

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman John Edmonds at 1:30 P.M. on January 25, 2005 in Room 313-S of the Capitol.

Committee members absent:

Committee staff present: Athena Andaya, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Mary Torrence, Revisor of Statutes Office  
Carol Doel, Committee Secretary

Conferees: Attorney General Phil Klein  
Rep. Jan Pauls  
Mike Farmer  
Kris Kobach  
Dr. Allen Wynne  
Rev. Bob Hanson  
Marsha Strahm  
Paul Barkey  
Kevin Theriot  
Larry Limbocker  
Pat Bullock  
Re. Cecil Washington  
Rev. Aletha Cushinberry  
Rev. Alan Benson  
Kent Hampton  
Pastor Jerry Johnston  
David Owens  
Richard Miller

Others attending: See attached list

Chairman Edmonds called the meeting to order and opened the floor for bill introductions.

Representative Eber Phelps requested the introduction of a bill regarding forfeiture of arms. The current statutes have no provision for firearms to be traded in for more suitable weapons for use by law enforcement officers.

Hearing no objections the bill was accepted for introduction.

Chairman Edmonds requested the introduction of a bill dealing with cost of living adjustments for certain retirees under KP&F.

With no objections the bill was accepted for introduction.

Chairman Edmonds opened the meeting for public hearing on **SCR 1601** which proposes to amend Article 15 of the Kansas Constitution by adding a new section that would define marriage as a civil contract between a man and a woman and stating that all other marriages would be null and void. No other relationships would be recognized as being entitled by the State of Kansas to the "rights or incidents" of marriage.

Representative Jan Pauls addressed the committee explaining that **SCR 1601**, if passed by the House, would be placed on the April ballot with the question of whether or not to place the Kansas definition of marriage into the Kansas Constitution. It would clarify that no other relationship is to be recognized by the state as a marriage. Rep. Pauls further stated that if passed **SCR 1601** would not remove any rights that any Kansas citizen presently holds and urges the passage of the amendment to allow citizens to vote on the issue. (Attachment 1)

Chairman Edmonds directed attention to written testimony by former Speaker of the House Tim Shallenburger

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in support of SCR 1601. In his testimony, Mr. Shallenburger opined that there are activist courts that could very well threaten to overturn existing Kansas law which bans same sex marriage and it is imperative that we add this amendment to the Kansas Constitution. (Attachment 2)

Mike Farmer, Executive Director Kansas Catholic Conference, the public policy office of the Catholic Church in Kansas, addressed the committee as a proponent of SCR 1601 relating when marriage is redefined so as to make other relationships equivalent to it, the institution of marriage is devalued and further weakened. It is the feeling of their organization that the state has an obligation to promote the family, which is rooted in marriage and that it would be wrong to redefine marriage for the sake of providing benefits to those who cannot rightfully enter into marriage. They, therefore, endorse SCR 1601 favorable for passage. (Attachment 3)

Kris Kobach, Professor of Constitutional Law, University of Missouri (Kansas City) School of Law, testified before the committee urging the passage of SCR 1601. In his testimony, Professor Kobach stated that it was his unequivocal constitutional judgment that this amendment is necessary if Kansas wishes to preserve and protect the traditional legal definition of marriage. In the absence of the constitutional amendment proposed by SCR 1601, the traditional definition of marriage is jeopardized by two threats ---- a judicial threat and a legislative threat. (Attachment 4)

Dr. Alan Wynne, a physician board certified in both internal medicine and endocrinology, presented testimony to the committee in support of SCR 1601. Dr. Wynne stated that he is opposed to adding sexual orientation to our non-discrimination clause. Unlike one's race or skin color, sexual preferences have not been shown to be immutable, predetermined, genetically-based characteristics. Dr. Wynne reported briefly on several different studies which have been made and gave references for finding these studies. (Attachment 5)

Next to appear as a proponent to SCR 1601 was Pastor of the Shawnee Heights Baptist Church, Reverend Bob Hanson. He reported that the Southern Baptist Church affirms God's plan for marriage and sexual intimacy – one man, and one woman, for life. Homosexuality is not a "valid alternative lifestyle." Southern Baptists do not believe that homosexuality is genetic or immutable. The Southern Baptists urge allowing the people of the state to speak by allowing the amendment to be placed on the November ballot. (Attachment 6) Reverend Hanson also called attention to written testimony submitted by Superintendent Terry Yancey, Kansas Assemblies of God urging passage of the "One Man - One Woman Marriage Amendment". (Attachment 7)

In her testimony supporting the passage of SCR 1601, Marsha Strahm, CWA of Kansas (Concerned Women of America), stated that they are asking for strengthening and protection of marriage from judges and courts that could impose their own ideas of what marriage should be. They are not asking for a ban on gay marriage, but are asking for definition and protection of an institution that has been deemed good for society throughout millennia, for safeguarding of an institution that has provided the building blocks of a stable society, and to understand that marriage is so important that we tamper with it at our own peril. (Attachment 8)

Reverend Paul Barkey, retired Army Chaplain and pastor of Ashland Community Church, appeared before the committee as a proponent of SCR 1601, and presented an extensive packet of material for the committees' perusal. It was their hope that this material would be of value in the deliberations on the issue which SCR 1601 presented. (Attachment 9)

Kevin H. Theriot provided testimony in favor of SCR 1601 stating the need to put before the voters an amendment of the Kansas State Constitution defining marriage as a civil contract between one man and one woman. He stated that his testimony represented his professional knowledge and opinion as a Kansas attorney who is involved in protecting marriage on a state and national level. Mr. Theriot is Senior Legal Counsel for the Alliance Defense Fund. (Attachment 10)

Larry Limbocker, life long resident of Kansas, appeared before the committee as a concerned citizen, in support of SCR 1601. In his testimony, Mr. Limbocker stated that this issue goes to the very core of our

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belief system, our mores, our principles and religious convictions. (Attachment 11)

Pat Bullock, Director of Missions Heart of Kansas Southern Baptist Association, delivered testimony in support of SCR 1601. In his testimony, Mr. Bullock stated, "When you redefine marriage, you redefine morality. When you redefine morality, you have redefined life itself rather than accepting what a Holy God created". (Attachment 12)

Next to present testimony before the committee in support of SCR 1601 was Pastor Cecil T. Washington, Jr. of the New Beginning Baptist Church. Pastor Washington spoke on the economic status, and giving risk percentages for various unhealthy tendencies. He also spoke of genetics, choice and change, real love, and intent and design and urged the passage of SCR 1601 protecting the institution of marriage. (Attachment 13)

Reverend Aletha Cushinberry, pastor of the Apostolic Church presented testimony encouraging the passage of SCR 1601. In her testimony Rev. Cushinberry stated that any change in the marriage law would lead to further deterioration of family as defined by God. (Attachment 14)

Representing the Asbury Mt. Olive Church, Dr. E. Alan Benson, Pastor, embraced SCR 1601. In her testimony, she related that after sincere and careful forethought and in her response to moral duty as a citizen of the State of Kansas and the United States of America, she stands in support of the Amendment to our State Constitution to clearly define marriage as an act or union between one man and one woman. (Attachment 15)

Kent Hampton spoke to the committee as a proponent of SCR 1601. In his testimony, Mr. Hampton opined that if same-sex unions are allowed, we will have declared marriage to be nothing special, only a temporary contract between people of undetermined quantity or gender. (Attachment 16) Mr. Hampton also included an article entitled *What Was Really Learned from Tasker and Golombok's Study of Lesbian and Single Parent Mothers?* written by *Walter R. Schumm*, Kansas State University (Attachment 17) as well as an article entitled *Differential Risk theory As A Subset of Social Exchange Theory: Implications For Making Gay Marriage Culturally Normative And For Understanding Stigma Against Homosexuals* also written by *Walter R. Schumm*. (Attachment 18)

Dr. Jerry Johnston, Senior Pastor of First Family Church of Overland Park, introduced his testimony in support of SCR 1601. He related that nearly 1,000 evangelical pastors in Kansas request that Kansans be given the opportunity to exercise their citizenship and vote on a marriage amendment. (Attachment 19) Dr. Johnston also presented each member of the committee with a copy of *Marriage Under Fire*, a book written by Dr. James Dobson and a CD Rom entitled *Same Sex Marriage vs. Marriage God's Way* a message by Dr. Jerry Johnston.

David Owens, representing Homeless Come Home, addressed the committee supporting SCR 1601 and related several life experiences. (No Testimony)

In his testimony supporting SCR 1601, Dr. Richard Miller, stated that marriage as a union of one man and one woman passes all the tests and is right. He respectfully requested that the right of the people of Kansas to vote on the issue be affirmed. (Attachment 20)

Attorney General Phil Klein addressed the committee in support of SCR 1601. In his testimony, the General stated that this resolution, unfortunately is a necessity precipitated by those who do not understand the concept of separation of power and do not understand the legal distinctions that are apparent in differences between the gay rights movement and the civil rights movement as well as the rights in women's suffrage movement. Attorney General Klein spoke about the legal issues and addressed the resolution itself. (No Testimony)

There were no other proponents who wished to address the committee regarding SCR 1601.

Chairman Edmonds advised the committee on plans for Wednesday, January 26<sup>th</sup> which included a regular committee meeting beginning at 1:30 p.m. taking testimony from opponents until 3:00 p.m. when the committee would adjourn until 5:00 p.m. when testimony from opponents would continue until everyone who wished to address the committee had done so. Committee was adjourned at 4:30 p.m.

# FEDERAL AND STATE AFFAIRS

## GUEST LIST

Date 1-25-05

Paul E. Berkeley	
RICHARD L. MILLER	
Fort Vincent	
Betty Martin	
Carol Kessler	
Larry Kimbocker	
Samuel Reed	
Glen O. Morrison	
Marla Carter + Brad Berg	
Law King	
Keith Haxford	
Don M. Reza	
Tiffany Muller	
TOM WITT	
LISA MAYHUGH	
SCOTT SEEL	
Ashley Wendler	
Wesley	
Mike Farmer	
David Klepper	KC STAR
Marsha Strahm	CWA of Mo
Chris Williams	
Denny Johnston	First Family Church

# FEDERAL AND STATE AFFAIRS

## GUEST LIST

Date 1-25-05

Kent Hampton	
Barbara Murphy	
Alan Llynn	
Bob Hanson	
Alanna Tushnet	
Gene Washington	
Pat Bullock	
Jay Gul	
Annann Meyer	KNIASW Intern
Jeremiah J. Johnston	
Kris Kobach	
Ryan Kriegshauser	
PAT WEHMAN	
Amber Shaverdi	PMCA
Valon Law	
Christie Braggner	
Sean Hickey	
Jim Cronk	KBA
Christian Meyer	AG office
EUSA Rawls	KNIASW Intern
Note: David Owens chose not to sign (mac)	
Kevin Tierot	
Phill Sathier	



JANICE L. PAULS

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TOPEKA

HOUSE OF  
REPRESENTATIVESRANKING MINORITY MEMBER:  
JUDICIARY

MEMBER:

HOUSE RULES AND JOURNAL  
TRANSPORTATION  
JOINT HOUSE AND SENATE COMMITTEE  
ON JUVENILE JUSTICE AND CORRECTIONS  
OVERSIGHT  
JOINT HOUSE AND SENATE COMMITTEE  
ON ADMINISTRATIVE RULES AND  
REGULATIONS  
JOINT HOUSE AND SENATE COMMITTEE  
ON REDISTRICTING

KANSAS SENTENCING COMMISSION

Testimony before the Federal and State Affairs Committee  
on SCR 1601

January 25, 2005

Chairman Edmonds, Vice-Chairman Siegfried, Ranking Democrat Burroughs and members of the committee, I appreciate the opportunity to testify before you on SCR 1601. As I am an attorney, I will be joining in on a discussion on Thursday also.

SCR 1601 represents the exact version of the protection of marriage act which was crafted in a conference committee last year between the House and the Senate and passed by the Senate. While this version was substantially the House version which the House had passed earlier and the Senate failed to pass, the House did not have the votes to pass the conference committee report last year.

SCR 1601, if passed by the House, would place on the April ballot the question of whether or not to place the Kansas definition of marriage into the Kansas Constitution. It would also clarify that no other relationship is to be recognized by the state as a marriage.

Initially, let me address the question of whether this Resolution contains two subjects. A similar challenge was presented to the Supreme Court in Louisiana, which rejected the argument. The first paragraph in this Resolution states what marriage is, the second paragraph states what marriage is not to be. It would seem that in no way could this be considered two separate subjects.

SCR 1601, if passed by the voters of Kansas will not remove any rights that any Kansas citizen presently holds. The state does not recognize greater numbers than two in a marriage, and the state does not allow two members of the same sex to enter into a marriage.

The question then arises, if SCR 1601 does not remove any rights or add any rights, why pass it? If this resolution is placed in the Kansas Constitution, no court can set aside our Kansas law as unconstitutional. While I would think it unlikely that a Kansas judge would try and set aside our law, that has happened, as occurred in Massachusetts. In your materials you received from staff, you learned that Massachusetts is the only state that recognizes same-sex marriage. However, Massachusetts did not pass a law to do this, but a Massachusetts court changed their law to recognize same-sex marriage.

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Date 1-25-05Attachment 1

Some have questioned whether this law discriminates against those who wish to enter into same-sex marriage. Kansas laws against discrimination protect against discrimination on the basis of race, religion, color, sex, disability, national origin or ancestry and age. Sexual orientation has never been a protected class in Kansas and this issue has been discussed numerous times. Sexual orientation describes behavior and is not an easily recognized outward condition.

The second paragraph provides that “No relationship, other than marriage, shall be recognized by the state as entitling the parties to the rights or incidents of marriage”. This would prohibit the state from either providing marital benefits for other relationships other than marriage, or from compelling others to treat other relationships as the equivalent of marriage. For example, no employer could be forced to offer insurance benefits to others in relationships other than marriage, but employers could voluntarily offer such benefits. (State employers would not be able to do so.)

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Everyone on both sides of this question seems to believe that this amendment would easily pass if placed on the ballot. As representatives of our constituencies, it is imperative that we allow the citizens to vote on this issue. I would urge you to vote this resolution out, without amendment. I am concerned that if amended, this will not pass the Senate again, as the vote was so close. This Constitutional amendment reflects the beliefs of the vast majority of Kansans and of our country.



**Tim Shallenburger**  
**1538 Garfield**  
**Baxter Springs, Kansas 66713**  
**(620) 856-2301**  
**tshallenburger@yahoo.com**

January 25, 2005

Thank you Mr. Chairman and member of the committee,

I, like thousands of Kansans believe traditional marriage between a man and a woman is the principal foundation of civilization. It provides humanity with fundamental principals and insures the survival of the Human Species.

The Kansas law that I helped pass as a legislator and Speaker, that defines marriage as something between a man and woman only, seems clear to me. However legal interpretation is always fraught with uncertainty. ~~As we have seen with other issues, in Kansas there are activist courts that could very well threaten to overturn existing Kansas law which bans same sex marriage and it is imperative that we add this amendment to the Kansas Constitution.~~

It is for this reason and as a concerned Kansan I would urge your support and passage of SCR 1601 and hope you can provide speedy passage so Kansas voters may take action at the earliest time.

As always I appreciate the work those of you do representing the citizens of Kansas and applaud your efforts in advance in allowing us to vote on this amendment as soon as possible.

Sincerely,



Tim Shallenburger

FEDERAL AND STATE AFFAIRS

Date 1-25-05

Attachment 2



6301 ANTIOCH • MERRIAM, KANSAS 66202 • PHONE/FAX 913-722-6633 • WWW.KSCATHCONF.ORG

***Testimony in Support of SCR 1601***

Chairman Edmonds and members of the committee:

Thank you for the opportunity to testify in favor of SCR 1601, which would amend our State Constitution to include a definition of marriage. My name is Mike Farmer and I am the Executive Director of the Kansas Catholic Conference, the public policy office of the Catholic Church in Kansas.

I find it very troubling that we now find it necessary to define in the Constitution our most basic human and social institution. Though we have seen it regulated by civil laws and Church laws, it did not originate from either the Church or state, but from God. Therefore, neither Church nor state can alter the basic meaning and structure of marriage.

The state rightly recognizes this relationship as a public institution in its laws because the relationship makes a unique and essential contribution to the common good. Laws play an educational role insofar as they shape patterns of thought and behavior, particularly about what is socially permissible and acceptable.

When marriage is redefined so as to make other relationships equivalent to it, the institution of marriage is devalued and further weakened. To uphold God's intent for marriage, in which sexual relations have their proper and exclusive place, is not to offend the dignity of homosexual persons. Christians must give witness to the whole moral truth and oppose as immoral both homosexual acts and unjust discrimination against homosexual persons.

The state has an obligation to promote the family, which is rooted in marriage. Therefore, it can justly give married couples rights and benefits it does not extend to others. It would be wrong to redefine marriage for the sake of providing benefits to those who cannot rightfully enter into marriage.

Some benefits currently sought by persons in homosexual unions can already be obtained without regard to marital status. For example, individuals can agree to own property jointly with another, and they can generally designate anyone they choose to be a beneficiary of their will or to make health care decisions in case they become incompetent.

MOST REVEREND RONALD M. GILMORE, S.T.L., D.D.  
DIOCESE OF DODGE CITY

MOST REVEREND JAMES P. KELEHER, S.T.D.  
Chairman of Board  
ARCHDIOCESE OF KANSAS CITY IN KANSAS

MOST REVEREND PAUL S. COAKLEY, S.T.L., D.D.  
DIOCESE OF SALINA

MICHAEL P. FARMER  
Executive Director

MOST REVEREND MARION F. FORST, D.D.  
RETIRED

MOST REVEREND GEORGE K. FITZSIMONS, D.D.  
RETIRED

FEDERAL AND STATE AFFAIRS

Date 1-25-05  
Attachment 3

Marriage, the nature and purposes of which are established by God, can only be the union of a man and a woman and must remain such in law. In a manner unlike any other relationship, marriage makes a unique and irreplaceable contribution to the common good of society, especially through the procreation and education of children. The union of husband and wife becomes, over a lifetime, a great good for themselves, their family, communities and society. Marriage is a gift to be cherished and protected.

Across times, cultures and very different religious beliefs, marriage is the foundation of the family. The family, in turn, is the basic unit of society. Thus, marriage is a personal relationship with public significance.

I therefore urge this committee to wholeheartedly endorse this amendment to our State Constitution and to recommend SCR 1601 favorable for passage.

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Thank you.

Michael P. Farmer  
Executive Director

**Statement of  
Kris W. Kobach  
Professor of Constitutional Law  
University of Missouri (Kansas City) School of Law**

Before the Kansas House of Representatives  
Federal and State Affairs Committee

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January 25, 2005

FEDERAL AND STATE AFFAIRS

Date 1-25-05

Attachment 4

## I. The Judicial Threat to the Traditional Definition of Marriage

Mr. Chairman and Members of the Committee, I come before you today to urge the passage of Senate Concurrent Resolution 1601, proposing an amendment to Article 15 of the Constitution of Kansas that would define marriage as a union of one man and one woman only. As a Professor of Constitutional Law, it is my considered and unequivocal constitutional judgment that this amendment is necessary if Kansas wishes to preserve and protect the traditional legal definition of marriage. In the absence of the constitutional amendment proposed by S.C.R. 1601, the traditional definition of marriage is jeopardized by two threats—a judicial threat and a legislative threat.

The judicial threat is the risk that the Kansas Supreme Court will, in a future case, rule that the Equal Protection Clause of the Kansas Constitution, found in Section 1 of the Kansas Bill of Rights, requires state and local officials to extend the legal benefits of marriage to same-sex couples. Section 1 states: “All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.”

Twenty years ago, such a strained interpretation of the Kansas Equal Protection Clause would have seemed improbable and far-fetched to any legal observer. However, the recent decision of the Massachusetts Supreme Court in the case of *Goodridge v. Department of Public Health*, 798 N.E.2d 941 (Mass. 2003), has changed the jurisprudential landscape in a way that has made this threat real and proximate. In *Goodridge*, the Massachusetts Court interpreted the Equal Protection Clause of the Massachusetts Constitution, which states that, “Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.” Mass. Const. Art. 1. The Massachusetts Court issued an opinion that was long on policy discourse and short on sound constitutional interpretation, concluding that there was no reasonable relationship whatsoever between the traditional definition of marriage and the general welfare of the state. 798 N.E.2d at 968. Accordingly, the Massachusetts Court opined, “Limiting the protections, benefits, and obligations of civil marriage to opposite-sex couples violates the basic premises of individual liberty and equality under law protected by the Massachusetts Constitution.” *Id.*

It is an interesting aspect of our federalist system that state supreme court rulings often reproduce themselves in other states, even though one state is under no legal obligation to follow the constitutional interpretations of another state. The *Goodridge* precedent has already spurred litigation in other states by parties seeking to stretch their states’ respective equal protection clauses in the same way. Already, the Superior Court of Washington has handed down a similar ruling in the case of *Castle v. State*, 2004 WL 1985215 (Wash. Super. 2004). In that case, the Washington Court struck down that state’s Defense of Marriage Act as invalid under Article I, Section 12 of the Washington Constitution, which states that: “No law shall be passed granting to any citizen, class of citizens or corporation ... privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.” In so doing, the Washington Court cited with approval the decision of the Massachusetts Court in *Goodridge*. The *Castle* case will be heard by the Washington Supreme Court in March 2005.

A similar constitutional challenge could easily be brought in Kansas, asserting that Kansas's Equal Protection Clause renders Kansas's statutory definition of marriage unconstitutional. Of course, if the Kansas Supreme Court were to bind itself to the original understanding of Article 1 of the Kansas Bill of Rights when it was ratified in 1859, there would be no realistic threat of the Kansas Constitution being similarly misconstrued. However, the Kansas Supreme Court has on numerous occasions disregarded the original intent of the constitution's framers and ratifiers. Consequently, the risk of constitutional misinterpretation in Kansas is present and significant.

When that legal challenge to the traditional definition of marriage occurs, it is likely that the Supreme Court of Kansas will look to Massachusetts and Washington in the interpretation of Kansas's Equal Protection Clause. The Kansas Court frequently utilizes opinions by the high courts of other states when interpreting Kansas's own constitution. See *Canaan v. Bartee*, 72 P.3d 911 (Kan. 2003); *United Sch. Dist. 229 v. State*, 885 P.2d 1170 (Kan. 1994). Of course, a precedent like *Goodridge* is not necessary for the Kansas Court to misinterpret Article 1 of the Kansas Bill of Rights. It is quite possible for the Kansas Court to make this mistake with out any prompting from out-of-state brethren.

The only effective defense against such judicial misinterpretation is an unambiguous constitutional amendment defining marriage as the union of one man and one woman, such as that found in S.C.R. 1601.

## **II. The Legislative Threat to the Traditional Definition of Marriage**

The second threat is a less proximate one, but it goes to the very nature of constitutional government. A constitutional polity, by definition, elevates certain principles, powers, and practices to the level of higher, constitutional law. In so doing, the state identifies those principles that are so important that the transitory legislative factions of the day should not be able to alter them by simple majority vote. When this elevation of principle happens, the people of the state are speaking in their constitutional voice. The people are the source of all constitutional authority exercised by the state government. The phrase at the beginning of the Kansas Constitution, "We, the people of Kansas," is not simply a rhetorical flourish. Kan. Const., Preamble. And it is no coincidence that constitutional amendments in Kansas and 48 other states require popular approval in statewide referendums in order to take effect.

Although the Kansas Legislature today would likely defeat any bill extending the rights and incidents of marriage to same-sex couples, a legislature fifty years from now might feel differently. By elevating the definition of marriage to the constitutional level, the Kansas Legislature today would appropriately compel that hypothetical legislature fifty years from now to muster a supermajority and then to go to that font of constitutional authority—the people—before altering the traditional definition of marriage.

An opponent of S.C.R. 1601 might respond by saying, “Yes, that is true; but the definition of marriage is not a principle of constitutional magnitude—it is not so fundamental that it needs to be enshrined in the Kansas Constitution.” To this argument, I have two responses. First, consider the centrality of marriage to our social fabric. Few would dispute the fact that marriage is the thread that holds families together, ensures the well-being of our children, and provides a safety net far stronger than any welfare state. Marriage predates the Kansas constitution, the U.S. Constitution, the Anglo-American common law, and even Western Civilization. Second, consider what is already in the Kansas Constitution. Article 15 alone contains sections concerning lotteries, bingo, parimutuel betting, liquor, and labor union membership. Kan. Const., Art. 15, §§ 3, 3a, 3b, 3c, 10, 12. Can one seriously make the claim that these principles are of sufficient importance to be elevated to the constitutional level, but the definition of marriage is not?

### **III. Responses to Counterarguments**

Plainly, the definition of marriage is a question of constitutional magnitude, not only in Kansas but also nationwide. The intense political debate that has surrounded the protection of traditional marriage is an indication of just how important and fundamental it is. Unfortunately some opponents of S.C.R. 1601 have advanced arguments cloaked in legal terminology that are at best incorrect, at worst intentionally misleading. I would like to address four of those arguments now.

#### **A. “We shouldn’t be taking away rights in the Kansas Constitution.”**

The first argument is a common one in popular discourse. It is the assertion that by defining marriage as “one man and one woman only,” S.C.R. 1601 takes away “rights” from certain individuals, namely those in the gay community.

This argument fundamentally misconstrues what a right is, in this context. A right is not the power to redefine a legal institution. A right is the power to utilize that institution on the same terms as every other individual. In other words, a gay individual already possesses the “right” to get married, and he will still possess that right after this constitutional amendment is ratified. He may exercise that right by entering a marital relationship with one individual of the opposite sex. But he chooses not to exercise that right because it is inconsistent with his lifestyle. In the same way, a pair of elderly spinster sisters has made the same decision. They may love each other, and they may intend to live together until death. But they have not exercised their right to marry because it is inconsistent with their lifestyle. None of these individuals has been denied a right.

\* What advocates of the legalization of same-sex marriage are demanding is not the right to marry, but the power to redefine marriage. Exercising a right and redefining the institution to which the right applies are very different things. For example, Section 7 of the Kansas Bill of Rights guarantees to every Kansan “the right to worship God according to the dictates of conscience.” Suppose that a man concludes that he can communicate with and worship God more effectively by smoking marijuana. Suppose

further that he forms a “church” of like-minded individuals who smoke marijuana with him every Sunday. When he is prosecuted for his crimes, he might argue that his “right” to worship is being denied by the state of Kansas. But his argument will fail because he is not exercising the right to worship; rather, he is attempting to redefine the concept of worship in a more expansive way. The assertion made by same-sex marriage advocates is similarly faulty. They are asserting the power to redefine an institution while pretending to merely assert a right.

**B. “S.C.R. 1601 violates the Equal Protection Clause of the U.S. Constitution.”**

I include the next argument because it was made recently by a Member of the Kansas Senate, whose statement was quoted in the *Kansas City Star*. That Senator claimed that S.C.R. 1601 is “blatantly discriminatory” and that it would violate the Equal Protection Clause of the U.S. Constitution if passed. This was quite an astonishing statement, because if what the Senator said is true, then current Kansas law defining marriage as the union of one man and one woman must also violate the U.S. Constitution. So too would the marriage statutes of 48 other states. If he truly believed what he said, then that Senator, who swore an oath of office (under Article 15, Section 14, of the Kansas Constitution) to uphold the U.S. Constitution, should therefore immediately introduce legislation revising Kansas marriage statutes to permit same-sex marriage. Thus far, he has not introduced such a bill.

Fortunately, he will not have to do so, because his understanding of Equal Protection law is flawed. In contrast to the Kansas Supreme Court, the U.S. Supreme Court has repeatedly visited the issue of homosexuality in the context of equal protection challenges. The U.S. Supreme Court has never held that traditional marriage statutes violate the Equal Protection Clause. Nor has the Court ever held that homosexuality constitutes a “suspect classification” subject to strict scrutiny under the Equal Protection Clause. Indeed, in the most recent case on the subject, *Lawrence v. Texas*, 539 U.S. 558 (2003), which invalidated a state law criminalizing homosexual sodomy, the Court took great pains to point out that its opinion did not jeopardize traditional marriage. For the majority, Justice Kennedy pointedly noted that the *Lawrence* case “does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter.” *Id.* at 578. And Justice O’Connor in her concurrence plainly stated that in an Equal Protection Clause challenge against a one-man, one-woman marriage statute, the government would possess a “legitimate state interest” in “preserving the traditional institution of marriage.” *Id.* at 585. Thus, there is no Supreme Court precedent supporting the contention that S.C.R. 1601 violates the Equal Protection Clause of the U.S. Constitution.

**C. “S.C.R. 1601 violates the Single Subject Rule.”**

The third argument is one that has been made by interest groups threatening legal action if this amendment to the Kansas Constitution is ratified. They assert that the amendment would violate the Single Subject Rule, found in Article 2, Section 16 of the Kansas Constitution (“No bill shall contain more than one subject....”), because the first



section of the amendment defines marriage, while the second section of the amendment specifies that the state may not bestow the rights or incidents of marriage on other relationships.

This claim is utterly unsupported by Kansas case law. In cases dating back to *State v. Barrett* in 1882, the Kansas Supreme Court has consistently held that Article 2, Section 16 “must not be construed or enforced in any narrow or technical spirit.” 27 Kan. 213 (1882). Indeed, the Kansas Constitution expressly demands that the Rule “be liberally construed to effectuate the acts of the legislature.” Kan. Const. Art. 2, § 16. To run afoul of the Rule, the legislature “must embrace two or more dissimilar and discordant subjects, that by no fair intendment can be considered as having any legitimate connection with or relation to each other.” *State v. Reves*, 666 P.2d 1190, 1195 (Kan. 1983). Clearly the two clauses of the amendment under consideration pass this low hurdle, having a very direct relation to one another.

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The past precedents of the Kansas Supreme Court make it virtually inconceivable that the Court would conclude S.C.R. 1601 violates the Rule. The Court has made it plain that even indirectly or incidentally related subjects may be combined together:

“Generally speaking, the courts are agreed that a statute may include every matter germane, referable, auxiliary, incidental, or subsidiary to, and not inconsistent with, or foreign to, the general subject or object of the act. The constitutional provision is not intended, nor should it be so construed as, to prevent the legislature from embracing in one act all matters properly connected with one general subject or object, but the term “subject” or “object” as used in these provisions is to be given a broad and extended meaning, so as to allow the legislature full scope to include in one act all matters fairly, reasonably, naturally, logically, properly, or directly or indirectly connected with, or related to, each other or the same subject or object. *Id.*”

In short, the connection between the definition of marriage and the extension of the legal benefits of marriage easily meets this standard. It also bears noting that last week the Supreme Court of Louisiana unanimously upheld the Louisiana marriage amendment when it was challenged on single subject grounds. *Forum for Equality PAC v. McKeithen*, 2005 La. LEXIS 128 (Jan. 19, 2005). The wording of the Louisiana amendment is nearly identical to the equivalent provisions in S.C.R. 1601.

**D. “S.C.R. 1601 would prohibit gay couples from entering private contractual arrangements such as employment contracts allowing health benefits for gay partners”**

The final argument is the claim that S.C.R. 1601 somehow limits the private right to contract involving employer health coverage of gay partners or limits a gay couple’s ability to convey power of attorney. Somehow, the argument goes, such private arrangements would be banned by the clause: “No relationship, other than a marriage,

shall be recognized by the state as entitling the parties to the rights or incidents of marriage.”

This argument is faulty for two reasons. First, S.C.R. 1601 only applies to rights and incidents of marriage conveyed “by the state.” It does not limit contractual or legal arrangements between private parties. In other words, private contracts that offer benefits similar to those offered to married couples are in no way prohibited by S.C.R. 1601. For example, an employer could offer health benefits to gay partners of employees without contravening S.C.R. 1601 in any respect. When such a private contract is made, it does not constitute “recognition by the state.” The state has not acted in any way.

Second, this argument misunderstands what a right or incident of marriage is. A right or incident of marriage is something that is automatically triggered when a marriage exists. It is also something that has been positively defined by statute or court decision. For example, consider the right of intestate inheritance by a spouse. This is the right of a spouse to inherit in the absence of a will. It is spelled out in Kansas law and comes into existence automatically, as soon as a marriage contract is signed. This should not be confused with a will, which does not come into existence automatically as soon as a marriage contract is signed. S.C.R. 1601 in no way prohibits a gay couple from executing a will that accomplishes what intestate inheritance does for a married couple. In other words, the contractual or private legal arrangements considered in this argument are not “rights or incidents of marriage,” because they do not come into existence automatically under state law as soon as a marriage exists.

To further illustrate the point, consider the legal ability to make medical decisions on behalf of an incapacitated spouse who did not name a legal proxy. This statutorily-recognized right comes into existence automatically with a marriage contract. This should not be confused with a living will naming a proxy who is empowered to make medical decisions. I am married, so the default spousal right exists in my case. But I can still execute a living will naming my mother, my sister, my pastor, my neighbor, or just about anyone else as my proxy. So too can an individual in a gay relationship name his or her partner as a proxy. A living will is not a “right or incident of marriage.” It is not a statutorily- or judicially-defined right that comes into existence as soon as the marriage contract is signed.

In conclusion, the primary arguments that have been advanced against S.C.R. 1601 rest upon flawed legal assumptions and understandings. The only remaining argument is the policy claim that the traditional definition of marriage should not be preserved. I respectfully urge this body to let the people of Kansas decide that fundamental question.

My name is Dr. Alan Wynne. I am speaking as a physician board-certified in both internal medicine and endocrinology. My internal medicine residency and endocrinology fellowship were both completed over a 6 ½ year period at the Mayo Clinic and included 2 years of bench research in molecular biology. My practice here in Topeka focuses on hormone related illnesses, including sex hormone related conditions.

I am opposed to adding sexual orientation to our non-discrimination clause. Unlike one's race or skin color, sexual preferences have not been shown to be immutable, predetermined, genetically-based characteristics.

The search for a biological, hormonal, or genetic cause for homosexual behaviors has not produced any convincing evidence for such. Studies looking for specific biological causes of homosexuality have been unfruitful. David Nimmons, a researcher looking for a "gay center" in the brain, stated, "I didn't show that gay men are born that way... Nor did I locate a 'gay center' in the brain." (1)

Many men patients of mine have been surgically or medically castrated for various reasons, yet their sexual preferences remain unchanged. Also, women with abnormally high male sex hormones continue their sexual preference toward men. In addition, adjustment of the male or female hormone levels of gay or lesbian individuals does not change their sexual orientation.

There also is no compelling scientific evidence demonstrating that homosexuality is genetically endowed. It is true that some studies have been construed in the popular press as lending credence to the genetic cause theory. One oft-quoted study by Dr. Dean Hamer et al supposedly finds "a genetic link to homosexuality" when his work revealed that 33 out of 40 pairs of brothers who were both gay had a similar genetic structure in the Xq28 area of the X chromosome." (2) Thus, some have concluded that there is a biological orientation to homosexuality.

Many physicians and geneticists alike, however, have widely criticized this study noting multiple problems with it including small sample size, the lack of a heterosexual control group and the fact that a large number of exceptions were recorded in the study. In fact, 14 of the 80 study subjects who allegedly were homosexual did not have the cited genetic marker, and Hamer offered no explanation for the deviation.

There is convincing evidence, however, that sexual orientation is strongly influenced by environment. Adopted brothers of homosexuals, with no genetic ties, have approximately three times the rate of homosexuality as the general population. (3) Also, 46% of homosexual men report childhood homosexual molestation and 22% of lesbian women report prior homosexual molestation. (4) These data argue in favor of a strong environmental influence on sexual orientation and argue against a genetic component.

It is clear from Dr. Robert Spitzer's research that some gay men and lesbians change their sexual orientation, giving further evidence this is not a predetermined trait. (5) Also, in one research survey, 63% of lesbians stated that they had "chosen" to be lesbians, as opposed to 28% who felt they had no choice in their sexuality. (6)

We also know that environment can play a significant role in the development of homosexuality since sexually molested boys have a higher incidence of homosexuality. (7) 42% of a sample of 1,001 homosexual men reported having had childhood (median age 10 years) experiences that met the criteria for sexual abuse, 33% involving anal sex. (8)

Homosexuality is not an immutable, predetermined characteristic for many homosexuals, but rather a set of tendencies and behaviors that can change over time. Sexual preferences, which can change over time, should not qualify individuals as a minority group.

This segment of our population does not have an immutable, inevitable characteristic that demands special governmental protection. Further, since it is well documented that homosexuals typically have relatively high household incomes and hold positions of respect and influence in our community, discrimination against them is not readily apparent as a pertinent current public policy issue.

Finally, in a review of studies looking for genetic contributions to homosexuality, Byne concluded "Indeed, perhaps the major finding of these heritability studies is that despite having all of their genes in common and having prenatal and postnatal environments as close to identical as possible, approximately half of the identical twins were nonetheless discordant for orientation. This finding underscores just how little is known about the origins of sexual orientation."

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**Testimony to:**

**The State and Federal Affairs Committee  
of the Kansas House of Representatives**

**January 25, 2005**

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**Hearing On**

**SCR 1601**

**Submitted by:**

**Bob Hanson**

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**Representing:**

**Kansas Nebraska Convention of Southern Baptists**

FEDERAL AND STATE AFFAIRS

Date 1-25-05

Attachment 6

Our Declaration of Independence states:

We hold these truths to be self-evident, that all men are created equal. That they are endowed by their Creator with certain inalienable rights, that among these are Life, Liberty and the Pursuit of Happiness.

Over the next few days, much will be argued in terms of freedom and rights. An unspoken issue, a question of importance is being wrestled with across this country and we who are present today are part of that contest.

Does the Creator from whom our nation states has endowed each of us with our inalienable rights remain the authority for moral principles and precepts? If not the Creator as understood by the Founding Fathers then who or what group?

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In his first inaugural address to Congress, George Washington, our first president, stressed God's role in the birth of this republic:

“No people can be bound to acknowledge and adore the invisible hand which conducts the affairs of men more than the people the United States. Every step by which they have advanced to the character of an independent nation seems to have been distinguished by some token of providential agency... We ought to be no less persuaded that the propitious smiles of heaven cannot be expected on a nation that disregards the eternal rules of order and right, which heaven itself has ordained.”

Another president, Abraham Lincoln, whom we honor as a great emancipator, is quoted as saying:

“It is the duty of nations, as well as of men, to own their dependence upon the overruling power of God and to recognize the sublime truth announced in the Holy Scriptures and proven by all history, that those nations only are blessed whose God is the Lord.”

Noah Webster who had served as a soldier in the Revolutionary War, was also elected to the Connecticut General Assembly for nine terms, the Legislature of Massachusetts for three terms as well as serving as a judge. He was also largely responsible for Article I, Section 8, of the United States Constitution. Webster stated:

“The moral principles and precepts contained in Scriptures ought to form the basis of all our civil constitutions and laws. All the miseries and evils which men suffer from vice, crime, ambition, injustice, oppression, slavery, and war, proceed from their despising or neglecting the precepts contained in the Bible.”

In 1913, President Woodrow Wilson said,

“A nation which does not remember what it was yesterday, does not know what it is today, nor what it is trying to do. We are trying to do a futile thing if we do not know where we came from or what we have been about...”

“The Bible... is the one supreme source of revelation of the meaning of life, the nature of God and spiritual nature and needs of men. It is the only guide of life which really leads the spirit in the way of peace and salvation.”

“America was born a Christian nation. America was born to exemplify that devotion to the elements of righteousness which are derived from the revelations of Holy Scripture.”

We as Southern Baptists do not believe that God has changed the definition of marriage laid down in Scripture centuries ago. Nor do we believe that God’s design was somehow misunderstood and has now evolved to a new standard.

#### **SBC Position Statement on Sexuality:**

We affirm God's plan for marriage and sexual intimacy – one man, and one woman, for life. Homosexuality is not a "valid alternative lifestyle." The Bible condemns it as sin. It is not, however, unforgivable sin. The same redemption available to all sinners is available to homosexuals. They, too, may become new creations in Christ.

Southern Baptists do not believe that homosexuality is genetic or immutable. We believe life change is possible through the redeeming and life-giving power of Jesus Christ. (See NARTH article at the end of Appendix)

#### **Background Information:**

##### **The Southern Baptist Convention**

Since its organization in 1845 in Augusta, Georgia, the Southern Baptist Convention (SBC) has grown to more than 16 million members who worship in more than 42,000 churches in the United States.

The term "Southern Baptist Convention" refers to both the denomination and its annual meeting. Working through 1,200 local associations and 41 state conventions and fellowships, Southern Baptists share a common bond of basic Biblical beliefs and a commitment to proclaim the Gospel of Jesus Christ to the entire world.



**The Kansas Nebraska Convention of Southern Baptists** represents 295 Southern Baptist Churches and Missions with a combined membership in the State of Kansas of more than 75,000 members.

During the Kansas Nebraska Convention of Southern Baptists (KNCSB) Annual Meeting, October 13-14, 2003 at Western Hills Baptist Church in Topeka, Kansas, messengers from the churches of the KNCSB passed Resolution #6 which supports the effort for a Federal Amendment to the Constitution of the United States. This resolution includes language that equally applies to the effort to amend the Constitution of the State of Kansas to protect traditional marriage. (Please see the full text of resolution #6 in the appendix at the end of this document).

**Important note:**

While the October 2003 KNCSB Annual State Convention voted to pass Resolution # 6 - a resolution in favor of a Federal Constitutional Amendment to protect marriage, its heart and intent applies to State and local measures to protect traditional marriage as well. The following information is submitted on my own initiative to offer support materials and resources from both the religious and secular community.

**Three Foundational Issues**

First and foremost, to redefine marriage is to redefine the very foundation God has established for human culture. As stated above, Southern Baptists do not believe that homosexuality is genetic or immutable. We believe life change is possible through the redeeming and life-giving power of Jesus Christ.

Although not a Southern Baptist, Bill Bennett has stated this very succinctly in his article published online by Empower America on March 17, 2003.

The parameters of proper sexual behavior are not arbitrary, nor are they intended to evolve. If we depart from the natural order of sexuality and the proper behavior and relationships that ensue from it, we are left with no guiding principle but the prevailing mood of the age. We are currently on the cusp of doing just that: We must decide whether we will continue to reinforce the natural sexual order in our laws or whether we will let them cave in to arbitrary preference.

As the proponents of gay marriage are quick to point out, promiscuity, adultery, cohabitation, divorce and out-of-wedlock births have severely damaged the institution of marriage. But this is not an argument for the redefinition of marriage. That the family is struggling today is not because of a design flaw. The problem is our failure to live up to the design.

When our behavior does not live up to the standard, we have two choices: We can change our behavior or change the standard.

The homosexual movement would change the standard. This is a conflict of ideals.

The homosexual movement cannot tolerate the persistence of mores that define marriage as the union of one man and one woman, the marriage relationship as the proper context of sexual expression and the family as the unit formed around that nucleus.

To normalize homosexuality requires us to deny that man linked to woman is both natural and ideal — that it is the purpose of our human sexuality — and to affirm the aberrant view that sexuality is an arbitrary construct and choice.

The homosexual vanguard proposes to replace sexual identity — that inescapable fact of nature that we are created male and female — with sexual behavior as a fundamental organizing principle of society. And if sexual behavior is the determinant, then appetite is the guiding principle.

Without respect for sexual identity, sexual partners become nothing more than interchangeable parts, rather than complementary on the basis of nature. And if behavior and appetite are the only determinants of sexual conduct, what is the argument against polygamy, incest or any other imaginable sexual relationship?

For our custom and law, the implications of such a fundamental change are profound, but nowhere more than for marriage.”

Given the argument just cited, if all were truly honest, there would have to be the admission that same-sex marriage will never be able to be considered on the same basis as heterosexual marriage. They are simply not the same thing, nor does the homosexual community truly have the same expectations for marriage that the majority of heterosexual couples do as the following examples demonstrate.

We admit that there are problems with the state of marriage in America. A recent CNN news show reports that 50% of all marriages have had to deal with adulterous relationships with one spouse or the other. However, the gay community, particularly male homosexual relationships expect and celebrate “openness” in their “committed relationships.” According to the February 1988 Lambda Report (p. 20) an article on research done by A.P. Bell, M..S. Weinberg and Hammersmith reveals findings that have no comparison with heterosexual relationships. According to the article

- \* 24 percent of gay men had over 100 partners
- \* 43 percent of gay men had over 500 partners
- \* 28 percent of gay men had over 1000 partners

Stanley Kurtz in his article “Beyond Gay Marriage” in the Weekly Standard (08/04/2003, Vol.

008, Issue 45) points out where we are going as a nation if we continue to go in the direction of accepting gay marriage as a nation.

Among the likeliest effects of gay marriage is to take us down a slippery slope to legalized polygamy and “polyamory” (group marriage). Marriage will be transformed into a variety of relationship contracts, linking two, three, or more individuals (however weakly and temporarily) in every conceivable combination of male and female. A scare scenario? Hardly. The bottom of this slope is visible from where we stand. Advocacy of legalized polygamy is growing. A network of grass-roots organizations seeking legal recognition for group marriage already exists. The cause of legalized group marriage is championed by a powerful faction of family law specialists. Influential legal bodies in both the United States and Canada have presented radical programs of marital reform. Some of these quasi-governmental proposals go so far as to suggest the abolition of marriage.

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When it comes to the question of fairness or discrimination against homosexuals, we believe the equal treatment argument is invalid because governments for centuries have forbidden polygamy and other abnormal marital arrangements for the good of the society.

Al Mohler the President of Southern Baptist Theological Seminary (a Southern Baptist Institution) has said,

"Civilization requires the regulation of human sexuality and relationships... No society - - ancient or modern -- has survived by advocating a laissez faire approach to sex and sexual relationships. Every society, no matter how liberal, sanctions some sexual behaviors and proscribes others. Every society establishes some form of sexual norm."

"...heterosexual marriage has been upheld for centuries in law and customs as well as through practices deeply embedded in the structures of civil societies. Married couples have been recognized through tax incentives as well as legal support, and they also have been expected to meet certain cultural expectations throughout human history."

"Society invests both rights and responsibilities in the institution of marriage and, by its various incentives and disincentives, points towards a cultural expectation. When that expectation is something other than marriage, problems immediately arise. Government does discriminate on the basis of marriage as the government discriminates on many others foundational bases in terms of its own interest."

As Southern Baptists we have been placed in a position to state unequivocally what we believe to be true, not just because we believe it to be true but because we are standing on a platform of divine revelation and also ancient human wisdom. Scripture in clearest terms categorizes all sexual relationships outside marriage against God's design. The ultimate answer lies not in government, but in the grace of God that comes to all mankind through the Gospel.

Based upon the Holy Scriptures, Southern Baptists are bound to declare the inherent sinfulness of all sexual activity outside of the marital bond.

"Procreation, reproduction, child-rearing and other essential rights and functions are divinely invested in the institution of marriage. Thus, to tamper with this divinely established institution is to risk not only social peril but the divine judgment that will most surely come."

*Al Mohler is President of Southern Baptist Theological Seminary (Louisville, KY).*

*Quote from a debate sponsored by Louisville Forum, a nonpartisan public affairs group in which Al Mohler and University of Louisville law professor Sam Marcossan presented opposing viewpoints on the legalization of same-sex "marriage."*

Secondly, the redefinition of marriage has grave implications for religious freedom and the freedom of conscience for people of faith. Discriminatory and demeaning verbal attacks, accusations of bigotry and intolerance are now continuously made against a multitude of religious groups, (including Southern Baptists).

To illustrate, the following is a quote from the text of an online article from Citizens for Community Values (the full text is printed in the appendix):

It is because of tyrannical actions of these unaccountable judges that a broad-based coalition of individuals and organizations – evangelical Christians, Catholics (three cardinals and 28 bishops), Muslims, Jews, scholars from the nations prestigious law schools – have banded together to preserve the traditional meaning of marriage. It is a diverse group that includes leaders from the biggest association of Hispanic churches in the United States, North America's two largest orthodox Jewish groups and the nations two largest African-American denominations. The coalition spokesman is Walter Fauntroy who marched with Martin Luther King.

The charges of bias are especially galling in the light of the fact that 85 U.S. Senators and 342 Members of the House voted for the Defense of Marriage Act, which was signed by President Clinton. It contained the very same language, that marriage in the United States shall be between one man and one woman. Are all of these leaders, including former President Clinton, bigots? According to the polls, two-thirds of the American people oppose granting new rights for gay marriage--is that bigotry? Is it bigotry that the overwhelming majority of religious traditions support marriage as the union of one man and one woman?

In a recent Baptist Press article, Princeton University Law Professor Robert P. George is quoted as saying that "A change in the marriage laws "almost certainly will" infringe on the freedoms of religious people." He then sites several examples of what has already occurred in Canada.

The article also quotes Glenn Lavy, an attorney with the Alliance Defense Fund. "Same-sex "marriage" would violate religious freedoms in the workplace, in schools and throughout society. Schools could be forced to teach that same-sex "marriages" and traditional marriage are identical."

Harvard University Law Professor Mary Ann Glendon is quoted from her Wall Street Journal commentary. "Gay-marriage proponents use the language of openness, tolerance and diversity, yet one foreseeable effect of their success will be to usher in an era of intolerance and discrimination the likes of which we have never seen before... every religion that disagrees will be labeled as bigoted and openly discriminated against."

