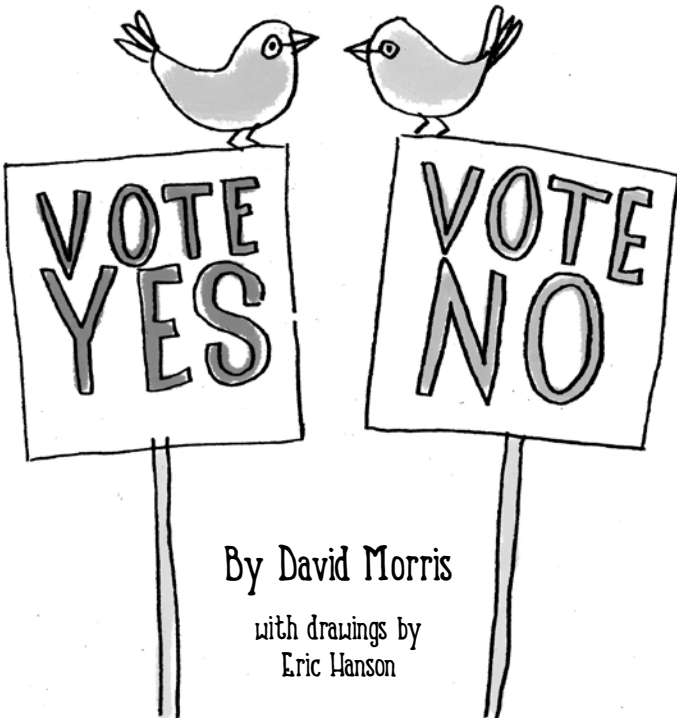


The Thoughtful Voter's Guide to Same-Sex Marriage

A Tool for the Decided, the Undecided,
and the Genuinely Perplexed



By David Morris

with drawings by
Eric Hanson

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Table of Contents

Introduction	5
A Brief History of Marriage	6
Divorce, American-Style	8
The Changing Legal Status of Wives	10
Polygamy, American-Style	11
The Controversy Over Interracial Marriage	12
The Controversy Over Contraception	14
Homosexuality Comes Out of the Closet	17
History Speeds Up: A Timeline of Gender-Related Marriage Events.	23

The Debate

The Case for Banning Same-Sex Marriage

Homosexuality Is a Sin.	28
Homosexuality Is a Choice	29
Same-Sex Marriage Threatens the Institution of Marriage	30
Same-Sex Marriage Endangers Children	31
It's About Religious Liberty	33

The Case for Legalizing Same-Sex Marriage

Same-Sex Marriage Strengthens the Institution of Marriage	34
Children Benefit from Dedicated Parents of Any Gender.	36
Homosexuality is Normal	38
Love Thy Neighbor: Many Congregations Affirm Marriage Equality.	40
It's About Religious and Personal Liberty	41

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Introduction

After 20 years of debate one might reasonably ask why another report on same-sex marriage would be necessary. Our reply is that although the debate has been long it has also often generated more heat than light.

We learn best through debate, by listening to both sides and sifting through the evidence they present. Too often, outside the courtroom where examination and cross-examination are the basis of judicial decision making, we hear only one side or the other. And too often we lose the forest for the trees, failing to step back and examine the heated debates over the definition of marriage that have occurred throughout U.S. history and abroad.

This November voters in four states—Maine, Maryland, Minnesota, Washington—will decide on whether to legalize, or ban same-sex marriage. This document, we hope, will help to inform those decisions.

We opted for thoroughness rather than sound bites. The result, we concede, is a long document that demands a willingness to spend some time on the issue. We believe the reader will find the time spent rewarding. The issue itself is one of the most important ever put before voters.

We begin with a background that puts the current debate about same-sex marriage in a historical context. We then present both sides of the debate, with extensive footnotes that allow the interested reader to dig deeper.

We welcome your feedback.



A Brief History of Marriage

Marriage was a social institution long before it was a state or church-sanctioned and regulated association. Marriage was the structure the human species used to raise and legitimate children and the basis for the kinship network that undergirded the economy and society for thousands of years.¹

Monogamy has been the most widely practiced form of matrimonial union although it has not been the only form. Even in societies where polygamy is sanctioned, the majority of marriages are monogamous.²

Polygamy, or plural marriage, has two forms. Polyandry, when one woman has more than one husband, is rare.³ Polygyny, when one man has more than one wife, is recognized in many societies. The Old Testament and the Qur'an endorse polygyny.⁴ Polygyny helped ensure that inherited lands remain intact and enabled male leaders to create alliances. The ability to support many wives publicly demonstrated a man's wealth.⁵

Concubinage, the practice of forming a somewhat enduring union with some woman other than one's wife, or between two unmarried persons was legally accepted in Greece and Rome and among the Hebrews.⁶

The first recorded mention of same-sex marriages occurred during the early Roman Empire. In 342 AD the Christian emperor issued a law prohibiting same-sex marriage. Those in such marriages faced the death penalty.⁷

Up until the Justinian Code in the 6th century no formal marriage ceremony by either the Church or the state was required for marriage. Just saying you were married was enough. Couples put up a public notice that they were to be seen as married and often had a party to celebrate the announcement.

In 866 Pope Nicholas I declared that a marriage was legal and

binding even without any public or liturgical ceremony so long as parties gave their consent.⁸

The fall of the Roman Empire and the rise and eventual consolidation of authority by the Catholic Church led to ecclesiastical courts gaining exclusive jurisdiction over marriage and divorce throughout Europe. In the 13th century the Catholic Church declared marriage to be a sacrament. In 1563 the Council of Trent required a Catholic marriage be conducted by a priest in a Church before two witnesses.

By the 18th century a wedding had become a religious event in all countries of Europe.

For hundreds of years different couples in the same geographical area might live under different marriage rules. A 13th-century Catholic couple would be married in the eyes of the Catholic Church while their Jewish neighbors would be married under Jewish law. Separate rules would govern their marriages.

E. J. Graff observes, "So you have Jews allowing divorce and Christians forbidding it; Jews allowing an uncle and niece to marry, while Christians forbade you to marry your godmother's third cousin..."⁹

With the rise of strong and centralized nations came a desire for uniform rules of marriage and divorce within their borders. Tensions inevitably emerged between state and church, between those who developed the civil rules and those who developed the ecclesiastical rules.

The most famous conflict between Church and State occurred in the 16th century. The Catholic Church declared marriage indissoluble, citing scripture.¹⁰ One could only remarry if the Church first annulled one's previous marriage by the Church.

In 1529, when King Henry VIII asked Pope Clement VII for an annulment of his marriage to Catherine of Aragon so he could marry Anne Boleyn, Clement denied the request. The Church of England was the result.¹¹

A hundred years later the Puritans decamped England for Massachusetts bringing with them their doctrinal disagreements

Up until the 6th century no formal marriage ceremony was required for marriage. Just saying you were married was enough.

with the Church of England. Puritans adhered strictly to the Bible, which they believed sanctioned only baptism and communion as sacraments, not marriage.

As a result, a Massachusetts marriage was deliberately constructed as a form of civil union. Weddings were performed by civil magistrates (Justices of the Peace) and took place in private homes.

The Puritans created a judicial tribunal that granted divorce on the grounds of adultery, bigamy, desertion and impotence.¹²

Other colonies, like Virginia, continued to follow the rules of the Church of England. In Virginia one could be married only by the church. Civil marriages were prohibited.

Today in the United States the bridge between civil and church marriages often occurs at the end of the religious ceremony. U.S. marriage laws delegate to the religious leader conducting the ceremony the civil authority to sanction the marriage. This is why at the end of religious weddings the rabbi or minister or imam announces, “In the power vested in me by the state of _____, I now pronounce you husband and wife.”

