples. among the points they make is that up until 1967, it was still illegal in some states for people of different races to marry. many opponents find the idea of comparing same-sex marriage to the civil rights struggles of the 1960s and earlier offensive, that it is like comparing apples and oranges. many of these individuals believe that sexual orientation is chosen, rather than an inherent part of who one is—unlike race, which is predetermined. most sexuality experts, however, agree that while we do not know for sure what “causes” a person to be heterosexual, bisexual, or homosexual, it is clear that it is determined very early in life, perhaps even before we are born. regardless, is marriage a civil right? a legal right? an inherent right?

it has also been argued that if sexual orientation is not “normal,” then same-sex couples would not have “healthy” relationships. however, there is no evidence that would support such a claim. in fact, some studies would suggest that some aspects of same-sex relationships are in fact healthier than heterosexual relationships. at least two factors may contribute to this. first, neither person in a same-sex couple is constrained by gender role expectations; that is, each person has more latitude to be himself or herself rather than the “breadwinner” or “homemaker.” second, because there are few role models for same-sex couples, they may actually spend more time negotiating aspects of their relationships in ways that heterosexual couples do not. currently no heterosexual has to pass a “mental health test” in order to marry. additionally, heterosexual couples do not have to demonstrate a “healthy” relationship in order to either marry or remain married. is it possible that heterosexual couples could learn something from same-sex couples?

suggested readings

george chauncey, why marriage? the history shaping today’s debate over gay equality (basic books, 2004).

linda hollingsdale, creating civil union: opening hearts and minds (common humanity press, 2002).

jonathan rauch, gay marriage: why it is good for gays, good for straights, and good for america (owl books, 2004).

a. sullivan and j. landau, same-sex marriage: pro and con (vintage books, 1997).