Finally, Southern Baptists of Kansas have strong concerns about the future of existing DOMA laws already on the books in Kansas and many states across the U.S. An amendment to the Constitution of the State of Kansas will help to uphold DOMA laws already on the books by doing everything we can to stem the tide of judicial activism in federal and state courts and protect the institution of marriage to the fullest extent of the law. A state amendment, voted on by the people of Kansas, would also demonstrate the will of the people of Kansas to possibly ratify an amendment to the federal constitution.

The testimony of Jon Brining, the Attorney General of Nebraska gave on March 3, 2004 to the United States Senate Committee on the Judiciary "Judicial Activism vs. Democracy:" What are the National Implications of the Massachusetts Good ridge Decision and the Judicial Invalidation of Traditional Marriage Laws?

A brief quote:

In 2000, more than 70% of Nebraskans voted to amend the Nebraska Constitution to define marriage as a union between one man and one woman. In 2003, the ACLU and Lambda Legal Foundation together sued Nebraska in federal court, arguing that the Nebraska amendment unconstitutionally denies gay and lesbian persons equal access to the political system. This is the first federal court challenge to a state's DOMA law.

My office moved to dismiss the suit, but last November, the Court denied our motion to dismiss. The language in the Court's order signals that Nebraska will very likely lose the case at trial.

Should these issues be solved by judges or by the representatives of the people of Kansas allowing the voices of their constituents to be heard in a statewide referendum? The Southern Baptists of Kansas urge you to allow the people of the state to speak by allowing the amendment to be placed on the November ballot.

**APPENDIX:**

(Full text of KNCSB resolutions - other support materials are attached)

**RESOLUTION SIX**

**Whereas**, the family, as the foundational unit of human society, is built upon God's good gift of marriage, which God defines as the lifelong union of one man and one woman; and

**Whereas**, Jesus states that marriage is a sacred, lifelong bond between one man and one woman and is the bedrock of a civil society'; and

**Whereas**, the Biblical model of the family is seriously threatened by a culture that increasingly does not view marriage only as an institution established by God and between one man and one woman; and

**Whereas**, Homosexuals and lesbians may have a legal right to live as they choose, they do not have the right to distort society's definition of marriage; and

**Whereas**, Requiring citizens to sanction or subsidize homosexual relationships violates the freedom of conscience for people of faith, and others who believe marriage is the union of one man and one woman; and

**Whereas**, Legalizing same-sex "marriage" would brand homosexuality as a normative lifestyle, which the Bible calls sinful and dangerous both to the individuals involved and to society at large; and

**Whereas**, The results of the effort to undermine the legal status of the biblical model of marriage may well be determined by un-elected judges; and

**Whereas**, Courts in several states, including Massachusetts and New Jersey, are considering the legalization of same-sex "marriage"; and

**Whereas**, The Full Faith and Credit Clause of the United States Constitution may require that marriages solemnized in one state be recognized in all fifty states; and

**Whereas**, It has been shown that if same-sex unions are recognized as "marriage" in a state court, then same-sex couples wishing to marry will travel to that state to "marry" and return home demanding their home state recognize their "marriages" and provide all rights and benefits afforded to couples in traditional marriages; and

**Whereas**, Proponents of same-sex "marriages" have indicated their intent to challenge state laws and the federal Defense of Marriage Act, which define marriage as between one man and one woman; and

**Whereas,** The federal Defense of Marriage Act (DOMA) cannot prevent state courts from subverting democracy and undermining marriage at the state level in states which sanction same-sex "marriage"; and

**Whereas,** There are very good reasons to believe that both state marriage laws and the federal Defense of Marriage Act may not survive if challenged in court; and

**Whereas,** The Federal Marriage Amendment is a reasonable and necessary response to the crisis created by those who are seeking to use the courts to overcome public opinion with respect to marriage and to codify same-sex "marriage"; now, therefore, be it

**Resolved,** That the Kansas Nebraska Convention of Southern Baptists, affirm that marriage is the union of one man and one woman as God intends; and be it further

**Resolved,** That we continue to oppose steadfastly all efforts by any court or state legislation to validate or legalize same-sex marriage and other equivalent unions; and be it further

**Resolved,** That we commit ourselves to pray for and support legislative and legal efforts to oppose the legalization of same-sex unions; and be it further

**Resolved,** That we call upon families to mark Marriage Protection Week, October 12-18, 2003, a week dedicated to preserving the divine institution of marriage; and

**Resolved,** That we call upon all families to encourage their U.S. Senators and Congressmen to support the Federal Marriage Amendment.



January 25, 2005

*RE: One Man – One Woman Marriage Amendment*

Dear Legislator:

On behalf of the Kansas Assemblies of God, I urge you to look with favor on our request to bring to the people the "One Man-One Woman Marriage Amendment" and allow the people of Kansas to make this decision by their vote. To us, the issue is first one of righteousness and pleasing God. Secondly, it is an issue worthy of resolving through the democratic process of the voting people in this state.

Thank you for acting with courage and doing the right thing.

Dictated but not read  
to expedite transmittal

Superintendent Terry L. Yancey  
Kansas Assemblies of God

FEDERAL AND STATE AFFAIRS

Date 1-25-05

Attachment 7

500 SW 27<sup>th</sup> St. • Topeka, Kansas • 66611  
(785)-234-5555 • office@topekafirstassembly.org





January 25, 2005

Members of the House Federal and State Affairs Committee:

Today we are here to talk about marriage. There are two ways of framing this issue: one is to say that we are here to protect an institution that existed before the Ten Commandments, before the ancient Babylonian Code of Hammurabi; before some of our most revered ancient civilizations. Our opponents will frame this issue by saying that it bans gay marriage; an arrangement which has no historical reference whatsoever. In fact, its very name implies that *couples* receive the right to marry, when in fact marriage is an individual right which all of us enjoy. We are all free to marry someone of the opposite sex because that is what marriage is...the union of one man and one woman.

The founders of our Constitution and the framers of the Kansas Constitution could not envision that *anyone* would try to redefine the concept of marriage because to them it was completely logical for this institution to be for a man and a woman not only for anatomical reasons, but because it is the only natural way to reproduce and to provide a safe and secure incubator for children to be nurtured and protected. It is and always has been a sociological and anthropological institution that grew out of mankind's need to protect and stabilize the family. They could not envision renegade judges and courts that were bent on perpetrating a social experiment upon our society, in spite of the wishes of the people and in disregard for the state's welfare. They could not foresee a scenario in which same-sex couples would ask the state to sanction their union and make it equivalent to the most foundational institution in our society. They could not imagine that there would be some who would advocate imposing a counterfeit standard of such an important institution and impose it on all citizens.

We are asking you to strengthen and protect marriage from judges and courts that could impose their own ideas of what marriage should be on the public. In surrounding states the public has spoken overwhelmingly that they want marriage to be protected.

You are not being asked to ban gay marriage. You ARE being asked to define and protect an institution that has been deemed good for society throughout millennia. You are being asked to safeguard an institution that has provided the building blocks of a stable society. We are asking you to understand that marriage is so important that we tamper with it at our own peril.

CWA of Kansas  
P.O. Box 11233  
Shawnee Mission, Kansas 66207  
913-491-1380

FEDERAL AND STATE AFFAIRS  
Date 1-25-05  
Attachment 8

**KANSAS MARRIAGE AMENDMENT**

**FEDERAL AND STATE AFFAIRS COMMITTEE**

**KANSAS HOUSE OF REPRESENTATIVES**

**DR. PAUL E. BARKEY**

**25 JANUARY 2005**

FEDERAL AND STATE AFFAIRS

Date 1-25-05

Attachment 9

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**TESTIMONY**  
**FEDERAL AND STATE AFFAIRS COMMITTEE**  
**KANSAS HOUSE OF REPRESENTATIVES**

25 January 2005  
Dr. Paul E. Barkey

My name is Paul Barkey, and I have been a resident of Manhattan, Kansas for the last fifteen years. I am a retired Army Chaplain and serve as pastor of Ashland Community Church.

We have prepared for you a packet of information on the Marriage Amendment which we hope will be of value in your deliberations on this issue which is so vital to the welfare of our state.

The Massachusetts Supreme Judicial Court ruled by a 4 to 3 vote in November 2003 that the state had to recognize the legitimacy of homosexual marriage. This was in direct contradiction of the expressed will of the majority of the citizens of Massachusetts and their legislature. On 17 May 2004 Massachusetts began issuing marriage licenses to homosexuals. These couples are now fanning out across the United States seeking to have other states give their relationship legal status. This was followed by local officials in California, Oregon, New Mexico, New York and New Jersey in defying state laws by issuing marriage licenses to homosexuals. It is now necessary to codify in the Kansas Constitution what has been obvious to most people for centuries: that marriage refers exclusively to the union of one man and one woman. Friends of traditional marriage had hoped that the Defense of Marriage Act (DOMA) passed by the Kansas Legislature, as well as the U.S. Congress and signed into law by President Clinton in 1996 would provide sufficient protection for marriage. Courts began immediately to challenge the boundaries and provisions of DOMA. We need to protect the institution of marriage from the reach of activist judges. This is why I favor the constitutional amendment already proposed in Congress: "Marriage in the United States shall consist only of the union of a man and a woman. Neither this constitution or the constitution of any state, nor state or federal law, shall be construed to require that moral status or the legal incidents thereof be conferred upon unmarried couples or groups."

A substantial majority of Americans favor retaining the traditional and legal definition of marriage. Hawaii, Alaska, California, Nevada, Nebraska, Missouri, Mississippi and Louisiana have all voted to protect the definition of marriage by 60 to 80%. People's Initiatives either have or will result in the Marriage Amendment vote in Arkansas, Michigan, Montana, North Dakota, Ohio and Oregon. Unfortunately this is not an option afforded the voters of Kansas. An article in USA Today reported that two-thirds of Americans are opposed to same-sex marriage (Fred Bayles, "Gay Marriage Ban Advances," 30 March 2004). Only in the last few years have two countries; the Netherlands and Belgium legalized same-sex marriage, giving it equal status with traditional marriage. We are able to now see the results of that decision. In some areas of Norway 80% of the children are born out of wedlock, as are 60% of subsequent births (Stanley Kurtz, "Death of Marriage in Scandinavia," Boston Globe, 10 March 2004).

If we redefine marriage to include homosexuals where do you stop? The ultimate result of expanding the definition of marriage is that it would lose its meaning. The ACLU is reportedly preparing to attempt to legalize polygamy. What would preclude polyamory or group marriage from also being recognized. Could your business afford health-care benefits for 3 or more people and their offspring in a group marriage? This also increases the likelihood of people marrying simply so that they can receive family health, tax and social security benefits. Research consistently shows that heterosexual married adults do better in every measure of emotional and physical health. They live longer, healthier and happier lives which is good for society.

It is our children and future generations that stand to lose the most in this debate. The legacy of divorce and sexual promiscuity has resulted in millions of our children who cry themselves to sleep every night because of the break-up of the home. The painful truth is that in recent decades we have been poor stewards of the institution of marriage. With the passage of

No-fault divorce laws in the 1960's marriage became, "as long as convenient," instead of "till death do us part." No-fault divorce, serial monogamy and deadbeat dads have all hurt our children. Every sociological study bears out the truth that children do best emotionally, physically, academically when raised in a stable home with a loving father and mother.

As this process unfolds our prayer is that Christians will display the wisdom of serpents and gentleness of doves that Christ urged. This is crystal clear: for believing Christians, the meaning of marriage comes not from the state but as instituted by God, Scripture, church history and the stamp of approval from milleniums of human history. Even in the worst case scenario of a constitutional amendment approving same-sex marriage, we do not fear as Christians the disappearance of godly marriage.

Despite the rhetoric of the proponents of same-sex marriage, Christian involvement in this debate is not based on fear, or bigotry, or hatred, or a lust for power. Instead, we are engaged because we love our families and our neighbors and desire the best for them. It is a matter of faithful citizenship for me as a Christian and pastor to be involved in this historic debate. Marriage is a gift from God, and the church offers the fullest realization of that gift. As Christians we are to contend for truth and justice, protecting the weak and innocent. The church is not to take its marching orders from the surrounding culture. We will rejoice if you choose to protect marriage. But if American culture takes another step in the words of Judge Borck of "Slouching Toward Gomorrah" we will seize it as another call to serve the Lord in counter-cultural witness.

# Esteeming Children

## A Position on the Defense of Traditional Marriage and Support for a Traditional Marriage Amendment

Paul E. Barkey, candidate for the District 66 seat of the Kansas House of Representatives

### Introduction

While some people contend that same-sex marriage would be socially valuable as a symbolic acknowledgement of love, I contend that we who support the traditional definition of marriage, do so for the sake of children and the health of our society.

Changing the definition of marriage to extend beyond that of one man and one woman is not just a benign social experiment that would give more "rights" to a larger social class, but a fundamental change in the institution not only of marriage, but of the family. Children stand to suffer the most from the redefinition of marriage. Proponents of change lack evidence that such a change would improve our social condition. In fact, other recent experiments with the historical structure of a family-record high rates of divorce, cohabitation and mixed families-have greatly hurt the least represented of our society, our children.

Childhood (including teen) suicide is higher in this generation than at any other time in history. It also seems that more children need counseling or mood-altering medications than at any other time in history. All this is happening as the traditional family has eroded. Divorce, cohabitation, single parenthood (usually by mothers as fathers abandon their families) have all taken their toll. Not only are our families dysfunctional, but our society is dysfunctional! We have gone from a pull-ourselves-up-by-the-bootstraps kind of culture to one that seeks only to be pacified by the Nanny State. Will same-sex marriages make a difference and make our society more stable? No. It will add one more confusing ingredient to a recipe for society that is literally decaying before our very eyes. Disorder and anarchy will be the outcome of such an experiment because at it's most biological and historical essence, the family thrives where both a mother and father-in a loving relationship-share in the responsibilities raising children. Somehow, magically, it takes both a man and a woman to bring the right mix for children to feel nurtured, disciplined, and whole.

## The arguments

Same-sex marriage proponents argue most emphatically that the reason that their position is important is for the sake of extending *entitlements* to partners. Entitlements, by in large, are *not*-I repeat, *not* government controlled. They want the power to:

1. Adopt. Same-sex couples are biologically incapable of procreation, so they intend to thwart nature and create a false “family”. Critically missing, however, are the time-tested, distinctive roles that men and women each play in the family dynamic. Two men or two women trying to raise children is simply not the same as one man and one woman united toward a goal of raising children. While I support adoption into a traditional family environment, I fundamentally oppose same-sex couples adopting children. And redefining marriage would make it much harder for adoption organizations with a specific religious intent to hold to their principles about where they place children in their care.
2. Immigrate within the definitions of a “family”. While it is easier for a spouse or child of a legal U.S. immigrant to obtain legal immigration status, it is not impossible *at all* in our very liberal immigration environment for singles to immigrate. The idea that unmarried residents cannot be united with their foreign partners is patently false, for the foreigner need only to obtain employment in the U.S. and then that person’s employer can act as a sponsor.
3. Extend social security benefits to their partners. The principle of extending social security benefits to spouses is based on the premise that only one party of the marriage is working and acquiring such benefits. This is foundational to a traditional formula of the U.S. family, where one spouse provides income, and one spouse administers the home. It seems, however, reasonable that in a society where both spouses often work, social security and other benefits that extend to spouses (see point 4) should be measured against the work record of each spouse. Certainly we can quantify in our tax forms when a family is supported by only one income and make adjustments to social security based on that information. This is relevant to the same-sex marriage debate because most homosexual couples are “dual income”, and therefore, most

homosexuals are contributing (and should one day be recipients of) their individual social security benefits. And so there is no need to have a homosexual partner derive social security benefits from his/her partner's contributions.

4. Extend employer benefits (e.g. health insurance) to their partners. Employers are under absolutely no obligation to extend *any* benefits to employees. While I concede that there are "tax advantages" to extending benefits such as health insurance to employees and their families, the problem is in the tax code. If employers were striped of this incentive, insurance decisions would be placed squarely in the hands of individuals (and individual families), where the market would play a more prominent role in insurance options (like auto insurance, for example). People and families could be individually insured, which would equalize the whole system and effectively remove the third-party paradigm that drives up medical prices and cripples health consumers today. In any event, as noted above, in most homosexual partnerships, both partners work and therefore are in a position to acquire their own employer-aided benefits, including health insurance. So once again, being able to share benefits with a partner is simply not necessary.
5. Extend inheritance rights to "partner survivors". Legally, people can leave their estates to anyone they wish. The idea that homosexual partners have no inheritance rights is clearly false.
6. Extend hospital visitation rights to partners. What policies hospitals hold regarding who can and cannot see patients or make decisions on the behalf of incapacitated patients is solely up to hospitals. No government policy affects individual hospital policy. The power of attorney may be extended to any person upon the consent of an individual. This is another case where the definition of marriage simply is not an issue.

On the whole, arguments supporting same-sex marriage are weak and unsubstantiated when we look at the issues logically. They mock and undermine a social system that has stood the test of time across cultures: the historical role of the family as a foundational unit of every civil society.

## **The will of the people**



What is most alarming of all about the battle over the definition of marriage, is that appointed (not elected) judges are largely handicapping the will of American voters. Americans seem to know instinctively that although they often struggle in their attempt to have an ideal marriage and family, the ideal is still worth the effort.

Even in Massachusetts, after the state's Supreme Judicial Court (appointed) ruled in a 4-3 decision that homosexual couples are legally entitled to marriage, the state's legislature (elected) convened to pass an amendment to the state constitution that would overturn the court's decision. We know that the amendment process is lengthy, and the verdict is still out, but isn't it interesting that the *elected* officials - who presumably are carrying out the will of the people-contend that same-sex marriage would effectively erode the entire institution of marriage?

We have here a manifest instance of elitist judges making decisions obviously contrary to the will of the people. This is why marriage amendments (defined as a legal bond of one man to one woman) are critical. Obviously a national amendment would make the most sense because it would erase the web of confusion that proponents of same-sex marriages would weave from state to state. But if our national lawmakers rest on the weak national Defense of Marriage Act, we must act as a state body to write the historical definition of marriage in the Kansas books once and for all.

That is why I support an amendment to either the U.S. or Kansas constitution to define marriage as that between one man and one woman. It is for the sake of long-held, historical precedent and for the sake of our children that I take this stand.

## Same-sex marriage vs. civil rights

Jeff Jacoby

March 8, 2004

Homosexual marriage is not a civil rights issue. But that hasn't stopped the advocates of same-sex marriage from draping themselves in the glory of the civil rights movement -- and smearing the defenders of traditional marriage as the moral equal of segregationists.

In The New York Times last Sunday, cultural critic Frank Rich, quoting a "civil rights lawyer," beatified the gay and lesbian couples lining up to receive illegal marriage licenses from San Francisco's new mayor, Gavin Newsom.

"An act as unremarkable as getting a wedding license has been transformed by the people embracing it," Rich wrote, "much as the unremarkable act of sitting at a Formica lunch counter was transformed by an act of civil disobedience at a Woolworth's in North Carolina 44 years ago this month." Nearby, the Times ran a photograph of a smiling lesbian couple in matching wedding veils -- and an even larger photograph of a 1960 lunch counter sit-in.

Rich's essay -- "The Joy of Gay Marriage" -- went on to cast the supporters of traditional marriage as hateful zealots. They are "eager to foment the bloodiest culture war possible," he charged. "They are gladly donning the roles played by Lester Maddox and George Wallace in the civil rights era."

But it is the marriage radicals like Rich and Newsom who are doing their best to inflame a culture war. And as is so often the case in wartime, truth -- in this case, historical truth -- has been an early casualty.

For contrary to what Rich seems to believe, when Ezell Blair Jr., David Richmond, Joseph McNeil, and Franklin McCain approached the lunch counter of the Elm Street Woolworth's in Greensboro, N.C. on Feb. 1, 1960, all they were looking for was something to eat. The four North Carolina Agricultural & Technical College students only wanted what any white customer might want, and *on precisely the same terms* -- the same food at the same counter at the same price.

Those first four sit-in strikers, like the thousands of others who would emulate them at lunch counters across the South, weren't demanding that Woolworth's prepare or serve their food in ways it had never been prepared or served before. They weren't trying to do something that had never been lawful in any state of the union. They weren't bent on forcing a revolutionary change upon a timeless social institution.

All they were seeking was what should already have been theirs under the law of the land. The 14th Amendment -- approved by Congress and ratified by three-

fourths of the states in 1868 -- had declared that blacks no less than whites were entitled to equal protection of the law. The Civil Rights Act of 1875 -- passed by a Democratic House and a Republican Senate and signed into law by President Grant -- had barred discrimination in public accommodations.

But the Supreme Court had gutted those protections with shameful decisions in 1883 and 1896. The court's betrayal of black Americans was the reason why, more than six decades later, segregation still polluted so much of the nation. To restore the 14th Amendment to its original purpose, to re-create the Civil Rights Act, to return to black citizens the equality that had been stolen from them -- that was the great cause of civil rights.

The marriage radicals, on the other hand, seek to restore nothing. They have not been deprived of the law's equal protection, nor of the right to marry -- only of the right to insist that a single-sex union is a "marriage." They cloak their demands in the language of civil rights because it sounds so much better than the truth: They don't want to accept or reject marriage on the same terms that it is available to everyone else. They want it on entirely new terms. They want it to be given a meaning it has never before had, and they prefer that it be done undemocratically -- by judicial fiat, for example, or by mayors flouting the law. Whatever else that may be, it isn't civil rights.

But dare to speak against it, and you are no better than Bull Connor.

Last month, as Massachusetts lawmakers prepared to debate a constitutional amendment on the meaning of marriage, the state's leading black clergy came out strongly in support of the age-old definition: the union of a man and a woman. They were promptly tarred as enemies of civil rights. "Martin Luther King," one left-wing legislator barked, "is rolling over in his grave at a statement like this."

But if anything has King spinning in his grave, it is the indecency of exploiting his name for a cause he never supported. The civil rights movement for which he lived and died was grounded in a fundamental truth: All of us are created equal. The same-sex marriage movement, by contrast, is grounded in the *denial* of a fundamental truth: The Creator who made us equal made us male and female. That duality has always and everywhere been the starting point for marriage. The newly fashionable claim that marriage can ignore that duality is akin to the claim, back when lunch counters were segregated, that America was a land of liberty and justice for all.

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## 'Gay marriage' confusions

Thomas Sowell

March 9, 2004

Few issues have produced as much confused thinking as the "gay marriage" issue.

There is, for example, the argument that the government has no business getting involved with marriage in the first place. That is a personal relation, the argument goes.

Love affairs are personal relations. Marriage is a legal relation. To say that government should not get involved in legal relations is to say that government has no business governing.

Homosexuals were on their strongest ground when they said that what happens between "consenting adults" in private is none of the government's business. But now gay activists are taking the opposite view, that it is government's business -- and that government has an obligation to give its approval.

Then there are the strained analogies with the civil rights struggles of the 1960s. Rosa Parks and Martin Luther King challenged the racial laws of their time. So, the argument goes, what is wrong with Massachusetts judges and the mayor of San Francisco challenging laws that they consider unjust today?

First of all, Rosa Parks and Martin Luther King were private citizens and they did not put themselves above the law. On the contrary, they submitted to arrest in order to gain the public support needed to change the laws.

As private citizens, neither Mrs. Parks nor Dr. King wielded the power of government. Their situation was very different from that of public officials who use the power delegated to them through the framework of law to betray that framework itself, which they swore to uphold as a condition of receiving their power.

The real analogy would be to Governor George Wallace, who defied the law by trying to prevent black students from being enrolled in the University of Alabama under a court order.

After Wallace was no longer governor, he was within his rights to argue for racial segregation, just as civil rights leaders argued against it. But, using the powers of his office as governor to defy the law was a violation of his oath.

If judges of the Massachusetts Supreme Court or the mayor of San Francisco want to resign their jobs and start advocating gay marriage, they have every right to do so. But that is wholly different from using the authority delegated to them under the law to subvert the law.

Gay rights activists argue that activist judges have overturned unjust laws in the past and that society is better off for it. The argument that some good has come from some unlawful acts in the past is hardly a basis for accepting unlawful acts in general.

If you only want to accept particular unlawful acts that you agree with, then of course others will have other unlawful acts that they agree with. Considering how many different groups have how many different sets of values, that road

leads to anarchy.

Have we not seen enough anarchy in Haiti, Rwanda and other places to know not to go there?

The last refuge of the gay marriage advocates is that this is an issue of equal rights. But marriage is not an individual right. Otherwise, why limit marriage to unions of two people instead of three or four or five? Why limit it to adult humans, if some want to be united with others of various ages, sexes and species?

Marriage is a social contract because the issues involved go beyond the particular individuals. Unions of a man and a woman produce the future generations on whom the fate of the whole society depends. Society has something to say about that.

Even at the individual level, men and women have different circumstances, if only from the fact that women have babies and men do not. These and other asymmetries in the positions of women and men justify long-term legal arrangements to enable society to keep this asymmetrical relationship viable -- for society's sake.

Neither of these considerations applies to unions where the people are of the same sex.

Centuries of experience in trying to cope with the asymmetries of marriage have built up a large body of laws and practices geared to that particular legal relationship. To then transfer all of that to another relationship that was not contemplated when these laws were passed is to make rhetoric more important than reality.

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## FAMILY RESEARCH COUNCIL

*Defending Faith, Family and Freedom*

January 24, 2005

### Ten Arguments From Social Science Against Same-Sex 'Marriage'

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A large and growing body of scientific evidence indicates that the intact, married family is best for children. In particular, the work of scholars David Popenoe, Linda Waite, Maggie Gallagher, Sara McLanahan, David Blankenhorn, Paul Amato, and Alan Booth has contributed to this conclusion.

**Summary:**  
A large and growing body of social scientific evidence indicates that the intact, married family is best for children. This InFocus paper highlights ten research-based reasons why marriage should only be seen as the union of one man and one woman.

This statement from Sara McLanahan, a sociologist at Princeton University, is representative:

If we were asked to design a system for making sure that children's basic needs were met, we would probably come up with something quite similar to the two-parent ideal. Such a design, in theory, would not only ensure that children had access to the time and money of two adults, it also would provide a system of checks and balances that promoted quality parenting. The fact that *both parents have a biological connection to the child* would increase the likelihood that the parents would identify with the child and be willing to sacrifice for that child, and it would reduce the likelihood that either parent would abuse the child.

Sara McLanahan and Gary Sandefur, *Growing Up with a Single Parent: What Hurts, What Helps* (Boston: Harvard University Press, 1994) 38.

The following are ten science-based arguments against same-sex "marriage":

#### 1. Children hunger for their biological parents.

Homosexual couples using in vitro fertilization (IVF) or surrogate mothers deliberately create a class of children who will live apart from their mother or father. Yale Child Study Center psychiatrist Kyle Pruett reports that children of IVF often ask their single or lesbian mothers about their fathers, asking their mothers questions like the following: "Mommy, what did you do with my daddy?" "Can I write him a letter?" "Has he ever seen me?" "Didn't you like him? Didn't he like me?" Elizabeth Marquardt reports that children of divorce often report similar feelings about their non-custodial parent, usually the father.

Kyle Pruett, *Fatherhood* (Broadway Books, 2001) 204.

Elizabeth Marquardt, *The Moral and Spiritual Lives of Children of Divorce*. Forthcoming.

#### 2. Children need fathers.

If same-sex civil marriage becomes common, most same-sex couples with children would be lesbian couples. This would mean that we would have yet more children being raised apart from fathers. Among other things, we know that fathers excel in reducing antisocial behavior and delinquency in boys and sexual activity in girls.

What is fascinating is that fathers exercise a unique social *and* biological influence on their

children. For instance, a recent study of father absence on girls found that girls who grew up apart from their biological father were much more likely to experience early puberty and a teen pregnancy than girls who spent their entire childhood in an intact family. This study, along with David Popenoe's work, suggests that a father's pheromones influence the biological development of his daughter, that a strong marriage provides a model for girls of what to look for in a man, and gives them the confidence to resist the sexual entreaties of their boyfriends.

\* Ellis, Bruce J., et al., "Does Father Absence Place Daughters at Special Risk for Early Sexual Activity and Teenage Pregnancy?" *Child Development*, 74:801-821.

\* David Popenoe, *Life Without Father* (Boston: Harvard University Press, 1999).

### **3. Children need mothers.**

Although homosexual men are less likely to have children than lesbians, homosexual men are and will be raising children. There will be even more if homosexual civil marriage is legalized. These households deny children a mother. Among other things, mothers excel in providing children with emotional security and in reading the physical and emotional cues of infants. Obviously, they also give their daughters unique counsel as they confront the physical, emotional, and social challenges associated with puberty and adolescence. Stanford psychologist Eleanor MacCoby summarizes much of this literature in her book, *The Two Sexes*. See also Steven Rhoads' book, *Taking Sex Differences Seriously*.

Eleanor MacCoby, *The Two Sexes: Growing Up Apart, Coming Together* (Boston: Harvard, 1998).

Steven Rhoads, *Taking Sex Differences Seriously* (Encounter Books, 2004).

### **4. Evidence on parenting by same-sex couples is inadequate.**

A number of leading professional associations have asserted that there are "no differences" between children raised by homosexuals and those raised by heterosexuals. But the research in this area is quite preliminary; most of the studies are done by advocates and most suffer from serious methodological problems. Sociologist Steven Nock of the University of Virginia, who is agnostic on the issue of same-sex civil marriage, offered this review of the literature on gay parenting as an expert witness for a Canadian court considering legalization of same-sex civil marriage:

Through this analysis I draw my conclusions that 1) all of the articles I reviewed contained at least one fatal flaw of design or execution; and 2) not a single one of those studies was conducted according to general accepted standards of scientific research.

This is not exactly the kind of social scientific evidence you would want to launch a major family experiment.

Steven Nock, affidavit to the Ontario Superior Court of Justice regarding Hedy Halpern et al. University of Virginia Sociology Department (2001).

### **5. Evidence suggests children raised by homosexuals are more likely to experience gender and sexual disorders.**

Although the evidence on child outcomes is sketchy, it does suggest that children raised by lesbians or homosexual men are more likely to experience gender and sexual disorders. Judith Stacey-- a sociologist and an advocate for same-sex civil marriage--reviewed the literature on child outcomes and found the following: "lesbian parenting may free daughters and sons from a broad but uneven range of traditional gender prescriptions." Her conclusion

here is based on studies that show that sons of lesbians are less masculine and that daughters of lesbians are more masculine.

She also found that a "significantly greater proportion of young adult children raised by lesbian mothers than those raised by heterosexual mothers ... reported having a homoerotic relationship." Stacey also observes that children of lesbians are more likely to report homoerotic attractions.

Her review must be viewed judiciously, given the methodological flaws detailed by Professor Nock in the literature as a whole. Nevertheless, these studies give some credence to conservative concerns about the effects of homosexual parenting.

Judith Stacey and Timothy Biblarz, "(How) Does the Sexual Orientation of Parents Matter?" *American Sociological Review* 66: 159-183. See especially 168-171.

#### **6. Same-sex "marriage" would undercut the norm of sexual fidelity within marriage.**

One of the biggest threats that same-sex "marriage" poses to marriage is that it would probably undercut the norm of sexual fidelity in marriage. In the first edition of his book in defense of same-sex marriage, *Virtually Normal*, homosexual commentator Andrew Sullivan wrote: "There is more likely to be greater understanding of the need for extramarital outlets between two men than between a man and a woman." Of course, this line of thinking--were it incorporated into marriage and telegraphed to the public in sitcoms, magazines, and other mass media--would do enormous harm to the norm of sexual fidelity in marriage.

One recent study of civil unions and marriages in Vermont suggests this is a very real concern. More than 79 percent of heterosexual married men and women, along with lesbians in civil unions, reported that they strongly valued sexual fidelity. Only about 50 percent of gay men in civil unions valued sexual fidelity.

Esther Rothblum and Sondra Solomon, *Civil Unions in the State of Vermont: A Report on the First Year*. University of Vermont Department of Psychology, 2003.

David McWhirter and Andrew Mattison, *The Male Couple* (Prentice Hall, 1984) 252.

#### **7. Same-sex "marriage" would further isolate marriage from its procreative purpose.**

Traditionally, marriage and procreation have been tightly connected to one another. Indeed, from a sociological perspective, the primary purpose that marriage serves is to secure a mother and father for each child who is born into a society. Now, however, many Westerners see marriage in primarily emotional terms.

Among other things, the danger with this mentality is that it fosters an anti-natalist mindset that fuels population decline, which in turn puts tremendous social, political, and economic strains on the larger society. Same-sex marriage would only further undercut the procreative norm long associated with marriage insofar as it establishes that there is no necessary link between procreation and marriage.

This was spelled out in the *Goodridge* decision in Massachusetts, where the majority opinion dismissed the procreative meaning of marriage. It is no accident that the countries that have legalized or are considering legalizing same-sex marriage have some of the lowest fertility rates in the world. For instance, the Netherlands, Sweden, and Canada have birthrates that hover around 1.6 children per woman--well below the replacement fertility rate of 2.1.

For national fertility rates, see: <http://www.cia.gov/cia/publications/factbook/geos/sw.html>



For more on the growing disconnect between marriage and procreation, see:  
<http://marriage.rutgers.edu/Publications/SOOU/SOOU2003.pdf>

### **8. Same-sex "marriage" would further diminish the expectation of paternal commitment.**

The divorce and sexual revolutions of the last four decades have seriously undercut the norm that couples should get and stay married if they intend to have children, are expecting a child, or already have children. Political scientist James Q. Wilson reports that the introduction of no-fault divorce further destabilized marriage by weakening the legal and cultural meaning of the marriage contract. George Akerlof, a Nobel laureate and an economist, found that the widespread availability of contraception and abortion in the 1960s and 1970s, and the sexual revolution they enabled, made it easier for men to abandon women they got pregnant, since they could always blame their girlfriends for not using contraception or procuring an abortion.

It is plausible to suspect that legal recognition of homosexual civil marriage would have similar consequences for the institution of marriage; that is, it would further destabilize the norm that adults should sacrifice to get and stay married for the sake of their children. Why? Same-sex civil marriage would institutionalize the idea that children do not need both their mother and their father.

This would be particularly important for men, who are more likely to abandon their children. Homosexual civil marriage would make it even easier than it already is for men to rationalize their abandonment of their children. After all, they could tell themselves, our society, which affirms lesbian couples raising children, believes that children do not need a father. So, they might tell themselves, I do not need to marry or stay married to the mother of my children.

James Q. Wilson, *The Marriage Problem*. (Perennial, 2003) 175-177.

George A. Akerlof, Janet L. Yellen, and Michael L. Katz, "An Analysis of Out-of-Wedlock Childbearing in the United States." *Quarterly Journal of Economics* CXI: 277-317.

### **9. Marriages thrive when spouses specialize in gender-typical roles.**

If same-sex civil marriage is institutionalized, our society would take yet another step down the road of de-gendering marriage. There would be more use of gender-neutral language like "partners" and--more importantly--more social and cultural pressures to neuter our thinking and our behaviors in marriage.

But marriages typically thrive when spouses specialize in gender-typical ways and are attentive to the gendered needs and aspirations of their husband or wife. For instance, women are happier when their husband earns the lion's share of the household income. Likewise, couples are less likely to divorce when the wife concentrates on childrearing and the husband concentrates on breadwinning, as University of Virginia psychologist Mavis Hetherington admits.

E. Mavis Hetherington and John Kelly, *For Better or For Worse*. (W.W. Norton and Co., 2002) 31.

Steven Rhoads, *Taking Sex Differences Seriously* (Encounter Books, 2004).

### **10. Women and marriage domesticate men.**

Men who are married earn more, work harder, drink less, live longer, spend more time attending religious services, and are more sexually faithful. They also see their testosterone levels drop, especially when they have children in the home.

If the distinctive sexual patterns of "committed" gay couples are any indication (see above), it is unlikely that homosexual marriage would domesticate men in the way that heterosexual marriage does. It is also extremely unlikely that the biological effects of heterosexual marriage on men would also be found in homosexual marriage. Thus, gay activists who argue that same-sex civil marriage will domesticate gay men are, in all likelihood, clinging to a foolish hope. This foolish hope does not justify yet another effort to meddle with marriage.

Steve Nock, *Marriage in Men's Lives* (Oxford University Press, 1998).

*Hardwired to Connect: The New Scientific Case for Authoritative Communities* (Institute for American Values, 2003) 17.

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## FAMILY RESEARCH COUNCIL

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### Questions and Answers: What's Wrong With Letting Same-Sex Couples "Marry?"

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#### Summary:

The debate over "marriage" for same-sex couples has been framed as an issue of "equal rights"--but it is not. The real issue is the definition of what "marriage" is. This paper explains how history, anthropology, and sociology demonstrate that a marriage cannot exist without the presence of both a man and a woman.

#### **What's wrong with letting same-sex couples legally "marry?"**

There are two key reasons why the legal rights, benefits, and responsibilities of civil marriage should not be extended to same-sex couples.

The first is that homosexual relationships are not marriage. That is, they simply do not fit the minimum necessary condition for a marriage to exist--namely, the union of a man and a woman.

The second is that homosexual relationships are harmful. Not only do they not provide the same benefits to society as heterosexual marriages, but their consequences are far more negative than positive.

Either argument, standing alone, is sufficient to reject the claim that same-sex unions should be granted the legal status of marriage.

#### **Let's look at the first argument. Isn't marriage whatever the law says it is?**

No. Marriage is not a creation of the law. Marriage is a fundamental human institution that predates the law and the Constitution. At its heart, it is an anthropological and sociological reality, not a legal one. Laws relating to marriage merely recognize and regulate an institution that already exists.

#### **But isn't marriage just a way of recognizing people who love each other and want to spend their lives together?**

If love and companionship were sufficient to define marriage, then there would be no reason to deny "marriage" to unions of a child and an adult, or an adult child and his or her aging parent, or to roommates who have no sexual relationship, or to groups rather than couples. Love and companionship are usually considered integral to marriage in our culture, but they are not sufficient to define it as an institution.

#### **All right--but if you add a *sexual* relationship to love and companionship, isn't that what most people would consider "marriage?"**

It's getting closer but is still not sufficient to define marriage.

In a ruling handed down June 26, 2003, the U. S. Supreme Court declared in *Lawrence v. Texas* that sodomy laws (and any other laws restricting private sexual conduct between consenting adults) are unconstitutional. Some observers have suggested that this decision

paves the way for same-sex "marriage." But in an ironic way, the Court's rulings that sex need not be (legally) confined to marriage undermine any argument that sex alone is a defining characteristic of marriage. Something more must be required.

### **So--what IS marriage, then?**

Anthropologist Kingsley Davis has said, "The unique trait of what is commonly called marriage is social recognition and approval ... of a couple's engaging in sexual intercourse and bearing and rearing children." Marriage scholar Maggie Gallagher says that "marriage across societies is a public sexual union that creates kinship obligations and sharing of resources between men, women, and the children their sexual union may produce."

Canadian scholar Margaret A. Somerville says, "Through marriage our society marks out the relationship of two people who will together transmit human life to the next generation and nurture and protect that life."

Another Canadian scholar, Paul Nathanson (who is himself a homosexual), has said, "Because heterosexuality is directly related to both reproduction and survival, ... *every* human societ[y] has had to *promote* it actively . ... Heterosexuality is always *fostered* by a cultural norm" that limits marriage to unions of men and women. He adds that people "are wrong in assuming that any society can do without it." [emphasis in original]

### **Are you saying that married couples who don't have children (whether by choice, or because of infertility or age) aren't really married? If we deny marriage to same-sex couples because they can't reproduce, why not deny it to those couples, too?**

A couple that doesn't want children when they marry *might* change their minds. Birth control might fail for a couple that uses it. A couple that appears to be infertile may get a surprise and conceive a child. The marital commitment may deter an older man from conceiving children with a younger woman outside of marriage. Even a very elderly couple is of the structural type (i.e., a man and a woman) that could theoretically produce children (or could have in the past). And the sexual union of all such couples is of the same *type* as that which reproduces the human race, even if it does not have that effect in particular cases.

Admittedly, society's interest in marriages that do not produce children is less than its interest in marriages that result in the reproduction of the species. However, we still recognize childless marriages because it would be an invasion of a heterosexual couple's privacy to require that they prove their intent or ability to bear children.

There is no reason, though, to extend "marriage" to same-sex couples, which are of a structural type (two men or two women) that is incapable--ever, under any circumstances, regardless of age, health, or intent--of producing babies naturally. In fact, they are incapable of even engaging in the type of sexual act that results in natural reproduction. And it takes no invasion of privacy or drawing of arbitrary upper age boundaries to determine that.

Another way to view the relationship of marriage to reproduction is to turn the question around. Instead of asking whether actual reproduction is essential to marriage, ask this: If marriage *never* had *anything* to do with reproduction, would there be any reason for the government to be involved in regulating or rewarding it? Would we even *tolerate* the government intervening in such an intimate relationship, any more than if government defined the terms of who may be your "best friend?" The answer is undoubtedly "no"--which reinforces the conclusion that reproduction is a central (even if not obligatory) part of the social significance of marriage.

Indeed, the facts that a child cannot reproduce, that close relatives cannot reproduce without risk, and that it only takes one man and one woman to reproduce, are among the reasons why people are barred from marrying a child, a close blood relative, or a person who

is already married. Concerns about reproduction are central to those restrictions on one's choice of marriage partner--just as they are central to the restriction against "marrying" a person of the same sex.

**But people can also reproduce *without* getting married. So what is the *purpose* of marriage?**

The mere biological conception and birth of children are not sufficient to ensure the reproduction of a healthy, successful society. Paul Nathanson, the homosexual scholar cited above, says that there are at least five functions that marriage serves--things that every culture *must* do in order to survive and thrive. They are:

- Foster the bonding between men and women
- Foster the birth and rearing of children
- Foster the bonding between men and children
- Foster some form of healthy masculine identity
- Foster the transformation of adolescents into sexually responsible adults

Maggie Gallagher puts it more simply, saying that "children need mothers and fathers" and "marriage is the most practical way to get them for children."

**But why should homosexuals be denied the right to marry like anyone else?**

The fundamental "right to marry" is a right that rests with *individuals*, not with *couples*. Homosexual *individuals* already have exactly the same "right" to marry as anyone else. Marriage license applications do not inquire as to a person's "sexual orientation."

Many people who now identify themselves as homosexual have previously been in legal (opposite-sex) marriages. On the other hand, many people who previously had homosexual relationships have now renounced that behavior and married persons of the opposite sex. If we define a "homosexual" as anyone who has ever experienced homosexual attractions, then both of these scenarios represent "homosexual" individuals who have exercised their right to be legally married.

However, while every individual person is free to get married, *no* person, whether heterosexual or homosexual, has ever had a legal right to marry simply any willing partner. Every person, whether heterosexual or homosexual, is subject to legal restrictions as to whom they may marry. To be specific, every person, regardless of sexual preference, is legally barred from marrying a child, a close blood relative, a person who is already married, or a person of the same sex. There is no discrimination here, nor does such a policy deny anyone the "equal protection of the laws" (as guaranteed by the Constitution), since these restrictions apply equally to every individual.

Some people may wish to do away with one or more of these longstanding restrictions upon one's choice of marital partner. However, the fact that a tiny but vocal minority of Americans desire to have someone of the same sex as a partner does not mean that they have a "right" to do so, any more than the desires of other tiny (but less vocal) minorities of Americans give them a "right" to choose a child, their own brother or sister, or a group of two or more as their marital partners.

**Isn't prohibiting homosexual "marriage" just as discriminatory as prohibiting interracial marriage, like some states used to do?**

This analogy is not valid at all. Bridging the divide of the sexes by uniting men and women is both a worthy goal and a part of the fundamental purpose of marriage, common to all human civilizations.

Laws against interracial marriage, on the other hand, served only the purpose of preserving a social system of racial segregation. This was both an unworthy goal and one utterly irrelevant to the fundamental nature of marriage.

Allowing a black woman to marry a white man does not change the definition of marriage, which requires one man and one woman. Allowing two men or two women to marry would change that fundamental definition. Banning the "marriage" of same-sex couples is therefore essential to preserve the nature and purpose of marriage itself.

**Hasn't the nature of marriage already changed dramatically in the last few generations? In defending "traditional marriage," aren't you defending something that no longer exists?**

It's true that American society's concept of marriage has changed, especially over the last fifty years. But not all change is positive, and our experiences in that regard may be instructive. Consider some of the recent changes to the institution of marriage--and their consequences:

- The divorce revolution has undermined the concept that marriage is a life-long commitment. As a result, there's been an epidemic of broken homes and broken families, and the consequences have been overwhelmingly negative.
- The sexual revolution has undermined the concept that sexual relations should be confined to marriage. As a result, there's been an epidemic of cohabitation, sexually transmitted diseases, abortions, and broken hearts, and the consequences have been overwhelmingly negative.
- The concept that childbearing should be confined to marriage has been undermined. As a result, there's been an epidemic of out-of-wedlock births, single parenthood, and fatherless children, and the consequences have been overwhelmingly negative.
- The pornography revolution, particularly with the advent of the Internet, has undermined the concept that a man's sexual desires should be directed toward his wife. As a result, there's been an epidemic of broken relationships, abused wives, and sex crimes, and the consequences have been overwhelmingly negative.

And now there is social and political pressure to redefine what constitutes marriage itself. What grounds does anyone have for thinking that the consequences of that radical social revolution, unprecedented in human history, would be any more positive than the consequences of the much less sweeping changes already described?

**Why does "defending marriage" and "defending the family" require opposing same-sex unions? How does a homosexual union do any harm to someone else's heterosexual marriage?**

It may come as a surprise to many people, but homosexual unions often have a more direct impact on heterosexual marriages than one would think. For example, the *Boston Globe* reported June 29, 2003, that "nearly 40 percent" of the 5,700 homosexual couples who have entered into "civil unions" in Vermont "have had a previous heterosexual marriage."

Of course, it could be argued that many of those marriages may have ended long before a spouse found their current homosexual partner. And some may assume that no opposite-sex spouse would *want* to remain married to someone with same-sex attractions. Nevertheless, the popular myth that a homosexual orientation is fixed at birth and unchangeable may have

blinded us to the fact that many supposed "homosexuals" have, in fact, had perfectly functional heterosexual marriages. And as *Globe* columnist Jeff Jacoby points out, "In another time or another state, some of those marriages might have worked out. The old stigmas, the universal standards that were so important to family stability, might have given them a fighting chance. Without them, they were left exposed and vulnerable."

**But isn't the number of homosexuals too small for same-sex unions to have much impact on other people's marriages?**

It's probably true that the percentage of marriages that fail because of the desire of one spouse to pursue a homosexual relationship will always be fairly small.

The most significant impact of legally recognizing same-sex unions would be more indirect. Expanding the definition of what "marriage" is to include relationships of a homosexual nature would inevitably, in the long run, change people's concept of what marriage is, what it requires, and what one should expect from it. These changes in the popular understanding of marriage would, in turn, change people's behavior both before and during marriage.

**How would allowing same-sex couples to marry change society's concept of marriage?**

For one thing, it would reinforce many of the negative changes described above. As an example, marriage will open wide the door to homosexual adoption, which will simply lead to more children suffering the negative consequences of growing up without both a mother and a father.

Among homosexual men in particular, casual sex, rather than committed relationships, is the rule and not the exception. And even when they do enter into a more committed relationship, it is usually of relatively short duration. For example, a study of homosexual men in the Netherlands (the first country in the world to legalize "marriage" for same-sex couples), published in the journal *AIDS* in 2003, found that the average length of "steady partnerships" was not more than 2 < years (Maria Xiridou et al., in *AIDS* 2003, 17:1029-1038).

In addition, studies have shown that even homosexual men who are in "committed" relationships are not sexually faithful to each other. While infidelity among heterosexuals is much too common, it does not begin to compare to the rates among homosexual men. The 1994 National Health and Social Life Survey, which remains the most comprehensive study of Americans' sexual practices ever undertaken, found that 75 percent of married men and 90 percent of married women had been sexually faithful to their spouse. On the other hand, a major study of homosexual men in "committed" relationships found that only seven out of 156 had been sexually faithful, or 4.5 percent. The Dutch study cited above found that even homosexual men in "steady partnerships" had an average of eight "casual" sex partners per year.

So if same-sex relationships are legally recognized as "marriage," the idea of marriage as a sexually exclusive and faithful relationship will be dealt a serious blow. Adding monogamy and faithfulness to the other pillars of marriage that have already fallen will have overwhelmingly negative consequences for Americans' physical and mental health.

**If you want people to be faithful and monogamous, shouldn't you grant same-sex couples the right to marry in order to encourage that?**

Some have argued that marriage will change the behavior of homosexuals, but it is far more plausible that the behavior of homosexuals will change people's idea of marriage, further undermining the concepts that marriage is a lifelong commitment and that sex should be confined to marriage.

The entire "gay liberation" movement has been but a part of the larger sexual liberation

movement whose fundamental tenet is that anybody should be able to have sex with anybody they want any time they want. To suggest that the crowning achievement of that pro-homosexual movement--obtaining society's ultimate stamp of approval through civil marriage--is suddenly going to result in these "liberated" homosexuals settling down into faithful, monogamous, childrearing is foolishly naive.