The institutional and philosophical differences have been the backdrop and context for many of the debates on a variety of issues. Who can marry? Who can divorce? What are the rights and obligations of individuals within a marriage? What level of government has the authority to determine who can get married or divorced?



Divorce. American-Style

The tension between civil and religious authority regarding marriage and divorce is evident throughout U.S. history. As University of Iowa history professor Mark Peterson notes, the question for the country and its states has been whether “the state and its concern for fairness (or) the church and its concern for sanctity should govern the social rules for joining two people in perpetual union.”¹³

Until relatively recently most states, heavily influenced by church teachings have allowed divorce under only limited circumstances (e.g. adultery, cruelty, abandonment). Couples who sought a divorce had to submit evidence that one or both had engaged in these activities.

States that passed laws allowing for divorce by out-of-state residents who stayed in that state for a few weeks created friction with states that imposed higher barriers to divorce.¹⁴

These frictions led some states to refuse to recognize quickie divorces in other states. North Carolina, for example, refused to recognize a Nevada divorce. The issue went to the Supreme Court. North Carolina argued that its refusal flowed from its desire to defend the institution of marriage and encourage people to work through the hard times. Recognizing a quickie divorce would undermine the institution of marriage.

In its 1945 decision the Court tackled the key Constitutional issue, first laying out North Carolina’s argument. “It is objected, however, that if such divorce decrees must be given full faith and credit, a substantial dilution of the sovereignty of other states will be effected. For it is pointed out that under such a rule one state’s policy of strict control over the institution of marriage could be thwarted by the decree of a more lax state...”

The Court conceded that might be the result but concluded, “such is part of the price of our federal system...”¹⁵ The Full Faith and Credit Clause of the U.S. Constitution (United States Constitution, Article IV, Section 1) requires that each state recognize “the public Acts, Records and Judicial Proceedings of every other state.”

Those with the means to do so could travel to quickie divorce states, but dissatisfaction continued to grow with a process that seemed to compel dishonesty and even perjury. The result was the nation’s first no-fault divorce law, signed by California Governor Ronald Reagan on September 4, 1969. All previous grounds for divorce were eliminated, replaced with a sole standard: the irremediable breakdown of the marriage.

By 1977, 9 states had adopted no-fault divorce laws. Today all 50 states and the District of Columbia have them.¹⁶

Religious organizations are not bound to recognize the new civil laws. The Catholic Church, for example, continues to deny divorced individuals the right to a Church wedding unless their first marriage is annulled.¹⁷

These new state divorce laws changed the legal and thus social expectations and obligations of marriage. “The idea that marriage partners themselves could simply decide to end their marriage was revolutionary; it affected thinking about the very nature of marriage and permanence,” writes Mary Lyndon Shanley.¹⁸



The Changing Legal Status of Wives

Another major change in the rules of marriage has involved the legal status of wives. For hundreds of years legislators and judges cited scripture to support laws that codified the inferior status of wives.¹⁹

U.S. law regarding the status of wives was heavily influenced by the writings of Sir William Blackstone, who codified and commented on English common law in the 18th century. With regard to marriage Blackstone insisted he was guided by the declaration in Genesis that husband and wife are “one flesh” in the eyes of God. To Blackstone that meant they were “one person” and the husband legally represented that person.²⁰

Under this definition of marriage, as historian Nancy Cott notes, the husband’s “obligation was to support his wife, provide her with the basic material goods of life, and to do so for their dependents. And her part of the bargain was to serve and obey him, and to lend to him all of her property, and also enable him to take all of her earnings, and represent her in court or in any sort of legal or economic transaction.”²¹

In most jurisdictions, for example, wives could not prosecute their husbands for marital rape because marrying gave spouses blanket consent to sexual relations at any time.²²

By the late 19th century most states granted married women the same property rights they had when single but the status of wives remained uncertain for many decades afterward. When the laws were challenged, the debates were often heated. During a vote on a proposed law, a New York legislator pleaded, “If any single thing should remain untouched by the hand of the reformer, it was the sacred institution of marriage [which] is about to be destroyed in one thoughtless blow that might produce change in all phases of domestic life.”²³

As late as 1945, for example, the New Jersey Supreme Court declared, “The plaintiff (husband) is the master of his household. He is the managing head, with control and power to preserve the family relation, to protect its members and to guide their conduct.”²⁴

Nevertheless, other courts and the general culture were changing rapidly regarding women’s rights within marriage. By 1954 a federal court could state with confidence, “The legal status of a wife has changed. Her legal personality is no longer merged in that of her husband.”²⁵



Polygamy. American-Style

Another clash between civil and church authority regarding the definition of marriage occurred over the issue of monogamy. The Latter Day Saints (LDS), more popularly known as Mormons, practiced polygamy. They argued it was a central part of their religion, citing many Biblical examples of leaders having multiple wives as evidence that God both justified and commanded this practice.²⁶

When Mormons first requested statehood in 1856 their application was rejected because they practiced polygamy. The Mormon Church claimed the federal government had no

jurisdiction to regulate internal church practices, that it was violating the First Amendment's right of freedom of religion.

In 1879, the U.S. Supreme Court sided with the federal government. "Polygamy has always been odious among the northern and western nations of Europe, and, until the establishment of the Mormon Church, was almost exclusively a feature of the life of Asiatic and of African people," the Court commented.²⁷ Monogamy became the law of the land.

In 1890 the Mormon Church suspended the solemnization of plural marriage. In 1896, after five unsuccessful attempts over 37 years, Utah became the 45th state.



The Controversy Over Interracial Marriage

Much more enduring and widespread than the debate over polygamy has been the question of whether blacks could marry whites.

After the Civil War the confederate states enacted what came to be known as the "black codes". Ex-slaves were allowed to marry each other, but were not allowed to testify against whites or serve on juries or state militias. Some states barred them from acquiring land and entering certain occupations.²⁸

After federal troops withdrew from the South in the late 1870s a series of Jim Crow laws mandated segregation of the races in public facilities and imposed obstacles that virtually eliminated the right of blacks to vote.

In Louisiana, for example, the number of black voters was reduced from 130,334 in 1896 to 5,320 in 1900, although blacks comprised the majority of the state's population. In North Carolina black voters were completely eliminated from voter rolls during the period from 1896–1904.²⁹

The idea of interracial romance enraged large segments of the American population both inside and outside the South.

All but nine states banned interracial marriage at one time, some by constitutional amendment. For example, in 1875, North Carolina amended its constitution to add this language: "all marriages between a white person and a Negro or between a white person and a person of Negro descent to the third generation inclusive are, hereby, forever prohibited."³⁰

Those supporting such bans argued that God had commanded the separation of the races and cited many passages in the Bible to justify their position.³¹

Another argument used to support a ban on mixed race marriage was its supposed harmful effect on children. Children of couples of different races were considered less mentally and physically fit than the offspring of white couples.³²

In 1955 the Virginia Supreme Court of Appeals upheld that state's 1924 law criminalizing interracial marriages. The state had a legitimate right to prevent "a mongrel breed of citizens", it asserted.³³

In 1959, in a case involving an interracial couple that had married in another state and been arrested in Virginia, the trial judge declared, "Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents... The fact that he separated the races shows that he did not intend for the races to mix."³⁴

In 1948 the California Supreme Court became the first state court to declare unconstitutional a state ban on interracial marriages.³⁵ At that time, 38 states still forbade interracial marriage; 6 did so by constitutional provision.³⁶

During the 1950s and 1960s the courts and federal laws reduced or eliminated discriminatory laws against blacks. This coincided with and was clearly influenced by the increasing activism by blacks to gain equal treatment. Rosa Parks' 1955 act of civil disobedience in which she refused to give up her seat on a bus to a white man was a catalyst to the modern Civil Rights Movement. It led to the Montgomery Bus Boycott led by the young Reverend Martin Luther King, Jr and later to the Freedom Rides.

All but nine states banned interracial marriage at one time, some by constitutional Amendment

Finally, in 1964 Congress passed the Civil Rights Act which overturned the Jim Crow laws and in 1965 the Voting Rights Act gave blacks the effective right to vote.

Soon thereafter the legal status of interracial marriage was revisited. At the time, if an interracial couple got married in a state that sanctioned such marriages they could be arrested when returning home.

Mildred and Richard Loving, residents of Virginia were married in 1958 in the District of Columbia, having left Virginia to evade the Racial Integrity Act, a state law banning marriages between any white person and any non-white person. Upon their return to Virginia they were charged with violation of the ban. They pled guilty and were sentenced to one year in prison, the sentence suspended for 25 years on condition that the couple leave the state of Virginia.

In 1967, by a 9-0 vote the U.S. Supreme Court overturned Virginia's anti-miscegenation law and those of 16 states that still prohibited and criminalized marriages based on race. The Court declared, "The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men."³⁷

In 1984, the Supreme Court overturned a Florida judicial decision that interracial couples were inherently less capable and effective parents than same race couples.³⁸



The Controversy Over Contraception

Civil and church authority has also clashed over the role of procreation in marriage. When birth control devices became widely available in the 1860's and 1870s states and the federal government enacted laws to prevent the sale of such devices.

In 1873 a federal law outlawed the distribution of birth control information or devices through the mail. Most states passed their own anti-contraception laws.

At the time all Christian religions viewed procreation as central to the institution of marriage. For justification they often cited one of western Christianity's most influential theologians, the 5th century Bishop Saint Augustine who declared: "The Apostle himself is...a witness that marriage is for the sake of generation..."³⁹ The 1876 book *Conjugal Sins*, for example, insisted that contraception "degrades... the holy state of matrimony."⁴⁰

In 1916 Margaret Sanger, who coined the term "birth control" opened the first family planning clinic in the United States. The police shut it down 10 days later.

Sanger served 30 days in prison. In 1918, a court overturned the conviction, ruling that condoms could be legally advertised and sold for the prevention of disease. Condoms began to be legally sold to Americans for the first time in forty-five years. Nevertheless buying and selling contraceptives was still illegal in several states.

In 1921, Sanger founded the American Birth Control League, which later became the Planned Parenthood Federation of America and established organizations to promote and explain birth control. In the 1930s, churches began to reexamine their position that procreation was an essential part of the sacrament of marriage. In 1930 the Anglican Church sanctioned the use of birth control by married couples. In 1931 the Federal Council of Churches in the U.S. issued a similar statement.

Pope Pius XI responded by releasing *Casti Connubi* affirming the Catholic Church's opposition to all contraceptives. The Pope declared the "conjugal act is destined primarily by nature for the begetting of children" and those who "deliberately frustrate its natural power and purpose, sin against nature and commit a deed which is shameful and intrinsically vicious."

In the 1940s, Connecticut legislators introduced bills to

*The 1876 book
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allow physicians to prescribe contraceptives for married couples if a pregnancy would be life threatening. The Catholic Church led the fight against the legislation. One historian describes how “priests became heavily involved...Their efforts were not confined to anti-birth control sermons on Sundays. They engaged in voter registration drives, they encouraged parishioners to support anti-birth control candidates for the legislature, and they actively campaigned to defeat any changes in the birth control laws.”⁴¹ The bills failed.

In the 1960s virtually all Christian religions had endorsed the use of contraception, except Catholicism. “There seems little doubt,” an editorial in Christianity Today concluded, “that public sentiment, religious and otherwise, is shifting increasingly toward acceptance of birth control.”⁴²

Pope Paul VI appointed a commission on birth control to advise him on the issue. An overwhelming majority of its members favored lifting the ban. Nevertheless, in his 1968 Encyclical, *Humanae Vitae* (Of Human Life) Pope Paul VI affirmed the Church’s position on contraception, arguing, “The reason is that the fundamental nature of the marriage act, while uniting husband and wife in the closest intimacy, also renders them capable of generating new life—and this as a result of laws written into the actual nature of man and of woman. And if each of these essential qualities, the unitive and the procreative, is preserved, the use of marriage fully retains its sense of true mutual love and its ordination to the supreme responsibility of parenthood to which man is called.”⁴³

More than a hundred Catholic theologians signed a letter rejecting the Pope’s logic. “Never before in modern times has there been such open resistance to a papal edict,” Christianity Today observed. Among the reactions reported was a statement by Rev. Billy Graham: “In general I would disagree with it [*Humanae Vitae*]... I believe in planned parenthood.”⁴⁴

In 1965, the U.S. Supreme Court took the decision about contraception out of the hands of state legislatures by striking down the Connecticut statute, ruling that married couples could decide not to have children.⁴⁵

The Courts Strengthen the Right to Marry

Increasingly courts began to define marriage as a fundamental civil liberty. They required a “compelling” state interest to justify restrictions. The burden of proof rested on the state to provide sufficient evidence to justify the restrictive laws.

In 1978 under this doctrine the U. S. Supreme Court overturned a Wisconsin statute that denied marriage licenses to those who owed child support. Wisconsin argued it was doing so to ensure that children did not become “public charges” and as a collection device for delinquent dads. The Supreme Court recognized the value of those public goals but concluded they were insufficient to justify infringing on the right to marry. “Marriage is one of the basic civil rights of man, fundamental to our very existence and survival.”⁴⁶

In 1987 the U.S. Supreme Court overturned a Missouri Divisions of Corrections requirement allowing inmates to marry only if the superintendent of the prison decided there were “compelling reasons to do so”.⁴⁷



Homosexuality Comes Out of the Closet

Since the early 1990s the debate over the definition of marriage has focused on same-sex marriage. Here, as in the case of interracial marriage, the issue of same-sex marriage has emerged as the legal and social environment regarding homosexuality has changed.

After World War II coming out of the “closet” could prove costly for gays or lesbians. One of the most famous examples of this cost involved Alan Turing, a British mathematical genius widely celebrated as the father of computing and the field of artificial intelligence.

Turing designed a machine that cracked the Nazi’s Enigma Code, regarded by the Germans as unbreakable. The

breakthrough was credited with helping to shorten the war and save countless lives.

Five years after the war Turing was arrested and convicted under laws that banned homosexuality. He was chemically castrated, a process accomplished by injecting female hormones.

Turing lost his security clearance and was unable to continue his work. In 1954 he killed himself at the age of 41. (The law under which Turing was convicted was overturned by Parliament in 1967⁴⁸)

In the United States throughout the 1950s and 1960s the FBI and police departments kept lists of (known) homosexuals, their favored establishments and friends. The Post Office kept track of addresses where material pertaining to homosexuality was mailed. Bars catering to homosexuals were shut down and their customers arrested and exposed in newspapers.⁴⁹

In 1966, when the Mattachine Society, the first gay rights organization, asked the federal government to rescind its policy banning homosexuals from federal employment, John W. Macy, Chairman of the Civil Service Commission responded:

“Pertinent considerations here are the revulsion of other employees by homosexual conduct and the consequent disruption of service efficiency, the apprehension caused other employees of homosexual advances, solicitations or assaults, the unavoidable subjection of the sexual deviate to erotic stimulation through on-the-job use of the common toilet, shower and living facilities, the offense to members of the public who are required to deal with a known or admitted sexual deviate to transact Government business, the hazard that the prestige and authority of a Government position will be used to foster homosexual activity, particularly among the youth, and the use of Government funds and authority in furtherance of conduct offensive both to the mores and the law of our society.”⁵⁰

In 1974 the IRS rejected the application of The Pride Foundation for a non profit tax exemption, declaring the

organization’s goal of “advanc[ing] the welfare of the homosexual community” was “perverted or deviate behavior” “contrary to public policy and [is] therefore, not ‘charitable.’”⁵¹

In 1961 all states had anti-sodomy statutes.⁵² These statutes outlawed what legislators viewed as sinful or “unnatural sex” acts, like oral sex and anal sex. The sinfulness stemmed from their not making pregnancy possible. Many of these statutes applied to both heterosexuals and homosexuals but were only enforced against the latter.⁵³

In 1967 the Supreme Court upheld the ban on homosexuals in the Immigration and Nationality Act of 1952.⁵⁴ The ban remained in effect until 1991.