### **Don't homosexuals need marriage rights so that they will be able to visit their partners in the hospital?**

The idea that homosexuals are routinely denied the right to visit their partners in the hospital is nonsense. When this issue was raised during debate over the Defense of Marriage Act in 1996, the Family Research Council did an informal survey of nine hospitals in four states and the District of Columbia. None of the administrators surveyed could recall a single case in which a visitor was barred because of their homosexuality, and they were incredulous that this would even be considered an issue.

Except when a doctor limits visitation for medical reasons, final authority over who may visit an adult patient rests with that patient. This is and should be the case regardless of the sexual orientation or marital status of the patient or the visitor.

The only situation in which there would be a possibility that the blood relatives of a patient might attempt to exclude the patient's homosexual partner is if the patient is unable to express his or her wishes due to unconsciousness or mental incapacity. Homosexual partners concerned about this (remote) possibility can effectively preclude it by granting to one another a health care proxy (the legal right to make medical decisions for the patient) and a power of attorney (the right to make all legal decisions for another person). Marriage is not necessary for this. It is inconceivable that a hospital would exclude someone who holds the health care proxy and power of attorney for a patient from visiting that patient, except for medical reasons.

The hypothetical "hospital visitation hardship" is nothing but an emotional smokescreen to distract people from the more serious implications of radically redefining marriage.

### **Don't homosexuals need the right to marry each other in order to ensure that they will be able to leave their estates to their partner when they die?**

As with the hospital visitation issue, the concern over inheritance rights is something that simply does not require marriage to resolve it. Nothing in current law prevents homosexual partners from being joint owners of property such as a home or a car, in which case the survivor would automatically become the owner if the partner dies.

An individual may leave the remainder of his estate to whomever he wishes--again, without regard to sexual orientation or marital status--simply by writing a will. As with the hospital visitation issue, blood relatives would only be able to overrule the surviving homosexual partner in the event that the deceased had failed to record his wishes in a common, inexpensive legal document. Changing the definition of a fundamental social institution like marriage is a rather extreme way of addressing this issue. Preparing a will is a much simpler solution.

### **Don't homosexuals need marriage rights so that they can get Social Security survivor benefits when a partner dies?**

It is ironic that activists are now seeking Social Security survivor benefits for homosexual partners, since Congress originally intended them as a way of supporting a very traditional family structure--one in which the husband worked to provide the family's cash income while the wife stayed home to keep house and raise the children. Social Security survivor benefits were designed to recognize the non-monetary contribution made to a family by the homemaking and child-rearing activities of a wife and mother, and to ensure that a woman and her children would not become destitute if the husband and father were to die.



The Supreme Court ruled in the 1970s that such benefits must be gender-neutral. However, they still are largely based on the premise of a division of roles within a couple between a breadwinner who works to raise money and a homemaker who stays home to raise children.

Very few homosexual couples organize their lives along the lines of such a "traditional" division of labor and roles. They are far more likely to consist of two earners, each of whom can be supported in old age by their own personal Social Security pension.

Furthermore, far fewer homosexual couples than heterosexual ones are raising children at all, for the obvious reason that they are incapable of natural reproduction with each other. This, too, reduces the likelihood of a traditional division of labor among them.

Survivor benefits for the legal (biological or adopted) *children* of homosexual parents (as opposed to their partners) are already available under current law, so "marriage" rights for homosexual couples are unnecessary to protect the interests of these children themselves.

### **Don't some scholars claim that some cultures *have* recognized same-sex unions?**

A few pro-homosexual writers, such as William N. Eskridge, Jr. (author of a 1996 book called *The Case for Same-Sex Marriage*), have asserted this. They support this claim by citing evidence, mostly from obscure, primitive tribes, suggesting some tolerance of gender non-conformity or even homosexual relationships (particularly between men and boys). But the important point is that in *none* of these cultures was such behavior seen as the moral and social *equivalent* of lifelong heterosexual marriage, which is what today's pro-homosexual activists are demanding.

### **Even if "marriage" itself is uniquely heterosexual, doesn't fairness require that the legal and financial benefits of marriage be granted to same-sex couples--perhaps through "civil unions" or "domestic partnerships?"**

No. The legal and financial benefits of marriage are not an entitlement to be distributed equally to all (if they were, single people would have as much reason to consider them "discriminatory" as same-sex couples). Society grants benefits to marriage because marriage has benefits for society--including, but not limited to, the reproduction of the species in households with the optimal household structure (i.e., the presence of both a mother and a father).

Homosexual relationships, on the other hand, have no comparable benefit for society, and in fact impose substantial costs on society. The fact that AIDS is at least ten times more common among men who have sex with men than among the general population is but one example.

### **How else does marriage benefit society?**

As a group of thirteen leading social scientists reported in 2002, "Marriage is an important social good, associated with an impressively broad array of positive outcomes for children and adults alike." Put simply, married men and women, and their children, are happier, healthier, and more prosperous than people in other types of households.

For example:

- A five-year study released in 1998 found that continuously married husbands and wives experience better emotional health and less depression than people of any other marital status.
- A 1990 review of research found that husbands and wives also have better physical health, while the unmarried have significantly higher annual death rates--about 50 percent higher for women and 250 percent higher for men.

- Rates of violent abuse by intimate partners are four times higher among never-married women, and twelve times higher among divorced and separated women, than they are among married women. In fact, married people are less likely to be the victims of any type of violent crime than are those who have divorced, separated, or never married.
- Families headed by married couples also have much higher incomes and greater financial assets.
- In addition, husbands and wives who are sexually faithful even experience more physical pleasure and emotional satisfaction in their sexual relations than do any other sexually active people.

Children raised by their married mother and father, meanwhile, experience *lower* rates of many social problems, including:

- premarital childbearing;
- illicit drug use;
- arrest;
- health, emotional, or behavioral problems;
- poverty; and
- school failure or expulsion.

These benefits are then passed on to future generations as well, because children raised by married parents are themselves less likely to cohabit or to divorce as adults.

For more information on the benefits of marriage, see:

- Bridget Maher, "Why Marriage Should Be Privileged in Public Policy," *Insight* No. 254 (Washington, DC: Family Research Council), April 16, 2003 (online at <http://www.frc.org/get.cfm?i=IS03D1>)
- *Why Marriage Matters: Twenty-One Conclusions from the Social Sciences* (New York: Institute for American Values, 2002); see [www.americanvalues.org](http://www.americanvalues.org)
- Linda J. Waite and Maggie Gallagher, *The Case for Marriage: Why Married People are Happier, Healthier, and Better Off Financially* (New York: Doubleday, 2000)

**Isn't it possible that allowing homosexuals to "marry" each other would allow them to participate in those benefits as well?**

No. The benefits of marriage do not flow simply from the presence of two people and government recognition of their relationship. Instead, they flow from the inherent complementarity of the sexes and the power of lifelong commitment. The first of these is rejected outright by homosexuals, and the second is far less common among them.

As noted earlier, opening the gates of "marriage" to homosexuals is far more likely to change the attitudes and behavior of heterosexuals for the worse than it is to change the lifestyles of homosexuals for the better.

**Do most same-sex couples even want to assume the responsibilities of marriage?**

There is considerable reason to doubt that they do. A front-page article in the *New York Times* (August 31, 2003) reported that in the first 2 = months after Ontario's highest court legalized "marriage" for same-sex couples, fewer than 500 same-sex Canadian couples had taken out marriage licenses in Toronto, even though the city has over 6,000 such couples registered as permanent partners.

The *Times* reported that "skepticism about marriage is a recurring refrain among Canadian gay couples," noting that "many gays express the fear that it will undermine their notions of who they are. They say they want to maintain the unique aspects of their culture and their place at the edge of social change." Mitchel Raphael, the editor of a Toronto "gay" magazine, said, "I'd be for marriage if I thought gay people would challenge and change the institution and not buy into the traditional meaning of 'till death do us part' and monogamy forever." And Rinaldo Walcott, a sociologist at the University of Toronto, lamented, "Will queers now have to live with the heterosexual forms of guilt associated with something called cheating?"

It appears that many homosexuals want the right to "marry" only because marriage constitutes society's ultimate stamp of approval on a sexual relationship--not because they actually want to participate in the institution of marriage as it has historically been understood.

### **What about the argument that homosexual relations are harmful? What do you mean by that?**

Homosexual men experience higher rates of many diseases, including:

- Human Papillomavirus (HPV), which causes most cases of cervical cancer in women and anal cancer in men
- Hepatitis A, B, and C
- Gonorrhea
- Syphilis
- "Gay Bowel Syndrome," a set of sexually transmitted gastrointestinal problems such as proctitis, proctocolitis, and enteritis
- HIV/AIDS (One Canadian study found that as a result of HIV alone, "life expectancy for gay and bisexual men is eight to twenty years less than for all men.")

Lesbian women, meanwhile, have a higher prevalence of:

- Bacterial vaginosis
- Hepatitis C
- HIV risk behaviors
- Cancer risk factors such as smoking, alcohol use, poor diet, and being overweight

### **Why do homosexuals have such high rates of sexually transmitted diseases?**

Much of the reason for high rates of sexually transmitted diseases among homosexuals lies in their higher rates of promiscuous sexual behavior. For example, the 2003 Dutch study mentioned earlier found that even homosexual men who had a "steady partner" also had an average of eight "casual" sexual partners per year (those without a "steady partner" had an average of 22 "casual" ones). Lesbians, meanwhile, were found by one study to have twice

as many lifetime *male* sexual partners as women in the heterosexual control group.

### **Do homosexuals have more mental health problems as well?**

Yes. Various research studies have found that homosexuals have higher rates of:

- Alcohol abuse
- Drug abuse
- Nicotine dependence
- Depression
- Suicide

### **Isn't it possible that these problems result from society's "discrimination" against homosexuals?**

This is the argument usually put forward by pro-homosexual activists. However, there is a simple way to test this hypothesis. If "discrimination" were the cause of homosexuals' mental health problems, then one would expect those problems to be much less common in cities or countries, like San Francisco or the Netherlands, where homosexuality has achieved the highest levels of acceptance.

In fact, the opposite is the case. In places where homosexuality is widely accepted, the physical and mental health problems of homosexuals are greater, not less. This suggests that the real problem lies in the homosexual lifestyle itself, not in society's response to it. In fact, it suggests that increasing the level of social support *for* homosexual behavior (by, for instance, allowing same-sex couple to "marry") would only increase these problems, not reduce them.

### **Do homosexuals have higher rates of domestic violence?**

Yes. It's notable that so-called "hate crimes" directed at homosexuals, such as the brutal murder of Wyoming college student Matthew Shepard in 1998, are often touted as a measure of society's supposed hostility to homosexuals. Yet even when it comes to violence, homosexuals are far more likely to be victimized by each other than by an "anti-gay" attacker. Government statistics show that "intimate partner violence" between people of the same sex is approximately twenty times more common than anti-homosexual "hate crimes."

Research also shows that men and women in heterosexual marriages experience *lower* rates of domestic violence than people in any other living arrangement.

### **Do homosexuals pose a threat to children?**

Homosexual men are far more likely to engage in child sexual abuse than are heterosexuals. The evidence for this lies in the findings that:

- Almost all child sexual abuse is committed by men; and
- Less than three percent of American men identify themselves as homosexual; yet
- Nearly a third of all cases of child sexual abuse are homosexual in nature (that is, they involve men molesting boys). This is a rate of homosexual child abuse about ten times higher than one would expect based on the first two facts.

These figures are essentially undisputed. However, pro-homosexual activists seek to explain them away by claiming that men who molest boys are not usually homosexual in their adult sexual orientation. Yet a study of convicted child molesters, published in the *Archives of Sexual Behavior*, found that "86 percent of offenders against males described themselves as homosexual or bisexual" (W. D. Erickson, M.D., et al., in *Archives of Sexual Behavior* 17:1, 1988).

This does *not* mean that all, or even most, homosexual men are child molesters--but it does prove that homosexuality is a significant risk factor for this horrible crime.

### **But haven't studies shown that children raised by homosexual parents are no different from other children?**

No. This claim is often put forward, even by professional organizations. The truth is that most research on "homosexual parents" thus far has been marred by serious methodological problems. However, even pro-homosexual sociologists Judith Stacey and Timothy Biblarz report that the actual data from key studies show the "no differences" claim to be false.

Surveying the research (primarily regarding lesbians) in an *American Sociological Review* article in 2001, they found that:

- Children of lesbians are less likely to conform to traditional gender norms.
- Children of lesbians are more likely to engage in homosexual behavior.
- Daughters of lesbians are "more sexually adventurous and less chaste."
- Lesbian "co-parent relationships" are more likely to end than heterosexual ones.

A 1996 study by an Australian sociologist compared children raised by heterosexual married couples, heterosexual cohabiting couples, and homosexual cohabiting couples. It found that the children of heterosexual married couples did the best, and children of homosexual couples the worst, in nine of the thirteen academic and social categories measured.

### **What do these consequences of homosexual behavior have to do with marriage?**

Since homosexual behavior is directly associated with higher rates of promiscuity, physical disease, mental illness, substance abuse, child sexual abuse, and domestic violence, there is no reason to reward such behavior by granting it society's ultimate affirmation--the status of civil marriage--or any of the benefits of marriage.

For more information on the harmful consequences of homosexual behavior, see the following publications by the Family Research Council's Senior Fellow for Marriage and Family Studies, Dr. Timothy J. Dailey:

- *Dark Obsession: The Tragedy and Threat of the Homosexual Lifestyle* (Nashville: Broadman and Holman, 2003); order online at: <http://www.frc.org/get.cfm?i=BK03F01>
- "Homosexuality and Child Sexual Abuse," *Insight* No. 247 (Washington, D.C.: Family Research Council), May 17, 2002 (online at: <http://www.frc.org/get.cfm?i=IS02E3>)
- "The Negative Health Effects of Homosexuality," *Insight* No. 232 (Washington, D.C.: Family Research Council), March 6, 2001 (online at: <http://www.frc.org/get.cfm?i=IS01B1>)

- "Homosexual Parenting: Placing Children at Risk," *Insight* No. 238 (Washington: Family Research Council) November 1, 2001 (online at: <http://www.frc.org/get.cfm?i=1S01J3>)

### **Do the American people want to see "marriages" between same-sex couples recognized by law?**

No--and in the wake of the June 2003 court decisions to legalize such "marriages" in the Canadian province of Ontario and to legalize homosexual sodomy in the United States, the nation's opposition to such a radical social experiment has actually grown.

Five separate national opinion polls taken between June 24 and July 27, 2003 showed opponents of civil "marriage" for same-sex couples outnumbering supporters by not less than fifteen percentage points in every poll. The wording of poll questions can make a significant difference, and in this case, the poll with the most straightforward language (a Harris/CNN/Time poll asking "Do you think marriages between homosexual men or homosexual women should be recognized as legal by the law?") resulted in the strongest opposition, with 60 percent saying "No" and only 33 percent saying "Yes."

Even where pollsters drop the word "marriage" itself and use one of the euphemisms to describe a counterfeit institution parallel to marriage, we see a decline in public support for the homosexual agenda. The Gallup Poll, for instance, has asked, "Would you favor or oppose a law that would allow homosexual couples to legally form civil unions, giving them some of the legal rights of married couples?"

This question itself is misleading, in that it downplays the legal impact of "civil unions." Vermont, the only U. S. state to adopt "civil unions" (under coercion of a state court), actually gives *all* "of the legal rights of married couples" available under state law to people in a same-sex "civil union"--not just "some." But despite this distortion, a 49-percent-to-49-percent split on this question in May 2003 had changed to opposition by a margin of 58 percent to 37 percent when the *Washington Post* asked the identical question in August 2003.

Even the percentage of Americans willing to declare that "homosexual relations between consenting adults" (never mind homosexual civil "marriage") "should be legal" dropped from 60 percent to only 48 percent between May and July of 2003. The biggest drop in support, a stunning 23 percentage points (from 58 percent to 35 percent), came among African Americans--despite the rhetoric of pro-homosexual activists who seek to frame the issues of "gay rights" and same-sex unions as a matter of "civil rights."

### **Is it necessary to amend the U. S. Constitution to prevent legal recognition of civil "marriage" for same-sex couples?**

No state legislature has even come close to allowing same-sex unions to be recognized as civil marriage. However, knowing that public opinion is firmly against them, pro-homosexual activists have now turned to the courts in an effort to get what they cannot achieve through the democratic process. Several states have heard lawsuits from same-sex couples demanding that they be granted marriage licenses, and at this writing there is a very real possibility that in the near future one or more state courts may order legal recognition of a same-sex civil "marriage."

If that happens, it is highly likely that some same-sex couples who obtain a civil "marriage" in that state will seek to have it recognized in other states. The 1996 Defense of Marriage Act (DOMA), which was passed by an overwhelming bipartisan majority in Congress and signed into law by President Clinton, declares that states do not have to recognize same-sex civil "marriages" contracted in other states. However, pro-homosexual activists would undoubtedly go to federal court to seek to have DOMA declared unconstitutional.

Such a legal challenge to DOMA *ought* to fail. But given the U. S. Supreme Court's recent

history of judicial activism on the subject of homosexuality, in defiance of the history and traditions of the country and even of the Court's own prior decisions, many have concluded that it would be unsafe to trust the Court on this issue.

Amending the Constitution now appears to be the only way to achieve two indispensable goals:

- preserve a uniform national standard for something so fundamental to our civilization as the definition of marriage; and
- prevent the imposition of same-sex civil "marriage" or marital benefits through acts of undemocratic judicial tyranny.

#### Additional Resources

- [Dark Obsession: The Tragedy and Threat of the Homosexual Lifestyle](http://www.frc.org/get.cfm?i=BK03F01&f=IF03H01)
- <http://www.frc.org/get.cfm?i=BK03F01&f=IF03H01>
- [Homosexuality and Child Sexual Abuse](http://www.frc.org/get.cfm?i=IS02E3&f=IF03H01)
- <http://www.frc.org/get.cfm?i=IS02E3&f=IF03H01>
- [The Negative Health Effects of Homosexuality](http://www.frc.org/get.cfm?i=IS01B1&f=IF03H01)
- <http://www.frc.org/get.cfm?i=IS01B1&f=IF03H01>
- [Homosexual Parenting: Placing Children at Risk](http://www.frc.org/get.cfm?i=IS01J3&f=IF03H01)
- <http://www.frc.org/get.cfm?i=IS01J3&f=IF03H01>

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## FAMILY RESEARCH COUNCIL

January 24, 2005

by: Timothy J. Dailey, Ph. D.

### A Man and His Horse

In what some call a denial of a basic civil right, a Missouri man has been told he may not marry his long-term companion. Although his situation is unique, the logic of his argument is remarkably similar to that employed by advocates of homosexual marriage.

The man claims that the essential elements of marriage--love and commitment--are indeed present: "She's gorgeous. She's sweet. She's loving. I'm very proud of her. ... Deep down, way down, I'd love to have children with her."<sup>1</sup>

Why is the state of Missouri, as well as the federal government, displaying such heartlessness in denying the holy bonds of wedlock to this man and his would-be "wife"?

It seems the state of Missouri is not prepared to indulge a man who waxes eloquent about his love for a 22-year-old mare named Pixel.

### The Threat to Marriage

The Missouri man and homosexual "marriage" proponents categorically reject the definition of marriage as the union of a man and a woman. Instead, the sole criterion for marriage becomes the presence of "love" and "mutual commitment." But once marriage is no longer confined to a man and a woman, it is impossible to exclude virtually any relationship between two or more partners of either sex--even non-human "partners."

To those who object to comparing gay marriage to widely-rejected sexual preferences, it should be pointed out that until very recent times the very suggestion that two men or two women could "marry" was itself greeted with scorn.

Of course, media stories on same-sex marriage rarely address the fact that redefining marriage logically leads to the Missouri man and his mare. Instead, media reports typically focus instead on homosexual couples who resemble the stereotypical ideal of a married couple. Ignored in such reports is social science research indicating that such idealized "families" are utterly atypical among homosexuals.

In this pamphlet we will show the following:

1. Gay marriage threatens the institutions of marriage and the family.
2. Same-sex relationships are not the equivalent of traditional marriage

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#### Summary:

Advocates for same-sex marriage reject the definition of marriage as the union of a man and a woman. This makes it impossible to exclude virtually any relationship between two or more partners of either sex.

This pamphlet shows how homosexual marriage is not the equivalent of traditional marriage and demonstrates that gay marriage is not a civil rights issue or a matter of "discrimination."

Also discussed is the overwhelming rejection of same-sex unions by Americans, many of whom do not consider homosexual marriage to be a moral alternative to traditional marriage.



3. Gay marriage is not a civil rights issue
4. Americans overwhelmingly reject gay marriage
5. Gay marriage is not a moral alternative to traditional marriage.
6. Homosexuality is rightly viewed as unnatural.

#### The "Polyamory" Movement

*"Sean has a wife. He also has a girlfriend. His girlfriend has another boyfriend. That boyfriend is dating Sean's wife."*  
description of "polyamory" relationship<sup>2</sup>

The movement to redefine marriage has found full expression in what is variously called "polyfidelity" or "polyamory," which seeks to replace traditional marriage with a bewildering array of sexual combinations between various groups of individuals.

"Polyamory" is derived from Greek and Latin roots, and is loosely translated "many loves." Polyamorists reject the "myth" of monogamy and claim to practice "harmonious love and intimacy between multiple poly partners."<sup>3</sup> Stanley Kurtz describes the "bewildering variety of sexual combinations. There are triads of one woman and two men; heterosexual group marriages; groups in which some or all members are bisexual; lesbian groups, and so forth."<sup>4</sup>

The polyamory movement took its inspiration from Robert Heinlein's 1961 sci-fi novel, *Stranger in a Strange Land*, in which sexual possessiveness (as in marital exclusivity) is portrayed as an evil leading to societal ills such as murder and war. The book helped spawn a number of ill-fated sexual communes, such as San Francisco's Kerista community, in which members had sexual relations with each other according to a rotating schedule.

#### Anti-Marriage Activists

The Kerista commune collapsed in 1992, but the polyamory movement has taken hold in academia where, according to *First Things*, its proponents "are now so influential, if not dominant, in the academic field of marriage and family law." Scholars enamored with polyamory argue in favor of "a social revolution that would replace traditional marriage and family law."<sup>5</sup>

Kurtz concurs that the "gradual transition from gay marriage to state-sanctioned polyamory, and the eventual abolition of marriage itself, is now the most influential paradigm within academic family law." One prominent advocate of polyamory, David Chambers, professor of law at the University of Michigan, argues: "By ceasing to conceive of marriage as a partnership composed of one person of each sex, the state may become more receptive to units of three or more."<sup>6</sup>

#### The Frat House Concept of "Family"

This radical definition of marriage gives rise to bizarre conceptions of family that include virtually any relationship or social group. In 1990, a San Francisco task force on family policy led by lesbian activist Roberta Achtenberg defined the family as a "unit of interdependent and interacting persons, related together over time by strong social and emotional bonds and/or by ties of marriage, birth, and adoption."<sup>7</sup>

The "frat house with revolving bedroom doors" concept of marriage and the family poses dangers to children.

Polyamory advocates pay scant attention to the dangers posed to children being raised according to this "frat house with revolving bedroom doors" concept of marriage and the family. Yet, this nebulous, free-for-all model of the family looms ahead for our society unless a bulwark is created in the form of a constitutional amendment protecting marriage.

The slippery slope leading to the destruction of marriage as we know it draws ever closer with the decision of the Massachusetts Supreme Judicial Court to compel the state legislature to grant homosexual sex partners the legal status of married people. This decision has emboldened public officials in various localities to grant marriage licenses to homosexual couples, igniting a national debate on the question: What is marriage--and where do we draw the limits on who can marry?

#### Same-Sex Relationships are not the Equivalent of Marriage

A growing body of research indicates that in key respects homosexual and lesbian relationships are radically different than married couples.

-- **Relationship duration:** While a high percentage of married couples remain married for up to 20 years or longer, with many remaining wedded for life, the vast majority of homosexual relationships are short-lived and transitory. This has nothing to do with alleged "societal oppression." A study in the Netherlands, a gay-tolerant nation that has legalized homosexual marriage, found the average duration of a homosexual relationship to be one and a half years.<sup>8</sup>

-- **Monogamy versus promiscuity:** Studies indicate that while three-quarters or more of married couples remain faithful to each other, homosexual couples typically engage in a shocking degree of promiscuity. The same Dutch study found that "committed" homosexual couples have an average of eight sexual partners (outside of the relationship) per year.<sup>9</sup>

-- **Intimate partner violence:** homosexual and lesbian couples experience by far the highest levels of intimate partner violence compared with married couples as well as cohabiting heterosexual couples.<sup>10</sup> Lesbians, for example, suffer a much higher level of violence than do married women.<sup>11</sup>

#### What about the Children?

In his exhaustive examination of human history, Giovanni Battista Vico (1668-1744), Professor of Rhetoric at the University of Naples, concluded that marriage between a man and a woman is an essential characteristic of civilization, and as such is the "seedbed" of society. Vico warned that chaos would ensue in the absence of strong social norms encouraging marital faithfulness and the loving care of children born to the union.

Since reproduction requires a male and a female, society will always depend upon heterosexual marriage to provide the "seedbed" of future generations. The evidence indicates that homosexual or lesbian households are not a suitable environment for children.

Data from the 2000 U.S. Census and other sources indicates that only a small percentage of homosexual households choose to raise children.<sup>12</sup> One reason for this is that the raising of children is inimical to the typical homosexual lifestyle, which as we have seen typically involves a revolving bedroom door. With the added problem of high rates of intimate partner violence, such households constitute a dangerous and unstable environment for children.

Homosexuals and lesbians are unsuitable role models for children because of their lifestyle. Dr. Brad Hayton observes that homosexual households "model a poor view of marriage to children. They are taught by example and belief that marital relationships are transitory and mostly sexual in nature. ... And they are taught that monogamy in a marriage is not the norm [and] should be discouraged if one wants a good 'marital' relationship."<sup>13</sup>

### The Phony Comparison with Race

Many black Americans are understandably offended when gay activists, who have never been relegated to the back of a bus, equate their agenda with racial discrimination. In a statement supporting traditional marriage, several black pastors wrote: "We find the gay community's attempt to tie their pursuit of special rights based on their behavior to the civil rights movement of the 1960s and 1970s abhorrent."<sup>14</sup>

A majority of Black Americans reject the facile comparison of sexual behavior with an immutable characteristic such as race, and disagree with the oft-heard contention by gay activists that homosexuals are "born that way." A Pew Research poll found that by an overwhelming 61 to 26 percent margin, Black Protestants believe sexual orientation can be changed.<sup>15</sup> The same poll reported that Black Americans oppose homosexual marriage by a 60 to 28 percent margin.<sup>16</sup>

### Gay Marriage is not a Civil Rights Issue

Defining marriage as the union of a man and a woman would not deny homosexuals the basic civil rights accorded other citizens. Nowhere in the Bill of Rights or in any legislation proceeding from it are homosexuals excluded from the rights enjoyed by all citizens--including the right to marry.

However, no citizen has the unrestricted right to marry whoever they want. A parent cannot marry their child (even if he or she is of age), two or more spouses, or the husband or wife of another person. Such restrictions are based upon the accumulated wisdom not only of Western civilization but also of societies and cultures around the world for millennia.

Neither can gay activists appeal to a "natural rights" argument: i.e., no reasonable person would deny homosexuals and lesbians their self-evident right to marry. Harry Jaffa cogently replies that such arguments actually argue *against* homosexual marriage: "Nature and reason tell us that a Negro is a human being, and is not to be treated like a horse or an ox or a dog, just as they tell us that a Jew is a human being, and is not to be treated as a plague-bearing bacillus. But with the very same voice, nature and reason tell us that a man is not a woman, and that sexual friendship is properly between members of opposite-sexes, not the same sex."<sup>17</sup>

### Upholding Traditional Marriage is not "Discrimination"

Discrimination occurs when someone is unjustly denied some benefit or opportunity. But it must first be demonstrated that such persons deserve to be treated equally. For example, FAA and airline regulations rightly discriminate regarding who is allowed into the cockpit of an airline. Those who are not trained pilots have no rightful claim to "discrimination" because they are not allowed to fly an airplane.

On the other hand, discrimination would occur if properly credentialed pilots are refused hiring simply because of the color of their skin. In this case such individuals have been denied employment simply because of their race.

The issue of alleged discrimination was addressed by the Minnesota Supreme Court in *Baker v. Nelson*, when it rejected the argument that denying a same-sex couple the right to marry was the equivalent of racial discrimination. The court found: "In common sense and constitutional sense, there is a clear distinction between a marital restriction based merely upon race and one based upon the fundamental difference in sex."

Similarly, in October 2003, a three-judge panel of the Arizona Court of Appeals ruled unanimously against two homosexuals who argued in a lawsuit that marriage is a fundamental right, and that prohibiting it for same-sex couples violates constitutional protections for due process. The court found that the state's ban on homosexual marriage "rationally furthers a legitimate state interest," and thus does not discriminate against

homosexuals by depriving them of their constitutional rights.<sup>18</sup> The court further noted: "Recognizing a right to marry someone of the same sex would not expand the established right to marry, but would redefine the legal meaning of 'marriage.'"

When gay activists and their supporters cry "discrimination!" they conveniently avoid the question of whether homosexual relationships merit being granted equality with marriage. Yet this question deserves our close examination, for the danger posed to our society by redefining marriage is no less than permitting unqualified individuals to fly airplanes.

### Americans Reject Gay Marriage

Typical of polls on the subject, a Fox News poll conducted after the Massachusetts ruling found that Americans oppose same-sex marriage by an overwhelming 66 to 25 percent margin.<sup>19</sup>

A majority of Americans also support a constitutional amendment banning gay marriage. A Fox News/Opinion Dynamics poll in August 2003 reported that 58 percent of respondents favored amending the Constitution, with 34 percent opposed.<sup>20</sup> A Zogby poll released in February 2004 found that, by a 51 to 43 percent margin, voters agreed that a constitutional amendment should be passed limiting marriage to a man and a woman.<sup>21</sup> Similarly, a February 2004 Gallup poll found that 53 percent of respondents favored a constitutional amendment banning gay marriage, with 44 percent opposed.<sup>22</sup>

Homosexual marriage is a potent political issue, with opponents ever more dedicated to preserving the traditional definition of marriage. A follow-up Pew Research poll conducted in February 2004 found: "Gay marriage has surpassed other major social issues like abortion and gun control in its influence on voters. Four in ten voters say they would not vote for a candidate who disagrees with them on gay marriage, even if they agree with the candidate on most other issues." The poll reported that "voters oppose gay marriage by more than two to one (65 percent to 28 percent), a margin that has remained generally steady since October."<sup>23</sup>

### Polls Cite Moral Objections to Homosexuality

A Pew Research poll released in November 2003 reported: "The most common reasons given for objecting to gay and lesbian marriage are moral and religious. ... More than eight in ten opponents of gay marriage (82 percent) say it runs counter to their religious beliefs, with 73 percent completely agreeing with that sentiment." <sup>24</sup>

The poll found that the top two reasons for opposing gay marriage are that "The Bible says it is morally wrong/a sin" (28 percent), followed by the response that homosexual marriage is "against my religious beliefs" (17 percent).<sup>25</sup> Unexpressed religious beliefs are reflected in the next two largest categories of responses. Sixteen percent of respondents based their opposition to gay marriage on the fact that the "definition of marriage is a man and a woman," followed by "It's just wrong/I just don't agree with it" (12 percent).

A Barna Research poll, also released in November 2003, confirmed that Americans consider homosexual behavior to be morally objectionable. Only 30 percent of respondents agreed that "having a sexual relationship with someone of the same sex" was morally acceptable. By comparison, the respondents considered "getting drunk" (35 percent), "using profanity" (36 percent), sex outside of marriage (42 percent), cohabitation (60 percent), and gambling (61 percent) all to be more acceptable than homosexuality.<sup>26</sup>

It is outside the scope of this pamphlet to discuss the biblical and theological understanding regarding homosexual behavior. See the FRC booklet "Keeping the Churches Marriage Friendly: How the Bible and Tradition Refute the 'Gay Theology'" (available at [www.frc.org](http://www.frc.org) or by calling 1-800-225-4008 ).

### The Validity of Moral Arguments

The oft-repeated mantra "you can't legislate morality"--the contention that moral arguments have no place in formulating public policy--is absurd. It is the duty of legislators to evaluate the *right* legislation needed to correct some *wrong* or *injustice*, or promote some *positive* or *good* result. Many of the same people who wish to exclude religiously informed moral arguments from the debate about marriage are little troubled by the use of moral and religious arguments when discussing other issues such as racial discrimination, capital punishment, or the war in Iraq.

The conviction that human sexuality is rightfully expressed within marriage between a man and a woman is deeply rooted in our history and Judeo-Christian beliefs. Over a century ago, in *Maynard v. Hill* (1888), the U.S. Supreme Court recognized that the understanding of marriage springs from the fundamental morality of a people. The Court described marriage as "creating the most important relation in life, as having more to do with the morals and civilization of a people than any other institution."

Similarly, in *Baker v. Nelson* (1971), the Minnesota Supreme Court affirmed the Judeo-Christian roots of the definition of marriage: "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."

#### Homosexuality is Unnatural

The advocates of anti-marriage and anti-family sexuality face yet another foe: divinely created nature itself. According to the above-mentioned Pew Poll, the next most frequent reason given for opposing gay marriage is that "homosexuality is not natural/normal" (9 percent). This response is followed by "the purpose of marriage is to have children" (4 percent), which also recognizes a purposeful--and thus "natural"--design for human sexuality.

In his epistle to Christians living in Rome, the Apostle Paul speaks of an undeniable "law" regarding normative human behavior that is written on the hearts of mankind "to which their own conscience also bears witness." Those who would reject this law find themselves in opposition to the Divine intent for mankind, a reality that every culture from the dawn of civilization has either recognized--or failed to acknowledge at its peril.

The power of the innate realization that there is something fundamentally "unnatural" about homosexuality--even among those who consider themselves non-religious--should not be underestimated, and may well provide the vital motivation that will turn back the seemingly invincible juggernaut of the gay agenda.

#### The Gay Agenda vs. Nature

In their 1989 book, *After the Ball: How America Will Conquer its Fear and Hatred of Gays in the '90s*, homosexual activists Marshall Kirk and Hunter Madsen presented a strategy for achieving the full acceptance of homosexuality in American culture. Kirk and Madsen write: "In any campaign to win over the public, gays must be portrayed as victims in need of protection so that straights will be inclined by reflex to adopt the role of protector."

That this strategy has met with considerable success is undeniable. But wait! The subtitle of Kirk and Madsen's book reveals the confident presumption that America would conquer its (purported) fear and hatred of gays *in the '90s*.

Yet America did not, as expected, embrace the homosexual agenda with open arms. When queried regarding homosexuality as a *behavioral lifestyle*--as opposed to a civil rights issue--many Americans continue to register strong negative reactions.

A *Public Perspectives* survey found that 69 percent of those surveyed report being "very much" or "somewhat" bothered by seeing a person "kissing someone of the same sex in public."<sup>27</sup> This hesitancy is not limited to those holding to traditional morality. No less than

the liberal icon *Glamour* magazine reported the results of a readership poll in which 59 percent of the respondents were "put off" by a lesbian kiss shown on network television.<sup>28</sup>

This "ick factor," far from irrational, is rooted in the subconscious realization of what is normal and what is not, and which forms an inescapable part of our being. And it may be that by underestimating the power of this innate understanding, gay activists have made their greatest tactical error.

#### A Coming Spiritual Revival?

Camille Paglia, a self-confessed radical lesbian and atheist feminist, addresses this fundamental miscalculation of gay activism, which, "encouraged by the scientific illiteracy of academic postmodernism, wants to deny that there is a heterosexual norm. This is madness." Paglia warns that eventually "the insulting disrespect shown by gay activists to religion ... would produce a backlash."<sup>29</sup>

Paglia notes: "History shows that massive spiritual revivals are a fundamental, recurrent element in culture." She further warns that "there may unfortunately be deep, slow-moving forces at work like those that led to Christianity's triumph over cosmopolitan, sexually permissive, but ethically weak late-paganism during the Roman Empire."<sup>30</sup>

#### Gay Marriage: A No Show in History

Some scholars claim that marriage between homosexuals has been commonly practiced and accepted by various peoples throughout history. One prominent advocate of this view, William Eskridge, contends that same-sex unions and even "marriages" have been common in other times and cultures.

Responding to Eskridge, professors Peter Lubin and Dwight Duncan point out that the so-called "evidence" for homosexual marriage comes primarily from small, isolated pre-literate tribes. Lubin and Duncan point out that "a great many of the primitive societies deemed by Eskridge to be tolerant of [same-sex marriage] ... have also been known to engage in other practices, such as cannibalism, female genital mutilation, massacre or enslavement of enemies taken in war, and other practices which was once held to be the duty of the civilized to extirpate."<sup>31</sup>

Furthermore, what Eskridge takes for homosexual marriage are actually male bonding rituals that he mistakenly eroticized. Alleged examples from ancient Rome, such as Nero and Elagabalus, only reveal the degree to which homosexuality was held in contempt by Roman society. In referring to Nero's homosexuality, Tacitus wrote that the emperor "polluted himself by every lawful or lawless indulgence, [and] had not omitted a single abomination which could heighten his depravity." This hardly constitutes an endorsement of homosexuality in ancient Rome.

Lubin and Duncan summarize: "There is no 'rich history of same-sex marriage' that [Eskridge] has 'uncovered,' that was 'suppressed in recent Western history, and is only now coming to light.' The 'resistance' to same-sex marriage is not limited to 'Western culture' with its age-old 'anti-homosexual hysteria and bigotry,' but extends to almost every culture throughout the world."<sup>32</sup>

On the face of it, theories about the supposed widespread practice of homosexual marriage throughout history lack merit, given the biological imperative of families consisting of husbands and wives producing children, which is a basic requirement for the preservation of any culture or society.

#### How Does Gay Marriage Harm Your Marriage?

One might as well ask, "How does *my* printing counterfeit \$20 bills hurt *your* wallet?" Or to

use another example, can you imagine a building where every carpenter defined his own standard of measurement? A man and a woman joined together in holy matrimony is the time-tested "yardstick" for marriage. One cannot alter the definition of marriage without throwing society into confusion any more than one can change the definition of a yardstick.

Homosexual marriage is an empty pretense that lacks the fundamental sexual complementariness of male and female. And like all counterfeits, it cheapens and degrades the real thing. The destructive effects may not be immediately apparent, but the cumulative damage is inescapable. The eminent Harvard sociologist, Pitirim Sorokin, analyzed cultures spanning several thousand years on several continents, and found that virtually no society has ceased to regulate sexuality within marriage as defined as the union of a man and a woman, and survived.<sup>33</sup>

#### A Federal Marriage Amendment: Protection against Judicial Tyranny

Given the strong public opposition to homosexual behavior, it is hardly surprising that no state has voted to extend full marriage rights to gay and lesbian couples. Having failed to achieve their agenda through the democratic process, homosexual activists are now focusing on advancing their agenda through the courts as well as through "civil disobedience" such as the illegal issuance of marriage licenses by public officials in San Francisco and elsewhere.

There is growing danger of activist judges disregarding marriage laws passed by a majority of the population and enshrined in centuries of legal precedence, and imposing homosexual marriage on the nation. States' "Defense of Marriage" laws will help to protect against counterfeit marriage. But such statutes can be overturned in state courts on the argument that they violate state constitutional equal protection and due process clauses.

Amending state constitutions to bar gay marriage will also offer some protection. However, observers fear that the U.S. Supreme Court could overturn state constitutional amendments on the basis of the equal protection and due process clauses in the U.S. Constitution. Robert Bork writes: "One of the last obstacles to the complete normalization of homosexuality in our society is the understanding that marriage is the union of a man and a woman. ... Many court watchers believe that within five to ten years the U.S. Supreme Court will hold that there is a constitutional right to homosexual marriage, just as that court invented a right to abortion. The chosen instrument will be the Equal Protection Clause of the 14<sup>th</sup> Amendment."<sup>34</sup>

A constitutional amendment defining marriage as the union of a man and a woman offers the ultimate protection against the agenda of gay and lesbian activists such as Paula Ettelbrick, former legal director of the Lambda Legal Defense and Education Fund, who unabashedly states: "Being queer means pushing the parameters of sex, sexuality, and family, and ... transforming the very fabric of society."<sup>35</sup>

We enjoy the blessing of living in a nation that has enshrined democratic principles--but this privilege also entails the obligation to make our voices heard in the political process. Those who value the family have a God-given duty to become involved in what is shaping up as the preeminent moral issue of our day: protecting the very institution of marriage.

Our elected representatives must be put on notice that they face an historic choice between catering to the demands of a well-heeled, powerful cadre of homosexual activist organizations determined to radically alter the definition and nature of marriage, or listening to the voice of people across the nation who seek to preserve marriage as the wellspring of society and culture for themselves and their families for generations to come.

*Written by Timothy J. Dailey, Ph.D., Senior Fellow, Center for Marriage and Family Studies at Family Research Council*

notes

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- 3 Ibid.
- 4 Stanley Kurtz, "Beyond Gay Marriage," *The Weekly Standard* 8 (August 4-11, 2003): 28.
- 5 "The Marriage Amendment; Editorial" *First Things* 136 (October 1, 2003): 1048.
- 6 Kurtz, "Beyond Gay Marriage," 29.
- 7 Roberta Achtenberg, et al., "Approaching 2000: Meeting the Challenges to San Francisco's Families," the Final Report of the Mayor's Task Force on Family Policy, City and County of San Francisco, June 13, 1990, p. 1.
- 8 Maria Xiridou, et al, "The Contribution of Steady and Casual Partnerships to the Incidence of HIV Infection among Homosexual Men in Amsterdam," *AIDS* 17 (2003): 1031.
- 9 Ibid.
- 10 "Extent, Nature, and Consequences of Intimate Partner Violence," *U.S. Department of Justice: Office of Justice Programs* (July, 2000): 30. Cp. "Violence Between Intimates," *Bureau of Justice Statistics Selected Findings*, November 1994, p. 2.
- 11 Ibid.
- 12 "PCT 14: Unmarried-Partner Households by Sex of Partners" (U.S. Census Bureau: Census 2000 Summary File 1). Cp. Dan Black et al., "Demographics of the Gay and Lesbian Population in the United States: Evidence from Available Systematic Data Sources," *Demography* 37 (May 2000): 150.
- 13 Bradley P. Hayton, "To Marry or Not: The Legalization of Marriage and Adoption of Homosexual Couples," (Newport Beach: The Pacific Policy Institute, 1993), p. 9.
- 14 Cheryl Wetzstein, "Blacks Angered by Gays' Metaphors," *Washington Times* (March 3, 2004): 3.
- 15 "Religious Beliefs," p. 7.
- 16 Ibid, 12.
- 17 Harry Jaffa, *Homosexuality and the Natural Law* (Claremont, CA: The Claremont Institute for the Study of Statesmanship and Political Philosophy, 1990): 19.
- 18 "Court Upholds State's Ban on Same-Sex Marriage" *Associated Press* (October 8, 2003).
- 19 Dana Blanton, "Fox News/Opinion Dynamics Poll: Majority Opposes Same-Sex Marriage," (November 21, 2003).
- 20 "Attitudes about Homosexuality and Gay Marriage," *AEI Studies in Public Opinion* (American Enterprise Institute Compilation: February 13, 2004): 31.
- 21 "Bush Leads in Red States, Kerry Ahead in Blue States" *Zogby Poll* (February 18, 2004).



**Whereas,** The federal Defense of Marriage Act (DOMA) cannot prevent state courts from subverting democracy and undermining marriage at the state level in states which sanction same-sex "marriage"; and

**Whereas,** There are very good reasons to believe that both state marriage laws and the federal Defense of Marriage Act may not survive if challenged in court; and

**Whereas,** The Federal Marriage Amendment is a reasonable and necessary response to the crisis created by those who are seeking to use the courts to overcome public opinion with respect to marriage and to codify same-sex "marriage"; now, therefore, be it

**Resolved,** That the Kansas Nebraska Convention of Southern Baptists, affirm that marriage is the union of one man and one woman as God intends; and be it further

**Resolved,** That we continue to oppose steadfastly all efforts by any court or state legislation to validate or legalize same-sex marriage and other equivalent unions; and be it further

**Resolved,** That we commit ourselves to pray for and support legislative and legal efforts to oppose the legalization of same-sex unions; and be it further

**Resolved,** That we call upon families to mark Marriage Protection Week, October 12-18, 2003, a week dedicated to preserving the divine institution of marriage; and

**Resolved,** That we call upon all families to encourage their U.S. Senators and Congressmen to support the Federal Marriage Amendment.



January 25, 2005

*RE: One Man – One Woman Marriage Amendment*

Dear Legislator:

On behalf of the Kansas Assemblies of God, I urge you to look with favor on our request to bring to the people the "One Man-One Woman Marriage Amendment" and allow the people of Kansas to make this decision by their vote. To us, the issue is first one of righteousness and pleasing God. Secondly, it is an issue worthy of resolving through the democratic process of the voting people in this state.

Thank you for acting with courage and doing the right thing.

Dictated but not read  
to expedite transmittal

Superintendent Terry L. Yancey  
Kansas Assemblies of God

FEDERAL AND STATE AFFAIRS

Date 1-25-05

Attachment 7

500 SW 27<sup>th</sup> St. • Topeka, Kansas • 66611  
(785)-234-5555 • office@topekafirstassembly.org



January 25, 2005

Members of the House Federal and State Affairs Committee:

Today we are here to talk about marriage. There are two ways of framing this issue: one is to say that we are here to protect an institution that existed before the Ten Commandments, before the ancient Babylonian Code of Hammurabi; before some of our most revered ancient civilizations. Our opponents will frame this issue by saying that it bans gay marriage; an arrangement which has no historical reference whatsoever. In fact, its very name implies that *couples* receive the right to marry, when in fact marriage is an individual right which all of us enjoy. We are all free to marry someone of the opposite sex because that is what marriage is...the union of one man and one woman.

The founders of our Constitution and the framers of the Kansas Constitution could not envision that *anyone* would try to redefine the concept of marriage because to them it was completely logical for this institution to be for a man and a woman not only for anatomical reasons, but because it is the only natural way to reproduce and to provide a safe and secure incubator for children to be nurtured and protected. It is and always has been a sociological and anthropological institution that grew out of mankind's need to protect and stabilize the family. They could not envision renegade judges and courts that were bent on perpetrating a social experiment upon our society, in spite of the wishes of the people and in disregard for the state's welfare. They could not foresee a scenario in which same-sex couples would ask the state to sanction their union and make it equivalent to the most foundational institution in our society. They could not imagine that there would be some who would advocate imposing a counterfeit standard of such an important institution and impose it on all citizens.

We are asking you to strengthen and protect marriage from judges and courts that could impose their own ideas of what marriage should be on the public. In surrounding states the public has spoken overwhelmingly that they want marriage to be protected.

You are not being asked to ban gay marriage. You ARE being asked to define and protect an institution that has been deemed good for society throughout millennia. You are being asked to safeguard an institution that has provided the building blocks of a stable society. We are asking you to understand that marriage is so important that we tamper with it at our own peril.

CWA of Kansas  
P.O. Box 11233  
Shawnee Mission, Kansas 66207  
913-491-1380

FEDERAL AND STATE AFFAIRS

Date 1-25-05

Attachment 8

**KANSAS MARRIAGE AMENDMENT**

**FEDERAL AND STATE AFFAIRS COMMITTEE**

**KANSAS HOUSE OF REPRESENTATIVES**

**DR. PAUL E. BARKEY**

**25 JANUARY 2005**

FEDERAL AND STATE AFFAIRS

Date 1-25-05

Attachment 9

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**TESTIMONY**  
**FEDERAL AND STATE AFFAIRS COMMITTEE**  
**KANSAS HOUSE OF REPRESENTATIVES**

*25 January 2005*  
*Dr. Paul E. Barkey*

My name is Paul Barkey, and I have been a resident of Manhattan, Kansas for the last fifteen years. I am a retired Army Chaplain and serve as pastor of Ashland Community Church.

We have prepared for you a packet of information on the Marriage Amendment which we hope will be of value in your deliberations on this issue which is so vital to the welfare of our state.

The Massachusetts Supreme Judicial Court ruled by a 4 to 3 vote in November 2003 that the state had to recognize the legitimacy of homosexual marriage. This was in direct contradiction of the expressed will of the majority of the citizens of Massachusetts and their legislature. On 17 May 2004 Massachusetts began issuing marriage licenses to homosexuals. These couples are now fanning out across the United States seeking to have other states give their relationship legal status. This was followed by local officials in California, Oregon, New Mexico, New York and New Jersey in defying state laws by issuing marriage licenses to homosexuals. It is now necessary to codify in the Kansas Constitution what has been obvious to most people for centuries: that marriage refers exclusively to the union of one man and one woman. Friends of traditional marriage had hoped that the Defense of Marriage Act (DOMA) passed by the Kansas Legislature, as well as the U.S. Congress and signed into law by President Clinton in 1996 would provide sufficient protection for marriage. Courts began immediately to challenge the boundaries and provisions of DOMA. We need to protect the institution of marriage from the reach of activist judges. This is why I favor the constitutional amendment already proposed in Congress: "Marriage in the United States shall consist only of the union of a man and a woman. Neither this constitution or the constitution of any state, nor state or federal law, shall be construed to require that moral status or the legal incidents thereof be conferred upon unmarried couples or groups."

A substantial majority of Americans favor retaining the traditional and legal definition of marriage. Hawaii, Alaska, California, Nevada, Nebraska, Missouri, Mississippi and Louisiana have all voted to protect the definition of marriage by 60 to 80%. People's Initiatives either have or will result in the Marriage Amendment vote in Arkansas, Michigan, Montana, North Dakota, Ohio and Oregon. Unfortunately this is not an option afforded the voters of Kansas. An article in USA Today reported that two-thirds of Americans are opposed to same-sex marriage (Fred Bayles, "*Gay Marriage Ban Advances*," 30 March 2004). Only in the last few years have two countries; the Netherlands and Belgium legalized same-sex marriage, giving it equal status with traditional marriage. We are able to now see the results of that decision. In some areas of Norway 80% of the children are born out of wedlock, as are 60% of subsequent births (Stanley Kurtz, "*Death of Marriage in Scandinavia*," Boston Globe, 10 March 2004).

If we redefine marriage to include homosexuals where do you stop? The ultimate result of expanding the definition of marriage is that it would lose its meaning. The ACLU is reportedly preparing to attempt to legalize polygamy. What would preclude polyamory or group marriage from also being recognized. Could your business afford health-care benefits for 3 or more people and their offspring in a group marriage? This also increases the likelihood of people marrying simply so that they can receive family health, tax and social security benefits. Research consistently shows that heterosexual married adults do better in every measure of emotional and physical health. They live longer, healthier and happier lives which is good for society.

It is our children and future generations that stand to lose the most in this debate. The legacy of divorce and sexual promiscuity has resulted in millions of our children who cry themselves to sleep every night because of the break-up of the home. The painful truth is that in recent decades we have been poor stewards of the institution of marriage. With the passage of

No-fault divorce laws in the 1960's marriage became, "as long as convenient," instead of "till death do us part." No-fault divorce, serial monogamy and deadbeat dads have all hurt our children. Every sociological study bears out the truth that children do best emotionally, physically, academically when raised in a stable home with a loving father and mother.

As this process unfolds our prayer is that Christians will display the wisdom of serpents and gentleness of doves that Christ urged. This is crystal clear: for believing Christians, the meaning of marriage comes not from the state but as instituted by God, Scripture, church history and the stamp of approval from milleniums of human history. Even in the worst case scenario of a constitutional amendment approving same-sex marriage, we do not fear as Christians the disappearance of godly marriage.

Despite the rhetoric of the proponents of same-sex marriage, Christian involvement in this debate is not based on fear, or bigotry, or hatred, or a lust for power. Instead, we are engaged because we love our families and our neighbors and desire the best for them. It is a matter of faithful citizenship for me as a Christian and pastor to be involved in this historic debate. Marriage is a gift from God, and the church offers the fullest realization of that gift. As Christians we are to contend for truth and justice, protecting the weak and innocent. The church is not to take its marching orders from the surrounding culture. We will rejoice if you choose to protect marriage. But if American culture takes another step in the words of Judge Borck of "Slouching Toward Gomorrah" we will seize it as another call to serve the Lord in counter-cultural witness.

# **Esteeming Children**

## **A Position on the Defense of Traditional Marriage and Support for a Traditional Marriage Amendment**

Paul E. Barkey, candidate for the District 66 seat of the Kansas House of Representatives

### **Introduction**

While some people contend that same-sex marriage would be socially valuable as a symbolic acknowledgement of love, I contend that we who support the traditional definition of marriage, do so for the sake of children and the health of our society.

Changing the definition of marriage to extend beyond that of one man and one woman is not just a benign social experiment that would give more "rights" to a larger social class, but a fundamental change in the institution not only of marriage, but of the family. Children stand to suffer the most from the redefinition of marriage. Proponents of change lack evidence that such a change would improve our social condition. In fact, other recent experiments with the historical structure of a family-record high rates of divorce, cohabitation and mixed families-have greatly hurt the least represented of our society, our children.

Childhood (including teen) suicide is higher in this generation than at any other time in history. It also seems that more children need counseling or mood-altering medications than at any other time in history. All this is happening as the traditional family has eroded. Divorce, cohabitation, single parenthood (usually by mothers as fathers abandon their families) have all taken their toll. Not only are our families dysfunctional, but our society is dysfunctional! We have gone from a pull-ourselves-up-by-the-bootstraps kind of culture to one that seeks only to be pacified by the Nanny State. Will same-sex marriages make a difference and make our society more stable? No. It will add one more confusing ingredient to a recipe for society that is literally decaying before our very eyes. Disorder and anarchy will be the outcome of such an experiment because at it's most biological and historical essence, the family thrives where both a mother and father-in a loving relationship-share in the responsibilities raising children. Somehow, magically, it takes both a man and a woman to bring the right mix for children to feel nurtured, disciplined, and whole.



## The arguments

Same-sex marriage proponents argue most emphatically that the reason that their position is important is for the sake of extending *entitlements* to partners. Entitlements, by in large, are *not*-I repeat, *not* government controlled. They want the power to:

1. Adopt. Same-sex couples are biologically incapable of procreation, so they intend to thwart nature and create a false “family”. Critically missing, however, are the time-tested, distinctive roles that men and women each play in the family dynamic. Two men or two women trying to raise children is simply not the same as one man and one woman united toward a goal of raising children. While I support adoption into a traditional family environment, I fundamentally oppose same-sex couples adopting children. And redefining marriage would make it much harder for adoption organizations with a specific religious intent to hold to their principles about where they place children in their care.
2. Immigrate within the definitions of a “family”. While it is easier for a spouse or child of a legal U.S. immigrant to obtain legal immigration status, it is not impossible *at all* in our very liberal immigration environment for singles to immigrate. The idea that unmarried residents cannot be united with their foreign partners is patently false, for the foreigner need only to obtain employment in the U.S. and then that person’s employer can act as a sponsor.
3. Extend social security benefits to their partners. The principle of extending social security benefits to spouses is based on the premise that only one party of the marriage is working and acquiring such benefits. This is foundational to a traditional formula of the U.S. family, where one spouse provides income, and one spouse administers the home. It seems, however, reasonable that in a society where both spouses often work, social security and other benefits that extend to spouses (see point 4) should be measured against the work record of each spouse. Certainly we can quantify in our tax forms when a family is supported by only one income and make adjustments to social security based on that information. This is relevant to the same-sex marriage debate because most homosexual couples are “dual income”, and therefore, most

homosexuals are contributing (and should one day be recipients of) their individual social security benefits. And so there is no need to have a homosexual partner derive social security benefits from his/her partner's contributions.

4. Extend employer benefits (e.g. health insurance) to their partners. Employers are under absolutely no obligation to extend *any* benefits to employees. While I concede that there are "tax advantages" to extending benefits such as health insurance to employees and their families, the problem is in the tax code. If employers were striped of this incentive, insurance decisions would be placed squarely in the hands of individuals (and individual families), where the market would play a more prominent role in insurance options (like auto insurance, for example). People and families could be individually insured, which would equalize the whole system and effectively remove the third-party paradigm that drives up medical prices and cripples health consumers today. In any event, as noted above, in most homosexual partnerships, both partners work and therefore are in a position to acquire their own employer-aided benefits, including health insurance. So once again, being able to share benefits with a partner is simply not necessary.
5. Extend inheritance rights to "partner survivors". Legally, people can leave their estates to anyone they wish. The idea that homosexual partners have no inheritance rights is clearly false.
6. Extend hospital visitation rights to partners. What policies hospitals hold regarding who can and cannot see patients or make decisions on the behalf of incapacitated patients is solely up to hospitals. No government policy affects individual hospital policy. The power of attorney may be extended to any person upon the consent of an individual. This is another case where the definition of marriage simply is not an issue.

On the whole, arguments supporting same-sex marriage are weak and unsubstantiated when we look at the issues logically. They mock and undermine a social system that has stood the test of time across cultures: the historical role of the family as a foundational unit of every civil society.

## **The will of the people**

What is most alarming of all about the battle over the definition of marriage, is that appointed (not elected) judges are largely handicapping the will of American voters. Americans seem to know instinctively that although they often struggle in their attempt to have an ideal marriage and family, the ideal is still worth the effort.

Even in Massachusetts, after the state's Supreme Judicial Court (appointed) ruled in a 4-3 decision that homosexual couples are legally entitled to marriage, the state's legislature (elected) convened to pass an amendment to the state constitution that would overturn the court's decision. We know that the amendment process is lengthy, and the verdict is still out, but isn't it interesting that the *elected* officials - who presumably are carrying out the will of the people - contend that same-sex marriage would effectively erode the entire institution of marriage?

We have here a manifest instance of elitist judges making decisions obviously contrary to the will of the people. This is why marriage amendments (defined as a legal bond of one man to one woman) are critical. Obviously a national amendment would make the most sense because it would erase the web of confusion that proponents of same-sex marriages would weave from state to state. But if our national lawmakers rest on the weak national Defense of Marriage Act, we must act as a state body to write the historical definition of marriage in the Kansas books once and for all.

That is why I support an amendment to either the U.S. or Kansas constitution to define marriage as that between one man and one woman. It is for the sake of long-held, historical precedent and for the sake of our children that I take this stand.

## Same-sex marriage vs. civil rights

Jeff Jacoby

March 8, 2004

Homosexual marriage is not a civil rights issue. But that hasn't stopped the advocates of same-sex marriage from draping themselves in the glory of the civil rights movement -- and smearing the defenders of traditional marriage as the moral equal of segregationists.

In The New York Times last Sunday, cultural critic Frank Rich, quoting a "civil rights lawyer," beatified the gay and lesbian couples lining up to receive illegal marriage licenses from San Francisco's new mayor, Gavin Newsom.

"An act as unremarkable as getting a wedding license has been transformed by the people embracing it," Rich wrote, "much as the unremarkable act of sitting at a Formica lunch counter was transformed by an act of civil disobedience at a Woolworth's in North Carolina 44 years ago this month." Nearby, the Times ran a photograph of a smiling lesbian couple in matching wedding veils -- and an even larger photograph of a 1960 lunch counter sit-in.

Rich's essay -- "The Joy of Gay Marriage" -- went on to cast the supporters of traditional marriage as hateful zealots. They are "eager to foment the bloodiest culture war possible," he charged. "They are gladly donning the roles played by Lester Maddox and George Wallace in the civil rights era."

But it is the marriage radicals like Rich and Newsom who are doing their best to inflame a culture war. And as is so often the case in wartime, truth -- in this case, historical truth -- has been an early casualty.

For contrary to what Rich seems to believe, when Ezell Blair Jr., David Richmond, Joseph McNeil, and Franklin McCain approached the lunch counter of the Elm Street Woolworth's in Greensboro, N.C. on Feb. 1, 1960, all they were looking for was something to eat. The four North Carolina Agricultural & Technical College students only wanted what any white customer might want, and *on precisely the same terms* -- the same food at the same counter at the same price.

Those first four sit-in strikers, like the thousands of others who would emulate them at lunch counters across the South, weren't demanding that Woolworth's prepare or serve their food in ways it had never been prepared or served before. They weren't trying to do something that had never been lawful in any state of the union. They weren't bent on forcing a revolutionary change upon a timeless social institution.

All they were seeking was what should already have been theirs under the law of the land. The 14th Amendment -- approved by Congress and ratified by three-

fourths of the states in 1868 -- had declared that blacks no less than whites were entitled to equal protection of the law. The Civil Rights Act of 1875 -- passed by a Democratic House and a Republican Senate and signed into law by President Grant -- had barred discrimination in public accommodations.

But the Supreme Court had gutted those protections with shameful decisions in 1883 and 1896. The court's betrayal of black Americans was the reason why, more than six decades later, segregation still polluted so much of the nation. To restore the 14th Amendment to its original purpose, to re-create the Civil Rights Act, to return to black citizens the equality that had been stolen from them -- that was the great cause of civil rights.

The marriage radicals, on the other hand, seek to restore nothing. They have not been deprived of the law's equal protection, nor of the right to marry -- only of the right to insist that a single-sex union is a "marriage." They cloak their demands in the language of civil rights because it sounds so much better than the truth: They don't want to accept or reject marriage on the same terms that it is available to everyone else. They want it on entirely new terms. They want it to be given a meaning it has never before had, and they prefer that it be done undemocratically -- by judicial fiat, for example, or by mayors flouting the law. Whatever else that may be, it isn't civil rights.

But dare to speak against it, and you are no better than Bull Connor.

Last month, as Massachusetts lawmakers prepared to debate a constitutional amendment on the meaning of marriage, the state's leading black clergy came out strongly in support of the age-old definition: the union of a man and a woman. They were promptly tarred as enemies of civil rights. "Martin Luther King," one left-wing legislator barked, "is rolling over in his grave at a statement like this."

But if anything has King spinning in his grave, it is the indecency of exploiting his name for a cause he never supported. The civil rights movement for which he lived and died was grounded in a fundamental truth: All of us are created equal. The same-sex marriage movement, by contrast, is grounded in the *denial* of a fundamental truth: The Creator who made us equal made us male and female. That duality has always and everywhere been the starting point for marriage. The newly fashionable claim that marriage can ignore that duality is akin to the claim, back when lunch counters were segregated, that America was a land of liberty and justice for all.

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## 'Gay marriage' confusions

Thomas Sowell

March 9, 2004

Few issues have produced as much confused thinking as the "gay marriage" issue.

There is, for example, the argument that the government has no business getting involved with marriage in the first place. That is a personal relation, the argument goes.

Love affairs are personal relations. Marriage is a legal relation. To say that government should not get involved in legal relations is to say that government has no business governing.

Homosexuals were on their strongest ground when they said that what happens between "consenting adults" in private is none of the government's business. But now gay activists are taking the opposite view, that it is government's business -- and that government has an obligation to give its approval.

Then there are the strained analogies with the civil rights struggles of the 1960s. Rosa Parks and Martin Luther King challenged the racial laws of their time. So, the argument goes, what is wrong with Massachusetts judges and the mayor of San Francisco challenging laws that they consider unjust today?

First of all, Rosa Parks and Martin Luther King were private citizens and they did not put themselves above the law. On the contrary, they submitted to arrest in order to gain the public support needed to change the laws.

As private citizens, neither Mrs. Parks nor Dr. King wielded the power of government. Their situation was very different from that of public officials who use the power delegated to them through the framework of law to betray that framework itself, which they swore to uphold as a condition of receiving their power.

The real analogy would be to Governor George Wallace, who defied the law by trying to prevent black students from being enrolled in the University of Alabama under a court order.

After Wallace was no longer governor, he was within his rights to argue for racial segregation, just as civil rights leaders argued against it. But, using the powers of his office as governor to defy the law was a violation of his oath.

If judges of the Massachusetts Supreme Court or the mayor of San Francisco want to resign their jobs and start advocating gay marriage, they have every right to do so. But that is wholly different from using the authority delegated to them under the law to subvert the law.

Gay rights activists argue that activist judges have overturned unjust laws in the past and that society is better off for it. The argument that some good has come from some unlawful acts in the past is hardly a basis for accepting unlawful acts in general.

If you only want to accept particular unlawful acts that you agree with, then of course others will have other unlawful acts that they agree with. Considering how many different groups have how many different sets of values, that road

leads to anarchy.

Have we not seen enough anarchy in Haiti, Rwanda and other places to know not to go there?

The last refuge of the gay marriage advocates is that this is an issue of equal rights. But marriage is not an individual right. Otherwise, why limit marriage to unions of two people instead of three or four or five? Why limit it to adult humans, if some want to be united with others of various ages, sexes and species?

Marriage is a social contract because the issues involved go beyond the particular individuals. Unions of a man and a woman produce the future generations on whom the fate of the whole society depends. Society has something to say about that.

Even at the individual level, men and women have different circumstances, if only from the fact that women have babies and men do not. These and other asymmetries in the positions of women and men justify long-term legal arrangements to enable society to keep this asymmetrical relationship viable -- for society's sake.

Neither of these considerations applies to unions where the people are of the same sex.

Centuries of experience in trying to cope with the asymmetries of marriage have built up a large body of laws and practices geared to that particular legal relationship. To then transfer all of that to another relationship that was not contemplated when these laws were passed is to make rhetoric more important than reality.

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## FAMILY RESEARCH COUNCIL

*Defending Faith, Family and Freedom*

January 24, 2005

### Ten Arguments From Social Science Against Same-Sex 'Marriage'

Issue No.: 266

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A large and growing body of scientific evidence indicates that the intact, married family is best for children. In particular, the work of scholars David Popenoe, Linda Waite, Maggie Gallagher, Sara McLanahan, David Blankenhorn, Paul Amato, and Alan Booth has contributed to this conclusion.

**Summary:**  
A large and growing body of social scientific evidence indicates that the intact, married family is best for children. This InFocus paper highlights ten research-based reasons why marriage should only be seen as the union of one man and one woman.

This statement from Sara McLanahan, a sociologist at Princeton University, is representative:

If we were asked to design a system for making sure that children's basic needs were met, we would probably come up with something quite similar to the two-parent ideal. Such a design, in theory, would not only ensure that children had access to the time and money of two adults, it also would provide a system of checks and balances that promoted quality parenting. The fact that *both parents have a biological connection to the child* would increase the likelihood that the parents would identify with the child and be willing to sacrifice for that child, and it would reduce the likelihood that either parent would abuse the child.

Sara McLanahan and Gary Sandefur, *Growing Up with a Single Parent: What Hurts, What Helps* (Boston: Harvard University Press, 1994) 38.

The following are ten science-based arguments against same-sex "marriage":

#### 1. Children hunger for their biological parents.

Homosexual couples using in vitro fertilization (IVF) or surrogate mothers deliberately create a class of children who will live apart from their mother or father. Yale Child Study Center psychiatrist Kyle Pruett reports that children of IVF often ask their single or lesbian mothers about their fathers, asking their mothers questions like the following: "Mommy, what did you do with my daddy?" "Can I write him a letter?" "Has he ever seen me?" "Didn't you like him? Didn't he like me?" Elizabeth Marquardt reports that children of divorce often report similar feelings about their non-custodial parent, usually the father.

Kyle Pruett, *Fatherhood* (Broadway Books, 2001) 204.

Elizabeth Marquardt, *The Moral and Spiritual Lives of Children of Divorce*. Forthcoming.

#### 2. Children need fathers.

If same-sex civil marriage becomes common, most same-sex couples with children would be lesbian couples. This would mean that we would have yet more children being raised apart from fathers. Among other things, we know that fathers excel in reducing antisocial behavior and delinquency in boys and sexual activity in girls.

What is fascinating is that fathers exercise a unique social *and* biological influence on their



children. For instance, a recent study of father absence on girls found that girls who grew up apart from their biological father were much more likely to experience early puberty and a teen pregnancy than girls who spent their entire childhood in an intact family. This study, along with David Popenoe's work, suggests that a father's pheromones influence the biological development of his daughter, that a strong marriage provides a model for girls of what to look for in a man, and gives them the confidence to resist the sexual entreaties of their boyfriends.

\* Ellis, Bruce J., et al., "Does Father Absence Place Daughters at Special Risk for Early Sexual Activity and Teenage Pregnancy?" *Child Development*, 74:801-821.

\* David Popenoe, *Life Without Father* (Boston: Harvard University Press, 1999).

### **3. Children need mothers.**

Although homosexual men are less likely to have children than lesbians, homosexual men are and will be raising children. There will be even more if homosexual civil marriage is legalized. These households deny children a mother. Among other things, mothers excel in providing children with emotional security and in reading the physical and emotional cues of infants. Obviously, they also give their daughters unique counsel as they confront the physical, emotional, and social challenges associated with puberty and adolescence. Stanford psychologist Eleanor MacCoby summarizes much of this literature in her book, *The Two Sexes*. See also Steven Rhoads' book, *Taking Sex Differences Seriously*.

Eleanor MacCoby, *The Two Sexes: Growing Up Apart, Coming Together* (Boston: Harvard, 1998).

Steven Rhoads, *Taking Sex Differences Seriously* (Encounter Books, 2004).

### **4. Evidence on parenting by same-sex couples is inadequate.**

A number of leading professional associations have asserted that there are "no differences" between children raised by homosexuals and those raised by heterosexuals. But the research in this area is quite preliminary; most of the studies are done by advocates and most suffer from serious methodological problems. Sociologist Steven Nock of the University of Virginia, who is agnostic on the issue of same-sex civil marriage, offered this review of the literature on gay parenting as an expert witness for a Canadian court considering legalization of same-sex civil marriage:

Through this analysis I draw my conclusions that 1) all of the articles I reviewed contained at least one fatal flaw of design or execution; and 2) not a single one of those studies was conducted according to general accepted standards of scientific research.

This is not exactly the kind of social scientific evidence you would want to launch a major family experiment.

Steven Nock, affidavit to the Ontario Superior Court of Justice regarding Hedy Halpern et al. University of Virginia Sociology Department (2001).

### **5. Evidence suggests children raised by homosexuals are more likely to experience gender and sexual disorders.**

Although the evidence on child outcomes is sketchy, it does suggest that children raised by lesbians or homosexual men are more likely to experience gender and sexual disorders. Judith Stacey-- a sociologist and an advocate for same-sex civil marriage--reviewed the literature on child outcomes and found the following: "lesbian parenting may free daughters and sons from a broad but uneven range of traditional gender prescriptions." Her conclusion

here is based on studies that show that sons of lesbians are less masculine and that daughters of lesbians are more masculine.

She also found that a "significantly greater proportion of young adult children raised by lesbian mothers than those raised by heterosexual mothers ... reported having a homoerotic relationship." Stacey also observes that children of lesbians are more likely to report homoerotic attractions.

Her review must be viewed judiciously, given the methodological flaws detailed by Professor Nock in the literature as a whole. Nevertheless, these studies give some credence to conservative concerns about the effects of homosexual parenting.

Judith Stacey and Timothy Biblarz, "(How) Does the Sexual Orientation of Parents Matter?" *American Sociological Review* 66: 159-183. See especially 168-171.

#### **6. Same-sex "marriage" would undercut the norm of sexual fidelity within marriage.**

One of the biggest threats that same-sex "marriage" poses to marriage is that it would probably undercut the norm of sexual fidelity in marriage. In the first edition of his book in defense of same-sex marriage, *Virtually Normal*, homosexual commentator Andrew Sullivan wrote: "There is more likely to be greater understanding of the need for extramarital outlets between two men than between a man and a woman." Of course, this line of thinking--were it incorporated into marriage and telegraphed to the public in sitcoms, magazines, and other mass media--would do enormous harm to the norm of sexual fidelity in marriage.

One recent study of civil unions and marriages in Vermont suggests this is a very real concern. More than 79 percent of heterosexual married men and women, along with lesbians in civil unions, reported that they strongly valued sexual fidelity. Only about 50 percent of gay men in civil unions valued sexual fidelity.

Esther Rothblum and Sondra Solomon, *Civil Unions in the State of Vermont: A Report on the First Year*. University of Vermont Department of Psychology, 2003.

David McWhirter and Andrew Mattison, *The Male Couple* (Prentice Hall, 1984) 252.

#### **7. Same-sex "marriage" would further isolate marriage from its procreative purpose.**

Traditionally, marriage and procreation have been tightly connected to one another. Indeed, from a sociological perspective, the primary purpose that marriage serves is to secure a mother and father for each child who is born into a society. Now, however, many Westerners see marriage in primarily emotional terms.

Among other things, the danger with this mentality is that it fosters an anti-natalist mindset that fuels population decline, which in turn puts tremendous social, political, and economic strains on the larger society. Same-sex marriage would only further undercut the procreative norm long associated with marriage insofar as it establishes that there is no necessary link between procreation and marriage.

This was spelled out in the *Goodridge* decision in Massachusetts, where the majority opinion dismissed the procreative meaning of marriage. It is no accident that the countries that have legalized or are considering legalizing same-sex marriage have some of the lowest fertility rates in the world. For instance, the Netherlands, Sweden, and Canada have birthrates that hover around 1.6 children per woman--well below the replacement fertility rate of 2.1.

For national fertility rates, see: <http://www.cia.gov/cia/publications/factbook/geos/sw.html>

For more on the growing disconnect between marriage and procreation, see:  
<http://marriage.rutgers.edu/Publications/SOOU/SOOU2003.pdf>

### **8. Same-sex "marriage" would further diminish the expectation of paternal commitment.**

The divorce and sexual revolutions of the last four decades have seriously undercut the norm that couples should get and stay married if they intend to have children, are expecting a child, or already have children. Political scientist James Q. Wilson reports that the introduction of no-fault divorce further destabilized marriage by weakening the legal and cultural meaning of the marriage contract. George Akerlof, a Nobel laureate and an economist, found that the widespread availability of contraception and abortion in the 1960s and 1970s, and the sexual revolution they enabled, made it easier for men to abandon women they got pregnant, since they could always blame their girlfriends for not using contraception or procuring an abortion.

It is plausible to suspect that legal recognition of homosexual civil marriage would have similar consequences for the institution of marriage; that is, it would further destabilize the norm that adults should sacrifice to get and stay married for the sake of their children. Why? Same-sex civil marriage would institutionalize the idea that children do not need both their mother and their father.

This would be particularly important for men, who are more likely to abandon their children. Homosexual civil marriage would make it even easier than it already is for men to rationalize their abandonment of their children. After all, they could tell themselves, our society, which affirms lesbian couples raising children, believes that children do not need a father. So, they might tell themselves, I do not need to marry or stay married to the mother of my children.

James Q. Wilson, *The Marriage Problem*. (Perennial, 2003) 175-177.

George A. Akerlof, Janet L. Yellen, and Michael L. Katz, "An Analysis of Out-of-Wedlock Childbearing in the United States." *Quarterly Journal of Economics* CXI: 277-317.

### **9. Marriages thrive when spouses specialize in gender-typical roles.**

If same-sex civil marriage is institutionalized, our society would take yet another step down the road of de-gendering marriage. There would be more use of gender-neutral language like "partners" and--more importantly--more social and cultural pressures to neuter our thinking and our behaviors in marriage.

But marriages typically thrive when spouses specialize in gender-typical ways and are attentive to the gendered needs and aspirations of their husband or wife. For instance, women are happier when their husband earns the lion's share of the household income. Likewise, couples are less likely to divorce when the wife concentrates on childrearing and the husband concentrates on breadwinning, as University of Virginia psychologist Mavis Hetherington admits.

E. Mavis Hetherington and John Kelly, *For Better or For Worse*. (W.W. Norton and Co., 2002) 31.

Steven Rhoads, *Taking Sex Differences Seriously* (Encounter Books, 2004).

### **10. Women and marriage domesticate men.**

Men who are married earn more, work harder, drink less, live longer, spend more time attending religious services, and are more sexually faithful. They also see their testosterone levels drop, especially when they have children in the home.

If the distinctive sexual patterns of "committed" gay couples are any indication (see above), it is unlikely that homosexual marriage would domesticate men in the way that heterosexual marriage does. It is also extremely unlikely that the biological effects of heterosexual marriage on men would also be found in homosexual marriage. Thus, gay activists who argue that same-sex civil marriage will domesticate gay men are, in all likelihood, clinging to a foolish hope. This foolish hope does not justify yet another effort to meddle with marriage.

Steve Nock, *Marriage in Men's Lives* (Oxford University Press, 1998).

*Hardwired to Connect: The New Scientific Case for Authoritative Communities* (Institute for American Values, 2003) 17.

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## FAMILY RESEARCH COUNCIL

*Defending Faith, Family, and Freedom*

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### Questions and Answers: What's Wrong With Letting Same-Sex Couples "Marry?"

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by: Peter Sprigg

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#### Summary:

The debate over "marriage" for same-sex couples has been framed as an issue of "equal rights"--but it is not. The real issue is the definition of what "marriage" is. This paper explains how history, anthropology, and sociology demonstrate that a marriage cannot exist without the presence of both a man and a woman.

#### **What's wrong with letting same-sex couples legally "marry?"**

There are two key reasons why the legal rights, benefits, and responsibilities of civil marriage should not be extended to same-sex couples.

The first is that homosexual relationships are not marriage. That is, they simply do not fit the minimum necessary condition for a marriage to exist--namely, the union of a man and a woman.

The second is that homosexual relationships are harmful. Not only do they not provide the same benefits to society as heterosexual marriages, but their consequences are far more negative than positive.

Either argument, standing alone, is sufficient to reject the claim that same-sex unions should be granted the legal status of marriage.

#### **Let's look at the first argument. Isn't marriage whatever the law says it is?**

No. Marriage is not a creation of the law. Marriage is a fundamental human institution that predates the law and the Constitution. At its heart, it is an anthropological and sociological reality, not a legal one. Laws relating to marriage merely recognize and regulate an institution that already exists.

#### **But isn't marriage just a way of recognizing people who love each other and want to spend their lives together?**

If love and companionship were sufficient to define marriage, then there would be no reason to deny "marriage" to unions of a child and an adult, or an adult child and his or her aging parent, or to roommates who have no sexual relationship, or to groups rather than couples. Love and companionship are usually considered integral to marriage in our culture, but they are not sufficient to define it as an institution.

#### **All right--but if you add a *sexual* relationship to love and companionship, isn't that what most people would consider "marriage?"**

It's getting closer but is still not sufficient to define marriage.

In a ruling handed down June 26, 2003, the U. S. Supreme Court declared in *Lawrence v. Texas* that sodomy laws (and any other laws restricting private sexual conduct between consenting adults) are unconstitutional. Some observers have suggested that this decision

paves the way for same-sex "marriage." But in an ironic way, the Court's rulings that sex need not be (legally) confined to marriage undermine any argument that sex alone is a defining characteristic of marriage. Something more must be required.

### **So--what IS marriage, then?**

Anthropologist Kingsley Davis has said, "The unique trait of what is commonly called marriage is social recognition and approval ... of a couple's engaging in sexual intercourse and bearing and rearing children." Marriage scholar Maggie Gallagher says that "marriage across societies is a public sexual union that creates kinship obligations and sharing of resources between men, women, and the children their sexual union may produce."

Canadian scholar Margaret A. Somerville says, "Through marriage our society marks out the relationship of two people who will together transmit human life to the next generation and nurture and protect that life."

Another Canadian scholar, Paul Nathanson (who is himself a homosexual), has said, "Because heterosexuality is directly related to both reproduction and survival, ... *every* human societ[y] has had to *promote* it actively . ... Heterosexuality is always *fostered* by a cultural norm" that limits marriage to unions of men and women. He adds that people "are wrong in assuming that any society can do without it." [emphasis in original]

### **Are you saying that married couples who don't have children (whether by choice, or because of infertility or age) aren't really married? If we deny marriage to same-sex couples because they can't reproduce, why not deny it to those couples, too?**

A couple that doesn't want children when they marry *might* change their minds. Birth control might fail for a couple that uses it. A couple that appears to be infertile may get a surprise and conceive a child. The marital commitment may deter an older man from conceiving children with a younger woman outside of marriage. Even a very elderly couple is of the structural type (i.e., a man and a woman) that could theoretically produce children (or could have in the past). And the sexual union of all such couples is of the same *type* as that which reproduces the human race, even if it does not have that effect in particular cases.

Admittedly, society's interest in marriages that do not produce children is less than its interest in marriages that result in the reproduction of the species. However, we still recognize childless marriages because it would be an invasion of a heterosexual couple's privacy to require that they prove their intent or ability to bear children.

There is no reason, though, to extend "marriage" to same-sex couples, which are of a structural type (two men or two women) that is incapable--ever, under any circumstances, regardless of age, health, or intent--of producing babies naturally. In fact, they are incapable of even engaging in the type of sexual act that results in natural reproduction. And it takes no invasion of privacy or drawing of arbitrary upper age boundaries to determine that.

Another way to view the relationship of marriage to reproduction is to turn the question around. Instead of asking whether actual reproduction is essential to marriage, ask this: If marriage *never* had *anything* to do with reproduction, would there be any reason for the government to be involved in regulating or rewarding it? Would we even *tolerate* the government intervening in such an intimate relationship, any more than if government defined the terms of who may be your "best friend?" The answer is undoubtedly "no"--which reinforces the conclusion that reproduction is a central (even if not obligatory) part of the social significance of marriage.

Indeed, the facts that a child cannot reproduce, that close relatives cannot reproduce without risk, and that it only takes one man and one woman to reproduce, are among the reasons why people are barred from marrying a child, a close blood relative, or a person who

is already married. Concerns about reproduction are central to those restrictions on one's choice of marriage partner--just as they are central to the restriction against "marrying" a person of the same sex.

**But people can also reproduce *without* getting married. So what is the *purpose* of marriage?**

The mere biological conception and birth of children are not sufficient to ensure the reproduction of a healthy, successful society. Paul Nathanson, the homosexual scholar cited above, says that there are at least five functions that marriage serves--things that every culture *must* do in order to survive and thrive. They are:

- Foster the bonding between men and women
- Foster the birth and rearing of children
- Foster the bonding between men and children
- Foster some form of healthy masculine identity
- Foster the transformation of adolescents into sexually responsible adults

Maggie Gallagher puts it more simply, saying that "children need mothers and fathers" and "marriage is the most practical way to get them for children."

**But why should homosexuals be denied the right to marry like anyone else?**

The fundamental "right to marry" is a right that rests with *individuals*, not with *couples*. Homosexual *individuals* already have exactly the same "right" to marry as anyone else. Marriage license applications do not inquire as to a person's "sexual orientation."

Many people who now identify themselves as homosexual have previously been in legal (opposite-sex) marriages. On the other hand, many people who previously had homosexual relationships have now renounced that behavior and married persons of the opposite sex. If we define a "homosexual" as anyone who has ever experienced homosexual attractions, then both of these scenarios represent "homosexual" individuals who have exercised their right to be legally married.

However, while every individual person is free to get married, *no* person, whether heterosexual or homosexual, has ever had a legal right to marry simply any willing partner. Every person, whether heterosexual or homosexual, is subject to legal restrictions as to whom they may marry. To be specific, every person, regardless of sexual preference, is legally barred from marrying a child, a close blood relative, a person who is already married, or a person of the same sex. There is no discrimination here, nor does such a policy deny anyone the "equal protection of the laws" (as guaranteed by the Constitution), since these restrictions apply equally to every individual.

Some people may wish to do away with one or more of these longstanding restrictions upon one's choice of marital partner. However, the fact that a tiny but vocal minority of Americans desire to have someone of the same sex as a partner does not mean that they have a "right" to do so, any more than the desires of other tiny (but less vocal) minorities of Americans give them a "right" to choose a child, their own brother or sister, or a group of two or more as their marital partners.

**Isn't prohibiting homosexual "marriage" just as discriminatory as prohibiting interracial marriage, like some states used to do?**

This analogy is not valid at all. Bridging the divide of the sexes by uniting men and women is both a worthy goal and a part of the fundamental purpose of marriage, common to all human civilizations.

Laws against interracial marriage, on the other hand, served only the purpose of preserving a social system of racial segregation. This was both an unworthy goal and one utterly irrelevant to the fundamental nature of marriage.

Allowing a black woman to marry a white man does not change the definition of marriage, which requires one man and one woman. Allowing two men or two women to marry would change that fundamental definition. Banning the "marriage" of same-sex couples is therefore essential to preserve the nature and purpose of marriage itself.

**Hasn't the nature of marriage already changed dramatically in the last few generations? In defending "traditional marriage," aren't you defending something that no longer exists?**

It's true that American society's concept of marriage has changed, especially over the last fifty years. But not all change is positive, and our experiences in that regard may be instructive. Consider some of the recent changes to the institution of marriage--and their consequences:

- The divorce revolution has undermined the concept that marriage is a life-long commitment. As a result, there's been an epidemic of broken homes and broken families, and the consequences have been overwhelmingly negative.
- The sexual revolution has undermined the concept that sexual relations should be confined to marriage. As a result, there's been an epidemic of cohabitation, sexually transmitted diseases, abortions, and broken hearts, and the consequences have been overwhelmingly negative.
- The concept that childbearing should be confined to marriage has been undermined. As a result, there's been an epidemic of out-of-wedlock births, single parenthood, and fatherless children, and the consequences have been overwhelmingly negative.
- The pornography revolution, particularly with the advent of the Internet, has undermined the concept that a man's sexual desires should be directed toward his wife. As a result, there's been an epidemic of broken relationships, abused wives, and sex crimes, and the consequences have been overwhelmingly negative.

And now there is social and political pressure to redefine what constitutes marriage itself. What grounds does anyone have for thinking that the consequences of that radical social revolution, unprecedented in human history, would be any more positive than the consequences of the much less sweeping changes already described?

**Why does "defending marriage" and "defending the family" require opposing same-sex unions? How does a homosexual union do any harm to someone else's heterosexual marriage?**

It may come as a surprise to many people, but homosexual unions often have a more direct impact on heterosexual marriages than one would think. For example, the *Boston Globe* reported June 29, 2003, that "nearly 40 percent" of the 5,700 homosexual couples who have entered into "civil unions" in Vermont "have had a previous heterosexual marriage."

Of course, it could be argued that many of those marriages may have ended long before a spouse found their current homosexual partner. And some may assume that no opposite-sex spouse would *want* to remain married to someone with same-sex attractions. Nevertheless, the popular myth that a homosexual orientation is fixed at birth and unchangeable may have



blinded us to the fact that many supposed "homosexuals" have, in fact, had perfectly functional heterosexual marriages. And as *Globe* columnist Jeff Jacoby points out, "In another time or another state, some of those marriages might have worked out. The old stigmas, the universal standards that were so important to family stability, might have given them a fighting chance. Without them, they were left exposed and vulnerable."

**But isn't the number of homosexuals too small for same-sex unions to have much impact on other people's marriages?**

It's probably true that the percentage of marriages that fail because of the desire of one spouse to pursue a homosexual relationship will always be fairly small.

The most significant impact of legally recognizing same-sex unions would be more indirect. Expanding the definition of what "marriage" is to include relationships of a homosexual nature would inevitably, in the long run, change people's concept of what marriage is, what it requires, and what one should expect from it. These changes in the popular understanding of marriage would, in turn, change people's behavior both before and during marriage.

**How would allowing same-sex couples to marry change society's concept of marriage?**

For one thing, it would reinforce many of the negative changes described above. As an example, marriage will open wide the door to homosexual adoption, which will simply lead to more children suffering the negative consequences of growing up without both a mother and a father.

Among homosexual men in particular, casual sex, rather than committed relationships, is the rule and not the exception. And even when they do enter into a more committed relationship, it is usually of relatively short duration. For example, a study of homosexual men in the Netherlands (the first country in the world to legalize "marriage" for same-sex couples), published in the journal *AIDS* in 2003, found that the average length of "steady partnerships" was not more than 2 < years (Maria Xiridou et al., in *AIDS* 2003, 17:1029-1038).

In addition, studies have shown that even homosexual men who are in "committed" relationships are not sexually faithful to each other. While infidelity among heterosexuals is much too common, it does not begin to compare to the rates among homosexual men. The 1994 National Health and Social Life Survey, which remains the most comprehensive study of Americans' sexual practices ever undertaken, found that 75 percent of married men and 90 percent of married women had been sexually faithful to their spouse. On the other hand, a major study of homosexual men in "committed" relationships found that only seven out of 156 had been sexually faithful, or 4.5 percent. The Dutch study cited above found that even homosexual men in "steady partnerships" had an average of eight "casual" sex partners per year.

So if same-sex relationships are legally recognized as "marriage," the idea of marriage as a sexually exclusive and faithful relationship will be dealt a serious blow. Adding monogamy and faithfulness to the other pillars of marriage that have already fallen will have overwhelmingly negative consequences for Americans' physical and mental health.

**If you want people to be faithful and monogamous, shouldn't you grant same-sex couples the right to marry in order to encourage that?**

Some have argued that marriage will change the behavior of homosexuals, but it is far more plausible that the behavior of homosexuals will change people's idea of marriage, further undermining the concepts that marriage is a lifelong commitment and that sex should be confined to marriage.

The entire "gay liberation" movement has been but a part of the larger sexual liberation

movement whose fundamental tenet is that anybody should be able to have sex with anybody they want any time they want. To suggest that the crowning achievement of that pro-homosexual movement--obtaining society's ultimate stamp of approval through civil marriage--is suddenly going to result in these "liberated" homosexuals settling down into faithful, monogamous, childrearing is foolishly naive.

### **Don't homosexuals need marriage rights so that they will be able to visit their partners in the hospital?**

The idea that homosexuals are routinely denied the right to visit their partners in the hospital is nonsense. When this issue was raised during debate over the Defense of Marriage Act in 1996, the Family Research Council did an informal survey of nine hospitals in four states and the District of Columbia. None of the administrators surveyed could recall a single case in which a visitor was barred because of their homosexuality, and they were incredulous that this would even be considered an issue.

Except when a doctor limits visitation for medical reasons, final authority over who may visit an adult patient rests with that patient. This is and should be the case regardless of the sexual orientation or marital status of the patient or the visitor.

The only situation in which there would be a possibility that the blood relatives of a patient might attempt to exclude the patient's homosexual partner is if the patient is unable to express his or her wishes due to unconsciousness or mental incapacity. Homosexual partners concerned about this (remote) possibility can effectively preclude it by granting to one another a health care proxy (the legal right to make medical decisions for the patient) and a power of attorney (the right to make all legal decisions for another person). Marriage is not necessary for this. It is inconceivable that a hospital would exclude someone who holds the health care proxy and power of attorney for a patient from visiting that patient, except for medical reasons.

The hypothetical "hospital visitation hardship" is nothing but an emotional smokescreen to distract people from the more serious implications of radically redefining marriage.

### **Don't homosexuals need the right to marry each other in order to ensure that they will be able to leave their estates to their partner when they die?**

As with the hospital visitation issue, the concern over inheritance rights is something that simply does not require marriage to resolve it. Nothing in current law prevents homosexual partners from being joint owners of property such as a home or a car, in which case the survivor would automatically become the owner if the partner dies.

An individual may leave the remainder of his estate to whomever he wishes--again, without regard to sexual orientation or marital status--simply by writing a will. As with the hospital visitation issue, blood relatives would only be able to overrule the surviving homosexual partner in the event that the deceased had failed to record his wishes in a common, inexpensive legal document. Changing the definition of a fundamental social institution like marriage is a rather extreme way of addressing this issue. Preparing a will is a much simpler solution.

### **Don't homosexuals need marriage rights so that they can get Social Security survivor benefits when a partner dies?**

It is ironic that activists are now seeking Social Security survivor benefits for homosexual partners, since Congress originally intended them as a way of supporting a very traditional family structure--one in which the husband worked to provide the family's cash income while the wife stayed home to keep house and raise the children. Social Security survivor benefits were designed to recognize the non-monetary contribution made to a family by the homemaking and child-rearing activities of a wife and mother, and to ensure that a woman and her children would not become destitute if the husband and father were to die.

The Supreme Court ruled in the 1970s that such benefits must be gender-neutral. However, they still are largely based on the premise of a division of roles within a couple between a breadwinner who works to raise money and a homemaker who stays home to raise children.

Very few homosexual couples organize their lives along the lines of such a "traditional" division of labor and roles. They are far more likely to consist of two earners, each of whom can be supported in old age by their own personal Social Security pension.

Furthermore, far fewer homosexual couples than heterosexual ones are raising children at all, for the obvious reason that they are incapable of natural reproduction with each other. This, too, reduces the likelihood of a traditional division of labor among them.

Survivor benefits for the legal (biological or adopted) *children* of homosexual parents (as opposed to their partners) are already available under current law, so "marriage" rights for homosexual couples are unnecessary to protect the interests of these children themselves.

### **Don't some scholars claim that some cultures *have* recognized same-sex unions?**

A few pro-homosexual writers, such as William N. Eskridge, Jr. (author of a 1996 book called *The Case for Same-Sex Marriage*), have asserted this. They support this claim by citing evidence, mostly from obscure, primitive tribes, suggesting some tolerance of gender non-conformity or even homosexual relationships (particularly between men and boys). But the important point is that in *none* of these cultures was such behavior seen as the moral and social *equivalent* of lifelong heterosexual marriage, which is what today's pro-homosexual activists are demanding.

### **Even if "marriage" itself is uniquely heterosexual, doesn't fairness require that the legal and financial benefits of marriage be granted to same-sex couples--perhaps through "civil unions" or "domestic partnerships?"**

No. The legal and financial benefits of marriage are not an entitlement to be distributed equally to all (if they were, single people would have as much reason to consider them "discriminatory" as same-sex couples). Society grants benefits to marriage because marriage has benefits for society--including, but not limited to, the reproduction of the species in households with the optimal household structure (i.e., the presence of both a mother and a father).

Homosexual relationships, on the other hand, have no comparable benefit for society, and in fact impose substantial costs on society. The fact that AIDS is at least ten times more common among men who have sex with men than among the general population is but one example.

### **How else does marriage benefit society?**

As a group of thirteen leading social scientists reported in 2002, "Marriage is an important social good, associated with an impressively broad array of positive outcomes for children and adults alike." Put simply, married men and women, and their children, are happier, healthier, and more prosperous than people in other types of households.

For example:

- A five-year study released in 1998 found that continuously married husbands and wives experience better emotional health and less depression than people of any other marital status.
- A 1990 review of research found that husbands and wives also have better physical health, while the unmarried have significantly higher annual death rates--about 50 percent higher for women and 250 percent higher for men.

- Rates of violent abuse by intimate partners are four times higher among never-married women, and twelve times higher among divorced and separated women, than they are among married women. In fact, married people are less likely to be the victims of any type of violent crime than are those who have divorced, separated, or never married.
- Families headed by married couples also have much higher incomes and greater financial assets.
- In addition, husbands and wives who are sexually faithful even experience more physical pleasure and emotional satisfaction in their sexual relations than do any other sexually active people.

Children raised by their married mother and father, meanwhile, experience *lower* rates of many social problems, including:

- premarital childbearing;
- illicit drug use;
- arrest;
- health, emotional, or behavioral problems;
- poverty; and
- school failure or expulsion.

These benefits are then passed on to future generations as well, because children raised by married parents are themselves less likely to cohabit or to divorce as adults.

For more information on the benefits of marriage, see:

- Bridget Maher, "Why Marriage Should Be Privileged in Public Policy," *Insight* No. 254 (Washington, DC: Family Research Council), April 16, 2003 (online at <http://www.frc.org/get.cfm?i=IS03D1>)
- *Why Marriage Matters: Twenty-One Conclusions from the Social Sciences* (New York: Institute for American Values, 2002); see [www.americanvalues.org](http://www.americanvalues.org)
- Linda J. Waite and Maggie Gallagher, *The Case for Marriage: Why Married People are Happier, Healthier, and Better Off Financially* (New York: Doubleday, 2000)

**Isn't it possible that allowing homosexuals to "marry" each other would allow them to participate in those benefits as well?**

No. The benefits of marriage do not flow simply from the presence of two people and government recognition of their relationship. Instead, they flow from the inherent complementarity of the sexes and the power of lifelong commitment. The first of these is rejected outright by homosexuals, and the second is far less common among them.

As noted earlier, opening the gates of "marriage" to homosexuals is far more likely to change the attitudes and behavior of heterosexuals for the worse than it is to change the lifestyles of homosexuals for the better.

**Do most same-sex couples even want to assume the responsibilities of marriage?**

There is considerable reason to doubt that they do. A front-page article in the *New York Times* (August 31, 2003) reported that in the first 2 = months after Ontario's highest court legalized "marriage" for same-sex couples, fewer than 500 same-sex Canadian couples had taken out marriage licenses in Toronto, even though the city has over 6,000 such couples registered as permanent partners.

The *Times* reported that "skepticism about marriage is a recurring refrain among Canadian gay couples," noting that "many gays express the fear that it will undermine their notions of who they are. They say they want to maintain the unique aspects of their culture and their place at the edge of social change." Mitchel Raphael, the editor of a Toronto "gay" magazine, said, "I'd be for marriage if I thought gay people would challenge and change the institution and not buy into the traditional meaning of 'till death do us part' and monogamy forever." And Rinaldo Walcott, a sociologist at the University of Toronto, lamented, "Will queers now have to live with the heterosexual forms of guilt associated with something called cheating?"

It appears that many homosexuals want the right to "marry" only because marriage constitutes society's ultimate stamp of approval on a sexual relationship--not because they actually want to participate in the institution of marriage as it has historically been understood.

### **What about the argument that homosexual relations are harmful? What do you mean by that?**

Homosexual men experience higher rates of many diseases, including:

- Human Papillomavirus (HPV), which causes most cases of cervical cancer in women and anal cancer in men
- Hepatitis A, B, and C
- Gonorrhea
- Syphilis
- "Gay Bowel Syndrome," a set of sexually transmitted gastrointestinal problems such as proctitis, proctocolitis, and enteritis
- HIV/AIDS (One Canadian study found that as a result of HIV alone, "life expectancy for gay and bisexual men is eight to twenty years less than for all men.")