In 1972, a Tacoma, Washington teacher of twelve years with a perfect record was terminated after a former student outed him to the vice-principal.⁵⁵ The Washington Supreme Court supported the school, ruling that homosexuality was immoral and impaired his efficiency as a teacher. On October 3, 1977 the United States Supreme Court refused to hear an appeal.

Frustration at the need for secrecy and the costs of exposure boiled over one day in June 1969 at the Stonewall Inn, a bar in lower Manhattan that catered to gays and lesbians. In retrospect many view the Stonewall riots, a series of spontaneous violent demonstrations against a police raid as a catalyst that sparked gay rights activism and organizing.

Within weeks, Greenwich Village residents had organized into activist groups to focus on establishing places where gays and lesbians could be open about their sexuality without fear of arrest. Within six months, two gay activist organizations and three newspapers had been established.

On June 28, 1970 the first Gay Pride marches took place, and continue to take place in many cities, commemorating the anniversary of the riots.

Gay activism led to cities passing laws banning discrimination on the basis of sexual orientation. A backlash occurred in 1977, when Miami-Dade County passed an ordinance banning discrimination on the basis of sexual preference.

Shortly thereafter, singer Anita Bryant, who in 1969 had

become a spokeswoman for the Florida Citrus Commission, and gained a high level of visibility through a series of nationally televised commercials featuring her singing, formed a coalition named "Save Our Children" and launched a campaign to repeal the ordinance. The campaign argued that homosexuality is a sin and homosexuals a threat to children.⁵⁶

In 1977 Bryant's campaign led to a repeal of Dade County's anti-discrimination ordinance by a ballot initiative. That same year Florida legislators approved a measure prohibiting gay adoption.

Campaigns to repeal local anti-discrimination ordinances spread around the country. In California a ballot initiative would have made supportive or neutral statements regarding homosexuals by any public school employee cause for dismissal. Days before the election, the California Democratic Party opposed the initiative. Former California Governor Ronald Reagan also voiced opposition. The initiative failed by a wide margin.

In 1998 the Miami-Dade County Commission reinstated its ban on discrimination based on sexual orientation by a 7-6 vote. In 2002 a ballot initiative to repeal the 1998 law was rejected by 56 percent of the voters.

In 1981 a new virus, HIV/AIDS appeared and within a few years gained epidemic proportions. The number of new AIDS cases climbed to a peak of about 130,000 a year by the late 1980s. Hundreds of thousands died. For many, homosexuality became synonymous with AIDS.⁵⁷

In 1986 the Supreme Court ruled 5-4 that homosexual sex was not protected under the right to privacy.⁵⁸ Chief Justice Warren E. Burger, in a concurring opinion wrote, "To hold that the act of homosexual sodomy is somehow protected as a fundamental right would be to cast aside millennia of moral teaching."

To which Harry Blackmun who authored the dissent responded, "That certain, but by no means all, religious groups condemn the behavior at issue gives the State no license to impose their judgments on the entire citizenry. The legitimacy of secular legislation depends, instead, on whether the State can

advance some justification for its law beyond its conformity to religious doctrine."

In 1985, however the Supreme Court let stand an appellate ruling ordering Texas A&M University to provide official recognition of a student organization for gay and lesbian students.⁵⁹

In 1996 the Supreme Court overturned a constitutional amendment passed by the voters of Colorado that prohibited local or state governments from protecting homosexuals against discrimination.⁶⁰ The Court argued, "If the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare desire to harm a politically unpopular group cannot constitute a legitimate governmental interest."

In 2003 the Court ruled that intimate consensual sexual conduct is part of the liberty protected by the Constitution, explicitly overruling its 1986 decision. The Court ruled that Texas lacked a legitimate interest in regulating private sexual conduct through an anti-sodomy statute. "Liberty presumes an autonomy of self that includes freedom of thought, belief, expression and certain intimate conduct," the Court argued.⁶¹

In dissent Justice Antonin Scalia echoed Justice Burger's majority opinion 17 years before, "Countless judicial decisions and legislative enactments have relied on the ancient proposition that a governing majority's belief that certain sexual behavior is immoral and unacceptable constitutes a rational basis for regulation."⁶²

Even before the Court's 2003 decision, 27 states, the District of Columbia and four territories had repealed their sodomy laws by legislative action. Nine other states had had their sodomy laws overturned or invalidated by state court action. However, at present 10 states continue to have laws that make sodomy a crime in all cases while four others make it illegal only if the partners are of the same sex.⁶³

With intensive and extensive public education the number of AIDS cases has declined dramatically. The development of new drugs has allowed people to live with AIDS.

In the last 30 years discrimination against homosexuals, both

legal and social, has diminished. One reflection of this is the new context for coming out. In a special cover story by Entertainment Weekly, noted, “Fifteen years ago, when the star of a popular TV comedy decided to come out of the closet, it was big news. Not just big: It was the cover of *Time* magazine; a major story on *Oprah*, *Primetime Live*, and CNN; and the subject of a *New York Times* editorial that took her to task for her ‘ostentatious display of affection with her lover in front of President Clinton.’ At the time, it scarcely mattered that Ellen DeGeneres protested that she’d ‘never wanted to be the spokesperson for the gay community.’ That role was automatically assigned—by both the news media and a gay population desperate for high-visibility representatives—to any famous person who took such a rare public step.”⁶⁴

But now dozens of stars have come out with virtually no publicity. While Anderson Cooper’s revelation that he is gay did gain media attention it was mostly focused on why he had taken so long to reveal his homosexuality.

“What was impossible 60 years ago and dangerous 40 years ago and difficult 20 years ago is now becoming no big deal,” Entertainment Weekly concludes.

Today all states allow homosexual individuals to petition to adopt.⁶⁵

Twenty-three states explicitly approve of same-sex couples adopting. Four prohibit such adoptions. In the other 23 states trial courts have sometimes granted adoption but there are no statewide laws explicitly permitting this.⁶⁶

Nevertheless, prejudice against homosexuals continues to be widespread. The FBI reports a significant increase in hate crimes directed at gays or lesbians.⁶⁷ In many cities, individuals continue to fear the consequences of their revealing their sexual orientation.

Moreover, legal discrimination continues to exist. In 34 states, it is still legal for lesbian and gay employees to be fired simply because their employers discover, and disapprove of, their sexual orientation.⁶⁸

**23 states explicitly approve
of same-sex couples adopting.
4 prohibit such adoptions.**

History Speeds Up: A Timeline of Gender-Related Marriage Events

1971

The Minnesota Supreme Court dismisses a suit by two gay men that they had been wrongly denied a marriage license because the state did not explicitly prohibit same-sex marriage. The court argues, “The institution of marriage as a union of man and woman, uniquely involving the procreation and rearing of children within a family, is as old as the book of Genesis.”⁶⁹

1973

Maryland becomes the first state to explicitly ban same-sex marriage. In the next 11 years 45 of 50 states join Maryland in statutorily banning same-sex marriages.⁷⁰

1989

Denmark becomes the first country to legally recognize same sex unions as “civil unions” or “registered partnerships”. Norway and Sweden soon follow.

1990s

Courts in the United States and around the world begin to overturn legislation banning same sex marriages as violations of state or federal constitutional provisions related to equal protection or civil rights. European and Latin American countries usually accept the judicial decisions. American voters often react to court decisions by changing their state constitutions to exclude same sex marriages from constitutional protections.