Lesbian women, meanwhile, have a higher prevalence of:

- Bacterial vaginosis
- Hepatitis C
- HIV risk behaviors
- Cancer risk factors such as smoking, alcohol use, poor diet, and being overweight

### **Why do homosexuals have such high rates of sexually transmitted diseases?**

Much of the reason for high rates of sexually transmitted diseases among homosexuals lies in their higher rates of promiscuous sexual behavior. For example, the 2003 Dutch study mentioned earlier found that even homosexual men who had a "steady partner" also had an average of eight "casual" sexual partners per year (those without a "steady partner" had an average of 22 "casual" ones). Lesbians, meanwhile, were found by one study to have twice

as many lifetime *male* sexual partners as women in the heterosexual control group.

### **Do homosexuals have more mental health problems as well?**

Yes. Various research studies have found that homosexuals have higher rates of:

- Alcohol abuse
- Drug abuse
- Nicotine dependence
- Depression
- Suicide

### **Isn't it possible that these problems result from society's "discrimination" against homosexuals?**

This is the argument usually put forward by pro-homosexual activists. However, there is a simple way to test this hypothesis. If "discrimination" were the cause of homosexuals' mental health problems, then one would expect those problems to be much less common in cities or countries, like San Francisco or the Netherlands, where homosexuality has achieved the highest levels of acceptance.

In fact, the opposite is the case. In places where homosexuality is widely accepted, the physical and mental health problems of homosexuals are greater, not less. This suggests that the real problem lies in the homosexual lifestyle itself, not in society's response to it. In fact, it suggests that increasing the level of social support *for* homosexual behavior (by, for instance, allowing same-sex couple to "marry") would only increase these problems, not reduce them.

### **Do homosexuals have higher rates of domestic violence?**

Yes. It's notable that so-called "hate crimes" directed at homosexuals, such as the brutal murder of Wyoming college student Matthew Shepard in 1998, are often touted as a measure of society's supposed hostility to homosexuals. Yet even when it comes to violence, homosexuals are far more likely to be victimized by each other than by an "anti-gay" attacker. Government statistics show that "intimate partner violence" between people of the same sex is approximately twenty times more common than anti-homosexual "hate crimes."

Research also shows that men and women in heterosexual marriages experience *lower* rates of domestic violence than people in any other living arrangement.

### **Do homosexuals pose a threat to children?**

Homosexual men are far more likely to engage in child sexual abuse than are heterosexuals. The evidence for this lies in the findings that:

- Almost all child sexual abuse is committed by men; and
- Less than three percent of American men identify themselves as homosexual; yet
- Nearly a third of all cases of child sexual abuse are homosexual in nature (that is, they involve men molesting boys). This is a rate of homosexual child abuse about ten times higher than one would expect based on the first two facts.

These figures are essentially undisputed. However, pro-homosexual activists seek to explain them away by claiming that men who molest boys are not usually homosexual in their adult sexual orientation. Yet a study of convicted child molesters, published in the *Archives of Sexual Behavior*, found that "86 percent of offenders against males described themselves as homosexual or bisexual" (W. D. Erickson, M.D., et al., in *Archives of Sexual Behavior* 17:1, 1988).

This does *not* mean that all, or even most, homosexual men are child molesters--but it does prove that homosexuality is a significant risk factor for this horrible crime.

### **But haven't studies shown that children raised by homosexual parents are no different from other children?**

No. This claim is often put forward, even by professional organizations. The truth is that most research on "homosexual parents" thus far has been marred by serious methodological problems. However, even pro-homosexual sociologists Judith Stacey and Timothy Biblarz report that the actual data from key studies show the "no differences" claim to be false.

Surveying the research (primarily regarding lesbians) in an *American Sociological Review* article in 2001, they found that:

- Children of lesbians are less likely to conform to traditional gender norms.
- Children of lesbians are more likely to engage in homosexual behavior.
- Daughters of lesbians are "more sexually adventurous and less chaste."
- Lesbian "co-parent relationships" are more likely to end than heterosexual ones.

A 1996 study by an Australian sociologist compared children raised by heterosexual married couples, heterosexual cohabiting couples, and homosexual cohabiting couples. It found that the children of heterosexual married couples did the best, and children of homosexual couples the worst, in nine of the thirteen academic and social categories measured.

### **What do these consequences of homosexual behavior have to do with marriage?**

Since homosexual behavior is directly associated with higher rates of promiscuity, physical disease, mental illness, substance abuse, child sexual abuse, and domestic violence, there is no reason to reward such behavior by granting it society's ultimate affirmation--the status of civil marriage--or any of the benefits of marriage.

For more information on the harmful consequences of homosexual behavior, see the following publications by the Family Research Council's Senior Fellow for Marriage and Family Studies, Dr. Timothy J. Dailey:

- *Dark Obsession: The Tragedy and Threat of the Homosexual Lifestyle* (Nashville: Broadman and Holman, 2003); order online at: <http://www.frc.org/get.cfm?i=BK03F01>
- "Homosexuality and Child Sexual Abuse," *Insight* No. 247 (Washington, D.C.: Family Research Council), May 17, 2002 (online at: <http://www.frc.org/get.cfm?i=IS02E3>)
- "The Negative Health Effects of Homosexuality," *Insight* No. 232 (Washington, D.C.: Family Research Council), March 6, 2001 (online at: <http://www.frc.org/get.cfm?i=IS01B1>)

- "Homosexual Parenting: Placing Children at Risk," *Insight* No. 238 (Washington: Family Research Council) November 1, 2001 (online at: <http://www.frc.org/get.cfm?i=1S01J3>)

### **Do the American people want to see "marriages" between same-sex couples recognized by law?**

No--and in the wake of the June 2003 court decisions to legalize such "marriages" in the Canadian province of Ontario and to legalize homosexual sodomy in the United States, the nation's opposition to such a radical social experiment has actually grown.

Five separate national opinion polls taken between June 24 and July 27, 2003 showed opponents of civil "marriage" for same-sex couples outnumbering supporters by not less than fifteen percentage points in every poll. The wording of poll questions can make a significant difference, and in this case, the poll with the most straightforward language (a Harris/CNN/Time poll asking "Do you think marriages between homosexual men or homosexual women should be recognized as legal by the law?") resulted in the strongest opposition, with 60 percent saying "No" and only 33 percent saying "Yes."

Even where pollsters drop the word "marriage" itself and use one of the euphemisms to describe a counterfeit institution parallel to marriage, we see a decline in public support for the homosexual agenda. The Gallup Poll, for instance, has asked, "Would you favor or oppose a law that would allow homosexual couples to legally form civil unions, giving them some of the legal rights of married couples?"

This question itself is misleading, in that it downplays the legal impact of "civil unions." Vermont, the only U. S. state to adopt "civil unions" (under coercion of a state court), actually gives *all* "of the legal rights of married couples" available under state law to people in a same-sex "civil union"--not just "some." But despite this distortion, a 49-percent-to-49-percent split on this question in May 2003 had changed to opposition by a margin of 58 percent to 37 percent when the *Washington Post* asked the identical question in August 2003.

Even the percentage of Americans willing to declare that "homosexual relations between consenting adults" (never mind homosexual civil "marriage") "should be legal" dropped from 60 percent to only 48 percent between May and July of 2003. The biggest drop in support, a stunning 23 percentage points (from 58 percent to 35 percent), came among African Americans--despite the rhetoric of pro-homosexual activists who seek to frame the issues of "gay rights" and same-sex unions as a matter of "civil rights."

### **Is it necessary to amend the U. S. Constitution to prevent legal recognition of civil "marriage" for same-sex couples?**

No state legislature has even come close to allowing same-sex unions to be recognized as civil marriage. However, knowing that public opinion is firmly against them, pro-homosexual activists have now turned to the courts in an effort to get what they cannot achieve through the democratic process. Several states have heard lawsuits from same-sex couples demanding that they be granted marriage licenses, and at this writing there is a very real possibility that in the near future one or more state courts may order legal recognition of a same-sex civil "marriage."

If that happens, it is highly likely that some same-sex couples who obtain a civil "marriage" in that state will seek to have it recognized in other states. The 1996 Defense of Marriage Act (DOMA), which was passed by an overwhelming bipartisan majority in Congress and signed into law by President Clinton, declares that states do not have to recognize same-sex civil "marriages" contracted in other states. However, pro-homosexual activists would undoubtedly go to federal court to seek to have DOMA declared unconstitutional.

Such a legal challenge to DOMA *ought* to fail. But given the U. S. Supreme Court's recent



history of judicial activism on the subject of homosexuality, in defiance of the history and traditions of the country and even of the Court's own prior decisions, many have concluded that it would be unsafe to trust the Court on this issue.

Amending the Constitution now appears to be the only way to achieve two indispensable goals:

- preserve a uniform national standard for something so fundamental to our civilization as the definition of marriage; and
- prevent the imposition of same-sex civil "marriage" or marital benefits through acts of undemocratic judicial tyranny.

#### Additional Resources

- [Dark Obsession: The Tragedy and Threat of the Homosexual Lifestyle](http://www.frc.org/get.cfm?i=BK03F01&f=IF03H01)
- <http://www.frc.org/get.cfm?i=BK03F01&f=IF03H01>
- [Homosexuality and Child Sexual Abuse](http://www.frc.org/get.cfm?i=IS02E3&f=IF03H01)
- <http://www.frc.org/get.cfm?i=IS02E3&f=IF03H01>
- [The Negative Health Effects of Homosexuality](http://www.frc.org/get.cfm?i=IS01B1&f=IF03H01)
- <http://www.frc.org/get.cfm?i=IS01B1&f=IF03H01>
- [Homosexual Parenting: Placing Children at Risk](http://www.frc.org/get.cfm?i=IS01J3&f=IF03H01)
- <http://www.frc.org/get.cfm?i=IS01J3&f=IF03H01>

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## FAMILY RESEARCH COUNCIL

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by: Timothy J. Dailey, Ph. D.

### A Man and His Horse

In what some call a denial of a basic civil right, a Missouri man has been told he may not marry his long-term companion. Although his situation is unique, the logic of his argument is remarkably similar to that employed by advocates of homosexual marriage.

The man claims that the essential elements of marriage--love and commitment--are indeed present: "She's gorgeous. She's sweet. She's loving. I'm very proud of her. ... Deep down, way down, I'd love to have children with her."<sup>1</sup>

Why is the state of Missouri, as well as the federal government, displaying such heartlessness in denying the holy bonds of wedlock to this man and his would-be "wife"?

It seems the state of Missouri is not prepared to indulge a man who waxes eloquent about his love for a 22-year-old mare named Pixel.

### The Threat to Marriage

The Missouri man and homosexual "marriage" proponents categorically reject the definition of marriage as the union of a man and a woman. Instead, the sole criterion for marriage becomes the presence of "love" and "mutual commitment." But once marriage is no longer confined to a man and a woman, it is impossible to exclude virtually any relationship between two or more partners of either sex--even non-human "partners."

To those who object to comparing gay marriage to widely-rejected sexual preferences, it should be pointed out that until very recent times the very suggestion that two men or two women could "marry" was itself greeted with scorn.

Of course, media stories on same-sex marriage rarely address the fact that redefining marriage logically leads to the Missouri man and his mare. Instead, media reports typically focus instead on homosexual couples who resemble the stereotypical ideal of a married couple. Ignored in such reports is social science research indicating that such idealized "families" are utterly atypical among homosexuals.

In this pamphlet we will show the following:

1. Gay marriage threatens the institutions of marriage and the family.
2. Same-sex relationships are not the equivalent of traditional marriage

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#### Summary:

Advocates for same-sex marriage reject the definition of marriage as the union of a man and a woman. This makes it impossible to exclude virtually any relationship between two or more partners of either sex.

This pamphlet shows how homosexual marriage is not the equivalent of traditional marriage and demonstrates that gay marriage is not a civil rights issue or a matter of "discrimination."

Also discussed is the overwhelming rejection of same-sex unions by Americans, many of whom do not consider homosexual marriage to be a moral alternative to traditional marriage.

3. Gay marriage is not a civil rights issue
4. Americans overwhelmingly reject gay marriage
5. Gay marriage is not a moral alternative to traditional marriage.
6. Homosexuality is rightly viewed as unnatural.

#### The "Polyamory" Movement

*"Sean has a wife. He also has a girlfriend. His girlfriend has another boyfriend. That boyfriend is dating Sean's wife."*  
description of "polyamory" relationship<sup>2</sup>

The movement to redefine marriage has found full expression in what is variously called "polyfidelity" or "polyamory," which seeks to replace traditional marriage with a bewildering array of sexual combinations between various groups of individuals.

"Polyamory" is derived from Greek and Latin roots, and is loosely translated "many loves." Polyamorists reject the "myth" of monogamy and claim to practice "harmonious love and intimacy between multiple poly partners."<sup>3</sup> Stanley Kurtz describes the "bewildering variety of sexual combinations. There are triads of one woman and two men; heterosexual group marriages; groups in which some or all members are bisexual; lesbian groups, and so forth."<sup>4</sup>

The polyamory movement took its inspiration from Robert Heinlein's 1961 sci-fi novel, *Stranger in a Strange Land*, in which sexual possessiveness (as in marital exclusivity) is portrayed as an evil leading to societal ills such as murder and war. The book helped spawn a number of ill-fated sexual communes, such as San Francisco's Kerista community, in which members had sexual relations with each other according to a rotating schedule.

#### Anti-Marriage Activists

The Kerista commune collapsed in 1992, but the polyamory movement has taken hold in academia where, according to *First Things*, its proponents "are now so influential, if not dominant, in the academic field of marriage and family law." Scholars enamored with polyamory argue in favor of "a social revolution that would replace traditional marriage and family law."<sup>5</sup>

Kurtz concurs that the "gradual transition from gay marriage to state-sanctioned polyamory, and the eventual abolition of marriage itself, is now the most influential paradigm within academic family law." One prominent advocate of polyamory, David Chambers, professor of law at the University of Michigan, argues: "By ceasing to conceive of marriage as a partnership composed of one person of each sex, the state may become more receptive to units of three or more."<sup>6</sup>

#### The Frat House Concept of "Family"

This radical definition of marriage gives rise to bizarre conceptions of family that include virtually any relationship or social group. In 1990, a San Francisco task force on family policy led by lesbian activist Roberta Achtenberg defined the family as a "unit of interdependent and interacting persons, related together over time by strong social and emotional bonds and/or by ties of marriage, birth, and adoption."<sup>7</sup>

The "frat house with revolving bedroom doors" concept of marriage and the family poses dangers to children.

Polyamory advocates pay scant attention to the dangers posed to children being raised according to this "frat house with revolving bedroom doors" concept of marriage and the family. Yet, this nebulous, free-for-all model of the family looms ahead for our society unless a bulwark is created in the form of a constitutional amendment protecting marriage.

The slippery slope leading to the destruction of marriage as we know it draws ever closer with the decision of the Massachusetts Supreme Judicial Court to compel the state legislature to grant homosexual sex partners the legal status of married people. This decision has emboldened public officials in various localities to grant marriage licenses to homosexual couples, igniting a national debate on the question: What is marriage--and where do we draw the limits on who can marry?

#### Same-Sex Relationships are not the Equivalent of Marriage

A growing body of research indicates that in key respects homosexual and lesbian relationships are radically different than married couples.

-- **Relationship duration:** While a high percentage of married couples remain married for up to 20 years or longer, with many remaining wedded for life, the vast majority of homosexual relationships are short-lived and transitory. This has nothing to do with alleged "societal oppression." A study in the Netherlands, a gay-tolerant nation that has legalized homosexual marriage, found the average duration of a homosexual relationship to be one and a half years.<sup>8</sup>

-- **Monogamy versus promiscuity:** Studies indicate that while three-quarters or more of married couples remain faithful to each other, homosexual couples typically engage in a shocking degree of promiscuity. The same Dutch study found that "committed" homosexual couples have an average of eight sexual partners (outside of the relationship) per year.<sup>9</sup>

-- **Intimate partner violence:** homosexual and lesbian couples experience by far the highest levels of intimate partner violence compared with married couples as well as cohabiting heterosexual couples.<sup>10</sup> Lesbians, for example, suffer a much higher level of violence than do married women.<sup>11</sup>

#### What about the Children?

In his exhaustive examination of human history, Giovanni Battista Vico (1668-1744), Professor of Rhetoric at the University of Naples, concluded that marriage between a man and a woman is an essential characteristic of civilization, and as such is the "seedbed" of society. Vico warned that chaos would ensue in the absence of strong social norms encouraging marital faithfulness and the loving care of children born to the union.

Since reproduction requires a male and a female, society will always depend upon heterosexual marriage to provide the "seedbed" of future generations. The evidence indicates that homosexual or lesbian households are not a suitable environment for children.

Data from the 2000 U.S. Census and other sources indicates that only a small percentage of homosexual households choose to raise children.<sup>12</sup> One reason for this is that the raising of children is inimical to the typical homosexual lifestyle, which as we have seen typically involves a revolving bedroom door. With the added problem of high rates of intimate partner violence, such households constitute a dangerous and unstable environment for children.

Homosexuals and lesbians are unsuitable role models for children because of their lifestyle. Dr. Brad Hayton observes that homosexual households "model a poor view of marriage to children. They are taught by example and belief that marital relationships are transitory and mostly sexual in nature. ... And they are taught that monogamy in a marriage is not the norm [and] should be discouraged if one wants a good 'marital' relationship."<sup>13</sup>

### The Phony Comparison with Race

Many black Americans are understandably offended when gay activists, who have never been relegated to the back of a bus, equate their agenda with racial discrimination. In a statement supporting traditional marriage, several black pastors wrote: "We find the gay community's attempt to tie their pursuit of special rights based on their behavior to the civil rights movement of the 1960s and 1970s abhorrent."<sup>14</sup>

A majority of Black Americans reject the facile comparison of sexual behavior with an immutable characteristic such as race, and disagree with the oft-heard contention by gay activists that homosexuals are "born that way." A Pew Research poll found that by an overwhelming 61 to 26 percent margin, Black Protestants believe sexual orientation can be changed.<sup>15</sup> The same poll reported that Black Americans oppose homosexual marriage by a 60 to 28 percent margin.<sup>16</sup>

### Gay Marriage is not a Civil Rights Issue

Defining marriage as the union of a man and a woman would not deny homosexuals the basic civil rights accorded other citizens. Nowhere in the Bill of Rights or in any legislation proceeding from it are homosexuals excluded from the rights enjoyed by all citizens--including the right to marry.

However, no citizen has the unrestricted right to marry whoever they want. A parent cannot marry their child (even if he or she is of age), two or more spouses, or the husband or wife of another person. Such restrictions are based upon the accumulated wisdom not only of Western civilization but also of societies and cultures around the world for millennia.

Neither can gay activists appeal to a "natural rights" argument: i.e., no reasonable person would deny homosexuals and lesbians their self-evident right to marry. Harry Jaffa cogently replies that such arguments actually argue *against* homosexual marriage: "Nature and reason tell us that a Negro is a human being, and is not to be treated like a horse or an ox or a dog, just as they tell us that a Jew is a human being, and is not to be treated as a plague-bearing bacillus. But with the very same voice, nature and reason tell us that a man is not a woman, and that sexual friendship is properly between members of opposite-sexes, not the same sex."<sup>17</sup>

### Upholding Traditional Marriage is not "Discrimination"

Discrimination occurs when someone is unjustly denied some benefit or opportunity. But it must first be demonstrated that such persons deserve to be treated equally. For example, FAA and airline regulations rightly discriminate regarding who is allowed into the cockpit of an airline. Those who are not trained pilots have no rightful claim to "discrimination" because they are not allowed to fly an airplane.

On the other hand, discrimination would occur if properly credentialed pilots are refused hiring simply because of the color of their skin. In this case such individuals have been denied employment simply because of their race.

The issue of alleged discrimination was addressed by the Minnesota Supreme Court in *Baker v. Nelson*, when it rejected the argument that denying a same-sex couple the right to marry was the equivalent of racial discrimination. The court found: "In common sense and constitutional sense, there is a clear distinction between a marital restriction based merely upon race and one based upon the fundamental difference in sex."

Similarly, in October 2003, a three-judge panel of the Arizona Court of Appeals ruled unanimously against two homosexuals who argued in a lawsuit that marriage is a fundamental right, and that prohibiting it for same-sex couples violates constitutional protections for due process. The court found that the state's ban on homosexual marriage "rationally furthers a legitimate state interest," and thus does not discriminate against

homosexuals by depriving them of their constitutional rights.<sup>18</sup> The court further noted: "Recognizing a right to marry someone of the same sex would not expand the established right to marry, but would redefine the legal meaning of 'marriage.'"

When gay activists and their supporters cry "discrimination!" they conveniently avoid the question of whether homosexual relationships merit being granted equality with marriage. Yet this question deserves our close examination, for the danger posed to our society by redefining marriage is no less than permitting unqualified individuals to fly airplanes.

### Americans Reject Gay Marriage

Typical of polls on the subject, a Fox News poll conducted after the Massachusetts ruling found that Americans oppose same-sex marriage by an overwhelming 66 to 25 percent margin.<sup>19</sup>

A majority of Americans also support a constitutional amendment banning gay marriage. A Fox News/Opinion Dynamics poll in August 2003 reported that 58 percent of respondents favored amending the Constitution, with 34 percent opposed.<sup>20</sup> A Zogby poll released in February 2004 found that, by a 51 to 43 percent margin, voters agreed that a constitutional amendment should be passed limiting marriage to a man and a woman.<sup>21</sup> Similarly, a February 2004 Gallup poll found that 53 percent of respondents favored a constitutional amendment banning gay marriage, with 44 percent opposed.<sup>22</sup>

Homosexual marriage is a potent political issue, with opponents ever more dedicated to preserving the traditional definition of marriage. A follow-up Pew Research poll conducted in February 2004 found: "Gay marriage has surpassed other major social issues like abortion and gun control in its influence on voters. Four in ten voters say they would not vote for a candidate who disagrees with them on gay marriage, even if they agree with the candidate on most other issues." The poll reported that "voters oppose gay marriage by more than two to one (65 percent to 28 percent), a margin that has remained generally steady since October."<sup>23</sup>

### Polls Cite Moral Objections to Homosexuality

A Pew Research poll released in November 2003 reported: "The most common reasons given for objecting to gay and lesbian marriage are moral and religious. ... More than eight in ten opponents of gay marriage (82 percent) say it runs counter to their religious beliefs, with 73 percent completely agreeing with that sentiment." <sup>24</sup>

The poll found that the top two reasons for opposing gay marriage are that "The Bible says it is morally wrong/a sin" (28 percent), followed by the response that homosexual marriage is "against my religious beliefs" (17 percent).<sup>25</sup> Unexpressed religious beliefs are reflected in the next two largest categories of responses. Sixteen percent of respondents based their opposition to gay marriage on the fact that the "definition of marriage is a man and a woman," followed by "It's just wrong/I just don't agree with it" (12 percent).

A Barna Research poll, also released in November 2003, confirmed that Americans consider homosexual behavior to be morally objectionable. Only 30 percent of respondents agreed that "having a sexual relationship with someone of the same sex" was morally acceptable. By comparison, the respondents considered "getting drunk" (35 percent), "using profanity" (36 percent), sex outside of marriage (42 percent), cohabitation (60 percent), and gambling (61 percent) all to be more acceptable than homosexuality.<sup>26</sup>

It is outside the scope of this pamphlet to discuss the biblical and theological understanding regarding homosexual behavior. See the FRC booklet "Keeping the Churches Marriage Friendly: How the Bible and Tradition Refute the 'Gay Theology'" (available at [www.frc.org](http://www.frc.org) or by calling 1-800-225-4008 ).

### The Validity of Moral Arguments

The oft-repeated mantra "you can't legislate morality"--the contention that moral arguments have no place in formulating public policy--is absurd. It is the duty of legislators to evaluate the *right* legislation needed to correct some *wrong* or *injustice*, or promote some *positive* or *good* result. Many of the same people who wish to exclude religiously informed moral arguments from the debate about marriage are little troubled by the use of moral and religious arguments when discussing other issues such as racial discrimination, capital punishment, or the war in Iraq.

The conviction that human sexuality is rightfully expressed within marriage between a man and a woman is deeply rooted in our history and Judeo-Christian beliefs. Over a century ago, in *Maynard v. Hill* (1888), the U.S. Supreme Court recognized that the understanding of marriage springs from the fundamental morality of a people. The Court described marriage as "creating the most important relation in life, as having more to do with the morals and civilization of a people than any other institution."

Similarly, in *Baker v. Nelson* (1971), the Minnesota Supreme Court affirmed the Judeo-Christian roots of the definition of marriage: "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."

#### Homosexuality is Unnatural

The advocates of anti-marriage and anti-family sexuality face yet another foe: divinely created nature itself. According to the above-mentioned Pew Poll, the next most frequent reason given for opposing gay marriage is that "homosexuality is not natural/normal" (9 percent). This response is followed by "the purpose of marriage is to have children" (4 percent), which also recognizes a purposeful--and thus "natural"--design for human sexuality.

In his epistle to Christians living in Rome, the Apostle Paul speaks of an undeniable "law" regarding normative human behavior that is written on the hearts of mankind "to which their own conscience also bears witness." Those who would reject this law find themselves in opposition to the Divine intent for mankind, a reality that every culture from the dawn of civilization has either recognized--or failed to acknowledge at its peril.

The power of the innate realization that there is something fundamentally "unnatural" about homosexuality--even among those who consider themselves non-religious--should not be underestimated, and may well provide the vital motivation that will turn back the seemingly invincible juggernaut of the gay agenda.

#### The Gay Agenda vs. Nature

In their 1989 book, *After the Ball: How America Will Conquer its Fear and Hatred of Gays in the '90s*, homosexual activists Marshall Kirk and Hunter Madsen presented a strategy for achieving the full acceptance of homosexuality in American culture. Kirk and Madsen write: "In any campaign to win over the public, gays must be portrayed as victims in need of protection so that straights will be inclined by reflex to adopt the role of protector."

That this strategy has met with considerable success is undeniable. But wait! The subtitle of Kirk and Madsen's book reveals the confident presumption that America would conquer its (purported) fear and hatred of gays *in the '90s*.

Yet America did not, as expected, embrace the homosexual agenda with open arms. When queried regarding homosexuality as a *behavioral lifestyle*--as opposed to a civil rights issue--many Americans continue to register strong negative reactions.

A *Public Perspectives* survey found that 69 percent of those surveyed report being "very much" or "somewhat" bothered by seeing a person "kissing someone of the same sex in public."<sup>27</sup> This hesitancy is not limited to those holding to traditional morality. No less than

the liberal icon *Glamour* magazine reported the results of a readership poll in which 59 percent of the respondents were "put off" by a lesbian kiss shown on network television.<sup>28</sup>

This "ick factor," far from irrational, is rooted in the subconscious realization of what is normal and what is not, and which forms an inescapable part of our being. And it may be that by underestimating the power of this innate understanding, gay activists have made their greatest tactical error.

#### A Coming Spiritual Revival?

Camille Paglia, a self-confessed radical lesbian and atheist feminist, addresses this fundamental miscalculation of gay activism, which, "encouraged by the scientific illiteracy of academic postmodernism, wants to deny that there is a heterosexual norm. This is madness." Paglia warns that eventually "the insulting disrespect shown by gay activists to religion ... would produce a backlash."<sup>29</sup>

Paglia notes: "History shows that massive spiritual revivals are a fundamental, recurrent element in culture." She further warns that "there may unfortunately be deep, slow-moving forces at work like those that led to Christianity's triumph over cosmopolitan, sexually permissive, but ethically weak late-paganism during the Roman Empire."<sup>30</sup>

#### Gay Marriage: A No Show in History

Some scholars claim that marriage between homosexuals has been commonly practiced and accepted by various peoples throughout history. One prominent advocate of this view, William Eskridge, contends that same-sex unions and even "marriages" have been common in other times and cultures.

Responding to Eskridge, professors Peter Lubin and Dwight Duncan point out that the so-called "evidence" for homosexual marriage comes primarily from small, isolated pre-literate tribes. Lubin and Duncan point out that "a great many of the primitive societies deemed by Eskridge to be tolerant of [same-sex marriage] ... have also been known to engage in other practices, such as cannibalism, female genital mutilation, massacre or enslavement of enemies taken in war, and other practices which was once held to be the duty of the civilized to extirpate."<sup>31</sup>

Furthermore, what Eskridge takes for homosexual marriage are actually male bonding rituals that he mistakenly eroticized. Alleged examples from ancient Rome, such as Nero and Elagabalus, only reveal the degree to which homosexuality was held in contempt by Roman society. In referring to Nero's homosexuality, Tacitus wrote that the emperor "polluted himself by every lawful or lawless indulgence, [and] had not omitted a single abomination which could heighten his depravity." This hardly constitutes an endorsement of homosexuality in ancient Rome.

Lubin and Duncan summarize: "There is no 'rich history of same-sex marriage' that [Eskridge] has 'uncovered,' that was 'suppressed in recent Western history, and is only now coming to light.' The 'resistance' to same-sex marriage is not limited to 'Western culture' with its age-old 'anti-homosexual hysteria and bigotry,' but extends to almost every culture throughout the world."<sup>32</sup>

On the face of it, theories about the supposed widespread practice of homosexual marriage throughout history lack merit, given the biological imperative of families consisting of husbands and wives producing children, which is a basic requirement for the preservation of any culture or society.

#### How Does Gay Marriage Harm Your Marriage?

One might as well ask, "How does *my* printing counterfeit \$20 bills hurt *your* wallet?" Or to



use another example, can you imagine a building where every carpenter defined his own standard of measurement? A man and a woman joined together in holy matrimony is the time-tested "yardstick" for marriage. One cannot alter the definition of marriage without throwing society into confusion any more than one can change the definition of a yardstick.

Homosexual marriage is an empty pretense that lacks the fundamental sexual complementariness of male and female. And like all counterfeits, it cheapens and degrades the real thing. The destructive effects may not be immediately apparent, but the cumulative damage is inescapable. The eminent Harvard sociologist, Pitirim Sorokin, analyzed cultures spanning several thousand years on several continents, and found that virtually no society has ceased to regulate sexuality within marriage as defined as the union of a man and a woman, and survived.<sup>33</sup>

#### A Federal Marriage Amendment: Protection against Judicial Tyranny

Given the strong public opposition to homosexual behavior, it is hardly surprising that no state has voted to extend full marriage rights to gay and lesbian couples. Having failed to achieve their agenda through the democratic process, homosexual activists are now focusing on advancing their agenda through the courts as well as through "civil disobedience" such as the illegal issuance of marriage licenses by public officials in San Francisco and elsewhere.

There is growing danger of activist judges disregarding marriage laws passed by a majority of the population and enshrined in centuries of legal precedence, and imposing homosexual marriage on the nation. States' "Defense of Marriage" laws will help to protect against counterfeit marriage. But such statutes can be overturned in state courts on the argument that they violate state constitutional equal protection and due process clauses.

Amending state constitutions to bar gay marriage will also offer some protection. However, observers fear that the U.S. Supreme Court could overturn state constitutional amendments on the basis of the equal protection and due process clauses in the U.S. Constitution. Robert Bork writes: "One of the last obstacles to the complete normalization of homosexuality in our society is the understanding that marriage is the union of a man and a woman. ... Many court watchers believe that within five to ten years the U.S. Supreme Court will hold that there is a constitutional right to homosexual marriage, just as that court invented a right to abortion. The chosen instrument will be the Equal Protection Clause of the 14<sup>th</sup> Amendment."<sup>34</sup>

A constitutional amendment defining marriage as the union of a man and a woman offers the ultimate protection against the agenda of gay and lesbian activists such as Paula Ettelbrick, former legal director of the Lambda Legal Defense and Education Fund, who unabashedly states: "Being queer means pushing the parameters of sex, sexuality, and family, and ... transforming the very fabric of society."<sup>35</sup>

We enjoy the blessing of living in a nation that has enshrined democratic principles--but this privilege also entails the obligation to make our voices heard in the political process. Those who value the family have a God-given duty to become involved in what is shaping up as the preeminent moral issue of our day: protecting the very institution of marriage.

Our elected representatives must be put on notice that they face an historic choice between catering to the demands of a well-heeled, powerful cadre of homosexual activist organizations determined to radically alter the definition and nature of marriage, or listening to the voice of people across the nation who seek to preserve marriage as the wellspring of society and culture for themselves and their families for generations to come.

*Written by Timothy J. Dailey, Ph.D., Senior Fellow, Center for Marriage and Family Studies at Family Research Council*

notes

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- 5 "The Marriage Amendment; Editorial" *First Things* 136 (October 1, 2003): 1048.
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- 8 Maria Xiridou, et al, "The Contribution of Steady and Casual Partnerships to the Incidence of HIV Infection among Homosexual Men in Amsterdam," *AIDS* 17 (2003): 1031.
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- 11 Ibid.
- 12 "PCT 14: Unmarried-Partner Households by Sex of Partners" (U.S. Census Bureau: Census 2000 Summary File 1). Cp. Dan Black et al., "Demographics of the Gay and Lesbian Population in the United States: Evidence from Available Systematic Data Sources," *Demography* 37 (May 2000): 150.
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- 20 "Attitudes about Homosexuality and Gay Marriage," *AEI Studies in Public Opinion* (American Enterprise Institute Compilation: February 13, 2004): 31.
- 21 "Bush Leads in Red States, Kerry Ahead in Blue States" *Zogby Poll* (February 18, 2004).

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28 Bonnie Fuller, "Editor's Letter" *Glamour* (February, 2000): 28.

29 Camille Paglia, "I'll Take Religion over Gay Culture," *Salon.com* (June 23, 1998).

30 Camille Paglia, "Men and Their Discontents," *Salon.com* (October 14, 1997).

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32 Ibid., 1324.

33 Pitirim Sorokin, *The American Sex Revolution*, (Boston:Peter Sargent Publishers, 1956): 77-105.

34 Robert Bork, "Stop Courts from Imposing Gay Marriage," *Wall Street Journal* (August 7, 2001): 14.

35 Paula Ettelbrick, quoted in "Since When is Marriage a Path to Liberation?" by William B. Rubenstein, *Lesbians, Gay Men, and the Law* (New York: The New Press, 1993), pp. 398, 400.

#### Additional Resources

- Battle for Marriage "Family" Packet - Set of 5 Brochures
- <http://www.frc.org/get.cfm?i=PK04E01&f=BC04C02>
- Battle for Marriage "Family and Friends" Packet - Set of 25 Brochures
- <http://www.frc.org/get.cfm?i=PK04E02&f=BC04C02>
- Battle for Marriage "Church" Packet - Set of 100 Brochures
- <http://www.frc.org/get.cfm?i=PK04E03&f=BC04C02>

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## FAMILY RESEARCH COUNCIL

*Defending Faith, Family, and Freedom*

January 24, 2005

### Comparing the Lifestyles of Homosexual Couples to Married Couples

by: Timothy J. Dailey, Ph. D.

"Married and Gay Couples Not All that Different," proclaimed the headline of a news article portraying homosexual households as remarkably similar to married couples. "We're the couple next door," claimed one partnered homosexual. "We have a dog and a cat. I drive a Volvo. I'm boring." [1] Such down-home portrayals of homosexual couples are meant to provoke the question: Since gay couples really differ only in that both partners are of the same sex, what rational basis exists for denying them full marriage rights?

Are homosexual households, as the article suggests, simply another variant of human relationships that should be considered, along with marriage, as "part of mainstream American society"?

On the contrary, the evidence indicates that "committed" homosexual relationships are radically different from married couples in several key respects:

- relationship duration
- monogamy vs. promiscuity
- relationship commitment
- number of children being raised
- health risks
- rates of intimate partner violence

Finally, this paper will present evidence from gay activists themselves indicating that behind the push for gay marriage lies a political agenda to radically change the institution of marriage itself.

#### RELATIONSHIP DURATION

Gay activists often point to high divorce rates and claim that married couples fare little better than homosexuals with regard to the duration of their relationships. The research, however, indicates that male homosexual relationships last only a fraction of the length of most marriages.

##### Married Couples

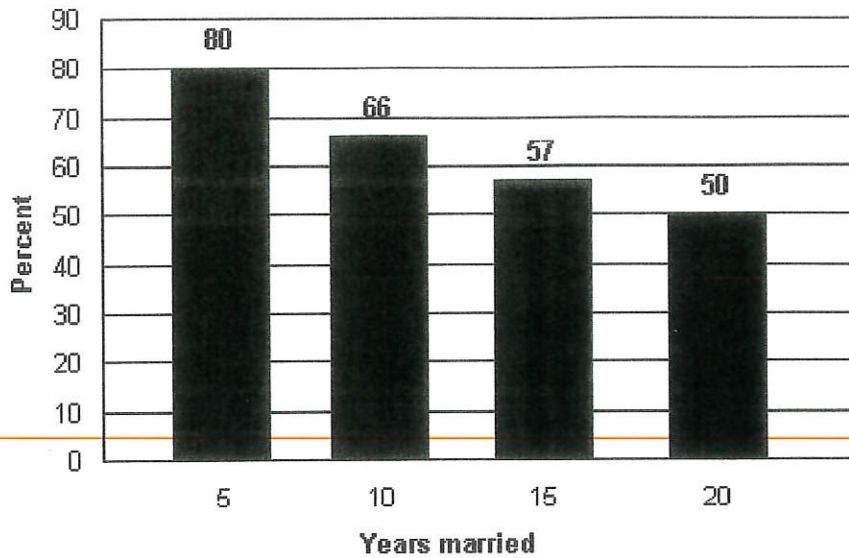
- A 2001 National Center for Health Statistics study on marriage and divorce statistics reported that 66 percent of first marriages last ten years or longer, with fifty percent lasting twenty years or longer. [2]

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##### Summary:

Many times, homosexual relationships are touted as being no different than ordinary married couples. But research shows that in several key respects, the homosexual lifestyle differs radically from other types of relationships.

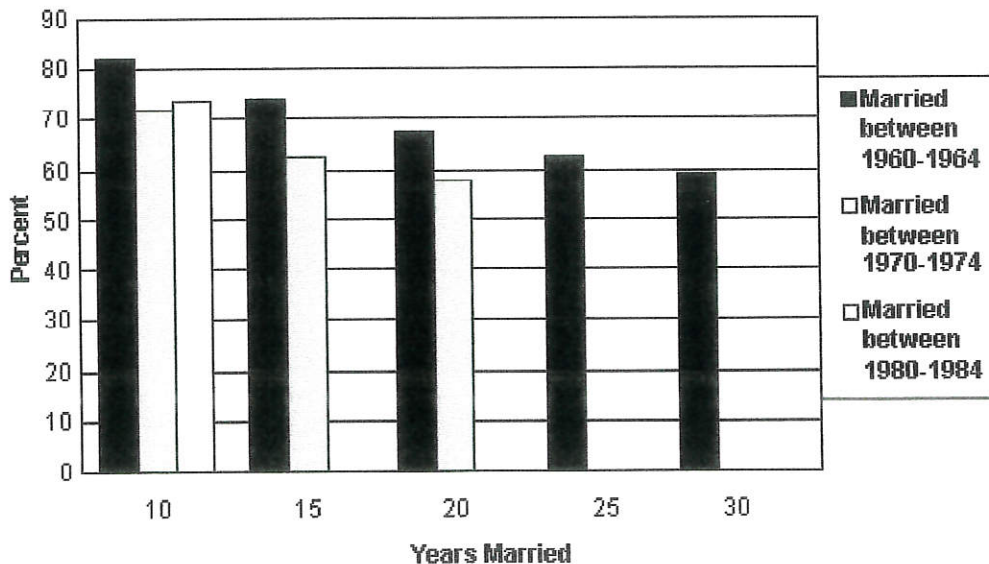
**Percent of Marriages Remaining Intact  
(by length of marriage)**



Source: National Center for Health Statistics, Centers for Disease Control and Prevention (2001)

• A 2002 U.S. Census Bureau study reported similar results, with 70.7 percent of women married between 1970 and 1974 reaching their tenth anniversary and 57.7 percent staying married for twenty years or longer.[3]

**Percentage of Marriages Reaching Stated Anniversary**

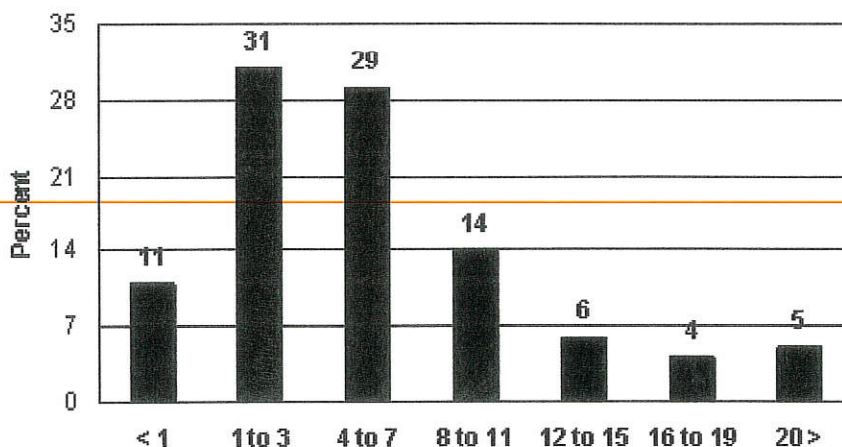


Source: Current Population Reports: U.S. Census Bureau (2002)

## Male Homosexual Relationships

The 2003-2004 Gay/Lesbian Consumer Online Census surveyed the lifestyles of 7,862 homosexuals. Of those involved in a "current relationship," only 15 percent describe their current relationship as having lasted twelve years or longer, with five percent lasting more than twenty years.[4] While this "snapshot in time" is not an absolute predictor of the length of homosexual relationships, it does indicate that few homosexual relationships achieve the longevity common in marriages.

**Length of Current Homosexual Relationship (Years to Date)**



Source: 2003-2004 Gay/Lesbian Consumer Online Census

- In *The Sexual Organization of the City*, University of Chicago sociologist Edward Laumann argues that "typical gay city inhabitants spend most of their adult lives in 'transactional' relationships, or short-term commitments of less than six months." [5]
- A study of homosexual men in the Netherlands published in the journal *AIDS* found that the "duration of steady partnerships" was 1.5 years. [6]
- In his study of male homosexuality in *Western Sexuality: Practice and Precept in Past and Present Times*, Pollak found that "few homosexual relationships last longer than two years, with many men reporting hundreds of lifetime partners." [7]
- In *Male and Female Homosexuality*, Saghir and Robins found that the average male homosexual live-in relationship lasts between two and three years. [8]

### MONOGAMY VS. PROMISCUITY: SEXUAL PARTNERS OUTSIDE OF THE RELATIONSHIP

Lest anyone suffer the illusion that any equivalency between the sexual practices of homosexual relationships and traditional marriage exists, the statistics regarding sexual fidelity within marriage are revealing:

#### Married couples

- A nationally representative survey of 884 men and 1,288 women published in the *Journal of Sex Research* found that 77 percent of married men and 88 percent of married women had remained faithful to their marriage vows. [9]

- A 1997 national survey appearing in *The Social Organization of Sexuality: Sexual Practices in the United States* found that 75 percent of husbands and 85 percent of wives never had sexual relations outside of marriage.[10]
- A telephone survey conducted for *Parade* magazine of 1,049 adults selected to represent the demographic characteristics of the United States found that 81 percent of married men and 85 percent of married women reported that they had never violated their marriage vows.[11]

### Male Homosexuals

Research indicates that the average male homosexual has hundreds of sex partners in his lifetime:

- The Dutch study of partnered homosexuals, which was published in the journal *AIDS*, found that men with a steady partner had an average of eight sexual partners per year.[12]
- Bell and Weinberg, in their classic study of male and female homosexuality, found that 43 percent of white male homosexuals had sex with 500 or more partners, with 28 percent having one thousand or more sex partners.[13]
- In their study of the sexual profiles of 2,583 older homosexuals published in the *Journal of Sex Research*, Paul Van de Ven et al. found that "the modal range for number of sexual partners ever [of homosexuals] was 101-500." In addition, 10.2 percent to 15.7 percent had between 501 and 1,000 partners. A further 10.2 percent to 15.7 percent reported having had more than one thousand lifetime sexual partners. [14]
- A survey conducted by the homosexual magazine *Genre* found that 24 percent of the respondents said they had had more than one hundred sexual partners in their lifetime. The magazine noted that several respondents suggested including a category of those who had more than one thousand sexual partners.[15]

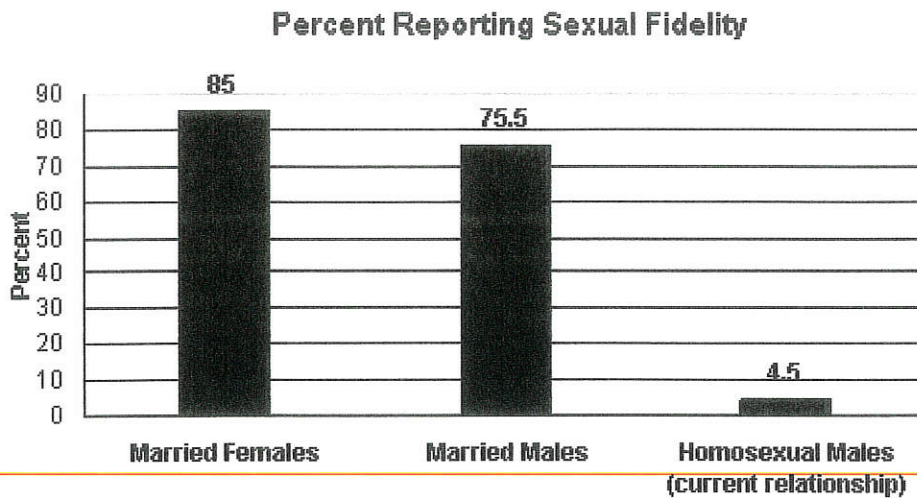
### "Commitment" in Male Homosexual Couples

Even in those homosexual relationships in which the partners consider themselves to be in a committed relationship, the meaning of "committed" or "monogamous" typically means something radically different than in heterosexual marriage.

- A Canadian study of homosexual men who had been in committed relationships lasting longer than one year found that only 25 percent of those interviewed reported being monogamous." According to study author Barry Adam, "Gay culture allows men to explore different...forms of relationships besides the monogamy coveted by heterosexuals." [16]
- The *Handbook of Family Diversity* reported a study in which "many self-described 'monogamous' couples reported an average of three to five partners in the past year. Blasband and Peplau (1985) observed a similar pattern." [17]
- In *The Male Couple*, authors David P. McWhirter and Andrew M. Mattison reported that, in a study of 156 males in homosexual relationships lasting from one to thirty-seven years:

Only seven couples have a totally exclusive sexual relationship, and these men all have been together for less than five years. Stated another way, all couples with a relationship lasting more than five years have incorporated some provision for outside sexual activity in their relationships.[18]

As the following chart shows, the extremely low rate of sexual fidelity among homosexual men dramatically contrasts with the high rate of fidelity among married heterosexuals.



Sources: Laumann, *The Social Organization of Sexuality*, 216; McWhirter and Mattison, *The Male Couple: How Relationships Develop* (1984): 252-253; Wiederman, "Extramarital Sex," 170.

According to McWhirter and Mattison, most homosexual men understood sexual relations outside the relationship to be the norm and viewed adopting monogamous standards as an act of oppression.

In their *Journal of Sex Research* study of the sexual practices of older homosexual men, Paul Van de Ven et al. found that only 2.7 percent of older homosexuals had only one sexual partner in their lifetime.[19]

Brad Hayton provides insight into the attitudes of many homosexuals towards commitment and marriage:

Homosexuals...are taught by example and belief that marital relationships are transitory and mostly sexual in nature. Sexual relationships are primarily for pleasure rather than procreation. And they are taught that monogamy in a marriage is not the norm [and] should be discouraged if one wants a good "marital" relationship.[20]

While the rate of fidelity within marriage cited by these studies remains far from ideal, there is a significant difference between the negligible lifetime fidelity rate cited for homosexuals and the 75 to 90 percent cited for married couples. This indicates that even "committed" homosexual relationships display a fundamental incapacity for the faithfulness and commitment that is axiomatic to the institution of marriage.

#### LEVEL OF COMMITMENT IN HOMOSEXUAL RELATIONSHIPS

If homosexuals and lesbians truly desired the same kind of commitment signified by marriage, then one would expect them to take advantage of the opportunity to enter into civil unions or registered partnerships, which grant them legal recognition as well as the legal rights of marriage. However, surprisingly few homosexuals and lesbians choose to enter into such legally recognized unions where such arrangements are available, indicating that such couples do not share the same view of commitment as typified by married couples.



## Vermont

In April 2000, the governor of the state of Vermont signed a law instituting civil unions for homosexuals. The bill conferred 300 privileges and rights enjoyed by married couples upon same-sex partners who register their relationship with the town clerk and have their union solemnized by a member of the clergy or the justice of the peace.

**Estimating the homosexual and lesbian population of Vermont:** The number of homosexuals and lesbians in the state of Vermont may be estimated based on national studies. Contrary to the widely promulgated but inaccurate claims that up to ten percent of the population is homosexual, research indicates that homosexuals comprise one to three percent of the population. For example, a recent study in *Demography* relying upon three large data sets--the General Social Survey, the National Health and Social Life Survey, and the U.S. Census--estimated the number of exclusive male homosexuals in the general population to be 2.5 percent and the number of exclusive lesbians to be 1.4 percent.[21]

According to the 2000 Census, the adult population of Vermont is 461,304.[22] Based on the *Demography* study, a reasonable estimate of the number of homosexuals and lesbians in Vermont would be approximately 5,600 (2.5 percent of the adult male population) for male homosexuals, and approximately 3,300 (1.4 percent of the adult female population) for lesbians, for a total of approximately 8,900 homosexuals and lesbians. [Note: these are only rough approximations for purposes of statistical comparison.]