1993

The Hawaii Supreme Court rules that denying same-sex couples the right to marry violates that state’s Equal Rights Amendment and could not be justified unless the state could demonstrate a compelling interest in the exclusion.⁷¹ It remands the case to the trial court.

1996

The Hawaiian court concludes the state had not met the compelling interest standard.⁷²

In reaction to the Hawaii decision, the U.S. Congress passes the Defense of Marriage Act (DOMA). Section 2 allows states not to recognize same sex marriages conducted in other states.⁷³ Section 3 consists of the following paragraph.

“In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or wife.”

1998

The Superior Court of Alaska strikes down the state’s ban on same-sex marriage concluding, “The court finds that marriage, i.e. the recognition of one’s choice of a life partner, is a fundamental right. The state must therefore have a compelling interest that supports its decision to refuse to recognize the exercise of this fundamental right.”⁷⁴ Later that year, a ballot measure against same sex marriage is approved in Alaska.

Hawaii voters pass a constitutional amendment that allows its legislature to ban same sex marriage.

2000

Canada passes a law defining marriage as between a man and a woman.⁷⁵

The Netherlands becomes the first country to approve same sex marriages.

Vermont becomes the first US state to allow same-sex civil unions. Its civil union law entitles same-sex couples to “all the same benefits, protections and responsibilities” offered to

opposite-sex couples who marry.⁷⁶ The couple is not eligible for these benefits and protections if they leave Vermont. Nor are they entitled to federal benefits offered to married couples.

2003

The Massachusetts Supreme Judicial Court rules unconstitutional that state’s ban on same-sex marriage. The Court concludes:

“Barring an individual from the protections, benefits, and obligations of civil marriage solely because that person would marry a person of the same sex violates the Massachusetts Constitution...a person who enters into an intimate, exclusive union with another of the same sex is arbitrarily deprived of membership in one of our community’s most rewarding and cherished institutions. That exclusion is incompatible with the constitutional principles of respect for individual autonomy and equality under law.”⁷⁷

2004

The history of interracial marriage and same sex marriage law intersect when Massachusetts Governor Mitt Romney invokes a state law enacted in 1913, when the hostility to interracial marriages was very strong, to inhibit the impact of the Massachusetts judicial decision. The law prohibits local registrars from issuing marriage licenses to couples whose marriages would be invalid in their home states.⁷⁸ The Massachusetts legislature repeals the 1913 law in 2008.⁷⁹

President George W. Bush calls for a federal constitutional amendment to prohibit same-sex marriage.⁸⁰

Eleven additional US states pass constitutional amendments banning same sex marriage. Eight of them ban not only same sex marriage but civil unions and domestic partnerships as well.⁸¹

In 2004 President George W. Bush called for a federal constitutional amendment to prohibit same-sex marriage.

2005

After a series of court decisions overturned bans on same sex marriages in several Canadian provinces the Canadian House votes 158-133 and the Senate 43-12 to make same-sex marriage legal throughout Canada.



In 2005 the Canadian Parliament voted to make same-sex marriage legal throughout Canada.

Texas becomes the 18th state to write a ban on same sex marriage into its constitution.

2006

The New Jersey Supreme Court rules that gay couples are entitled to the same legal rights and financial benefits as heterosexual couples, but orders the Legislature to decide whether their unions must be called marriage or could be known by another name.⁸²

In December 2006, the New Jersey legislature passes a bill providing for civil unions and recognizing other states' civil unions. (A bill legalizing same-sex marriages passes the legislature in 2012 but is vetoed by Governor Chris Christie.)

2007

Iowa's ban on gay marriage is struck down as unconstitutional.⁸³

2008

California's Supreme Court legalizes same-sex marriage. Five months later Californians approve Proposition 8, which adds a ban on same-sex marriage to the state constitution.

The Supreme Court of Connecticut legalizes same sex marriage.⁸⁴

State constitutional amendments are passed by ballot in Arizona, Florida and California.

2009

Maine's legislature passes a law allowing same-sex marriage. That November a ballot measure overturns that law.

2010

The Ninth Circuit Court of Appeals rules that California's passage of Proposition 8 violates the U.S. Constitution.⁸⁵

A U.S. District Court rules in two cases that the Defense of Marriage Act violates the US Constitution.⁸⁶

2012

A Federal Appeals Court affirms the District Court's decision overturning the Defense of Marriage Act.⁸⁷

As of the spring of 2012 marriage is defined as the union of one man and one woman in 41 states. Currently, 31 states have added constitutional amendments banning same-sex marriage. Ten others ban them through statute. Currently 8 states plus the District of Columbia recognize same-sex marriage.⁸⁸

Rhode Island does not permit same sex marriages but does recognize such marriages if performed in another state that does. Fourteen states plus the District of Columbia recognize some form of same-sex civil unions or domestic partnerships.

At least 12 other countries in Europe and Latin America have legalized same sex marriage.⁸⁹

In November 2012 voters in Maine, Maryland, Minnesota and Washington will vote on constitutional amendments pertaining to same-sex marriage.

Maine will vote on whether to overturn a previous constitutional amendment banning such marriages.⁹⁰ Maryland will vote on whether to overturn a law legalizing same-sex marriage enacted by its state legislature in early 2012. Minnesota will vote on a constitutional amendment banning same-sex marriage.⁹¹ Washington will vote on whether to overturn existing legislation permitting same-sex marriages.⁹²

Currently 8 states plus the District of Columbia recognize same-sex marriages.

The Debate

We learn best by hearing both sides, in their own words. What follows, we trust, is a candid and dispassionate presentation of the major points made by both sides in the debate over same-sex marriage. For those who want to explore any point in more detail, the end notes provide links to all sources.

The Case for Banning Same-Sex Marriage

1. Homosexuality Is a Sin

Legalizing same-sex marriage legitimizes and gives society's blessing on homosexual behavior. Almost all major religions condemn homosexuality as sinful behavior.⁹³

Leviticus, the third book of the Hebrew Bible says, "Thou shalt not lie with mankind, as with womankind: it is abomination."⁹⁴ The New Testament affirms this view, noting, "... God gave them over to shameful lusts. Even their women exchanged natural relations for unnatural ones...Men committed indecent acts with other men, and received in themselves the due penalty for their perversion."⁹⁵

The Catholic Church views homosexuality as "a serious depravity" going against the natural moral law. Homosexual acts "close the sexual act to the gift of life. They do not proceed from a genuine affective and sexual complementarity. Under no circumstances can they be approved."⁹⁶ Islam teaches that homosexuality is a vile form of fornication punishable by death.⁹⁷ Orthodox Judaism considers it an "abomination" and punishable by death.⁹⁸

In 2003 the Southern Baptist Convention approved a resolution that stated, "Legalizing 'same-sex marriage' would convey a societal approval of a homosexual lifestyle, which the Bible calls sinful and dangerous both to the individuals involved and to society at large."⁹⁹

The Evangelical Presbyterian Church believes, "[H]omosexual practice is a distortion of the image of God as it is still reflected in fallen man, and a perversion of the sexual relationship as God intended it to be."¹⁰⁰

Richard Land, president of the Southern Baptist Ethics & Religious Liberty Commission comments, "If we were to allow same-sex marriage to be legalized, then we have sent the message to our society and to our young people that this is a perfectly normal healthy lifestyle choice but in fact the Bible tells us in Romans 1 it is an unnatural, sinful choice. ... The homosexual community does not want tolerance; they want affirmation. That is something that someone who believes in biblical authority cannot give them..."¹⁰¹

2. Homosexuality Is a Choice

Sanctioning same-sex marriage is not the same as sanctioning interracial marriage. "Race and gender are immutable characteristics. Clearly, sexual orientation is not in the same category...", observe two members of the Hawaii Commission on Sexual Orientation.¹⁰²

Homosexuality is a disorder that can be cured through therapy. The most methodologically rigorous (prospective and longitudinal) study yet conducted on subjects who had sought change through religious ministries showed that 38 percent achieved success, defined as either "substantial conversion to heterosexual attraction" (15 percent) or "chastity" with homosexual attraction "either missing or present only incidentally."¹⁰³

Peter Sprigg of the Family Research Council notes, "One of the strongest pieces of evidence for the possibility of change came from an unlikely source—Dr. Robert Spitzer, a psychiatrist who was instrumental in the pivotal 1973 decision of the American Psychiatric Association to remove homosexuality from its official list of mental disorders."¹⁰⁴

Spitzer studied two hundred people who had reported some measure of change from a homosexual to a heterosexual orientation as a result after therapy for unwanted same-sex

attractions. He concluded, "The changes following reparative therapy were not limited to sexual behavior and sexual orientation self-identity... The changes encompassed the core aspects of sexual orientation."¹⁰⁵

3. Same-Sex Marriage Threatens the Institution of Marriage

Same-sex marriage is a fundamental threat to marriage, the bedrock and heart of civilization. Historically, the primary purpose of marriage has been to bear and raise children. Responsible procreation is at the heart of society's interest in regulating marriage.

Reacting to the Massachusetts court decision overturning the state ban on same-sex marriage Brian Fahling, senior trial attorney for the American Family Association Center for Law & Policy argued, "The court has tampered with society's DNA, and the consequent mutation will reap unimaginable consequences for Massachusetts and our nation."¹⁰⁶

Social anthropologist Stanley Kurtz argues there is an abundance of evidence that recognizing same-sex marriages would undermine the institution of marriage. "Scandinavian gay marriage has driven home the message that marriage itself is outdated, and that virtually any family form, including out-of-wedlock parenthood, is acceptable," he writes.¹⁰⁷ After Norway and Sweden legalized domestic partnerships, in 1993 and 1994 respectively, out-of-wedlock birth rate rose significantly.

More than half of all children in Norway, Sweden and Denmark are now born to unmarried parents. Kurtz concludes, "...married parenthood has become a minority phenomenon." He blames gay marriage.

Same-sex relationships are not committed relationships. There is "indisputable evidence of the unavoidably promiscuous, fleeting nature of most same-sex relationships."¹⁰⁸ "The evidence is overwhelming that homosexual and lesbian 'committed' relationships are not the equivalent of marriage," argues the Family Research Council. "In addition, there is little evidence that homosexuals and lesbians truly desire to commit themselves to the kind of monogamous relationships as signified by marriage."

A 1984 study of gay males found that every single couple that had been together more than five years had incorporated a provision for outside sexual activity.¹⁰⁹

Heterosexual marriages last longer. More than 65 percent of heterosexual marriages last for 10 years or longer compared to only 29 percent of homosexual relationships.¹¹⁰

This disinterest in long-term relationships has resulted in a relatively small demand for registered partnerships or marriage by gay and lesbian couples even when legally available. The number of registered same-sex unions in Sweden is reported to be about 1,500 (for a total of 3,000 individuals) out of the estimated homosexual and lesbian population of 140,000, or about 2 percent of gay and lesbian people.¹¹¹

Legalizing same-sex marriages will lead us down a slippery slope to where anything goes: prostitution, polygamy, incest.¹¹²

Stanley Kurtz argues in National Review, "once gay marriage itself has been granted on grounds of 'equal protection' or 'equal benefits,' it will be impossible to deny either parental or marital status to any number of adults."¹¹³ He adds, "The end of the line is the end of marriage..."

Legalizing same-sex marriages will lead us down a slippery slope to where anything goes: prostitution, polygamy, incest.

4. Same-Sex Marriage Endangers Children

"Marriage is fundamentally about the needs of children," says David Blankenhorn, author of *The Future of Marriage* and the founder and president of the Institute for American Values. "(W)hat children need most are mothers and fathers."¹¹⁴

The mother and the father bring different and important traits to child rearing. Psychiatrist Harold M. Voth of the Menninger Foundation wrote in 1978, "One of the most important functions of parenting is to evoke, develop and reinforce gender identity and then proceed to shepherd the developing child in such a way as to bring his psychological side into harmony with his biological side and therefore develop a solid sense of maleness or femaleness..."¹¹⁵

Children are better off when raised by both a father and mother. Child Trends, a leading independent nonpartisan research concludes:¹¹⁶

“[R]esearch clearly demonstrates that family structure matters for children, and the family structure that helps children the most is a family headed by two biological parents in a low-conflict marriage. Children in single-parent families, children born to unmarried mothers, and children in stepfamilies or cohabiting relationships face higher risks of poor outcomes... . There is thus value for children in promoting strong, stable marriages between biological parents... . [I]t is not simply the presence of two parents... . but the presence of two biological parents that seems to support children’s development.”

The Catholic Church raises to a moral principle “the right of the child to be born from one father and one mother who are father and mother both from a biological and a legal point of view.”¹¹⁷

“We know from biology that two males or two females cannot have a marital union that is biologically open to new life. This means that, in order for a same-sex couple to conceive a child, the couple would have to take either sperm or an egg from someone who is a stranger to their relationship. So in order to conceive a child, a same-sex couple would have to overlook the child’s right to be raised by both of his or her biological parents.”

The controversial psychologist Paul Cameron, head of the Family Research Institute, estimates the risk of a homosexual molesting a child is much greater than that of a heterosexual.¹¹⁸

Cameron also contends that gays have a 20-plus shorter life span than heterosexuals and warns that this “has profound implications for adoption...the chances that a gay-adopted child will lose one or both parents before graduating from high school are much greater than they would be with a married man and woman.”¹¹⁹

5. It’s About Religious Liberty

The legalization of same-sex marriage threatens religious freedom. The Catholic Church defines religious freedom as meaning “that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits.”¹²⁰

If same-sex marriage is legalized churches will be forced to aid and abet behavior contrary to their moral teachings. As the United States Conference of Catholic Bishops notes,

“Changing the legal term “marriage” is not one change in the law, but rather amounts to thousands of changes at once. The term “marriage” can be found in family law, employment law, trusts and estates, healthcare law, tax law, property law, and many others. These laws affect and pervasively regulate religious institutions, such as churches, religiously-affiliated schools, hospitals, and families... When Church and State disagree on what the term “marriage” means ... conflict results... as the State will apply various sanctions against the Church for its refusal to comply with the State’s definition.”¹²¹

There are already numerous examples of how this has occurred. For example in New York City, Yeshiva University, a school under Orthodox Jewish auspices, banned same-sex couples from its married dormitory. In 2001, the state’s highest court ruled Yeshiva violated New York City’s ban on sexual orientation discrimination. In 2006 Catholic Charities withdrew from the adoption business because Massachusetts law prohibited them from refusing to place children with same-sex couples.¹²²

Religions should not be forced to accommodate lifestyles considered sinful under their religious tenets.

The Case for Legalizing Same-Sex Marriage

1. Same-Sex Marriage Strengthens the Institution of Marriage

The structure of families has changed dramatically in the last 50 years. Married couples represented just 48 percent of American households in 2010—far below the 78 percent of households in 1950.

Same-sex marriages hold the promise to boost the percentage of married households, strengthening the institution of marriage.

David Blankenhorn, one of two expert court witnesses used by those supporting the constitutionality of California's ballot initiative banning same sex marriage recently recanted and announced, "the time has come for me to accept gay marriage and emphasize the good that it can do."¹²³

Same-sex households are a fact of life in the United States. The 2010 Census reported 594,000 same-sex households, about 1 percent of all households.¹²⁴

Adam Romero of The Williams Institute notes, "In many ways, the more than 107,000 same-sex couples living in California are similar to married couples. According to Census 2000, they live throughout the state, are racially and ethnically diverse, have partners who depend upon one another financially, and actively participate in California's economy."¹²⁵

Those who seek legal recognition for their same-sex unions often have a long term committed relationship. A study by psychologist Esther Rothblum of 400 couples who had a civil union in Vermont the first year they were available found that on average couples who sought a civil union license had already been together for 11 to 12 years.¹²⁶

Civil unions, however, do not convey the benefits of marriages, either substantively or psychologically. Vermont, the first state to allow same-sex unions in 2000, recognized its shortcomings by legalizing same-sex marriage in 2009.