**Number of homosexuals and lesbians in Vermont who have entered into civil unions:** *USA Today* reports that, as of January 2004, only 936 homosexual or lesbian couples (for a total of 1,872 individuals) have entered into civil unions.[23] This indicates that only about 21 percent of the estimated homosexual and lesbian population of Vermont has entered into civil unions. *Put another way, 79 percent of homosexuals and lesbians in Vermont choose not to enter into civil unions.*

By contrast, in Vermont, heterosexual married couples outnumber cohabiting couples by a margin of 7 to 1, indicating a much higher level of desire on the part of heterosexual couples to legalize their relationships.[24]

For purposes of comparison it may be useful to examine two countries that have granted special rights to homosexuals, including marriage-like civil unions, which grant gays and lesbians virtually all of the rights of marriage.

## Sweden

In 1995 Sweden passed the Registered Partnership Act which created civil unions for homosexual couples. In 2003 that law was amended to give registered homosexual couples the same right to adopt or have legal custody of children as married couples. The percentage of homosexual or lesbians in Sweden that enter into civil unions may be estimated as follows:

**Estimated homosexual and lesbian population of Sweden:** Extrapolating from the *Demography* estimates in the U.S., a similar percentage of the homosexual and lesbian population of Sweden would be approximately 140,000 (2.5 percent of the adult male population of 3,531,554, and 1.4 percent of the adult female population of 3,679,317).[25]

**Number of homosexuals and lesbians in Sweden who have registered their unions:** 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.[26] This indicates that only about two percent of Swedish homosexuals and lesbians choose to enter into legally recognized unions. Put another way, about 98 percent of Swedish homosexuals and lesbians do not officially register as same-sex couples.

## The Netherlands

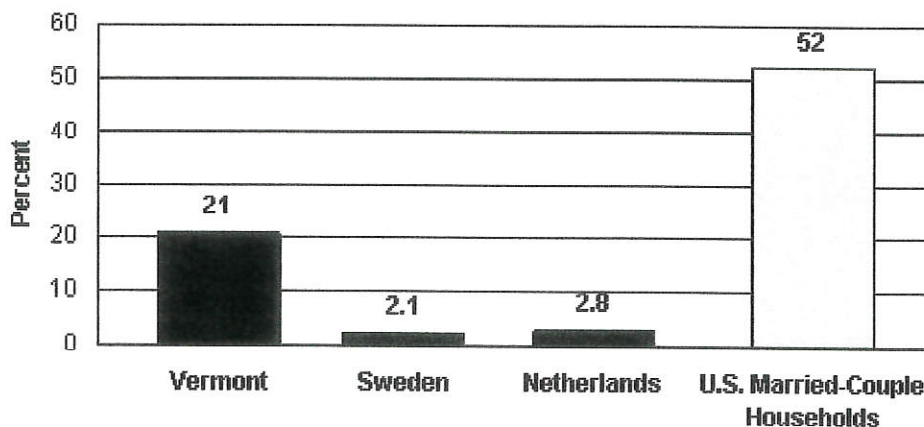
A landmark law allowing same-sex "marriage" was instituted in the Netherlands on March 31, 2001, with a highly publicized communal ceremony that included two lesbian "brides" and six homosexual "grooms." The Netherlands instituted a "registered partnership" law in 1998 that accorded legal status to homosexual relationships similar to that of marriage. The new law, which explicitly recognizes same-sex matrimony, is restricted to Dutch nationals. However, as the following analysis shows, the percentage of homosexuals and lesbians that have entered into marriage-like civil unions is very low.

**Estimated homosexual and lesbian population of the Netherlands:** Extrapolating from demographic figures for homosexuals and lesbians in the U.S., a similar percentage for the Netherlands would be 242,000 (2.5 percent of the adult male population of 6,161,662, and 1.4 percent of the adult female population of 6,311,338).<sup>[27]</sup>

**Number of Dutch homosexuals and lesbians who have registered their unions:** A news report by the Gay Financial Network predicted that "some 10,000 gay couples could be married" in the first year following the legalization of gay "marriage" in the Netherlands. In reality, far fewer chose to solemnize their relationships. The Office of Legislative Research released a report in October 2002 stating: "The Dutch Ministry of Economic Affairs reports that 3,383 of the 121,776 marriages licensed between April 1, 2001, and June 30, 2002, involved people of the same sex."<sup>[28]</sup>

Thus, as of October 2002, only 2.8 percent, or 6,766 individuals (3,383 licenses) out of an estimated homosexual and lesbian population of 242,000, have registered their unions as "married."

**Percentage of Homosexuals Entering Into Civil Unions/"Marriages" Compared to Percentage of U.S. Households Consisting of Married Couples**



Sources: U.S. Census Bureau, *Married-Couple and Unmarried-Partner Households: 2000*, 2; Black, "Demographics," 141; U.S. Census Bureau *Census 2000 Summary File 1*; Bayles, "Vermont's Gay Civil Unions," 1; *Census 2000 Special Reports*, 4; Shane, "Many Swedes Say 'I Don't,'" 1; "ORL Backgrounder," 1.

The much lower rates of homosexual and lesbian civil "marriages" in Sweden and the Netherlands must be viewed in the light of much lower marriage rates in both of those countries, a trend that the introduction of gay "marriage" in the 1990s has not reversed. Thus, as writer Stanley Kurtz argues, the granting of marriage rights to homosexuals and lesbians "has further undermined 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." [29]

### **Conclusion: Level of Relationship Commitment Among Homosexuals**

Data from Vermont, Sweden, and the Netherlands reveal that only a small percentage of homosexuals and lesbians identify themselves as being in a committed relationship, with even fewer taking advantage of civil unions or, in the case of the Netherlands, of same-sex "marriage." This indicates that even in the most "gay friendly" localities, the vast majority of homosexuals and lesbians display little inclination for the kind of lifelong, committed relationships that they purport to desire to enter.

## **NUMBER OF CHILDREN BEING RAISED IN HOMOSEXUAL HOUSEHOLDS**

### **Inflated Statistics for Homosexual Households in the United States**

Claims regarding the numbers of children being raised in homosexual and lesbian households vary widely and are often unsubstantiated. According to a study on homosexual parenting in the *American Sociological Review*, researchers have given figures "of uncertain origin, depicting a range of...6 to 14 million children of gay or lesbian parents in the United States." [30]

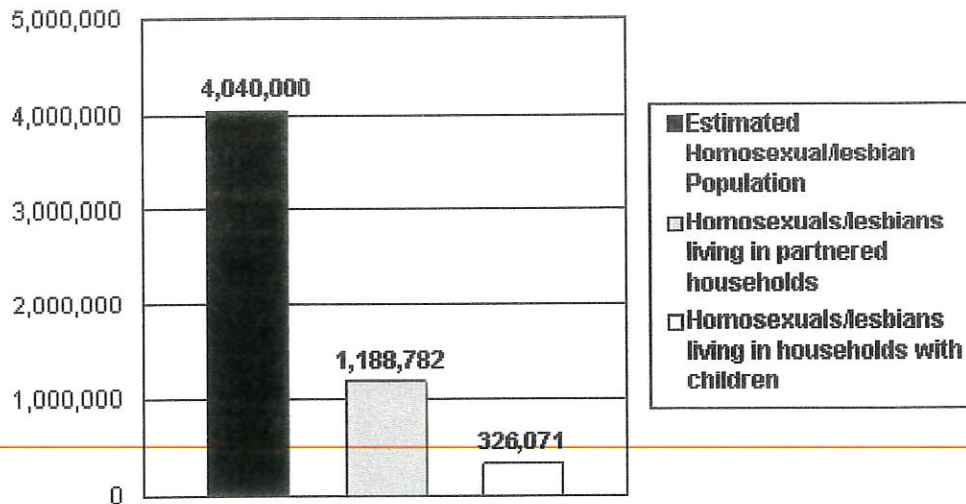
According to the study's authors, Judith Stacey and Timothy J. Biblarz, the higher estimates are based upon "classifying as a lesbigay [sic] parent anyone who reports that even the idea of homoerotic sex is appealing." [31] Instead, the authors favor a figure of about one million, which "derives from the narrower...definition of a lesbigay parent as one who self-identifies as such." [32]

However, even the lower figure of one million children being raised in gay and lesbian households does not stand up to statistical analysis.

The U.S. Census Bureau reports that there are 594,391 same-sex unmarried partner households in the United States (301,026 male homosexual households and 293,365 lesbian households). [33] This indicates that only one percent of the total of 59,969,000 households contain same-sex partners. Assuming the Stacey/Biblarz estimate that one million children have a homosexual or lesbian parent, this would mean that, on average, every homosexual household has at least one child. [34]

However, the 2000 Census figures show that only 33 percent (or 96,810) of female same-sex households and 22 percent (or 66,225) of male same-sex households have their own children living with them. [35] These 163,035 same-sex couples (or 326,070 individuals) comprise only 8 percent of the estimated homosexual and lesbian population. Put another way, 92 percent of the estimated adult population of homosexuals and lesbians in the U.S. do not live with children. By comparison, the 2000 Census showed that 46 percent of married couple households have at least one child living in the household. [36] However, this figure underestimates the total number of married couples who have had children, as many older couples have grown children who are no longer living at home.

### Estimated United States Homosexual Population 2000 U.S. Census



\*Sources: Black, "Demographics," 141; *Census 2000 Special Reports*, 4.

The Stacey/Biblarz estimates may include children being raised by single homosexuals, some of whom are raising their own biological children conceived in a previous heterosexual relationship. Nevertheless, these calculations indicate how absurdly inflated most of the estimates are concerning the number of children being raised by homosexuals. Far from being the proven success that some claim, homosexual parenting remains very much the exception rather than the rule.

#### Implications for Homosexual Parenting

Gay activists attempt to minimize the differences between homosexual and heterosexual households in order to make homosexuality look as normal as possible. However, as already shown, only a small minority of gay and lesbian households have children. Beyond that, the evidence also indicates that comparatively few homosexuals choose to establish households together--the type of setting that is normally prerequisite for the rearing of children.

The Human Rights Campaign, a homosexual advocacy organization, claims that the U.S. population of gays and lesbians is 10,456,405, or five percent of the total U.S. population over 18 years of age.<sup>[37]</sup> However, as we have seen, the best available data supports a lower estimate of 2.5 percent for male homosexuals and 1.4 percent for lesbians.<sup>[38]</sup> This would lead to a figure of approximately 4,040,000 homosexual men and women in the U.S. population. Thus, *only about 30 percent* of homosexuals (1,202,418 out of some 4 million) choose to live in a household with a person of the same sex.

The above indicates that only a small minority of gays and lesbians choose to live in partnered relationships, and furthermore, only a small percentage of partnered homosexual households actually have children. The evidence thus does not support the claim that significant numbers of homosexuals desire to provide a stable home for children.

#### HEALTH RISKS

Even those homosexual relationships that are loosely termed "monogamous" do not necessarily result in healthier behavior. The evidence indicates that homosexual and lesbian

relationships are at far greater risk for contracting life-threatening disease compared with married couples:

- The journal *AIDS* reported that men involved in relationships engaged in anal intercourse and oral-anal intercourse with greater frequency than did those without a steady partner.[39] Anal intercourse has been linked with a host of sexually transmitted diseases, including AIDS.
- The exclusivity of the relationship did not diminish the incidence of unhealthy sexual acts, which are commonplace among homosexuals. An English study published in the same issue of *AIDS* concurred, finding that most "unsafe" sex acts among homosexuals occur in steady relationships.[40]
- A study of steady and casual male homosexual relationships in Amsterdam found that "steady partners contribute to (HIV) incidence more than casual partners. This can mainly be explained by the fact that risky behavior with steady partners is much greater than that with casual partners (30 versus 1.5 UAI [unprotected anal intercourse] acts annually)."[41]
- ~~These findings confirmed an earlier study by the Dutch Department of Health and Environment, which found that 67 percent of HIV-positive men aged 30 and younger had been infected by a steady partner. The study concluded: "In recent years, young gay men have become more likely to contract HIV from a steady sexual partner than from a casual one."~~[42]

#### **"Exclusive" Lesbian Relationships Also at Risk**

The assumption that lesbians involved in exclusive sexual relationships are at reduced risk for sexual disease is false:

- The journal *Sexually Transmitted Infections* concludes: "The risk behavior profile of exclusive WSW (women who have sex with women) was similar to all wsw." [43] One reason for this is because lesbians "were significantly more likely to report past sexual contact with a homosexual or bisexual man and sexual contact with an IDU (intravenous drug user)."[44]

#### **Greater Risk for Suicide**

Homosexual and lesbian relationships experience a far greater rate of mental health problems compared to married couples.

- A twins study that examined the relationship between homosexuality and suicide, published in the *Archives of General Psychiatry*, found that homosexuals with same-sex partners were at greater risk for overall mental health problems and were 6.5 times more likely than their twins to have attempted suicide. The higher rate was not attributable to mental health or substance abuse disorders.[45]

#### **INTIMATE PARTNER VIOLENCE Lesbian and Homosexual Relationships**

Research indicates very high levels of violence in homosexual and lesbian relationships:

- A study in the *Journal of Interpersonal Violence* examined conflict and violence in lesbian relationships. The researchers found that 90 percent of the lesbians surveyed had been recipients of one or more acts of verbal aggression from their intimate partners during the year prior to this study, with 31 percent reporting one or more incidents of physical abuse.[46]
- In a survey of 1,099 lesbians, the *Journal of Social Service Research* found that

slightly more than half of the lesbians reported that they had been abused by a female lover/partner. The researchers found that "the most frequently indicated forms of abuse were verbal/emotional/psychological abuse and combined physical-psychological abuse."<sup>[47]</sup>

- A study of lesbian couples reported in the *Handbook of Family Development and Intervention* "indicates that 54 percent had experienced 10 or more abusive incidents, 74 percent had experienced six or more incidents, 60 percent reported a pattern to the abuse, and 71 percent said it grew worse over time."<sup>[48]</sup>

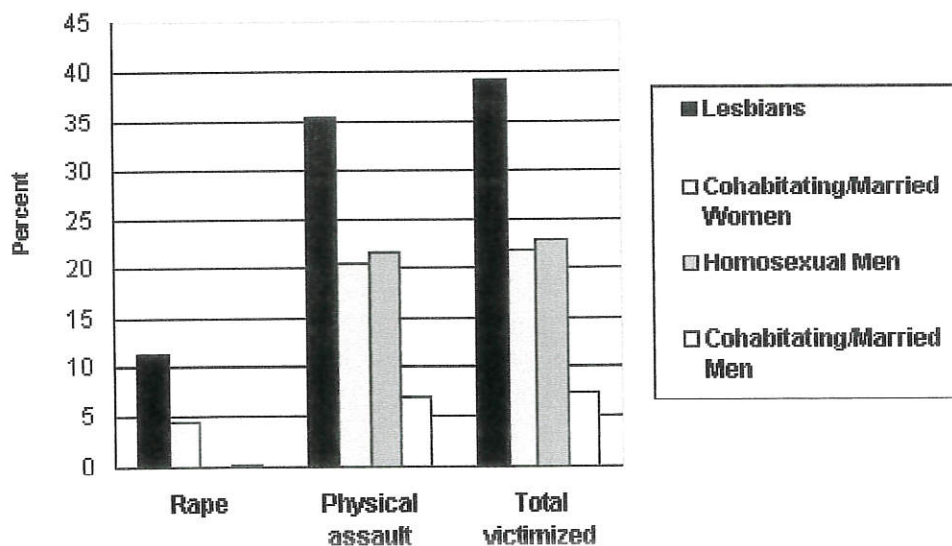
- In their book *Men Who Beat the Men Who Love Them: Battered Gay Men and Domestic Violence*, Island and Letellier postulate that "the incidence of domestic violence among gay men is nearly double that in the heterosexual population."<sup>[49]</sup>

### Gay and lesbian vs. other opposite-sex intimate partner relationships

Surveys conducted by the U.S. Department of Justice confirm that homosexual and lesbian relationships had a far greater incidence of domestic partner violence than opposite-sex relationships including cohabitation or marriage.

- The National Violence against Women Survey, sponsored by the National Institute of Justice, found that "same-sex cohabitants reported significantly more intimate partner violence than did opposite-sex cohabitants. Thirty-nine percent of the same-sex cohabitants reported being raped, physically assaulted, and/or stalked by a marital/cohabitating partner at some time in their lifetimes, compared to 21.7 percent of the opposite-sex cohabitants. Among men, the comparable figures are 23.1 percent and 7.4 percent."<sup>[50]</sup>

**Comparison of Intimate Partner Violence Against Various Categories**

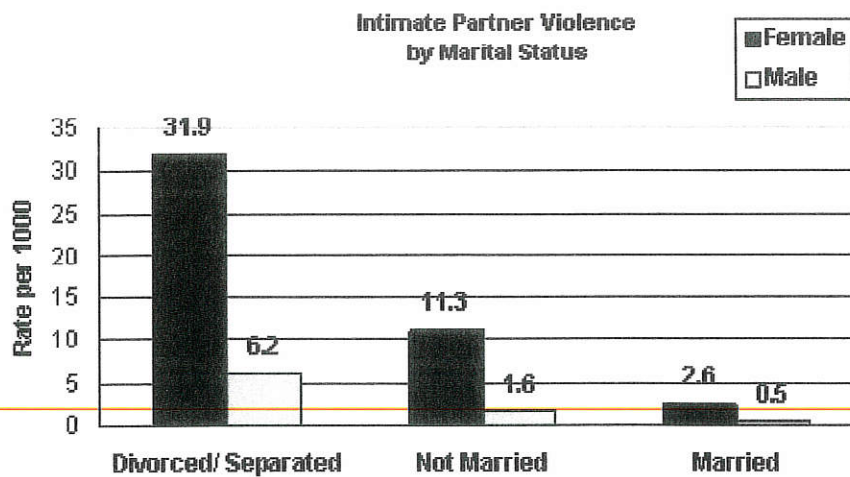


Source: "Extent, Nature, and Consequences of Intimate Partner Violence," *U.S. Department of Justice: Office of Justice Programs*, 30.

### Marriage vs. Other Types of Intimate Partner Relationships

- A Bureau of Justice Statistics (an agency of the U.S. Department of Justice) report found that married women in traditional families experience the lowest rate of

violence compared with women in other types of relationships.[51] Women who were not married to their "intimate partner" (i.e., were cohabiting), experienced a rate of violence four times higher than that of married women (11.3 per thousand vs. 2.6 per thousand). [52]



Source: "Intimate Partner Violence," *Bureau of Justice Statistics Special Report*, Bureau of Justice Statistics, January 31, 2002: 4.

### Homosexual and Lesbian Couples vs. Married Couples

When homosexual and lesbian relationships are directly compared with married couples, the difference in the domestic partner violence is pronounced:

### Intimate Partner Violence: Homosexual/Lesbian vs. Married



Sources: "Extent, Nature, and Consequences of Intimate Partner Violence," *U.S. Department of Justice: Office of Justice Programs*: 30; "Intimate Partner Violence," *Bureau of Justice Statistics Special Report*: 11.

A POLITICAL AGENDA: REDEFINING MARRIAGE

By their own admission, gay activists are not simply interested in making it possible for homosexuals and lesbians to partake of conventional married life. Rather, they aim to change the essential character of marriage, removing precisely the aspects of fidelity and chastity that promote stability in the relationship and the home:

- Paula Ettelbrick, the former legal director of the Lambda Legal Defense and Education Fund, has stated, "Being queer is more than setting up house, sleeping with a person of the same gender, and seeking state approval for doing so....Being queer means pushing the parameters of sex, sexuality, and family, and in the process transforming the very fabric of society." [53]
- Homosexual writer and activist Michelangelo Signorile speaks approvingly of those who advocate replacing monogamy with sexually "open" relationships:

For these men the term "monogamy" simply doesn't necessarily mean sexual exclusivity....The term "open relationship" has for a great many gay men come to have one specific definition: A relationship in which the partners have sex on the outside often, put away their resentment and jealousy, and discuss their outside sex with each other, or share sex partners. [54]

- The views of Signorile and Ettelbrick regarding marriage are widespread in the homosexual community. According to the *Mendola Report*, a mere 26 percent of homosexuals believe that commitment is most important in a marriage relationship. [55]

Former homosexual William Aaron explains why even homosexuals involved in "committed" relationships do not practice monogamy:

In the gay life, fidelity is almost impossible. Since part of the compulsion of homosexuality seems to be a need on the part of the homophile to "absorb" masculinity from his sexual partners, he must be constantly on the lookout for [new partners]. Consequently the most successful homophile "marriages" are those where there is an arrangement between the two to have affairs on the side while maintaining the semblance of permanence in their living arrangement. [56]

The evidence is overwhelming that homosexual and lesbian "committed" relationships are not the equivalent of marriage. 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. What remains, then, is the disturbing possibility that behind the demands for "gay marriage" lurks an agenda of undermining the very nature of the institution of marriage.

*Timothy J. Dailey, Ph.D., is senior fellow in the Center for Marriage and Family Studies at the Family Research Council. Dr. Dailey and Peter Sprigg recently co-authored Getting It Straight: What the Research Says About Homosexuality.*

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## FAMILY RESEARCH COUNCIL

January 24, 2005

Issue No.: 99  
by:

*Peter Sprigg delivered these remarks on March 29, 2004, at the World Congress of Families III in Mexico City, Mexico.*

### Summary:

This speech deftly summarizes the homosexual agenda and why it must be opposed by supporters of the family.

After individual human life itself, nothing is more precious or more essential to the survival and the success of human society than the family. The family is more important than the United Nations, more important than our individual countries, and more important than our cities, towns, or villages. The family is more important than our schools, corporations, or our civic organizations.

The family is more important than all of these things, because human civilization is built from the bottom up, not the top down. The first brick of the foundation is individual human life, and the second brick is the family. This raises crucial questions: What is a family? What makes a family?

Some people answer that question by saying, "Love makes a family." That sounds nice, but while love is, as the saying goes, "a many-splendored thing," love alone is not enough to make a family. In truth, what makes a family is one man and one woman united in marriage for a lifetime, and the children born from that union.

Not every family lives up to that ideal. Some people become single parents through no fault of their own, because of death or abandonment. Some loving couples adopt children in order to create a new family structure that reproduces as closely as possible the circumstances of a natural family. But it is important for society to continue to uphold the traditional family structure as the ideal family. It is important to uphold that ideal because it is the family structure most consistent with what the American Declaration of Independence refers to as "the laws of nature and of nature's God."

However, even if someone doesn't believe in natural law, or even in God, there is still a good reason to uphold the ideal of the traditional family.

The reason the married, one-man, one-woman natural family is the ideal family is that we know that both the spouses and the children in such

families have a better chance in life. Such children, for instance, do better academically, financially, emotionally, and behaviorally. They have better health, and they delay sexual activity longer. The evidence for this in the social science literature is overwhelming.

It is because the family is so crucial to society that we call ourselves "pro-family." We want to do everything we can to support, encourage, assist, maintain, and promote traditional families and do everything we can to maintain that ideal of the married, one-man, one-woman natural family.

However, in order to defend what we are for--the family--we often must define what we are against. We are against anything that threatens the traditional family or undermines that

ideal. That means that we are against parents snuffing out the lives of their own unborn children through abortion. It means that we are against drug and alcohol abuse, domestic violence, and child abuse. It means that we are against illegitimacy, abandonment, and divorce. And it means that we are against any sexual behavior that would undermine the uniqueness of the faithful, lifelong marriage bond between a husband and wife. We are against premarital sex, pornography, adultery, and prostitution. And yes, we are also against the practice of homosexuality.

Now, you may ask, if we are for something so simple and profound as family, and against so many things that threaten it, why is it that one of these threats--homosexuality--gets so much attention? It's not because homosexuality is a greater sin than any other. It's not because we want to deprive homosexuals of their fundamental human rights. It's not because we are afraid to be near homosexuals, and it's not because we hate homosexuals. On the contrary, I desire the very best for them. And desiring the best for someone, and acting to bring that about, is the essence of love. However, I do not believe that engaging in behavior that is unnatural, immoral, and dangerous both to public health and to their own health is the best thing for people with same-sex attractions.

And so, as one part of our broad-based efforts to support the traditional family, we oppose what is sometimes called "the gay agenda." It is an agenda that demands the full acceptance of the practice of homosexuality--morally, socially, legally, religiously, politically, and financially. Indeed, it calls for not only acceptance, but affirmation and celebration of this behavior as normal. It even demands that homosexuality be seen as desirable for those who desire it. This is "the gay agenda"--and we are against it.

This agenda has already made remarkable progress. Homosexual activists knew that their behavior would never be accepted as "normal" if doctors considered it a form of mental illness. Therefore, in 1973 they forced a resolution through the American Psychiatric Association to remove homosexuality from the Diagnostic and Statistical Manual of Mental Disorders. It is important for everyone to realize that the 1973 decision was *not* the result of new clinical research or scientific evidence. It was, rather, a *political* decision made in response to a vicious campaign of harassment and intimidation by homosexual activists.

Indeed, studies actually continue to show that homosexuals experience high rates of mental illness. For example, the Netherlands Mental Health Survey and Incidence Study, reported in the *Archives of General Psychiatry* in 2001, found that "people with same-sex sexual behavior are at greater risk for psychiatric disorders." The fact that this is true even in one of the most "gay-friendly" nations on earth--indeed, the first nation to grant same-sex civil marriage--undermines any argument that such mental illnesses are merely a reaction to society's alleged "discrimination."

A second element in the agenda is to persuade people that those who engage in homosexual behavior are "born that way." If people are "born gay," it makes it more difficult to argue that a homosexual orientation is abnormal, or that homosexual behavior is immoral. It is astonishing how pervasive this concept has become--especially in light of the fact that there is *no* convincing scientific evidence that homo-sexuality is determined by either genetics or biology. Only a tiny handful of studies have ever been put forward to make such a claim. Unfortunately, the scientific critiques that discredited those studies have never quite caught up to the original media hype.

A third element of the homosexual agenda is to get "sexual orientation" added to the categories of protection under anti-discrimination codes in private organizations and under civil rights laws in the public sector. In fact, homosexuals should and already do have all of the same rights under the law as any other citizen, such as the right to vote, the right of free speech, and the right to trial by jury. Those rights are truly "civil" or political in nature, and the exercise of them does nothing to infringe on anyone else's freedom.

However, adding "sexual orientation" to civil rights laws governing private employment and housing does infringe on the rights of others--namely, the normal right of employers and landlords to make economic decisions based on their own best judgment. Governments

normally interfere with such economic freedom only when the alleged "discrimination" is based on characteristics that are inborn, involuntary, immutable, and innocuous, such as race. None of those criteria apply to homosexual behavior. Nevertheless, a family-owned bed-and-breakfast in the Canadian province of Prince Edward Island went out of business because its owners refused to compromise their principles by allowing a homosexual couple to share a bed in the family's own home. In Hungary, a Christian seminary was forced to reinstate a seminary student who had been expelled as a homosexual. When "homosexual rights" are imposed, other rights of longer standing, such as religious liberty, are trampled upon.

A fourth element of the agenda is to win the enactment of "hate crime" laws that provide severe punishment of crimes motivated by "bias" against homosexuals. All of us in the pro-family movement are opposed to violent crimes, against homosexuals or anyone else. Hate crime laws, though, set a dangerous precedent of punishing people specifically for their opinions. In addition, under some such laws a person can be punished simply for intimidation--which could include just verbally expressing disapproval of homosexuality. One example comes from England, where 69-year-old Harry Hammond held a sign that said, "Stop immorality. Stop homosexuality. Stop lesbianism." Hecklers threw mud and water at him and knocked him to the ground--yet police arrested this old man, rather than his assailants, for a "breach of public order."

A fifth element of the homosexual agenda is the effort to get homosexual propaganda included in the curriculum of public schools. The intent of these efforts is obvious--to ensure that the next generation will grow up with an unquestioning acceptance of all the myths that the homosexual activists want young people to believe.

And a final element in this agenda is to redefine marriage and family altogether. They hope to achieve this by opening the door for homosexuals to adopt children and by legalizing same-sex marriage. If denied marriage in name, they hope to win virtually all the benefits and privileges of marriage through so-called civil unions or domestic partnerships.

The trend of giving all the legal rights and benefits of marriage to homosexual couples began in Denmark in 1989. Some form of these laws has since spread to Finland, Germany, Iceland, Norway, Sweden, France, and Portugal (and possibly others). In 2000, the state of Vermont became the first place in the U.S. to offer such "civil unions," as a result of a decision of that state's highest court. California's legislature voted last year to expand that state's existing "domestic partnerships" scheme into what will be essentially a civil unions registry, beginning in 2005.

The first country to open the institution of full civil marriage to same-sex couples was the Netherlands, beginning in 2001. In 2003, Belgium followed, as did two provinces of Canada in response to court decisions there. And on November 18, 2003, the Supreme Judicial Court of the American state of Massachusetts ruled that same-sex couples must be allowed to enter civil marriages, and that a parallel institution of "civil unions" would not be sufficient.

The highly publicized issuance of marriage licenses by a few local officials in California and other states since that time has been clearly illegal. However, the Massachusetts court's ruling will result in that state recognizing the first legal homosexual civil marriages in America on May 17, 2004, unless further legal action is taken to prevent it. On February 24, 2004, President Bush endorsed an amendment to the U. S. Constitution that would limit marriage to unions of one man and one woman. These developments have set off a furious debate about the meaning of marriage in the United States, which I am sure is mirrored elsewhere in the world.

The debate over whether homosexual couples should be allowed to legally "marry" is *not* about rights, equality, or discrimination, despite the often heated rhetoric to that effect. Still less is it about the allocation of an entitlement package of legal rights and financial benefits. Instead, this is a question of definition: How do we define the social institution we call marriage? To answer that we must ask, What is the public purpose of marriage?

Please note that I said the *public* purpose of marriage. The *private* purposes for which people enter into marriage may be as diverse as the people themselves. Homosexual activists sometimes argue that they want to marry for the same reasons heterosexuals do: out of a desire for love and companionship.

But are interpersonal love and companionship really the business of government? Would we even tolerate the government issuing licenses and regulating entry and exit into relationships whose only or even principal purpose is emotional attachment? I submit to you that the answer is no.

So what is the public interest in marriage? Why is marriage a public, civil institution, rather than a purely private one? The answer, I would argue, is that marriage is a public institution because it brings together men and women for the purpose of reproducing the human race and keeping a mother and father together to cooperate in raising to maturity the children they produce. The public interest in such behavior is great, because thousands of years of human experience and a vast body of contemporary social science research both demonstrate that married husbands and wives, and the children they conceive and raise, are happier, healthier, and more prosperous than people in any other living situation.

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Now, I know exactly what some people say. They argue that reproduction cannot be the purpose of marriage, because opposite-sex couples that are elderly, infertile, or simply don't plan to have children are still permitted to marry. In fact, I would suggest that the actual, tangible public interest in childless marriages is not as great as the public interest in marriages that produce children.

However, to exclude non-reproducing heterosexual couples from marriage would require an invasion of privacy or the drawing of arbitrary and inexact lines. Instead, we simply define the structure of marriage as being open to the entire class of couples that are even theoretically capable of natural reproduction--namely, opposite-sex ones--and we exclude an entire class of couples that are intrinsically infertile--namely, same-sex ones.

Of course some homosexuals do reproduce (with help, of course), and some homosexual couples do raise children. But let me suggest, as an analogy, another area in which the law places limits on the exercise of a fundamental right--voting. We have a minimum voting age because we presume that adults are wiser and better informed than children. The mere fact that some adults are actually foolish and ill-informed, while some children may be wiser and better informed, does not make the existence of a minimum voting age arbitrary or discriminatory. Distinguishing between opposite-sex couples and same-sex couples with regard to marriage on the basis of general differences is equally logical.

In fact, I would suggest that the argument in favor of same-sex marriage can only be logically sustained if one argues that there is no difference between men and women--that is, if one argues not merely that men and women are equal in value and dignity (a proposition I'm sure we all agree with) but that males and females are identical, and thus can serve as entirely interchangeable parts in the structure of marriage. This contention is biologically absurd, and "same-sex marriage" is thus an oxymoron.

Nevertheless, some observers ask, What harm could same-sex civil marriage possibly do to anyone else's heterosexual marriage? One answer is, it could destroy it. Forty percent of the couples entering civil unions in Vermont include at least one partner who was previously in a heterosexual marriage--just like Gene Robinson, the new bishop of the Episcopal church in the American state of New Hampshire, who left his wife and children for a homosexual lover. I once made this point in a public forum, and a listener argued that it would be "dishonest" for someone experiencing same-sex attractions to remain in an opposite-sex marriage. My response was simple: I would never call it "dishonest" for any person to fulfill their marriage vows.

An indirect effect is more likely, however. As the transient, promiscuous, and unfaithful relationships that are characteristic of homosexuals become part of society's image of marriage, fewer marriages will be permanent, exclusive, and faithful--even among

heterosexuals. So-called "conservative" advocates of same-sex civil marriage are optimistic that legal unions would change homosexuals for the better; it seems far more probable that homosexuals would change marriage for the worse.

Some advocates of homosexual unions even suggest that if another class of couples who want to marry are allowed to do so, it would actually *strengthen* marriage. This argument has been effectively refuted by American anthropologist Stanley Kurtz, who cites the trailblazing experience of Scandinavia. In an article in *The Weekly Standard* in February, Kurtz pointed out,

Marriage in Scandinavia is in deep decline, with children shouldering the burden of rising rates of family dissolution. And the mainspring of the decline--an increasingly sharp separation between marriage and parenthood--can be linked to gay marriage.

Kurtz also cites Danish social theorist Henning Bech and Norwegian sociologist Rune Halvorsen as having admitted that:

The goal of the gay marriage movement in both Norway and Denmark . . . was not marriage but social approval of homosexuality. Halvorsen suggests that the low numbers of registered gay couples may be understood as a collective protest against the expectations (presumably, monogamy) embodied in marriage.

The final harm done by same-sex marriage would undoubtedly be a slide down the proverbial "slippery slope." Advocates of same-sex marriage seek to remove the potential for procreation from the definition of marriage, making gender irrelevant in the choice of a spouse, and re-defining marriage only in terms of a loving and committed relationship. If that happens, then it is hard to see how other restrictions upon one's choice of marriage partner can be sustained. These include the traditional restrictions against marrying a child, a close blood relative, or a person who is already married.

While pedophile or incestuous marriages may be further off, polygamous marriages have much stronger precedents in history and culture than do even homosexual ones. Lawsuits have already been filed in American courts--with the support of the American Civil Liberties Union--demanding recognition of plural marriages. And--I am not making this up--news reports in recent weeks have carried stories of an Indian girl being married to a dog, and a French woman who was legally permitted (with the approval of the president of France) to marry her boyfriend--who is already dead.

Lesbian activist Paula Ettelbrick, currently the executive director of the International Gay and Lesbian Human Rights Commission, has said that homosexuality "means pushing the parameters of sex, sexuality, and family, and in the process transforming the very fabric of society." In fact, homosexuality and homosexual civil marriage would rip the fabric of society in ways that may be difficult, if not impossible, to mend.

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## FAMILY RESEARCH COUNCIL

January 24, 2005

Volume No.: 98  
by: Peter Sprigg

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*Senior Director for the Center for Marriage and Family Studies Peter Sprigg delivered these remarks as an opening statement at a panel discussion on "same-sex marriage" at the University of Pennsylvania on February 12, 2004.*

Summary:  
Peter Sprigg delivered these remarks at a panel discussion at the University of Pennsylvania on February 12, 2004.

Good evening. Thank you for inviting me to be with you tonight.

There are many different issues and arguments that can be raised in the debate over so-called "same-sex marriage"--far too many to even survey in a four-minute statement. So let me get right to what I think is the key question that must be answered.

The debate over whether homosexual couples should be allowed to legally "marry" is *not* about rights, equality, or discrimination, despite the often heated rhetoric to that effect. Still less is it about the allocation of an entitlement package of legal rights and financial benefits. Instead, this is a question of definition--how do we define the social institution we call marriage? To answer that we must ask, What is the public purpose of marriage?

Please note that I said the *public* purpose of marriage. The *private* purposes for which people enter into marriage may be as diverse as the people themselves. Homosexual activists sometimes argue that they want to marry for the same reasons heterosexuals do--out of a desire for love and companionship.

But I ask you--are interpersonal love and companionship really the business of government? Would we even tolerate the government issuing licenses and regulating entry and exit into relationships whose only or even principal purpose is emotional attachment? I submit to you that the answer is no.

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the structure of marriage as being open to the entire class of couples that are even theoretically capable of natural reproduction--namely, opposite-sex ones--and we exclude an entire class of couples that are intrinsically infertile--namely, same-sex ones.

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In fact, I would suggest that the argument in favor of same-sex marriage can only be logically sustained if one argues that there is no difference between men and women--that is, if one argues not merely that men and women are equal in value and dignity, a proposition I'm sure we all agree with, but that males and females are identical, and thus can serve as entirely interchangeable parts in the structure of marriage. This contention is biologically absurd, and "same-sex marriage" is thus an oxymoron.

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## FAMILY RESEARCH COUNCIL

January 24, 2005

by: Professor Gerard Bradley  
William Saunders, Esq.

The legal revolution to make same-sex "marriage" the law of the land has been uncommonly swift. With the Massachusetts case *Goodridge v. Department of Health*,<sup>1</sup> lawyers for homosexuals have taken same-sex "marriage" from exotic suggestion to virtual reality in barely a decade.

The Massachusetts decision could scarcely have been more radical. It declared that our perennial understanding of marriage as the union of man and woman was *irrational*--in other words, *utterly without foundation in reason*. The court likened opposition to same-sex "marriage" to the racist prejudice against interracial marriage.<sup>2</sup> As if to emphasize the point, the court's date for the first same-sex weddings--May 17, 2004--is fifty years to the day after segregation was forbidden in *Brown v. Board of Education*.

### The Same-Sex "Marriage" Strategy

There are various ways in which same-sex "marriage" might spread across the country. The first is piecemeal: one state at a time--similarly to how no-fault divorce laws spread during the 1960s.

Secondly, same-sex "marriage" might also spread by the migration of couples demanding recognition of their Massachusetts vows in other states; or finally, by a Supreme Court opinion declaring that the Constitution *requires* the recognition of their union.

As things now stand, the Supreme Court will have the last word on whether there is a constitutional right for two persons of the same sex to marry, as well as whether there must be *interstate* recognition of such unions. The only way to ensure that the Court as well as state judges and legislatures do not provide legal recognition of same-sex "marriage" is to amend the U.S. Constitution.<sup>3</sup>

### The Defense of Marriage Act

One possible bar to homosexual couples exchanging vows in Massachusetts, moving to another state, and demanding that their vows be recognized there is the Defense of Marriage Act (doma).<sup>4</sup> Enacted in 1996, this federal statute establishes that, for all federal purposes (such as tax returns, veterans' benefits, social security survivors' benefits, etc.), only a husband and wife count as spouses.

doma also addresses the "travel" question by specifying that no state shall be required to give effect to any act "respecting a relationship between persons of the same sex treated as a marriage under the laws of [any] other state." The intent of doma is to provide legal

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#### Summary:

The legal revolution to make same-sex "marriage" the law of the land is advancing more quickly than many imagined.

With the Massachusetts case *Goodridge v. Department of Health*, homosexual "marriage" has gone from exotic suggestion to virtual reality in barely a decade.

Efforts to prevent same-sex "marriage" include the Federal Defense of Marriage Act (DOMA) as well as legislative efforts in the states to prevent the legalization of such unions.

However, legal scholars believe that the ultimate protection lies in a constitutional amendment defining marriage as between a man and a woman.

This pamphlet answers objections to a federal marriage amendment and explains why such an amendment is necessary.

protection to states in danger of having these counterfeit marriages forced upon them by Massachusetts-wed same-sex "spouses" moving into their state.

The general legal rule in the United States is that marriage laws are entirely portable: Get married in one state, and you will be married in all the rest. This rule arises from various legal principles, among them "choice of law," comity among the states, and a constitutional doctrine called "Full Faith and Credit." *doma* makes an exception for same-sex "marriages".

It should be noted that *doma* does not reverse *Goodridge* and does nothing to relieve the citizens of Massachusetts (or any other state) of judicially-imposed same-sex "marriage". Rather, *doma* performs the limited but valuable service of protecting states from having to recognize such unions performed in states like Massachusetts. A state saddled by activist courts ruling for same-sex marriage--as in Massachusetts--would have to look elsewhere for relief. In such cases a state constitutional amendment would be required to correct the activist decision, as is currently being attempted in Massachusetts.

Under our Constitution, the laws and judgments of each state have some degree of influence in other states.<sup>5</sup> Under this "Full Faith and Credit" clause, Congress is empowered to prescribe the effect given to, for example, a state judgment from Illinois in Ohio. However, there are exceptions and limitations to the extraterritorial effect of state law. We will examine below the relevant one--the so-called "public policy exception."

Will the Supreme Court Uphold DOMA?

There are three reasons for concern as to whether *doma* will be upheld when challenged in court. First, since there is no precedent for *doma*, we simply do not know what difference Congress's *saying* that states need not recognize out-of-state marriages makes. On the few occasions where Congress has used its power to prescribe effects of state acts, Congress *required* states to recognize other states' acts--not the other way around.<sup>6</sup> *doma*, on the other hand, tells states that they are *not* required to recognize the marriage policy of another state.

Harvard Law School professor Laurence Tribe, a prominent constitutional commentator, vehemently denies that *doma* is constitutional. He says that Congress lacks the power to legislate a "categorical exemption" from the Full Faith and Credit Clause.<sup>7</sup>

A second reason to believe *doma* will not survive challenge in court has to do with an established exception to interstate recognition: public policy. The standard legal doctrine is that states are not obliged to recognize an out-of-state marriage that is contrary to a "strong [in-state] public policy."<sup>8</sup> Many people suppose that so long as a state makes clear that marriage is intended to be for a man and woman, then its public policy is strong enough so it would not have to give legal recognition to Massachusetts-style same-sex "marriages".

The Erosion of Marriage Law

The reality is unfortunately not that simple. Some states that do not recognize same-sex "marriage" nonetheless believe they might be forced, under Full Faith and Credit, to recognize such unions performed in another state.<sup>9</sup> But more importantly, whether a state's recognition of traditional marriage is actually a "strong public policy" is not settled by the mere assertion that it is.

State courts in Vermont, Massachusetts, Hawaii, and other states have in varying ways overturned their marriage laws despite long-established legal practice and custom that marriage is reserved to a man and a woman. The underlying problem is that so many concessions have been made to *de facto* "gay unions"--adoption, spousal benefits, and other incidents of marriage--that courts readily conclude that states do not consistently act on any coherent understanding of marriage.

The *Goodridge* court, for example, referred to the plaintiff couples (i.e., the gay wedding aspirants) as "families" and claimed that same-sex couples may be "excellent parents." If these folks are already families doing an excellent job with children, the court asked, why exactly are they prohibited from marrying like other couples who head families with kids?

By way of illustration, suppose a judge in Indiana hears the case of a same-sex couple "married" in Massachusetts that is challenging *doma* and suing to have their vows recognized in Indiana. The judge will ask the state's attorney to identify the rational basis for limiting marriage to a man and a woman. The likely reply will be: "because marriage is procreative."

This will invite the response by the court: "How is it that sterile couples are permitted to marry, and that there is no noticeable legal difference between how children born to married couples and single women are treated under the law?" The court, hearing no cogent response, will then likely declare that it is not the state's intent to promote marriage because of its link to procreation, and that the ostensible ground is really a cover for mere moral disapproval or simple prejudice, neither of which is a legitimate *rational* basis.

The state's attorney general might advance a second response: "The husband-wife marital home is where the state wishes to have childrearing take place." The court's reply could well be: "Then why does the state permit adoption by unmarried individuals, and even by same-sex couples?" And so on.

The preceding colloquy illustrates the reasoning that was, in fact, employed in *Goodridge* and in *Baker v. State*<sup>10</sup> (the Vermont civil unions case from 1999), and it is likely to be employed in any state that has made any concessions to "gay unions."

Thus it is impossible to be certain how the question of the interstate portability of Massachusetts' same-sex "marriages" will be resolved in the courts. Since the proliferation threat is both real and imminent, the only way to assure a favorable outcome is to establish law so clear--and whose constitutionality is so solid--that even judges disinclined to follow it will have no choice but to apply it. Any federal statute such as *doma* does not, and cannot, do that. A well-drafted constitutional amendment can.

#### A New Constitutional "Right" to Engage in Homosexual Acts

Regardless of the intricacies of the Full Faith and Credit Clause, *doma* must pass basic constitutional tests. These tests include minimum standards of equality and rationality. Every law must serve a legitimate state purpose and rationally serve that end. This test provides the third reason *doma* is unlikely to survive a court challenge.

In *Lawrence v. Texas* (2003) the Supreme Court for the first time ruled that states may not forbid people to engage in non- or extra-martial sex acts.<sup>11</sup> The justices said that the Texas law lacked any basis in reason, and that therefore no legitimate state interest was involved.<sup>12</sup>

The Court made a significant--and radical--statement about a supposed constitutional protection for homosexual relationships. The *reason* why homosexual acts are protected, the Court said, is precisely because such acts may constitute a person's identity; because sexual conduct "can be but one element in a personal bond that is more enduring;" because penalizing sodomitical acts could lead to "discrimination both in the public and the private spheres."<sup>13</sup>

Therefore, the Court said, "persons in a homosexual relationship" have a right to the *same* constitutional liberty when it comes to marriage, procreation, and family that "heterosexual persons do."<sup>14</sup> *Lawrence* is not about sodomy and privacy. It is about homosexual "bonds" and state respect for them.

The dissenting justices argued that such reasoning would "dismantle the structure of constitutional law" that has permitted legal marriage only between a man and a woman.<sup>15</sup> *Lawrence* is a very forbidding warning that any law against same-sex "marriage"--doma included--is unlikely to survive.

#### The Federalist Approach to a Constitutional Amendment

Proposals to protect marriage by amending the U.S. Constitution fall basically into two categories. The first would seek to address only the interstate travel problem. This category of proposals would tolerate same-sex marriage in any state where it arose due to legal action *within* that state. Each state would thus determine its own definition of marriage.

This type of amendment appeals to the American tradition of federalism. Supporters of redefining marriage--as well as some of their opponents--criticize proposals to establish a national definition of marriage. They say that in our federal system of fifty states combined in one union, states have always been, and should remain in charge of determining marriage law.

However, there already exists a national definition of marriage everywhere in the United States. No one other than a husband and wife, for example, may submit a form 1040 to the Internal Revenue Service listing themselves as "married, filing jointly." In addition, at least until May 17, 2004, there has been *one* common definition of marriage at the state level.

Proponents of the federalist approach cite an 1878 Supreme Court case *Pennoyer v. Neff*, where the Court ruled that a state has an "absolute" right to decide the "conditions upon which the marriage relation shall be created."<sup>16</sup> By 1971, however, the Supreme Court (in *Boddie v. Connecticut*) found the state's power to be much less "absolute": marriage was regulated by the states "absent some specific federal constitutional or statutory provision."<sup>17</sup>

For better or worse, the national government and the courts have by and large taken the power to define marriage out of the states' hands. The Supreme Court's promissory note in *Lawrence v. Texas*--that it will require same-sex "marriage" as part of everyone's liberty to express oneself sexually, without suffering discrimination--signals the final stage of this takeover.

#### The "Definition Approach" to Amending the Constitution

The other type of amendment seeks a constitutional definition of marriage as the union of a man and a woman. Nothing else in the United States could be a legal marriage. Any other definition of marriage in any state law would be void.

Once again, critics of a definitional amendment claim that defining marriage has always been the business of the states, and that it should remain so. But *Lawrence* already signals that we *will* soon have a single national definition of marriage, and it will be one in which every state will be forced to recognize same-sex couples as "married." As Robert Bork says, "One way or another, federalism is going to be overridden. The only question is whether the general rule will permit or prohibit marriage of same-sex couples."<sup>18</sup>

#### The False Comparison with Interracial Marriage

Before considering the defining features of marriage and the extent to which states have authority over them, we should examine a special case of national intervention in marriage. In 1967, the Supreme Court held in *Loving v. Virginia* that states could not ban interracial marriage.<sup>19</sup> The language of *Loving* as well as constitutional logic means that in these United States, race (including ethnicity, color, and nationality) have nothing to do with the definition of marriage.

Regrettably, the Massachusetts court in *Goodridge* misinterpreted the intent of *Loving*. *Goodridge* said: "Recognizing the right of an individual to marry a person of the same sex will not diminish the value or the dignity of opposite sex marriage, any more than recognizing the right of an individual to marry a person of a different race devalues the marriage of a person who marries someone of her own race."<sup>20</sup>

This distinction is based on a fundamentally flawed analogy. One's race is irrelevant to whether one possesses the characteristics necessary to enter into marriage (which requires the sexual complementarity of the spouses), i.e., that one is either a man or a woman. However, if both parties are of the same sex, neither of them can fulfill the necessary requirement, i.e., to be of the sex that is the opposite of the person one wishes to marry. *Goodridge*, with its fundamental misunderstanding of *Loving*, only serves to underline the necessity of a constitutional amendment before other courts issue similarly misguided rulings.