Federal statutes and regulations confer 1,049 rights and benefits to married couples¹²⁷ while state laws confer 400

additional rights and responsibilities on spouses.¹²⁸ Many of these rights and responsibilities (such as the right to family medical leave, the right to protection against domestic violence, health insurance, inheritance) are available only through the state's grant of a marriage license.

Marriage also conveys a sense of stability. Over 70 percent of married same-sex couples surveyed in Massachusetts felt marriage had increased the level of commitment in their relationships, according to a 2009 study by the Williams Institute.¹²⁹

The legalization of same sex marriage spurs more couples to make a legal commitment to one another. In those US states that allow same-sex marriages, 30 percent of same-sex couples marry in the first year. In states with civil unions, only 18 percent exercise that option, says psychologist Lee Badgett.

Marriage benefits both spouses by promoting physical and psychological health. After an extensive examination of the data, the US Department of Health and Human Services concludes,

"Regardless of population subgroup (age, sex, race, Hispanic origin, education, income, or nativity) or health indicator (fair or poor health, limitations in activities, low back pain, headaches, serious psychological distress, smoking, or leisure-time physical inactivity), married adults were generally found to be healthier than adults in other marital status categories."¹³⁰

As for those who point to European data as evidence that same-sex marriage will lead to fewer heterosexual marriages and more cohabitation, psychologist Lee Badgett notes, "No matter how you slice the demographic data, rates of non-marital births and cohabitation do not increase as a result of the passage of laws that give same-sex partners the right to registered partnership. Giving gay couples rights does not inexplicably cause heterosexuals to flee marriage, as Kurtz would have us believe."¹³¹

According to the Nordic Statistical Yearbook, "Overall, the number of marriages in the Nordic countries has increased since 1990... (while) the total number of divorces in the Nordic countries has been quite stable from 1990 to 2004."¹³²

2. Children Benefit from Dedicated Parents of Any Gender

The most important ingredient for children is that they have two committed and loving parents. There has been a dramatic decline in these types of families. In 1960 88 percent of children were living with two parents. By 2011 this had fallen to 69 percent. Over 19.2 million children live with single parents. In the U.S. 50 percent of women under 30 who give birth are unmarried.¹³³

The number of married couples who choose to remain childless has increased. Today about 12 percent of U.S. married couples never have children.

Nearly all mainstream organizations dealing with mental health and child safety endorse same-sex parenting.¹³⁴

The Child Welfare League of America, the nation's oldest and largest membership-based child welfare organization, and the nationally recognized standard- setter for child welfare services, says "[a]ny attempt to preclude or prevent gay, lesbian, and bisexual individuals or couples from parenting, based solely on their sexual orientation, is not in the best interest of children."¹³⁵

The American Academy of Pediatrics, the nation's oldest and largest association of pediatricians with over 60,000 members, has concluded, "No data have pointed to any risk to children as a result of growing up in a family with 1 or more gay parents."¹³⁶

The American Academy of Child and Adolescent Psychiatry, with over 6,500 psychiatrists has determined "[o]utcome studies of children raised by parents with a homosexual or bisexual orientation, when compared to heterosexual parents, show no greater degree of instability in the parental relationship or developmental dysfunction in children."¹³⁷

The American Psychiatric Association with over 38,000 physician members concludes, "[n]umerous studies over the last three decades consistently demonstrate that children raised by gay or lesbian parents exhibit the same level of emotional, cognitive, social, and sexual functioning as children raised by heterosexual parents."¹³⁸

The American Psychological Association, with 148,000

members notes, "the evidence to date suggests that home environments provided by lesbian and gay parents are as likely as those provided by heterosexual parents to support and enable children's psychosocial growth."¹³⁹

In Florida, after taking voluminous testimony from both sides on the issue of whether to overturn that state's ban on adoption by same-sex couples the Circuit Court Judge Cindy Lederman concluded,

"As a result, based on the robust nature of the evidence available in the field, this Court is satisfied that the issue is so far beyond dispute that it would be irrational to hold otherwise; the best interests of children are not preserved by prohibiting homosexual adoption."¹⁴⁰

No state has ever conditioned marriage on the ability of the couple to have children.

Indeed, the fact that same-sex couples cannot in and of themselves have children may benefit children says psychologist Abbie Goldberg. Gays and lesbians do not become parents by accident, compared with an almost 50 percent accidental pregnancy rate among heterosexuals. "That translates to greater commitment on average and more involvement."¹⁴¹

Over 115,000 children now live with same-sex parents.¹⁴²

Research suggests that gay and lesbian parents are a powerful resource for children in need of adoption. A 2007 report found 65,000 children living with adoptive gay parents between 2000 and 2002. An additional 14,000 were in foster homes headed by gays and lesbians.¹⁴³

A 2011 report found that, of gay and lesbian adoptions at more than 300 agencies, more than half consisted of kids with special needs.¹⁴⁴

Children, in particular, benefit from marriage equality. Psychologist Lee Badgett after conducting surveys of same-sex

Nearly all mainstream organizations dealing with mental health and child safety endorse same-sex parenting

married couples in Massachusetts and the Netherlands noted, “Many parents reported that their children felt more secure and protected. Others noted that their children gained a sense of stability. A third common response was that marriage allowed children to see their families as being validated or legitimated by society or the Government.”¹⁴⁵

Paul Cameron, whose research on child abuse and the life expectancy of gays is widely cited by opponents of same-sex marriage, has been criticized and censured by both courts and scientific bodies for misrepresenting data. A Texas Circuit Court reprimanded Cameron for making “misrepresentations” noting for example “his sworn statement that ‘homosexuals are approximately 43 times more apt to commit crimes than is the general population’ is a total distortion of the Kinsey data upon which he relies...”¹⁴⁶

In 1984 the Nebraska Psychological Association passed an extraordinary resolution declaring it “formally disassociates itself from the representations and interpretations of scientific literature offered by Dr. Paul Cameron in his writing and public statement on sexuality.” In 1986 the American Sociological Association declared that it, “officially and publicly...condemns his consistent misrepresentation of sociological research.”¹⁴⁷

As for life expectancy, an exasperated Robert Hogge, author of the 1997 study cited by Paul Cameron has voiced his concern at those with an anti-gay agenda misusing his data. He reminds us that the original study was done when AIDS was rampant. Since then, he noted in 2001, “Deaths from HIV infection have declined dramatically...there has been a threefold decrease in mortality...”¹⁴⁸

A recent study based on new data estimates the difference in life expectancy between homosexual and heterosexuals may now be as little as 1-2 years.¹⁴⁹

3. Homosexuality is Normal

Homosexuality is a normal variant within the human condition. There are currently some 8 to 15 million gay and lesbians live in the United States, about 3-5 percent of the population.¹⁵⁰

In some useful aspects, homosexuality might be likened

to left-handedness, another normal variant in the human condition that characterizes about 10 percent of the population. Interestingly, cultural and social pressures often encourage left-handed children to become right-handed although evidence indicates that such a forced conversion can cause multiple problems, including learning disorders and stuttering. Historically, religions have condemned left-handedness, justifying this with many biblical passages, including Matthew 25:32-34.¹⁵¹ Many religious schools used to punish students who used their left hands.¹⁵² Perhaps even more pertinent is that in 19th century Europe homosexuals were referred to as “left-handed”.¹⁵³