### The Nature of Marriage

The defining features of marriage are a union between a man and a woman that is (a) monogamous; (b) sexually exclusive; (c) the morally legitimate context for raising children; and (d) permanent.

Individual states have limited autonomy with regard to each of these characteristics. Monogamy, for example, was imposed upon territories seeking statehood by the national government towards the end of the nineteenth century, in the course of the protracted struggle over polygamy. While it may be true that a state could, at least theoretically, recognize plural marriages, the certain effect of the polygamy cases decided by the Supreme Court is that no one has a right, even on the basis of sincere religious belief, to enter a polygamous marriage.

And then there is the "slippery slope" argument: If two men or two women can marry, why not three or more? Why not a group of men and women? In this extension of *Lawrence's* logic, states would be powerless to limit marriage to couples--or groups of any sort.

The central presupposition of many Supreme Court cases is that marriage is distinctively the sexual communion of a man and a woman, which results naturally in children. In condemning an Oklahoma law in 1942 that punished certain career criminals with sterilization,<sup>21</sup> the Court referred to "marriage and procreation" as "one of the basic civil rights of man."<sup>22</sup>

Before *Lawrence*, the states had protected marriage through laws against non- and extra-marital sex. This protective mantle also originally included laws concerning illegitimacy, which were designed to limit procreation to married couples.

The two types of laws are mutually reinforcing: They sought to limit sex to marriage and increase the chances that children will be born only to married couples. Even today, states that are defending marriage against the same-sex onslaught argue that they are upholding the time-honored link among marriage, sexual activity, and procreation. Vermont unsuccessfully pressed this argument in the civil unions case, *Baker v. State*, in 1999.<sup>23</sup> The linkage between "marriage, sex, kids" remains the traditional, common understanding.

But again, it was the national government that intervened. In *Levy v. Louisiana* (1968), the Court ruled that most legal distinctions based upon illegitimacy are unconstitutional.<sup>24</sup> Louisiana sought to justify such laws as attempts to make marriage the basis of family relationships. However, the Court seemed to have believed such laws constituted unfair burdens lacking in social value.<sup>25</sup>

Finally, while the spread of no-fault divorce has severely weakened the permanency of marriage, it should be noted that the Court's language in *Lawrence* may make reform of no-

fault divorce difficult. Here again, the national government limits what is purportedly a state law matter.

### The Need to Experiment?

The most common justification for federalism is that, rather than straitjacket the whole nation with a single legal template, it is better to allow states to experiment with different legal solutions to social problems. Thus, we can eventually determine what works and what does not. Another common justification is that problems vary from state to state, and that these local variations demand different responses. One response might be appropriate for Utah, another for Arizona, and still a third for New Jersey.

Neither of these common justifications for federalism is relevant to the marriage question. The question is whether men can marry men and women can marry women. The common good requires everywhere a single answer, and that answer is *no*. Marriage is an institution that has an inherent meaning. Nothing peculiar to New York or to Wyoming makes any difference. There is no need to experiment, and indeed, it would be foolhardy to do so.

### Conclusion

To save marriage, that is, to ensure marriage remains reserved to one man and one woman, will require amending the U.S. Constitution. In the absence of such an amendment, it is likely marriage will be fundamentally transformed through the judicial recognition of same-sex "marriage". This will happen either through application of the Full Faith and Credit Clause, or by the determination that same-sex "marriage" is protected, through substantive due process, as a liberty interest under the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the Constitution.

Either through a Full Faith and Credit decision or through a substantive due process decision, it is all but certain the Supreme Court will legalize same-sex "marriage". It is highly unlikely that the Supreme Court will allow a federal statute such as *doma* to interfere with this newfound fundamental "right to engage in homosexual conduct." Thus, the sole remaining recourse against such runaway judicial activism is through an amendment to the Constitution of the United States. We delay at our peril.

*Gerard V. Bradley is Professor of Law at the University of Notre Dame School of Law. William Saunders is Senior Fellow at the Family Research Council.*

1 440 Mass. 309 (2003), 798 N.E. 2d 941 (2003)

2 *Id.* at p. 965.

3 "This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound hereby, anything in the Constitution or laws of any State to the contrary notwithstanding." U.S. Constitution, Article VI.

4 Public Law 104-199 (104<sup>th</sup> Congress), September 21, 1996: "No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship."

5 "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof." U.S. Constitution, Article IV, Section I.

6 H.R. Rep. No. 3396, 104 Cong., 2d Sess. (2004)

7 Laurence H. Tribe, *American Constitutional Law* (3 ed; 2000), Sec. 6-35 at 1247 n.49.

8 "The Full Faith and Credit Clause does not require a State to apply another State's law in violation of its own legitimate public policy." *Nevada v. Hall*, 440 U.S. 410, 422 (1980).

9 See, e.g., Letter of Caitlin Halligan, Solicitor General, State of New York, March 3, 2004.

10 744 A. 2d 864 (Vt 1999).

11 No. 02-102, slip op. at 1\_(539 U.S.\_\_\_\_(2003), 123 S.C. 2472.

12 Id. at p. 18.

13 Id. at p. 6, 13-14.

14 Id. at p. 13.

15 Dissenting opinion, J. Scalia, at pp. 20-21.

16 95 U.S. 714, 734-35 (1877).

17 401 U.S. 371, 389 (1971).

18 "Stop Courts from Imposing Gay Marriage," *Wall Street Journal*, Aug. 7, 2001, at A-14.

19 388 U.S. 1, 12 (1967).

20 440 Mass. 309, 798 N.E. 2d 941, 965 (2003).

21 *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

22 Id. at p. 541.

23 744 A. 2d 864 (Vt 1999).

24 391 U.S. 68 (1968).

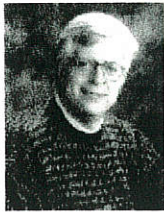
25 Id at p. 69.

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DENNIS PRAGER



## When women marry, Democrats lose

Posted: September 23, 2003  
1:00 a.m. Eastern

By Dennis Prager

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It takes a particularly noble Democrat to promote marriage and family. The strengthening of these institutions is not in the Democratic Party's self-interest. The more people marry, and especially the more they have children after they marry, the more likely they are to hold conservative values and vote Republican.

That is why it is inaccurate to speak of a "gender gap" in Americans' voting. The gap is between married and unmarried women. Single women, especially single women with children, tend to vote Democratic, while married women, especially married women with children, tend to vote Republican.

Why is this?

There are two primary reasons.

One is that women's nature yearns for male protection. This is a heretical idea among the well-educated whose education is largely devoted to denying the facts of life. But it is a fact of life that can easily be proven: Extremely wealthy women almost always seek to marry men who are even wealthier than they are. Actress Jane Fonda had more money than almost anyone in America, yet she married Ted Turner, a man who had even more money than she. Though fabulously wealthy and a feminist, Ms. Fonda nevertheless could not shed her female nature.

Given women's primal desire to be protected, if a woman has no man to provide it, she will seek security elsewhere - and elsewhere today can only mean the government. In effect, the state becomes her husband. This phenomenon has frequently been commented on with regard to the breakdown of many black families. The welfare state simply rendered many black men unnecessary and therefore undesirable as spouses: Why marry when you can get more benefits from the state while remaining single (and get even more money if you have children while remaining single)?

Once a woman does marry, however, her need for the state not only diminishes, she now begins to view the state as inimical to her interests. For the married woman, especially if

she has children, two primal urges work against her having a pro-big government attitude. Her urge to be protected, which is now fulfilled by her husband, and her primal urge to protect her nest are now endangered by the government, which as it grows, takes away more and more of her family's money.

Once a woman marries and has children, therefore, her deepest desires - to be protected and to protect her family - work as strongly on behalf of conservative values and voting Republican as they did on behalf of liberalism and the Democratic Party when she was single.

The other reason married women are less likely to be liberal and vote Democratic relates to maturity and wisdom.

Just about everyone - a man as much as a woman - is rendered more mature and wiser after marrying. This is not an insult to singles. It was as true of me as of anyone else. If you're single, ask any married person - happily or unhappily married - whether or not marriage has matured them.

The single biggest change induced by marriage is that you can no longer think only about yourself. "I" becomes "we." Narcissism becomes far less possible in marriage than in the single state. And just as marriage decreases narcissism, it increases wisdom. Having to relate to another human being (especially of the opposite sex) to whom you have made a lifelong commitment (even if it ends in divorce) vastly increases your wisdom. And if you have children, your wisdom increases exponentially. Again, ask any parent if they are wiser since becoming a parent.

Am I implying that increasing one's maturity and wisdom works in favor of the Republicans and against liberalism and the Democrats? Absolutely. Wisdom and contemporary liberalism are in conflict. That is why the vast majority of people who change their politics as they get older (and presumably wiser) change them from liberal to conservative.

For all these reasons, the Democrats know how important it is for them to expand dependency on government and to promote "alternative families" rather than the family that consists of a married man and woman with children.

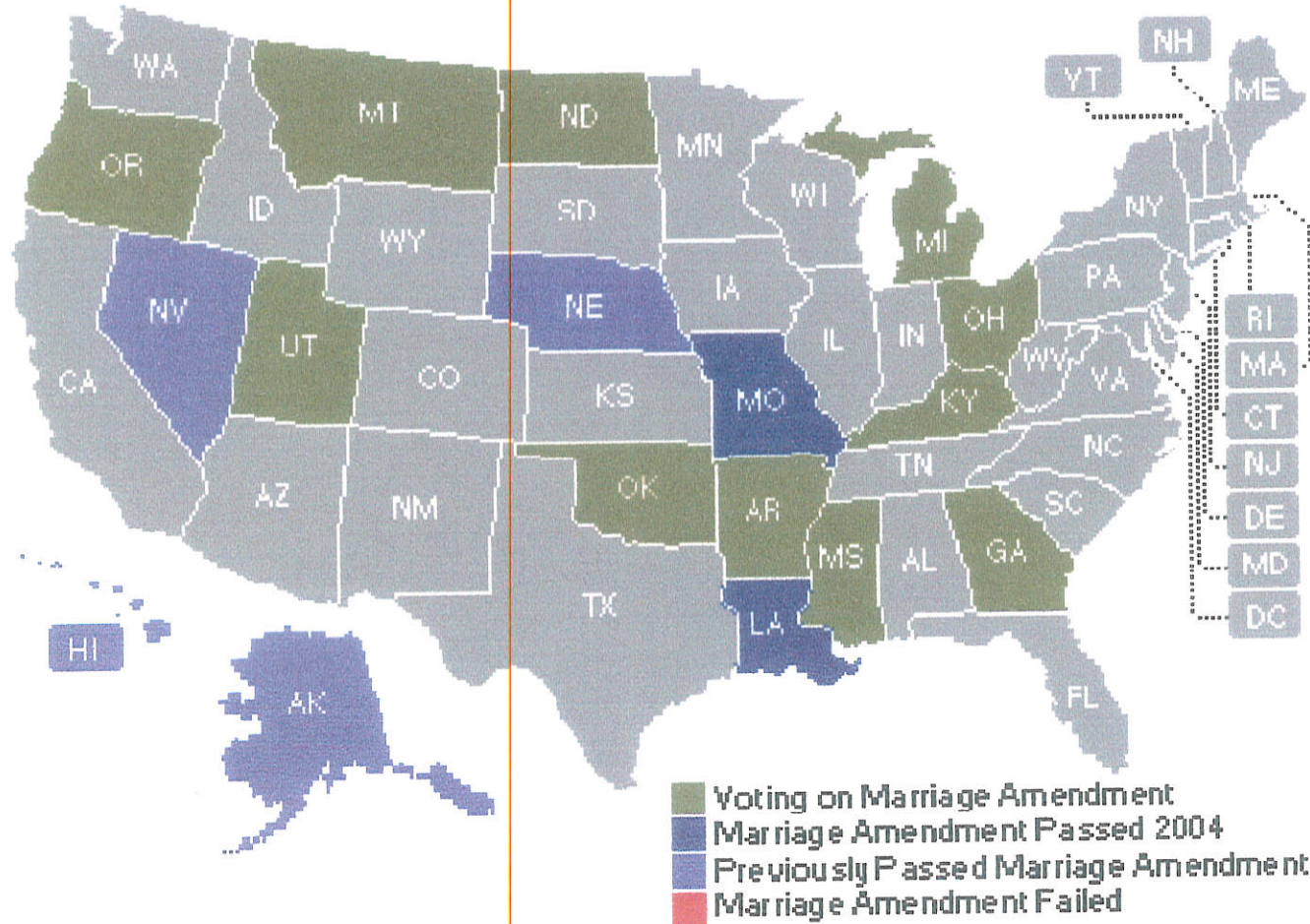
The Democrats know where their votes are.

*Dennis Prager, one of America's most respected and popular nationally syndicated radio talk-show hosts, is the author of several books and a frequent guest on television shows such as Larry King Live, Politically Incorrect, The Late Late Show on CBS, Rivera Live, The Early Show on CBS, Fox Family Network, The O'Reilly Factor and Hannity & Colmes.*

# 2004 State Marriage Constitutional Amendments

This is an overview of all the pending or recently passed state constitutional amendments (marriage protection amendments) which will be on the ballot this fall (2004). The exception is Missouri's amendment which passed on August 3. This resource includes information as to whether the issue made it to the ballot via the legislature or an initiative drive and what the status of those initiatives are.

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*BIOGRAPHICAL INFORMATION*

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Master Parachutist, and Jumpmaster with more than 100 military jumps

Combat Veteran

Disabled Veteran

• LOCAL

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Pastor at Ashland Community Church 7 years

• ORGANIZATIONS

Disabled American Veterans

American Legion

82d Airborne Association

**KANSAS HOUSE OF REPRESENTATIVES  
FEDERAL AND STATE AFFAIRS COMMITTEE**

**2005 Regular Session**

January 25, 2005

Representative John Edmonds, Committee Chair

Prepared Testimony of Kevin H. Theriot

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FEDERAL AND STATE AFFAIRS

Date 1-23-05

Attachment 10

**KANSAS HOUSE OF REPRESENTATIVES  
FEDERAL AND STATE AFFAIRS COMMITTEE**

**2005 Regular Session**

**January 25, 2005**

**Representative John Edmonds, Committee Chair**

**Prepared Testimony of Kevin H. Theriot**

Good afternoon Mister Chairman, Members of the Committee, and other distinguished guests. I am pleased to have been given the opportunity to testify in favor of Senate Concurrent Resolution No. 1601 (the "Amendment") regarding the need to put before the voters an amendment of the Kansas state constitution defining marriage as a civil contract between one man and one woman. My testimony represents my professional knowledge and opinion as a Kansas attorney who is involved in protecting marriage on a state and national level in my capacity as Senior Legal Counsel for the Alliance Defense Fund.

There is widespread agreement that marriage is a unique relationship between one man and one woman.<sup>1</sup> Kansas law currently reflects the understanding that marriage is the union of a man and a woman,<sup>2</sup> as does the law that has been legislatively enacted in all fifty American states.<sup>3</sup> These laws are based on the understanding that men and women are fundamentally different, and this difference is foundational to the institution

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<sup>1</sup> Opinions polls have consistently revealed that Americans oppose same-sex marriage by significant margins. See e.g. Roper Opinion Poll, *U.S. News and World Report* (May 1993)(60% "strongly oppose" and 14% "somewhat oppose" recognition of same sex marriages) available in Westlaw poll database with search "same sex marriage"; Dana Blanton, *Majority Opposes Same Sex Marriage* (62% oppose and 26% favor same sex marriage. 58% favor and 34% oppose a constitutional amendment defining marriage as being between a man and a woman)(Aug. 26, 2003) at <http://www.foxnews.com/story/0,2933,95753,00.html>; The Harris Poll, *Attitudes to Gays and Lesbians Have Become More Accepting, but Most People Still Disapprove of Single-Sex Marriages and Adoption by Same Sex* (Feb. 9, 2000) (63% of those surveyed in 1996 opposed and 11% approved same sex marriage while 55% opposed and 16 % approved same sex marriage in 2000) at [http://www.harrisinteractive.com/harris\\_poll/index.asp?PID=1](http://www.harrisinteractive.com/harris_poll/index.asp?PID=1); David Morris and Gary Langer, *Most Oppose Same Sex Marriage But Balk at Amending [Federal] Constitution* (Jan. 21, 2004)((55% believe it should be illegal for homosexual couples to get married and 58% believe each state should make its own law) at <http://abcnews.go.com/images/pdf/945a2GayMarriage.pdf>; and CBS News Poll, *Poll: Few Favor Same-Sex Marriage* (March 15, 2004) ("[a] constitutional amendment that would allow marriage only between a man and a woman has the support of nearly six in ten Americans") at <http://www.cbsnews.com/stories/2004/03/15/opinion/polls/main606453.shtml>.

<sup>2</sup> Kan. Stat. Ann. § 23-101 (2004).

<sup>3</sup> This is true even in Vermont where the legislature, under judicial order, adopted statutes creating the legal status of "civil unions" which are intended to be the legal equivalent of marriage, but do not bear the title marriage. 15 Vt. Stat. Ann. Sec. 1201(4).

of marriage and a democratic society.

## I. The Current Attack on Marriage Makes the Amendment Necessary.

### A. *The Situation in the Courts*

This consensus, however, has been under continuing attack. For the past thirty-five years there has been a well-orchestrated effort by some gay-rights activists to obtain recognition of same-sex unions as marriages.<sup>4</sup> Unsuccessful in persuading the public and elected representatives of the people on the merits of their claim, advocates have turned to the courts, arguing that the federal and state constitutions require recognition of same-sex marriage. To date, no federal court has agreed.<sup>5</sup> However, state courts in Hawaii,<sup>6</sup> Alaska,<sup>7</sup> Vermont,<sup>8</sup> and Massachusetts<sup>9</sup> have found that varied provisions of those state constitutions require recognition of same-sex unions.

In Hawaii the Supreme Court found that, absent a showing of a compelling state interest, equal protection as guaranteed by the state constitution required the state to issue marriage licenses to same sex couples.<sup>10</sup> In Alaska the state constitutional protection of privacy provided the warrant for a trial court to order officials to issue marriage licenses to same sex couples.<sup>11</sup> The citizens of Hawaii and Alaska responded to the actions of their courts by amending their state constitutions to correct what was largely perceived as judicial overreaching.<sup>12</sup>

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<sup>4</sup> The long-standing nature of this effort is evidenced by *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971) (defining marriage as requiring one man and one woman was not discriminatory), and *Singer v. Hara*, 522 P.2d 1187 (Wash. 1974) (same).

<sup>5</sup> See *Shahar v. Bowers*, 114 F.3d 1097 (11<sup>th</sup> 1997) (upholding Ga. attorney general's withdrawal of employment offer to a woman due to fact that she entered into a same-sex union).

<sup>6</sup> *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993) (equal protection clause requires state show compelling interest in restricting marriage to one man and one woman).

<sup>7</sup> *Brause v. Bureau of Vital Statistics*, 1998 WL 88743 (Alaska Super. Ct. Feb. 27, 1998) (state constitutional right of privacy requires recognition of same-sex marriage).

<sup>8</sup> *Baker v. State*, 744 A.2d 864 (Vt. 1999) (common benefits clause requires recognition of same-sex unions).

<sup>9</sup> *Goodridge v. Dept. of Public Health*, 798 N.E.2d 941 (Mass. 2003).

<sup>10</sup> *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993) (equal protection clause requires state show compelling interest in restricting marriage to one man and one woman).

<sup>11</sup> *Brause v. Bureau of Vital Statistics*, 1998 WL 88743 (Alaska Super. Ct. Feb. 27, 1998) (state constitutional right of privacy requires recognition of same-sex marriage).

<sup>12</sup> "The legislature shall have the power to reserve marriage to opposite-sex couples." Haw. Const. Art. I, sec. 23 (added after passage in general election Nov. 3, 1998) available at [www.hawaii.gov/lrb/con/condoc.html](http://www.hawaii.gov/lrb/con/condoc.html), "To be valid or recognized in this State, a marriage may exist only between one man and one woman." Alaska Const., Art. I, sec. 25 (added after passage in general election

In Vermont, the court based its decision recognizing same sex unions as the equivalent of marriage in the “common benefits” clause of the state constitution, a provision similar to, but different from, the equal protection guarantees found in the Fifth and Fourteenth Amendments of the federal constitution.<sup>13</sup> Vermont legislators did not afford their citizens the opportunity to correct this judicial interpretation, instead passing Act 91, *An Act Relating to Civil Unions*.<sup>14</sup> The Vermont statute creating civil unions was passed in compliance with that state’s supreme court order to “create a parallel licensing or registration scheme, and extend all or most of the same rights and obligations provided by the law to married partners.”<sup>15</sup> As initially enacted civil unions differed from civil marriage in name only – same sex couples enjoyed all the legal benefits and obligations of marriage under Vermont law.

Because the vast majority of couples obtaining civil union licenses are not Vermont residents,<sup>16</sup> the question of interstate recognition of these unions has been raised in several states with mixed results.<sup>17</sup> At this time there is no final appellate judgment giving interstate recognition to a Vermont civil union.

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Nov. 3, 1998) available at <http://www.gov.state.ak.us/lsgov/akcon/table.html>.

<sup>13</sup> *Baker*, 744 A.2d at 870-71.

<sup>14</sup> This Act is available online at [www.sec.state.vt.us/civilunionlaw.htm](http://www.sec.state.vt.us/civilunionlaw.htm).

<sup>15</sup> *Baker v. State*, 744 A.2d 864 (Vt. 1999).

<sup>16</sup> By November 2002, 4,979 licenses had been issued for civil unions. Of these 4,203 were issued to out-of-state residents. Demian, *Civil Unions: the Vermont Approach*, available at <[www.buddybuddy.com/d-verm.html](http://www.buddybuddy.com/d-verm.html)>.

<sup>17</sup> A Texas trial court initially granted a divorce to two men who had obtained a civil union, but withdrew the opinion when challenged as a violation of Texas law recognizes marriage as the union of a man and a woman. See Greg Abbott, Attorney General of Texas, Press Release *Judge Vacates Order in Beaumont Divorce Case After Attorney General Abbott Intervenes* (Mar. 28, 2003) available at <[www.oag.state.tx.us/newspubs/releases/2003/20030328samesex.shtml](http://www.oag.state.tx.us/newspubs/releases/2003/20030328samesex.shtml)>. New York has recognized civil unions as the basis for a wrongful death claim by a partner. That matter is on appeal. *Langan v. St. Vincent's Hosp. of N.Y.*, Index 11618 (Nassau Cty. Sup. Ct., N.Y. 2003). Pleadings and order available at <[www.marriagewatch.org/cases/ny/langan/langan.htm](http://www.marriagewatch.org/cases/ny/langan/langan.htm)>. In Iowa a trial judge granted two women a divorce from a civil union, but the matter is on appeal. *Judge Amends Controversial Lesbian Divorce* (Dec. 31, 2003) at <[www.gaywired.com](http://www.gaywired.com)>. *Alons et al. v. Judge of the Iowa Dist. Ct. for Woodbury Cty*, 03-1982 (Iowa App. Ct 2003). In Georgia, the existence of a civil union is not recognized as a basis to avoid application of a custody provision prohibiting visitation of children during periods of parental cohabitation. *Burns v. Burns*, 560 S.E.2d 47, 48 (Ga. App. 2002). In Connecticut, civil unions are not subject to dissolution under that state’s provisions for divorce. *Rosengarten v. Downes*, 802 A.2d 170 (Conn. App 2002).



## **B. Massachusetts**

On November 18, 2003 the Massachusetts Supreme Judicial Court ruled 4-3 in *Goodridge v. Dept. of Public Health* that the state's laws reserving marriage for the union of one man and one woman were unconstitutional.<sup>18</sup> Justice Greaney, citing *Lawrence v. Texas*,<sup>19</sup> an opinion of the United Supreme Court, said that morality was no longer a rational basis for upholding the law, which is the minimal test for a law's constitutionality.<sup>20</sup> In fact, the Massachusetts court found no rational basis whatever for upholding the law.

Writing for the majority, Chief Justice Margaret Marshall gave the legislature 180 days to "take appropriate action" in light of the opinion, which was widely interpreted as an "order" to create a "gay marriage" law, even though the court did not state this. Under this ruling, marriage licenses began to issue to same-sex couples on May 17, 2004.

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## **C. Other Cases in the States**

Not to be outdone, Mayor Gavin Newsom of San Francisco announced on February 12, 2004, that he would begin issuing same-sex marriage licenses of his own at City Hall.<sup>21</sup> As thousands of homosexual couples rushed to San Francisco to get "married," several renegade local officials in New York, New Mexico, and Oregon began offering the same service. Legal actions by private parties and the state attorneys general were ultimately required to restore order to the chaos and enjoin the illicit same-sex "marriage" ceremonies in each jurisdiction.<sup>22</sup>

## **II. The Proposed Amendment is Constitutional.**

Most challenges to state constitutional amendments protecting marriage fall into two categories: (1) The amendment was not properly adopted; and/or (2) The Amendment violates the Federal Constitution. To date, neither of these arguments has ever been successful when challenging a state constitutional amendment protecting marriage. They present no obstacle to the proposed Amendment as currently written.

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<sup>18</sup> 798 N.E.2d 941 (Mass. 2003).

<sup>19</sup> 539 U.S. 558, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003).

<sup>20</sup> 798 N.E.2d 973 (Mass. 2003) (Greaney J. concurring).

<sup>21</sup> See, e.g., Lee Romney, *San Francisco First: Same Sex Marriages*, SEATTLE TIMES, Feb. 13, 2004; Alison Soltau, *City Expects Slew of Suits*, SAN FRANCISCO EXAMINER, Feb. 13, 2004; *LAMBDA Legal Intends to Take Any Action Necessary to Make Sure Marriage Licenses Continue to be Issued to Same Sex Couples in San Francisco*, LAMBDA Legal PR, Feb. 12, 2004; *Gay Marriage Opponents File to Block San Francisco as Gays Rush to City for Licenses*, SAN DIEGO UNION-TRIBUNE, Feb. 12, 2004.

<sup>22</sup> The Alliance Defense Fund, counsel for intervenors/appellants herein, also served as counsel in several of those actions. See, e.g., *Lockyer v. City & County of San Francisco*, consolidated with *Lewis v. Alfaro*, \_\_\_ Cal. Rptr. 3d \_\_\_, 2004 WL 1794627 (Cal., Aug 12, 2004).

**A. The Amendment Addresses One Subject: Marriage**

The Kansas Constitution requires that constitutional amendments presented to the electorate for a vote must address only one subject at a time. Article 14, Section 1 states:

When more than one amendment shall be submitted at the same election, such amendments shall be so submitted as to enable the electors to vote on each amendment separately.

The Kansas Supreme Court has determined that “[i]t was evidently the intention of this provision to require that amendments which are incongruous, or which do not *relate to the same subject matter or have the same object and purpose*, should be considered as separate amendments.” *Moore v. Shanahan*, 486 P.2d 506, 516 (Kan. 1971) (emphasis added).

All of the provisions of the proposed Amendment meet this test because they relate to the same subject matter and have the same object and purpose. It is undisputable that each sentence of Senate Concurrent Resolution No. 1601 relates to the same subject matter: Marriage. Neither is there any uncertainty that each sentence has the same object and purpose: to protect marriage. In *Forum for Equality v. McKeithen*, Nos. 04CA2477 & 04CA2523, 2005 WL 106567 (La. S.Ct. Jan. 19, 2005), the court upheld a similar statute under Louisiana’s “single object” requirement. The court found that Louisiana’s amendment which protected marriage from attacks similar to those in Vermont and Massachusetts had the single object of defending marriage.

Given the rule “that the constitutionality of a statute or concurrent resolution is presumed, and that all doubts must be resolved in favor of their validity,” *Vansickle v. Shanahan*, 511 P.2d 223, 230 (Kan. 1973), there is no doubt that the proposed Amendment will survive such a challenge. Senate Concurrent Resolution No. 1601, if adopted by the voters of Kansas, will pass scrutiny under Article 14, Section 1 of the Kansas Constitution.

**B. The Amendment Will Survive a Challenge Based on the Federal Constitution.**

A challenge to the constitutionality of the language in Senate Concurrent Resolution No. 1601 may also allege that it violates various provisions of the Federal Constitution. Such a challenge will also fail. This is because the U.S. Supreme Court has already ruled that there is no constitutional right to same-sex marriage when it denied certiorari in *Baker v. Nelson*, 409 U.S. 810 (1972). See *Wilson v. Ake*, \_\_\_ F.Supp.3d \_\_\_, No. 804cv1680, 2005 U.S. Dist LEXIS 755 (M.D. Fla. Jan. 19, 2005) (finding that *Baker* is binding Supreme Court precedent on the issue of whether limiting marriage to opposite sex couples violates the United States Constitution); *Morrison v. Sadler*, \_\_\_ N.E.2d \_\_\_, NO. 49A02-0305-CV-447, 2005 WL 107151 (Ind.App. Jan 20, 2005) (acknowledging same).

In *Baker v. Nelson*, 409 U.S. 810 (1972) (“appeal dismissed for want of a substantial federal question”), the United States Supreme Court considered and rejected the claims by two Minnesota men that Minnesota’s exclusion of same-sex couples from marriage violated the Ninth and Fourteenth Amendments to the U.S. Constitution. The Court affirmed the Minnesota Supreme Court’s ruling that there is no fundamental right to same-sex “marriage” under the Ninth Amendment or the Due Process Clause of the Fourteenth Amendment, and that excluding same-sex couples from marriage does not constitute irrational or invidious discrimination under the Equal Protection Clause of the Fourteenth Amendment. *See Baker*, 191 N.W.2d at 186-87. The Minnesota Supreme Court had ruled that the Minnesota definition of marriage “does not offend the First, Eighth, Ninth, or Fourteenth Amendments to the United States Constitution.” *Id.* at 187.

Under current *certiorari* jurisprudence, it sounds strange to say that there is precedential value in a Supreme Court dismissal without opinion of an appeal from a State Supreme Court. Indeed, under current rules, review of a State Supreme Court decision is entirely discretionary under the U.S. Supreme Court’s *certiorari* jurisdiction. 28 U.S.C. § 1257(a). “*Cert. denied*” has little, if any, precedential effect. *See Hopfmann v. Connolly*, 471 U.S. 459, 460 (1985) (unlike dismissal for want of a substantial federal question, denial of *certiorari* has no precedential effect). But the Supreme Court jurisdictional rules were different before 1988. In 1987 and before, 28 U.S.C. § 1257 read as follows:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

...

(2) *By appeal*, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

28 U.S.C. § 1257 (as amended July 29, 1970, Pub. L. 91-358, 84 Stat. 590) (emphasis added). Because the Minnesota Supreme Court decided in favor of the validity of the Minnesota statute, the plaintiffs had an automatic right of appeal to the U.S. Supreme Court. On direct appeal, The Supreme Court “dismissed for want of a substantial federal question.” *Baker v. Nelson*, 409 U.S. at 810.

The Supreme Court had no discretion to refuse to consider the merits of the appeal in *Baker v. Nelson*, 409 U.S. 810 (1972). Thus, the dismissal of the appeal for want of a substantial federal question was a definitive decision on the merits of the precise issues presented on appeal. Other federal courts may not decide that the issues presented to the Court in *Baker* present a substantial federal question that they are entitled to decide differently. The courts that have discussed the nature of the dismissal in *Baker* have recognized the binding nature of the decision. *See Adams v. Howerton*, 486 F. Supp. 1119, 1124 (C.D. Cal. 1980) (Supreme Court’s dismissal of *Baker* appeal was “an

important adjudication on the merits”), *aff’d on other grounds*, 673 F.2d 1036, 1039 n. 2 (9<sup>th</sup> Cir.) (noting that the Supreme Court’s dismissal of the *Baker* appeal “operates as a decision on the merits”), *cert. denied*, 458 U.S. 1111 (1982).

The elimination of the Court’s appellate jurisdiction in 1988 does not change the applicability of this rule to current cases. 16B CHARLES A. WRIGHT, ARTHUR R. MILLER, & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4014 (2003) (“Abolition of the appeal jurisdiction does not change this rule. Lower courts must continue to honor it”).

The Supreme Court’s dismissal in *Baker* of the appeal for want of a substantial federal question was a rejection of the merits of these claims. There is no federal due process, equal protection or privacy right to same-sex marriage in the Ninth or Fourteenth Amendments to the U.S. Constitution. Courts are “not free to disregard this pronouncement.”<sup>18</sup> *Hicks v. Miranda*, 422 U.S. 332, 344 (1975).

## 1. There Is No Fundamental Right to Same-Sex “Marriage.”

*Baker* is dispositive of due process, equal protection and right to privacy claims of a right to same-sex “marriage,” and subsequent developments in the law have not undermined the validity of the Supreme Court’s ruling. The U.S. Constitution would not support a right to same-sex “marriage” even without *Baker*.

### a. Due Process does not provide a substantive right to same-sex “marriage”

Fundamentally, advocates of same-sex marriage are seeking a court-ordered redefinition of marriage to create a new substantive due process right. *See Wilson v. Ake*, \_\_\_ F.Supp.3d \_\_\_, No. 804cv1680, 2005 U.S. Dist LEXIS 755 (M.D. Fla. Jan. 19, 2005) (rejecting the argument that there is a fundamental right to marry someone of the same sex). The Supreme Court “ha[s] always been reluctant to expand the concept of substantive due process because guideposts for responsible decision making in this unchartered area are scarce and open-ended.” *Washington v. Glucksburg*, 521 U.S. 702, 720 (1997) (internal quotation marks and citation omitted). The Court has defined two criteria for evaluating a claim of a fundamental right under the Due Process Clause:

Our established method of substantive-due-process analysis has two primary features: First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, *objectively*, deeply rooted in this Nation’s history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor

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<sup>18</sup>Although *Baker* may not have the same precedential weight before the U.S. Supreme Court as plenary consideration would have, *Edelman v. Jordan*, 415 U.S. 651, 670-71 (1974), the issues “necessarily decided” prevent other federal courts from reaching opposite conclusions. *Mandel v. Bradley*, 432 U.S. 173, 176 (1977).

justice would exist if [it] were sacrificed. Second, we have required in substantive-due-process cases a careful description of the asserted fundamental liberty interest.

*Id.* at 720-21 (citations and internal quotation marks omitted; emphasis added). The first step in this procedure is to “carefully formulat[e] the interest at stake.” *See id.* at 722.

The interest at stake here is not the historical right to marry, but the right to marry a person of the same sex. It is clear that there is no right to marry a person of the same sex that is “objectively, deeply rooted in this Nation’s history and tradition.” *Id.* at 721. Indeed, no state in this nation has ever passed a law permitting a marriage between persons of the same sex, and thirty-nine states have passed laws or constitutional amendments explicitly prohibiting such marriages.<sup>19</sup> This is the kind of national tradition that the Court relied upon in *Glucksberg* to reject a right to assistance in committing suicide:

Here . . . we are confronted with a consistent and almost universal tradition that has long rejected the asserted right, and continues explicitly to reject it today, even for terminally ill, mentally competent adults. To hold for respondents, we would have to reverse centuries of legal doctrine and practice, and strike down the considered policy choice of almost every State.

*Id.* at 723. Throughout American history marriage has always been defined as a union of a man and a woman. In the late 1800s, the Supreme Court rejected challenges to the

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<sup>19</sup>The following is a list of state statutes that currently specifically limit marriage to one man and one woman, and the date which the most recent legislative action on this issue was taken: Alabama Code §30-1-19 (1998); Alaska Stat. §25.05.013 - Alaska Const., Art I, sec. 23 (1998); Ariz. Rev. Stat. Ann. §25 101 (1996); Ark. Code Ann. §9 11 107 -Ark. Code Ann. - 9 11 109 - Ark. Code Ann. §9 11 208 (1997); Cal. Fam. Code §308.5 (2000); Colo. Rev. Stat. Ann. §14-2-104 (2000); 13 Del. Code Ann. §101 (1996); Florida Stat. Ann. §741.212 (1997); Georgia Code 19 3 3.1 (1996); Haw. Rev Stat. §572 3 - Haw. Const. Art. 25 (1998); Idaho Code §32 209 (1996); 750 Ill. Comp. Stat. Ann. §5/212 (1996); Ind. Code §31 11 1 1 (1997); Iowa Code Ann. §595.2 (1998); Kansas Stat. Ann. §23 101 (1996); Ky. Rev. Stat. §402.020 (1998); La. Civil Code, Art. 89 (1999); 19 A Maine Rev. Stat. Ann. §701 (1997); Mich. Comp. Laws Ann. §551.1 - Mich Comp. Laws Ann. §551.271 (1996); Minn Stat. Ann. §517.01 (1997); Mississippi Code Ann. §93 1 1 (1997); Mo. Stat. §451.022 (2001); Mont. Code Ann. §40 1 401 (1992); Neb. Const. Art. I, sec. 29 (2000); Nev. Const. art. 1 § 21 (2003); N.H. Rev. St. §§ 457:1, 457:2, 457:3 (2004); N.C. Gen. Stat. §51 1.2 (1996); N.D. Cent. Code §14 03 01 (1997); Ohio Rev. Code Ann. § 3101.01 (2004); 43 Okl. Stat. Ann. §3.1 (1996); 23 Pa. C.S.A. §1704 (1996); S.C. Code Ann. §20 1 15 (1996); S.D. Cod. Laws §25 1 1 (1996); Tenn. Code Ann. §36 3 113 (1996); Tx. Fam. Code § 6.204 (2003); Utah Code Ann. §30 1 4 (1995); Va. Code §20 45.2 (1997); Wash. Rev. Code §26.04.010 (1998); W.V. Code §48-2-603 (2000).

traditional legal definition of marriage by Mormon polygamists claiming an alleged constitutional right to engage in plural marriage. For example, in *Murphy v. Ramsey*, 114 U.S. 15 (1885), the U.S. Supreme Court stated:

[C]ertainly no legislation can be supposed more wholesome and necessary in the founding of a free, self-governing commonwealth, fit to take rank as one of the coordinate States of the Union, than that which seeks to establish it on the basis of 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*; 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.

*Murphy*, 114 U.S. at 45 (emphasis added). The Supreme Court has never defined “family” or “marriage” to encompass same-sex couples.

In *Lawrence v. Texas*, 539 U.S. 558, 123 S. Ct. 2472 (2003), the Court was careful not to characterize the right to engage in intimate, consensual homosexual conduct as a fundamental right. *See id.* at 2488 (Scalia, J., dissenting). Behavior that was illegal in all of the original states at the founding of our Nation, and even up to the present, cannot constitute a “fundamental liberty interest” under the Fourteenth Amendment. *Bowers v. Hardwick*, 478 U.S. 186, 194 (1986) (“Against this background, to claim that a right to engage in such conduct is ‘deeply rooted in this Nation’s history and tradition’ or ‘implicit in the concept of ordered liberty’ is, at best, facetious”). *Lawrence* overruled *Bowers* based on the recent trend of states to rescind laws prohibiting sodomy, or simply not to enforce them. *Lawrence*, 123 S. Ct. at 2481; *see also Loving*, 388 U.S. at 6 n.5 (where the court noted that “[o]ver the past 15 years, 14 States have repealed laws outlawing interracial marriages” when striking down a miscegenation statute for violating the Due Process and Equal Protection Clauses). The opposite is true in the case of same-sex “marriage.” The recent trend is for states and the federal government to take steps specifically to define marriage as a union between one man and one woman. Thirty-nine states have enacted legislation designed to preserve traditional marriage in the past eight years. *See* footnote 19, *supra*. No state legislature has recognized same-sex “marriages.”

In reality, the fundamental right to marry is of no help to same-sex couples, for they are by definition excluded from that right. To include same-sex couples within that right would require changing the meaning of the legal precedent and redefining the term “marriage.” If words have any meaning, they cannot be changed at the whim of a court to create new rights where they have never existed. *Cf. Glucksberg*, 521 U.S. at 721 (referring to rights “objectively, deeply rooted in this Nation’s history and tradition”). Alternatively, if words have no meaning, there is no such thing as law, and we have only the caprice of whoever is in power.

**b. The right to privacy does not include a right to same-sex “marriage.”**

The Supreme Court has also discussed the fundamental right to marry as a right to privacy, beginning with *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965):

We deal with a right of privacy older than the Bill of Rights—older than our political parties, older than our school system. Marriage is a coming together for better or worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.<sup>22</sup>

The Court subsequently clarified that this right to privacy was “founded in the Fourteenth Amendment’s concept of personal liberty.” *Whalen v. Roe*, 429 U.S. 589, 600, n.23 (1977); see also *Carey v. Population Services Intern’l*, 431 U.S. 678, 684-85 (1977); *Zablocki*, 434 U.S. at 384 (“More recent decisions have established that the right to marry is part of the fundamental ‘right of privacy’ implicit in the Fourteenth Amendment’s Due Process Clause”).

The right of marital privacy is one of the limited number of fundamental rights the Supreme Court has ruled to be included under the “liberty” that is protected by the Due Process Clause of the Fourteenth Amendment. *Glucksberg*, 521 U.S. at 720. Accordingly, the right to privacy adds nothing to the claim of a fundamental due process right to same-sex “marriage” because, as noted above, same sex “marriage” is not “objectively, deeply rooted in this Nation’s history and tradition.” *Glucksberg*, 521 U.S. at 721. *Lawrence* did nothing to change this fact, but merely held that private, consensual acts of adult homosexual conduct cannot be criminalized. It did not hold that homosexual relationships must be officially recognized by the government. *Lawrence*, 123 S. Ct. at 2484 (present case “does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter”).

The Due Process Clause of the Fourteenth Amendment does not create a fundamental right to same-sex “marriage.” Therefore, defining marriage as one man and one woman does not run afoul of this constitutional provision.

**2. Traditional Marriage Does Not Violate the Equal Protection Clause.**

The general rule of Equal Protection guaranteed by the Fourteenth Amendment to the United States Constitution is straightforward. A state governmental entity may not

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<sup>22</sup>Again, when the Court spoke of marriage as a right of privacy older than the Bill of Rights, it was speaking of a legal relationship between a man and a woman. Nothing else would make sense in light of the history of marriage in America.

legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that *all persons similarly circumstanced shall be treated alike*.

*Reed v. Reed*, 404 U.S. 71, 75-76 (1971) (citations omitted) (emphasis added); *Eisenstadt v. Baird*, 405 U.S. 438, 446-47 (1972). However, the Supreme Court has held that “[t]he Constitution does not require things which are different in fact or opinion to be treated in law as if they were the same.” *Skinner v. Oklahoma*, 316 U.S. 535, 540 (1942). As noted below, opposite sex couples provide unique contributions to society with regard to child rearing and other matters. Opposite sex couples are clearly different than same sex couples and treating them differently does not violate the Equal Protection Clause. See *Wilson v. Ake*, \_\_\_ F.Supp.3d \_\_\_, No. 804cv1680, 2005 U.S. Dist LEXIS 755 (M.D. Fla. Jan. 19, 2005) (finding that excluding same-sex couples from marriage does not violate the Equal Protection Clause).

### **III. Kansas Has a Vital Interest in Preserving Marriage.**

The State of Kansas, her people, and their governmental institutions have a strong interest in preserving and defending the institution of marriage. The United States Supreme Court has historically affirmed that this interest must be honored. *Reynolds v. United States*, 98 U.S. 145 (1878), involved a First Amendment Free Exercise of Religion Clause challenge to a federal law banning bigamy, in what was then the Territory of Utah. The Court found the statute constitutional because the legislature had a compelling interest in preserving conventional marriage consisting of one man and one woman. *Id.* at 165. See *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 535 (1993) (citing *Reynolds*).

In *Lawrence*, Justice O’Connor recognized that this same interest justifies preservation of traditional marriage against attacks by same-sex couples, and “other reasons exist to promote the institution of marriage beyond mere moral disapproval of an excluded group.” *Lawrence*, 123 S. Ct. at 2487-88 (O’Connor, J., concurring). The following analysis demonstrates some of the many reasons why Kansas has not only a reasonable, but a compelling interest in preserving traditional, opposite-sex marriage.

#### **A. Traditional Marriage is the Foundation of Our Society.**

The public interest in marriage and family originates in the belief that the foundation for political society is in family organization. See A.E. Hoebel, *THE LAW OF PRIMITIVE MAN*, 3-45 (1945). See also Paul J. Bohannon, *The Differing Realms of the Law*, 67 *AM. ANTHROPOLOG.* 33-42 (1965). That is, the state evolves out of and depends for its stability upon stable families. Both historically and structurally, marriage is the foundation of society. This truth has been recognized by the United States Supreme Court, which has observed that marriage is a relationship that is “older than the Bill of



Rights – older than our political parties, older than our school system,” *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965), and “fundamental to our very existence and survival.” *Loving v. Virginia*, 388 U.S. 1, 12 (1967). Indeed the Court regards “[m]arriage, as creating the most important relations in life, as having more to do with the morals and civilization of a people than any other institution. . .” *Maynard v. Hill*, 125 U.S. 190, 205 (1888).

Marriage, while from its very nature a sacred obligation, is nevertheless, in most civilized nations, a civil contract, and usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal. In fact, according as monogamous or polygamous marriages are allowed, do we find the principles on which the government of the people, to a greater or less extent, rests.

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*Reynolds*, 98 U.S. at 165-66.

Traditional, opposite-sex marriage is particularly important to democratic society because it is the “seedground for democracy.” Lynn D. Wardle, “*Multiply and Replenish*”: *Considering Same-Sex Marriage in Light of State Interests in Marital Procreation* 24 HARV. J. L. & PUB. POL’Y. 771, 780 (2001). See also Bruce C. Hafen, *The Constitutional Status of Marriage, Kinship, and Sexual Privacy - Balancing the Individual and Social Interests*, 81 MICH. L. REV. 463, 472-484 (1983) (“it is primarily through family bonds that both children and parents learn the attitudes and skills that sustain an open society”).

Traditional marriage has proven to be the safest repository of democratic values including tolerance, respect for others, and the balanced values of responsible individualism and commitment to the community. George W. Dent, Jr., *The Defense of Traditional Marriage*, 15 JOURNAL OF LAW & POLITICS 581, 596 (1999). Opposite-sex marriage is a mediating institution that nurtures the values of unselfishness and liberty.

[R]eflection on the heterosexual norm directs our attention to certain social necessities: the continuation of human life, the place of difference within community, the redirection of our tendency to place our own desires first. These necessities cannot be supported by rational calculations of self interest alone; they require commitments that go well beyond calculations of personal satisfaction. Having and rearing children is among the most difficult of human projects. Men and women need all the support they can get to maintain stable marriages in which the next generation can flourish. Even marriages that do not give rise to children exist in accord with, rather than in opposition to, this heterosexual norm.

The Ramsey Colloquium, *The Homosexual Movement*, 41 First Things 15, 17-18 (1994).

Opposite-sex marriage is a uniquely beneficial arrangement, providing equity and security for individuals, family, and society. The security and stability of marriage as compared to same-sex relationships is indisputable.<sup>23</sup> Opposite-sex marriage also fosters the value of equality. This is due in large part to the way in which the different sexes compliment one another.<sup>24</sup>

Marriages between one man and one woman are more likely than other types of families to have limited amounts of strife, the maximum amount of nurturing, the maximum amount of support, guidance, and leadership, and a very strong, intimate bond between parents and child. "Traditional marriage enriches the individuals who enter into it as well as their children and society generally. This effect satisfies even a strict test of liberal legitimacy because many benefits of marriage are not metaphysical but empirically verifiable. Married people live longer and enjoy better physical and psychological health and greater wealth." Dent, 15 JOURNAL OF LAW & POLITICS at 605.

These unique, invaluable contributions made to society by opposite-sex marriage necessitate and even compel the State to take steps to preserve it. Support of families that require unselfishness from their members is vital in a society where the focus on self is forever increasing. "[M]arriage and the family are institutions necessary for our continued social well-being and, in an individualistic society that tends to liberation from all constraint, they are fragile institutions in need of careful and continuing support." The Ramsey Colloquium, 41 FIRST THINGS at 17. Same-sex couples simply do not perform the same functions or provide the same benefits for society as conventional opposite-sex marriages. In view of the unique contributions that opposite-sex marriage makes to society, the State has a compelling interest in endorsing and preserving it to the exclusion of same-sex marriage which, as is demonstrated below, actually undermines opposite-sex

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<sup>23</sup> An extensive survey of sexual practices found that for married couples, "a vast majority are faithful while the marriage is intact." Robert T. Michael, et al., SEX IN AMERICA: A DEFINITIVE SURVEY 89 (1994). "Among married people, 94 percent had one partner in the past year." *Id.* at 101. And the average marriage is long lasting. Sixty-seven percent of marriages last ten years, and 50 percent last more than twenty years. Matthew D. Bramlett et al., *First Marriage Dissolution, Divorce, and Remarriage: United States*, Advance Data No. 323 (Nat'l Center for Health Statistics) (May 31, 2001). However, investigators discovered that only 15 percent of homosexual men and 17.3 percent of homosexual women had ever had relationships that lasted more than 3 years. Only a few had stayed together for more than 10 years (4 out of 252 men and 1 out of 138 women). Marcel T. Saghir, M.D. and Eli Robins, M.D., MALE AND FEMALE HOMOSEXUALITY: A COMPREHENSIVE INVESTIGATION 57, Table 4.13; 225, Table 12.10 (1973).