The American Academy of Pediatrics, the American Counseling Association, the American Psychiatric Association, the American Psychological Association, the National Association of School Psychologists, the National Association of Social Workers, the National Psychoanalytic Association have all declared that homosexuality is normal.¹⁵⁴

As for changing sexual orientation through therapy, the American Psychological Association, American Psychiatric Association and the National Association of Social Workers insist, “There is no reliable evidence that sexual orientation is amenable to redirection or significant influence from psychological intervention.”¹⁵⁵

In 2012, the Pan American Health Organization, part of the World Health Organization condemned reparative therapy. “There is no medical indication for changing sexual orientation,” says PAHO Director Dr. Mirta Roses Periago. Reparative or conversion therapy represent “a serious threat to the health and well-being—even the lives—of affected people.”¹⁵⁶

Dr. Spitzer, whose research was a significant part of the foundation of the thesis that reparative therapy was useful and successful has written an unprecedented letter published in the same journal where the original study appeared apologizing for its methodological flaws. He expressed frustration about how its findings had been misinterpreted and abused. His letter concludes, “I believe I owe the gay community an apology.”¹⁵⁷

In July 2012 Alan Chambers, the President of Exodus

International, the leading organization advocating reparative therapy shifted his position and declared “reparative therapy offered false hopes and could even be harmful.”¹⁵⁸

4. Love Thy Neighbor: Many Congregations Affirm Marriage Equality

Supporters of same-sex marriage acknowledge there are passages in the Bible that condemn same-sex marriage but they note that biblical traditions grew out of different times with different customs and different needs.

Leviticus, for example, widely cited as the basis for God’s opposition to homosexuality, also declares that God wants children who curse their parents to be put to death (20:9) and wants women who give birth to a male child to be isolated from the community for 40 days (80 days if she gives birth to a girl(12:1)) and prohibits the wearing of garments made of two kinds of cloth (19:19) and insists that every 50 years all debts must be abolished (25:13). In the past biblical passages were used as the primary justification for church opposition to equal rights for wives and interracial marriage.

The overwhelming message of the New Testament is love, not hate. Jesus never once mentions homosexuality but his response to the Pharisee’s question, “Teacher, which is the greatest commandment in the Law?” is both instructive and revealing.

“Jesus replied: ‘Love the Lord your God with all your heart and with all your soul and with all your mind.’ This is the first and greatest commandment. And the second is like it: ‘Love your neighbor as yourself.’ All the Law and the Prophets hang on these two commandments.”¹⁵⁹

It is clear that what is important in the Bible is not a family structure based on biology or even heterosexual relationships but the quality of love exhibited in relationships, observes Episcopal priest Rev. Jay Emerson Johnson.¹⁶⁰ If same-sex couples exhibit such love they deserve legal protection.

As congregations grapple with the issue of homosexuality and same-sex marriage many are embracing these welcoming

and loving biblical tenets.

In July 2012, for example, the Episcopal Church approved an official liturgy for blessing same-sex unions.¹⁶¹

In Minnesota, where an amendment to outlaw same-sex marriages will be on the ballot in November, synods representing about half of the 800,000 members of the of the Evangelical Lutheran Church in America as of spring 2012 had formally approved resolutions in opposition to that amendment.

The general assembly of Minnesota’s United Methodists overwhelmingly approved a similar resolution.¹⁶²

The Unitarian Universalist Association of Congregations and the Minnesota Rabbinical Council, which represents the majority of the state’s Jewish population, also voted to oppose the amendment.

5. It’s About Religious and Personal Liberty

Appeals to religious freedom must be rooted in consistent teaching and practice. But the Catholic Church, for instance, does not recognize marriages after divorce, unless the partner seeking to remarry obtains an annulment. Yet it has been willing to accord divorced partners who remarry under civil law the same privileges it accords marriages performed within the Church.

The examples opponents to same-sex marriage cite as interfering with religious liberty have all occurred under existing anti-discrimination laws. Are they advocating overturning those laws?

In most of these cases religious institutions are not being forced to conform to laws they find morally repugnant. Rather, they are being asked to decide whether they will continue to accept significant government subsidies that come with certain strings attached, as was the case with Catholic Charities involvement with adoptions in Massachusetts and Illinois.

Personal liberty is compatible with religious freedom. If exemptions need to be made to accommodate religions that should be possible. The courts have for many years been reviewing and ruling on cases that test the boundary line between religious freedom and equal protection.

Amendments to state constitutions to limit marriage to a union of a man and a woman single out one class of Americans for discrimination. Support seems driven primarily by profound personal discomfort with homosexuality, not a desire to defend the institution of marriage.

Indeed, the debate about same-sex marriage may have spurred a dramatic increase in violence toward gays and lesbians. According to political scientist Gary Segura: in 2008, crimes against gay men and lesbians accounted for seventy-one percent of all hate-motivated murders and fifty-five percent of all hate-motivated rapes. He concludes, "There is simply no other person in society who endures the likelihood of being harmed as a consequence of their identity than a gay man or lesbian."¹⁶³

Moral disapproval alone should not be a sufficient reason to deny rights to a minority.

Unless a clear and imminent danger exists, the state does not and should not regulate family life on the basis of parental characteristics.

After taking weeks of testimony from both sides, a federal appeals court overturned a successful ballot initiative that exempted same-sex marriages from the protection of the California Constitution. Its reason for doing so is pertinent.

"An initiative measure adopted by the voters deserves great respect. The considered views and opinions of even the most highly qualified scholars and experts seldom outweigh the determinations of the voters. When challenged, however, the voters' determinations must find at least some support in evidence...Conjecture, speculation and fears are not enough. Still less will the moral disapprobation of a group or class of citizens suffice, no matter how large the majority that shares that view. The evidence demonstrated beyond serious reckoning that Proposition 8 finds support only in such disapproval. As such, Proposition 8 is beyond the constitutional reach of the voters or their representatives."¹⁶⁴

You decide.

Notes

- 1 Marriage generally functioned to provide a “legitimate” identity to children but biological paternity was not universally the basis of that identity. In many cases the biological father (the Latin term is genitor) was distinct from the legal father (pater) produced by the marriage contract and ceremony.
- 2 Human Mating Systems: Polygyny. Washington State University. <http://public.wsu.edu/~rquinlan/polygyny.htm>
- 3 The majority of these marriages were fraternal in nature, that is, the husbands were all brothers.
- 4 King David had 7 wives and 10 concubines.(Samuel 3:1). King Solomon had 60 wives and 80 concubines. (Kings 3:1). The Qur’an(4:3) says, “Marry women of your choice, two or three or four; but if you fear that you shall not be able to deal justly with them, then only one or one that your right hands possess. That will be more suitable, to prevent you from doing injustice.”
- 5 Conrad Philip Kottak. “Cultural Anthropology”. 8th edition. McGraw Hill, New York. 2000
- 6 Where marriages produced no heir, wives presented a slave concubine to their husbands in order to raise an heir (Gen. 16). Concubines were protected under Mosaic law (Exod. 21:7-11; Dt. 21:10-14), though they were distinguished from wives (Jdg. 8:31) and were more easily divorced (Gen.21:10-14).
- 7 Matthew Kuefler, “The Marriage Revolution in Late Antiquity: The Theodosian Code and Later Roman Marriage Law,” Journal of Family History. October 2007
- 8 The Message. February 11, 2007. <http://shofm.files.wordpress.com/2007/02/bulletinfeb112007.pdf>
- 9 E.J. Graff. What IS Marriage For? Beacon Press. Boston, MA. 1999.
- 10 “What therefore God hath joined together, let not man put asunder.” Mark 10:2. “But I say unto you, That whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery: and whosoever shall marry her that is divorced committeth adultery.” Matt. 5:32
- 11 When Elizabeth became Queen in 1558 the Anglican Church became the established church. It was not merely a religious organization, but it was also an instrument of the state, especially in its functions of recording births, marriages and deaths.
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