<sup>24</sup> "Human society requires that we learn to value difference within community. In the complementarity of male and female we find the paradigmatic instance of this truth. . . . [It] invites us to learn to accept and affirm the natural world from which we are too often alienated. Moreover, in the creative complementarity of male and female we are directed toward community with those unlike us. In the community between male and female, we do not and cannot see in each other mere reflections of ourselves. In learning to appreciate this most basic difference, and in forming a marital bond, we take both difference and community seriously." Dent, The Ramsey Colloquium, 41 FIRST THINGS at 17-18.

marriage.

The fact that traditional heterosexual marriage has in recent years been ravaged by divorce does not detract from the many benefits it provides our society and the need for government to promote it.

Marriage and the family - Husband, wife, and children, joined by public recognition and legal bond - are the most effective institutions for rearing of children, the directing of sexual passion, and human flourishing in community. Not all marriages and families "work," but it is unwise to let pathology and failure, rather than a vision of what is normative and ideal, guide us in the development of social policy.

The Ramsey Colloquium, 41 FIRST THINGS at 17. The modern attacks on traditional marriage explained in the opening sections of this brief only serve to underscore the State's compelling interest in protecting marriage.

## **B. Traditional Marriage is the Ideal Environment for Raising Children**

The optimal environment for raising children is in a home comprised of the child's biological mother and father, who are married.

Under every standard—educational achievement, drug use, criminal activity, physical and emotional health, social adjustment and adult earnings—children of intact marriages have fewer problems than children of broken families. . . . Not only do children need two parents; it also seems that ideally a child should have both a mother and a father.

Dent, 15 JOURNAL OF LAW & POLITICS at 594-95.

Clinical studies observe that the triad of mother-father-child is necessary and desirable for the growth of a healthy child. "Early triangulation' serves especially to consolidate both the self-representation and the parental representation." Richard N. Atkins, *Discovering Daddy: The Mother's Role*, in FATHER AND CHILD 139, 144 (Stanley H. Cath, et al., eds., 1982). The forward to FATHER AND CHILD notes the increased awareness of the importance of the role of both mothers and fathers in child rearing: "Our sensitivities and instruments have become honed, attuned to the role a man comes to play during the early years in modulating the intensity of the mother-child tie, inviting that child to become a separate individual in an ever-widening world. . . . Researchers have become more aware of the subtle exchanges of identity taking place and of the mother's and father's part in facilitating development. . . ." John Munder Ross, *Preface* xvii-xviii, FATHER AND CHILD. Dr. Alfred A. Messer, a psychiatrist at Northside Hospital in Atlanta, Georgia, also notes the importance of both mothers and fathers as follows: "Children recognize the difference between maleness and femaleness as early as 14 months of age." Alfred A. Messer, *Boys' Father Hunger: The Missing Father Syndrome*, 23 Medical Aspects of Human Sexuality 44, 44 (January 1989). Boys establish their

physical and gender role identity between the ages of 18 to 36 months. “If the young boy is deprived of his father’s presence, the result can be deeply traumatic . . . .” *Id.* at 45.

Dozens of same-sex parenting studies have purported to find that children raised by same-sex couples do as well as other children. However, as one mostly favorable review of the same-sex parenting research reports, all of the studies have uniform defects:

there are *no studies of child development based on random, representative samples of such families*. Most studies rely on small-scale, snowball and convenience samples drawn primarily from personal and community networks or agencies. Most research to date has been conducted on white lesbian mothers who are comparatively educated, mature, and reside in relatively progressive urban centers, most often in California or the Northeastern states.

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Judith Stacey & Timothy Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 *American Soc. Rev.* 159, 166 (2001) (emphasis added);<sup>32</sup> see also Robert Lerner & Althea Nagai, *NO BASIS: WHAT THE STUDIES DON'T TELL US ABOUT SAME-SEX PARENTING 3* (2001) (review of homosexual parenting studies “found at least one fatal research flaw” in each one, and thus, “no generalizations can reliably be made based on any of these studies”).

Significantly, children raised by a single mother, particularly a divorced mother, have poorer physical health,<sup>33</sup> poorer mental health,<sup>34</sup> a greater likelihood of substance abuse,<sup>35</sup> a higher risk of suicide,<sup>36</sup> and a higher likelihood of committing a crime that

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<sup>32</sup>The authors blame these defects on “heterosexism,” and do not question the over-all conclusion that the sexual orientation of a parent is irrelevant. *Id.* at 167, 179.

<sup>33</sup>Ronald Angel & Jacqueline Worobey, *Single Motherhood and Children's Health*, 29 *Journal of Health and Soc. Behavior* 38, 48-49 (1988).

<sup>34</sup>Ollie Lundberg, *The Impact of Childhood Living Conditions on Illness and Mortality in Adulthood*, 36 *Social Science and Medicine* 1047, 1050, Table 3 (1993); Ronald L. Simons, et al., *Explaining the Higher Incidence of Adjustment Problems of Children of Divorce*, 61 *Journal of Marriage and the Family* 1020, 1028 (1999); Alan Booth & Paul R. Amato, *Parental Predivorce Relations and Offspring Postdivorce Well-Being*, 63 *Journal of Marriage and the Family* 197, 205 (2001).

<sup>35</sup>Robert L. Flewelling & Karl E. Bauman, *Family Structure as a Predictor of Initial Substance Use and Sexual Intercourse in Early Adolescence*, 52 *Journal of Marriage and the Family* 171, 175 & Table 2 (1990).

<sup>36</sup>David M. Cutler, Edward L. Glaeser & Karen Norberg, *Explaining the Rise in Youth Suicide*, Working Paper 7713 at 32, National Bureau of Economic Research (May 2000) (citing impact of divorce).

leads to incarceration.<sup>37</sup> This is the group of children to which the same-sex parenting studies compare children raised in homosexual homes. As one advocate for homosexual parenting acknowledges, “most of the research compares development of children with custodial lesbian mothers to that of children with custodial heterosexual mothers.” Charlotte J. Paterson, *Family Relationships of Lesbians and Gay Men*, 62 *Journal of Marriage and the Family* 1052, 1059 (2000). This is because “it has been widely believed that children living in families headed by divorced but heterosexual mothers provide the best comparison group.”<sup>38</sup> Since the pro-same-sex parenting studies find that children raised by homosexuals do as well as, but not significantly better than, those raised by divorced, heterosexual mothers, the clear weight of the evidence shows that children raised by same-sex parents do not do as well as children raised by their own mother and father who are married.

In reality, the same-sex parenting studies show a significant difference in outcome between children raised by heterosexual mothers and those raised by lesbians. Stacey and Biblarz, themselves proponents of same-sex parenting, challenge the intellectual honesty of the reports of “no differences.” Stacey & Biblarz at 178. They observe that “[o]nly a crude theory of cultural indoctrination that posited the absolute impotence of parents might predict such an outcome, and the remarkable variability of gender configurations documented in the anthropological record readily undermines such a theory.” *Id.* at 177. Instead of “no differences,” as reported by most studies, some of the studies clearly show a difference when it comes to sexuality. In one of the studies, “adolescent and young adult girls raised by lesbian mothers appear to have been more sexually adventurous and less chaste . . . .” *Id.* at 171. Overall, the studies validate a concern held by many who are concerned about the best interests of children:

The sexual orientation of parents appears to have a unique (although not large) effect on children in the politically sensitive domain of sexuality. The evidence, while scanty and underanalyzed, hints that parental sexual orientation is positively associated with the possibility that children will be more likely to attain a similar orientation—and theory and common sense also support such a view.

*Id.* at 177-78.<sup>39</sup> A similar outcome was reported in the Technical Report of the American Academy of Pediatrics:

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<sup>37</sup>Linda J. Waite & Maggie Gallagher, *THE CASE FOR MARRIAGE* 134 (2000).

<sup>38</sup>As Maggie Gallagher, co-author of *THE CASE FOR MARRIAGE*, observes: “If the problem with same-sex couples is not sexual orientation *per se*, but the negative effects of fatherlessness and/or motherlessness on children’s well-being, it is hard to imagine a scholarly focus better designed to obscure the evidence.” Maggie Gallagher, *Why Supporting Marriage Makes Business Sense* 10 (Corporate Resource Council 2002), available at [www.corporate resourcecouncil.org/white\\_papers.html](http://www.corporate resourcecouncil.org/white_papers.html).

<sup>39</sup>In Stacey and Biblarz’ view, these differences “cannot be considered deficits from any legitimate public policy perspective.” *Id.* at 177.

Compared with young adults who had heterosexual mothers, men and women who had lesbian mothers were slightly more likely to consider the possibility of having a same-sex partner, and more of them had been involved in at least a brief relationship with someone of the same sex, but in each group similar proportions of adult men and women identified themselves as homosexual.

Ellen C. Perrin, M.D., and the Committee on Psychosocial Aspects of Child and Family Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 341, 342 (February 2002).<sup>40</sup> The impact on sexuality of children raised by homosexual parents may not be as limited as these same-sex parenting advocates suggest. One study reported that “[t]he young adults from lesbian family backgrounds (four of seven sons and ten of fifteen daughters) were significantly more likely to report having considered the possibility of becoming involved in a same-gender sexual relationship, compared with only two of ten sons and one of eight daughters from the heterosexual family control group.” Fiona L. Tasker & Susan Golombok, *Adults Raised as Children in Lesbian Families*, 65 *American J. of Orthopsychiatry* 203, 211 (1995).

The fact that some single parents, blended families, and same-sex couples raise healthy children does not negate the fact that children have the best chances of developing fully in a home where both their mother and father are present. *See generally*, Wardle, 24 *HARV. J. L. & PUB. POL’Y* at 804. Same sex couples who adopt children or have them through artificial means intentionally deprive the children of the opportunity to be raised by both biological parents. “Even with natural reproduction, death, divorce or abandonment may deprive a child of one or both parents. But unlike natural reproduction, . . . same-sex marriage guarantee[s] that a child will not have both a mother and a father.” Dent, 15 *JOURNAL OF LAW & POLITICS* at 634-35. Thus, same-sex couples and married parents are not similarly situated regarding child rearing because a same-sex couple can never provide a child with the advantages of being raised by both biological parents.

#### **IV. Marriage Counterfeits Undermine Traditional Marriage**

Allowing same-sex “marriage” or Vermont-style “Civil Unions” would denigrate and undermine traditional, opposite-sex marriage in Kansas. Such attacks on traditional marriage are precisely the types of “injury to a person or abuse of an institution the law protects” that the Supreme Court held government is authorized to avoid in *Lawrence*, 123 S. Ct. at 2478. The acceptance of a philosophy that marriage is no longer relevant and that all “intimate” relationships are fungible, distorts perceptions and threatens to warp the reality of marriage and family life for millions of adults and children. “To depict marriage as simply one of several alternative ‘lifestyles’ is seriously to undermine the normative vision required for social well-being.” The Ramsey Colloquium, 41 *FIRST THINGS* at 18.

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<sup>40</sup> Available at [www.aap.org/policy/020008t.html](http://www.aap.org/policy/020008t.html).

In every society some people do not or cannot marry and bear and raise children. If they are viewed as unfortunate exceptions, the norm is not impaired. Recognition of gay marriages would mutilate the norm by granting, for the first time in history, equal honor to partnerships that inherently exclude the creation of life. The impact would be greater if, as seems likely, few gays elected to marry, stay married, and adopted children. Like legalizing bestiality, cloning, and baby-selling, validation of gay marriage would not cause direct, proximate harm, but it would damage society by degrading the way we see and relate to others. Traditional marriage is a public good. That is, it benefits not only married couples and their children but also generates positive externalities, or benefits to others. Men and women who marry and stay married encourage others to do likewise, to the profit of society.

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Dent, 15 JOURNAL OF LAW & POLITICS at 598-99. *See also id.*, at 615-639 (cataloguing numerous ways same-sex “marriage” would damage traditional marriage). Advocates of same-sex marriage freely admit they want to radically change the institution of marriage.<sup>25</sup>

The State of Kansas and its citizens have a compelling interest in preserving the integrity of the marital union by making opposite-sex marriage the exclusive form of family relationship endorsed by the government. Loss of this status would de-emphasize the importance of traditional opposite-sex marriage to society, weaken this vital institution, and place our entire democratic system in jeopardy by eroding its foundation. “[T]he main consequence of recognizing same-sex marriage would not be a shift of some people to homosexual conduct, but the change in heterosexuals no longer seeing

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<sup>25</sup> “Many advocates of same-sex marriage seek not to expand traditional marriage to gays but revolutionize the institution. [citing Nitya Duclos, *Some Complicating Thoughts on Same-Sex Marriage*, 1 Law & Sexuality 31 (1991)]. Prof. William Eskridge hopes gay marriage will dethrone the traditional family based on blood-relationships in favor of “families we choose.” [citing WILLIAM N. ESKRIDGE, JR., *THE CASE FOR SAME-SEX MARRIAGE* at 81; KATH WESTON, *FAMILIES WE CHOOSE: LESBIANS, GAYS, KINSHIP* 116 (1991)]. Michaelangelo Signorile urges activists “to fight for same-sex marriage and its benefits and then, once granted, redefine the institution of marriage completely, . . . to debunk a myth and radically alter an archaic institution . . . . The most subversive action lesbians and gay men can undertake . . . is to transform the notion of ‘family’ entirely.” [Michelangelo Signorile, *Bridal Wave*, OUT, Dec.-Jan., 1994, at 161. See also Franklin Kameny, *Deconstructing the Traditional Family*, THE WORLD & I, Oct. 1993, at 393-95.] Urvashi Vaid wants to “assimilate the straight world to the gay world.” [URVASHI VAID, *VIRTUAL EQUALITY: THE MAINSTREAMING OF GAY AND LESBIAN LIBERATION* 208 (1995)].”

Dent, at 616-17.

traditional marriage as something special.” Dent, 15 JOURNAL OF LAW & POLITICS at 614. Even more troubling is the prospect that same-sex marriage would actually reduce some of the benefits, like an optimal parenting environment, provided by traditional marriage.

The further separation of procreation from marriage implicit in legalization of same-sex marriage would send a cultural message of parental disconnection from family duties that could further diminish the level of responsibility of absent parents. . . . The potential for increased social disorder if same-sex marriage is legalized is profound.

Wardle, 24 HARV. J. L. & PUB. POL’Y. at 798. *See also* Dent, 15 JOURNAL OF LAW & POLITICS at 601 (“As social esteem for marriage and parenting declines, so does citizens’ willingness to assume these roles. Validation of same-sex marriages would accelerate this decline”).

### **Conclusion**

Here is the reality of our situation. Either the state will continue to regulate marriage out of concern for the well-being of children and society, or it will view marriage as a means of individual fulfillment. In making this choice, either the people will give meaning and structure to our political order through the process of political debate and democratic voting, or it will be imposed upon us by lawyers and judicial fiat.

I urge members of this committee to give the people of Kansas the opportunity to express their will on this matter directly through a constitutional amendment.

Thank you, Mister Chairman, for allowing me the time to appear before the committee and to extend my remarks in the form of this written testimony.



TESTIMONY  
FEDERAL AND STATE AFFAIRS COMMITTEE  
KANSAS HOUSE OF REPRESENTATIVES

My name is Larry Limbocker, I am a life long resident of Kansas, graduated from KSU. I am married with three children and have three grand children. My career is in real estate sales and the restaurant business. I come to you today as just an ordinary citizen who is active in both my community and my church and who has over 35 years experience in working with and serving the publics needs. I and my wife currently lead Divorce Care classes for the community and through the Gideon organization I participate in ministering to the imprisoned at our jails. Gentlemen.... Ladies, I love my country and I value life and I consider it my duty to God and my country to do whatever I can to insure the general health and welfare of both.

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I grew up in the "wild anything goes 60's". When a nation was experimenting with free love, free drugs, eastern meditation, riots, bombings and socialism. It was a time when just putting a flower in your hair and smoking dope solved all your problems. Fortunately, I was raised in a Christian home with a father and a mother who instilled in me a sense of right and wrong... and just as important... a sense of self-control. I had a Christian upbringing that helped maintain that sense of self-control in me, even when my parents were not around. Was I perfect?.... far from it.... but I never was able to shake that sense of knowing, when I was doing something I shouldn't be and that it was either harmful to myself or to others.

Most of you know what I'm talking about. Well the 60's have long gone but the free living far left boomers of that era have spawned a new generation of out of control children that are just as determined to ravage this country a second time of it's mores one at a time, slowly and surely. Make no mistake they are relentless and are driven by that same sense of self-gratification that comes from not having a sense of self-control and moral instruction. This MTV generation will push the limits of every traditional boundary needed to insure a safe and healthy society.

Gentlemen and Ladies, we need to understand what were dealing with here. Part of me wonders why do I even have to be here trying to explain what should be so obvious to us all. Why am I here having to try and convince people that we entrusted to protect our children from the harm that a morally degenerating society has increasingly forced on us over the past 40 years? I also find it odd that I am standing here trying to convince my state legislators to have the courage to protect the institution of marriage (one man and one woman) once and for all with a constitutional amendment.

FEDERAL AND STATE AFFAIRS

Date 1-25-05

Attachment 11

Every credible psychiatrist and counselor knows that the best possible environment for raising a healthy, contributing child in society is within a home made up of one husband (man) and one wife (woman). They live longer, are healthier and are better able to handle the pressure of society. It is incumbent of you to do everything you can to protect this fundamental, God ordained, 4000-year-old proven cornerstone of society.

I can't believe that any of you can look me in the eye and honestly say we favor legitimizing homosexual marriage which is exactly what will transpire, in time, if you ....1) Allow civil unions or 2) fail to give us the right to vote. All I'm asking is that you be true to your soul. I trust each of you knows what is the right thing to do is, I'm just asking that you do it.

Our founding fathers knew that when forming the constitution it had to be bigger than them. They understood their own frailty and the frailty of man. They had a vision for prosperity and the pursuit of happiness, and they knew what it took to protect it. They knew what made America strong and what was necessary to insure it. They followed a divine inspiration that created a document that led to the foundation of the greatest country in the world. Did these men have faults? Sure we all do, but they did not compromise their principles. Gentlemen if you claim any relationship at all with God or recognize his existence in any way as did every signer of the Declaration of Independence and the Bill of Rights, then all I ask is to be just as loyal to your Principles and sense of Morality that our founding fathers had. Principle and Morality is not up for compromise. Compromise has its place but the world has proven time and time again thru history and through the ruin of societies and even empires that there is no place for compromise when it comes to Morality.

Gentlemen and Ladies this is not a difficult question before you. Don't make it any harder that it has to be. All we are asking is that you be true to your soul. The world is a laboratory and each country is a test tube. If you want to know what the United States will look like in 20 years or less all you have to do is look at various Scandinavian countries that have given in to the relentless drum beating of "Kids Gone Wild." Drugs on demand, homosexual marriage, legal red light districts - is that what you want for our state? Our Country? You cannot responsibly turn a deaf ear or a blind eye to what's happening right now around the world and in our own country. The world is slowly being diluted with pleasure seeking individuals who have no moral example to guide them. They are being guided by an influence that is self seeking and knows very well that if God given values and morals of a society can be diluted, destroyed, compromised, redefined, or repackaged in any way they will have control over that society because man by nature is a pleasure seeking individual and weak without some overriding higher power guidance.

John F. Kennedy understood this very well when he made his famous quote, “Ask not what your country can do for you but rather ask what you can do for your country”. I believe Kennedy was not just making an appeal for people to contribute; Kennedy was also making an appeal for sacrifice. He wasn’t pleading to a selfish nation to storm the courts and garnish and sue for a legal right for every whim people deemed justifiable.

I put this before you today. This country was made great not by people who sought what they could get from the government but by what they were willing to sacrifice for the good of the nation as a whole. A strong nation is not based on the pursuit of self-gratification but on self-denial. Self-control is the most fundamental basic tenement of a healthy society and when people cannot control themselves it is up to our lawmakers to do so, “for our own good and the good of the country”. Each of you as a parent already does this with your children. What makes you think our country should be governed any other way?

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Make no mistake the homosexual agenda is to infiltrate our schools and courts and expose our children to a life style that is unnatural and sexually driven. If this legislature does nothing here and buys the argument that we do not need a constitutional amendment, then by default you will, in time, be contributing to the promotion of this lifestyle, which will lead to the devaluation of marriage for everyone and lead to everything you don’t want for a strong healthy society. Gay adoption, gender confusion, increased marriage out of wedlock, lower birth rates, multiple marriage partners, prostitution, and the general devaluation of life.

This is not a difficult question before you. I implore you just be true to your soul and pass a constitutional amendment that defines marriage as between one natural man and one natural woman and I further implore you to not allow your core beliefs to be manipulated, diluted, or compromised by acquiescing and permitting language that permits Civil Unions. Do not leave the door open for further interpretations.

Tyrannical federal judges will in time, given the trend of moral decline in this country, force this issue upon this body if not protected by a constitutional amendment. Liberal judges have already created judicial tyranny in this country, abusing their power and interpreting the Constitution to fit their own personal moral code and going against the will of the people. They’ve already succeeded in such brave and bold endeavors as removing those “harmful?” 10 commandments from our county and city offices, they’ve denied voluntary student led prayer on school grounds, they’ve succeeded in making Kansas famous by being known as the abortion capital of America and contributing heavily to the more than 40 million aborted children since Roe v Wade. Parents don’t have to be notified if their child wants an abortion.

Planned Parenthood hands out condoms freely in our schools now. By the way these condoms were just shown by Consumer Reports to have a 90% failure rate. Do you really want to leave the welfare of your children and grandchildren up to the courts? This nation is morally zooming out of control and it's up to you to stand in the gap and do what is necessary to protect your state.

Do not leave this matter for future lawmakers to wrestle with. Be done with it, this time, once and for all; follow the lead of 11 other states that realize that activist courts will eventually overturn state statutes. They've sealed it and are done with it and can now be about other business of the state. They listened to the will of the people and allowed the people to vote on this sensitive issue.

Answer me this, you know very well that the majority of this state wants the right to vote on this issue. As sensitive as this issue is how can you justify not giving us this opportunity? Do not succumb to the insults of outside forces from other states. Do not buckle under their ridiculing comments of a liberal press, about our great state. Rather stand firm and resolute and tell the world WHATS RIGHT WITH KANSAS.

Now all this being said it most imperative that you not believe those that would say, we are acting prejudicially against homosexuals. That would be a lie from the pit of hell. I currently am assisting individuals who are caught up in this life style and who desperately want help. They were victims of child abuse and child molestation and neglect. They need our help and our love. What they don't need is us facilitating their lifestyle and masking the pain. I truly believe that the greater love is expressed in dealing with homosexuality just as it is expressed when you deal with your own child who is suffering with a problem. You provide help and understanding and you assist that child in achieving a solution to their problem. You don't change your surroundings just to make the child more comfortable in the problem. That's the easy way out. As legislators I implore you to deal with the issue. Allow us to vote on it straight up, without adding a clause for Civil Unions.

I am here addressing you, not as democrats or republicans, but as either liberals or Conservatives. For this issue does not exclusively have it's home in one party or another. For I know that in Kansas there are conservative democrats as there are liberal republicans. This issue goes to the very core of our belief system, our mores, our principles and religious convictions, which are either liberal or conservative. If you feel you're boxed in a dilemma equally pressured then I implore you to stand on the side of conservatism where we have over 4000 years of history to back up our position of what a healthy society should look like. Your grandchildren are counting on you.

The Family Research Council in Washington D.C. has provided the public with pertinent information about the same-sex marriage issue. My convictions and statements to you last year were made before I received any data from them. This new statement is relying heavily on their research and most of my information will come from their material.

Same-sex 'marriage' proponents have a philosophy that will totally destroy marriage as we know it. Their sole criterion for marriage becomes the presence of "love" and "mutual commitment." If that premise is accepted and marriage is no longer defined as being between a man and a woman, it will be impossible to exclude virtually any relationship between two or more partners of either sex, even non-human "partners."

To allow same-sex marriages could open up the possibility of polyamory relationships. Polyamory means "many loves." There is a segment of people in America who reject monogamy and claim that multiple partners brings people into a more intimate relationship. One proponent of this ideology is David Chambers, professor of law at the University of Michigan. On page 29 of the book, Beyond Gay Marriage, author Stanley Kurtz quotes David Chambers' argument that, "By ceasing to conceive of marriage as a partnership composed of one person of each sex, the state may become more receptive to units of three or more."

There is strong evidence that same sex relationships are not the equivalent of marriage. In an article entitled "The Contribution of Steady and Casual Partnerships to the Incidence of HIV Infection Among Homosexual Men in Amsterdam," AIDS 17 (2003), Maria Xiridou states "A study in the Netherlands, a gay-tolerant nation that has legalized homosexual marriage, found the average duration of a homosexual relationship to be one and a half years." She goes on to say, "...the same Dutch study found that 'committed' homosexual couples have an average of eight sexual partners (outside of the relationship) per year."

One of the many arguments against banning same-sex marriage is that it violates the homosexual's civil rights. That is a ludicrous argument. It is obvious that no citizen has the unrestricted right to marry whomever they want. A parent cannot marry their child, have two or more spouses or marry another married person. They attempt to compare themselves as being discriminated against like the Black population. Harry Jaffa writes in his book, Homosexuality and the Natural Law, that "Nature and reason tell us that a Negro is a human being, and is not to be treated like a horse or an ox or a dog, just as they tell us that a Jew is a human being, and is not to be treated as a plague-bearing bacillus. But with the same voice, nature and reason tell us that a man is not a woman, and that sexual friendship is properly between members of the opposite sexes, not the same sex."

In October of 2003, a three-judge panel of the Arizona Court of Appeals ruled unanimously against two homosexuals who argued that marriage is a fundamental right. They ruled that the state's ban on homosexual marriage "rationally furthers a legitimate state interest" and "does not discriminate." They also stated that "recognizing a right to marry someone of the same sex would not

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expand the established right to marry, but would redefine the legal meaning of 'marriage'".

Another argument used against this amendment is that "you can't legislate morality." That is an absurd argument because every law we have is based upon a moral principle. People do not mind the use of moral and religious arguments when dealing with other issues such as racial discrimination, capital punishment, war in Iraq, prostitution, theft or fraud.

Homosexuality is unnatural. The human body was not designed for sexual intercourse between people of the same gender.

One question I keep hearing over and over is, "How does gay marriage harm your marriage?" I have another questions. If I printed counterfeit twenty dollar bills, how would that hurt your pocketbook? What if several carpenters constructing a building used different measurements? What if some used the metric system and others used the American foot and inches measurements? There must be a standard or society will become socially chaotic.

The Family Research Council quotes Dr. Pitirim Sorokim, the eminent Harvard sociologist who "analyzed cultures spanning several thousand years on several continents, and found that virtually no society has ceased to regulate sexuality within marriage as defined as the union of a man and a woman, and survived."

The most powerful argument I know for protecting marriage and opposing same-sex marriages comes from the Bible. Jesus said, "Haven't you read, ... that He who created them in the beginning made them male and female, and He also said: For this reason a man shall leave his father and mother and a and be joined to his wife, and the two will become ONE FLESH", Matthew 19:4-5. If God had designed men to marry men, He would have made only men. If Kansas can't figure out what marriage is then it has lost its moral compass. When you redefine marriage you redefine morality. When you redefine morality you have redefined life itself rather than accepting what a Holy God created.

Pat Bullock, Director of Missions  
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Courtesy of  
**CECIL T. WASHINGTON, JR.**

Pastor, The New Beginning Baptist Church

Founding Member, Truth In Love Outreach

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Presented January 25, 2005

To the Honorable House Committee on State & Federal Affairs  
Rep. John Edmonds, Chairman

Please uphold the institution of marriage as being between one man and one woman. I'd like to address some specific concerns.

### **Civil Rights**

As an African American, I am distressed that our struggle is being diluted by the constant attempt to equate African American rights with homosexual rights. It is definitely not the same struggle.

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### **Definition**

African Americans are defined by an innocent, unchangeable condition of being. There are no organizations established to help us change what we are. Note the following comparison.

#### African Americans:

- Innocent: Being black is nowhere condemned or declared unhealthy.
- Unchangeable: We can't change or opt out some day.
- Condition of being: It is what we are, not what we do.

#### Homosexuals:

- Not Innocent: It is condemned. It's declared unhealthy and dangerous.
- Not Unchangeable: Many have opted and are opting out of that lifestyle.
- Not a Condition of being: It is what people do, identified / defined by a behavior.

### **Economic Status**

In spite of the efforts to bring about parity, African Americans are still the last hired and first fired. Although the African Americans' economic upward mobility has improved, the gap with our white counterparts has grown wider.

This is far from being the case with the homosexual community. Gays are an advantaged group. Economically, they're excelling and surpassing much of society. There is no evidence of any disparate impact in economics, employment, housing, or other documented forms of discrimination. Their struggle is not the black struggle.

### **Unhealthy Tendencies**

Everyone has tendencies toward certain unhealthy, condemned behaviors, but being African American is not one of them. Homosexuality is a tendency toward a condemned, unhealthy lifestyle, plagued by unbalanced proportions of abusive relationships, disease and death.

**Apart from cultural morality, church doctrine or Biblical teaching, does any objective source indicate whether homosexual behavior is positive, neutral or negative?"**

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**CECIL T. WASHINGTON, JR.**

January 25, 2005

Yes. Relating to health issues in the United States alone, objective facts show that homosexuality is painfully negative. According to generally accepted estimates, approximately 2 to 4% of the population is homosexual, <sup>1</sup> yet. . .

They account for. . .

- 17% of gonorrhea cases <sup>2</sup>
- 85% of the syphilis cases in some regions <sup>3</sup>
- 42% of new HIV infections <sup>4</sup>
- 55% of AIDS cases <sup>5</sup>

(Only 5% of AIDS cases came through heterosexual contact. Another 22% were transmitted through injected drug use.)

. 9% of homosexual men have AIDS <sup>6</sup>

(Only .03% of heterosexual men have AIDS.)

They are. . .

- five times more likely to be infected with an incurable sexually transmitted disease (STD) linked to cancer <sup>7</sup>
- very likely to be infected with a STD (One in three gay men have an incurable STD.) <sup>8</sup>
- 50,000 times more likely to be the victim of "love crimes" (being physically abused by a homosexual partner) than "hate crimes" <sup>9</sup>

(Battering victimization occurs in 39% of gay male couples: 22% of gay men are physically abused by a partner, and 5% are sexually abused by a partner.) <sup>10</sup>

They are at a significantly higher risk for <sup>11</sup>. . .

- eating disorders <sup>12</sup>
- anxiety
- depression
- substance abuse (drugs, alcohol, cigarettes)
- death by prostate, testicular, or colon cancer
- psychiatric disorders <sup>13</sup>
- suicide <sup>14</sup>
- anal cancer
- premature death by 8 to 20 years <sup>15</sup>

Adolescents are also at a significantly higher risk for <sup>16</sup>. . .

- using tobacco, marijuana and cocaine before age 13
- having sexual intercourse before age 13
- having sexual intercourse with four or more partners
- being raped

While statistics vary from year-to-year and represent only a snapshot in time, they reveal a timeless picture of the devastating impact of homosexuality. And though these statistics are painfully tragic, none of us should be surprised because God's Word clearly communicates the negative impact of sexual sin on the physical body.



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I believe we should do as so many others are doing offer the way out that has proven to work for many others that offer that can free us from all sin the grace of God thru His Son Jesus Christ.

*"Flee from sexual immorality. All other sins a man commits are outside his body, but he who sins sexually sins against his own body." (1 Corinthians 6: 18)*

### **The Foundation**

The great battle in our society today actually goes deeper than who should be allowed to marry. The real issue we are struggling with is the powerful, destructive move to stop the ethics of Judaism and Christianity from continuing to be normative in our society.

This is why there is such a growing rejection of the Bible. That's why so many false quotations and blatant lies are put forth about the Bible. The idea that people should have their lives determined by the values of this book is put forth as preposterous and offensive.

The United States of America and its' government was founded on Biblical principles, and as a result, has grown stronger and lasted longer than any nation or other form of government. These historic principles are gradually being eroded. Once that has been done, where will we then get our ethics and values?

We sincerely appeal to you: please support this amendment to protect the institution of marriage.

### **Genetics**

Many argue that homosexuality is genetic. There is not one iota of evidence; not a clue, that this behavior is inherent or inherited. But let's suppose evidence did exist. Then what? Would that put an end to the argument? Does a genetic predisposition to alcohol abuse suffice as an argument to pursue a lifestyle of drinking?

### **Choice And Change**

I'm not saying that homosexuals have chosen or preferred their lifestyle. For some, it may be a choice, but for many it is not. Yet there are ministries which have been started by ex-homosexuals, such as Joe Dallas of Exodus International. He has helped thousands see that they do have a choice. If they will, they can choose to be set free from the bondage of this destructive lifestyle.

It may not be a person's choice to go into it, but you can choose to come out. This power has been proven to be available to many.

I have personally met, interviewed and ministered to many in the homosexual lifestyle. Some of them still struggle with those desires today, but many of them have made the choice to get help and support, therefore today they're walking in victory. Not only that, but they're reaching out to help others. This methodology has successfully freed people from a variety of self-destructive, self-gratifying, addictive behaviors.

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Another such person is former homosexual, Mike Haley, who is now in a heterosexual marriage, with children produced by the marriage. I'm part of an organization that recently brought him to Topeka, [March 27<sup>th</sup> 2003] in an effort to show there is help and hope for those who will choose to change.

### What It Could Lead To

Another issue not addressed by the proponents of same sex marriage is the ability of the bisexuals to choose. If they say that the gay person is genetically predisposed to desiring people of the same sex, then what about the bisexual? If the argument is that since homosexuals don't have a choice in their behavior, they deserve the sanctity of marriage, how then does this logic affect the bisexual who decides to marry someone of the same sex? The bisexual does have a choice.

~~The "no choice" argument would not apply to them. Should they not be allowed to marry the same sex? If we allow a person *with a choice* to marry the same sex, wouldn't that render the "no choice" argument irrelevant?~~

Is the real purpose of the "no choice" argument to make an emotional appeal? Doesn't it sound more compelling for someone to say, "God made me this way" or "Genes made me this way"?

The most compelling response that can be offered, in this regard, is to lovingly share the truth. The homosexual is to be fully loved as a human being, but not have their unions declared as a marriage.

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If we throw open the marriage door for homosexuals, what will we be letting ourselves in for? Consider the following scenario, put forth the other day by Woody Cozan. A marriage license clerk says to the couple in front of the line at the counter, "Next!..."

"Good morning, we want to apply for a marriage license".

"Names?"

"Tim & Jim Jones", replies one of the men.

"Jones? Are you related? You look alike," remarks the clerk.

"Yes, we're brothers", replies the other.

"Brothers! You can't get married!"

"Why not? Aren't you giving licenses to same gender couples?"

"Sure, but not brothers. That's incest!" The clerk is indignant.

"Incest? We're not going to have sex! We just want the financial benefits and after all we do love each other as brothers should. And neither of us has any other marital prospects."

"Well, if you're not gay then get married to a woman," states the clerk.

"Whoa! Hold on there! Gay men can marry women just like we can, but you let them marry each other. Well, we don't want to marry women either."

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So, why can't we get a license just like the gay guys? I want to marry Tim and he wants to marry me. Are you discriminating against us just because we're *not* gay?"  
"All right! All right! You can have your license. Now get out of here!"

### Real Love

It appears that the proponents of the homosexual agenda, and same sex marriage, are only open to three things. They want everyone to...

- ...express love for the homosexual,
  - ...acceptance, approval or sanctioning of their behavior, and
  - ...any rejection or opposition to their unhealthy lifestyle is to be categorized as homophobic or bigotry.
- 

I agree, wholeheartedly, with expressing love to homosexuals. But loving a person means you have to disagree with them when they are in error. Legitimate love must be willing to say the hard things.

We recently interviewed a former homosexual. He shared how real change and victory came through the love of someone who was willing to believe in him and love through the struggles. They continued to express love until it got through and he became receptive. He is now a changed man, and using that same love to help others.

Homosexuals need to know that the delivering love and grace of God really is available.

### Intent and Design - What is Marriage For?

The oldest record we have concerning the original intent and design for marriage is the Bible. The record reveals that God *instituted* it. The seven verses that give us the account are found in Genesis 2:18-24. The passage opens with the Creator stating the need man had...and what HE intended to do about it.

Beginning with verse 18, The LORD God said, "*It is not good for the man to be alone. I will make a helper suitable for him.*" Then, to set the stage for providing this help mate, God gave Adam an assignment which would help him to see his need as God saw it. God had him name all the animals.

The next two verses state:

<sup>19</sup> Now the LORD God had formed out of the ground all the beasts of the field and all the birds of the air. He brought them to the man to see what he would name them; and whatever the man called each living creature, that was its name. <sup>20</sup> So the man [Adam] gave names to all the livestock, the birds of the air and all the beasts of the field. But for Adam no suitable helper was found.

This picture of creation has Adam looking at all of these animals and naming them *in pairs*...Bull/Heifer, Stag/Mare, Rooster/Hen, Goose/Gander, Ram/Ewe, Buck/Doe.

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During the naming process, Adam finds that every male had a female as his help mate. But for Adam no suitable helper was found. Adam can now see more clearly what he needed. Like these that he's named, he needs a mate of the opposite sex.

Once Adam clearly sees his need, he's in a better position to appreciate it. The next two verses give us the account. (Gen 10:18-24)

<sup>21</sup> So the LORD God caused the man to fall into a deep sleep; and while he was sleeping, he took one of the man's ribs and closed up the place with flesh. <sup>22</sup> Then the LORD God made a woman from the rib he had taken out of the man, and he brought her to the man.

Excited at having his need met, Adam exclaims...<sup>23</sup> "This is now bone of my bones and flesh of my flesh; she shall be called 'woman,' for she was taken out of man."

God then gives the conclusion of the matter. <sup>24</sup> [Therefore] For this reason [for following this design and intent] a man will leave his [male] father and [female] mother and be united to his [female] wife, and they [male & female] will become one flesh [one]. (NIV)

There was no suitable mate for Adam found among the animals. As with the animals, the suitable mate had to be:

- Same in species / kind, i.e. a human being.
- Different in gender.

The human race is incomplete without both male and female.

According to the Biblical record, sexual intimacy belongs only within the marital relationship of the male and female. We should follow the clear example of Jesus. He offered caring ministry and words of solace to struggling people, while differentiating His love for sinners from his clear teaching about sinful practices.

Lastly, are we moving toward the day when preaching the Bible's message will be outlawed...or considered hate speech? Will we be forcing preachers to repeat what one of our nationally known preachers recently said?

**"WHEN PREACHING THE BIBLE IS OUTLAWED, I'LL JUST BE AN OUTLAW.**

**Please Protect The Institution Of Marriage!.**

January 25, 2005

NOTES

1. See Edward O. Laumann et al., *The Social Organization of Sexuality: Sexual Practices in the United States*. (Chicago: University ( Chicago Press, 1994). Cited in U. S. Supreme Court legal brief 02-102 *Lawrence v. Texas*, 16, note 42, [http://www.hrc.org/publications/eu/letters/lawrence\\_brief.pdf](http://www.hrc.org/publications/eu/letters/lawrence_brief.pdf) (accessed June 20, 2003).
2. Centers for Disease Control and Prevention, *Sexually Transmitted Disease Surveillance 2001 Supplement: Gonococcal Isolate Surveillance Project (GISP) Annual Report-2001* (October 2002), <http://www.cdc.gov/std/GISP2001/GISP2001Text&Fig.pdf> (accessed June 23, 2003).
3. Centers for Disease Control and Prevention, *Tracking the Hidden Epidemics: Trends in STDs in the United States in 2000* (n.d.), [http://www.cdc.gov/nchstp/dstd/Stats\\_Trends/Trends2000.pdf](http://www.cdc.gov/nchstp/dstd/Stats_Trends/Trends2000.pdf) (accessed June 23, 2003).
4. Centers for Disease Control and Prevention, *HIV/AIDS Update: A Glance at the HIV Epidemic* (n.d.), <http://www.cdc.gov/hiv/pubs/facts/wsw.pdf> (accessed June 23, 2003). This statistic is for male homosexuals.
5. Centers for Disease Control and Prevention, *HIV/AIDS Surveillance Report, 2001*. Vol. 13, no. 2 (Year-end edition) (2001), 14, <http://www.cdc.gov/hiv/stats/hasr1302.pdf> (accessed August 12, 2003). This statistic is for male homosexuals.
6. These figures assume 4 million homosexual men (a high figure, since it also includes boys), and 111 million heterosexual men age 15 years and older. These statistics are based upon the AIDS statistics from the Centers for Disease Control and Prevention, *HIV/AIDS Surveillance Report, 2001*. Vol. 13, no. 2 (Year-end edition) (2001), 14, <http://www.cdc.gov/hiv/stats/hasr1302.pdf> (accessed August 12, 2003), and the United States population statistics available from the Central Intelligence Agency, *The World Factbook* (2003), <http://www.cia.gov/cia/publications/factbook/index.html> (accessed August 13, 2003).
7. R. Dotinga, "US: 1 in 3 Gay Men Have Incurable STD" (March 6, 2002), <http://uk.gay.com/headlines/1923>.
8. Dotinga, "US: 1 in 3 Gay Men Have Incurable STD."
9. Gary Glenn, "Homosexual 'Love Crimes' Pose 50,000% Higher Risk of Violence than 'Hate Crimes'" (March 15, 2001), <http://www.afamichigan.org/releases/20010315a.htm>.
10. Gregory L. Greenwood et al., "Battering Victimization Among a Probability-Based Sample of Men Who Have Sex With Men," *Am J Public Health* 92, no. 12 (2002).
11. For this section see Anne Petrov, 10 *Things Gay Men Need to Know* (January 2, 2003), [www.gaywired.com](http://www.gaywired.com).
12. "Study: Gay Men at Greater Risk for Eating Disorders" (April 15, 2003), <http://www.gayhealth.com>.
13. Theo G. M. Sandfort et al., "Same-Sex Sexual Behavior and Psychiatric Disorders: Findings From the Netherlands Mental Health Survey and Incidence Study (NEMESIS)," *Arch Gen Psychiatry* 58, no. 1 (2001).
14. Robert S. Hogg et al., "Modeling the Impact of HIV Disease on Mortality in Gay and Bisexual Men," *International journal o Epidemiology* 26, no. 3 (1997): 660.
15. Hogg et al., "Modeling the Impact of HIV Disease," 657.
16. For this section see Robert Garofalo et al., "The Association Between Health Risk Behaviors and Sexual Orientation Among School-based Sample of Adolescents," *Pediatrics* 101, no. 5 (1998).

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**STATEMENT TO THE  
HOUSE STATE & FEDERAL AFFAIRS COMMITTEE**

Tuesday, January 25, 2005

**To the Honorable John Edmonds, Chairman and members of the Committee:**

I am, Rev. Aletha J. Cushinberry, I reside in Topeka, KS and pastor the Apostolic Church at 2420 S.E. Bellview Ave. In addition, I am a member of the Topeka African American Pastor's Coalition.

I speak in favor of maintaining marriage law as a legal and divine commitment between one man and one woman.

"We recognize that there are two kinds of rights; civil rights and divine rights. Civil rights are those rights given to" people "by civil law."

"Divine rights are those rights bestowed upon man by God. Since no civil law can abrogate (*repeal or abolish*) divine law, it is clear that all laws made by man must be in harmony with and designed to uphold the law of God." It is our belief that any change in our marriage laws, other than one man and one woman, will violate divine law.

It appears to us that any change in the marriage law will protect the "civil rights" of some while negating "divine rights" of all mankind. A change in our marriage laws would devalue both men and women marriage and in their role in raising children. Any change in the marriage law would lead to further deterioration of family as defined by God.

Any changes the marriage laws would protect personal the preferences of one group. As a Pastor and a member of the faith community I support no change in our marriage laws.

We do not believe in advocating hateful acts, taking advantage of the weak, or in persecuting individuals. We attempt to exercise charity and forgiveness towards others, even those who do not share our beliefs. The maintenance of our current marriage law allows us in the faith community support civil and divine rights. Thank you.

Respectfully submitted,



FEDERAL AND STATE AFFAIRS

Date 1-25-04

Attachment 14



# Asbury Mt. Olive United Methodist Church

1196 SW Buchanan Street Topeka, KS 66604

Church: 785 232-6801 Fax: 785 232-6962 E-mail: AsburyMtOliveUMC@aol.com

January 25, 2005

To: House State & Federal Affairs Committee  
State of Kansas House of Representatives  
State of Kansas Capitol Building

Greetings to the honorable members of the Kansas State House of Representatives. After sincere and careful forethought and in response to my moral duty as a citizen of the State of Kansas and the United States of America I stand now in support of the Amendment to our State Constitution to clearly define marriage as an act or union between one Man and one woman.

I do understand that not everyone here today has gathered for the same reasons and I do appreciate the pressure placed upon you as legislators to try to please everyone. I am also aware of the nature of politics which often calls for a need to be sensitive to the various positions of your voting constituency. So I stand today to offer release to those of you who are feeling bound by the current popular culture of "political correctness" which has led some to feel guilty for exercising conscious moral decisions. It is unfortunate that some have hijacked common sense with the cry of injustice while claiming "equal rights" for human wrongs to satisfy their personal agenda to change everyone else's morality to create a culture of "whatever feels good no-boundaries morality."

This legislation does NOT prevent homosexual couples from continuing in their personal relationships as they already have been doing. This legislation merely removes the guilt from you as legislators in supporting their chosen abnormal lifestyles with legal sanction. I must clearly state that completely and fully love all humankind, male and female. It should, however, be understood that "loving our neighbors" does NOT automatically require that we sanction or approve whatever our neighbors chooses to do or even worse allow acts of abnormalcy to be presented with the pretense of normalcy. I do realize that NOT every legislator is influenced by the American standard and tradition of Christian ethics therefore I ask that each legislator to consider whether he or she would want to encourage their own children or nieces and/or nephews to choose cohabitation and sexual union with a member of the same sex legitimized by the sanction of "matrimony". A greater concern may be whether this State really wants to become recognized as another one of "those states" where anything goes and you can legally conduct behavior that is illegal in most parts of the world.

Sincerely stated,

Dr. E. Alan Benson, Pastor  
The Asbury Mt.Olive Church

FEDERAL AND STATE AFFAIRS

Date 1-25-05

Attachment 15

I know that there are people who hear our testimony and are not persuaded. To them our best arguments ring hollow. Why? Because there is an underlying point that has not been very well developed. Until it is understood, most of the arguments will seem baseless. It is this: In marriage women tame men.

In ages past it was the natural inclination for young men to join together in packs for social support and to hunt for sustenance. They lived very much for themselves. Sexual urges were met haphazardly as circumstances allowed. Should a pregnancy result the woman was left to tend to the consequences.

In time, women domesticated men through the promise of regular sexual favors. Men in turn provided protection and food for the women and children. While this was a good arrangement, it was not without some conflict. Men and women are very different but it is that difference that allows one to compliment the other; physically, emotionally and spiritually. There would certainly be tensions and the need for compromise.

But it is precisely here, that the true benefits of marriage take rise; born on the one hand from the complimentary nature of the differences between the sexes, and on the other hand from the necessary compromises that reconcile some of those same differences. Social scientists have never found the same quality of benefits in any other union.

Recognizing the many benefits these traditional marriages bring to the couple, their children, their employers, and society on a whole, governments have granted some limited financial privileges to married couples to encourage them to remain together.

Today, homosexual activists are helping to perpetuate the Hollywood image of marriage when they assert that marriage is all about love. But, ask long-married couples and they will normally tell you that the feelings of love ebb and flow. Commitment is what makes for lasting marriages. I know, that's old-fashioned, but it is old-fashioned precisely because it has worked so well for mankind, for so very long.

Unfortunately, many of our young people believe Hollywood and the homosexual activists. More and more they are marrying when they feel "in love" and divorcing when they feel "out of love". Meanwhile, they enjoy the sexual perks of marriage whenever they desire. That makes it hard enough for society to convince young men to settled down to the life-long commitment of an old-fashioned marriage, the kind that provides precisely that stability society needs to prosper.

{ If same-sex unions are allowed, we will have declared marriage to be nothing special, only a temporary contract between people of undetermined quantity or gender. How then will we be able to convince our young people to make the commitment necessary for a good marriage? We have to preserve traditional marriage; to continue to bear testimony to the special-ness of the union of one man and one woman and its worth to society; hold it up as an ideal to aspire to. Our society desperately needs this; and given today's courts nothing short of a constitutional amendment will do.

Kent Hampton, 917 Pierre, Manhattan KS

FEDERAL AND STATE AFFAIRS  
Date 1-25-05  
Attachment 16



## AMMENDUM

I am not a sociologist or anthropologist. So, I don't pretend that my testimony is historically accurate in every aspect. But, I think you see that there is an underlying truth in what I have said. In fact I know of two present day situations that support it.

You will likely hear testimony concerning the Netherlands that reports that divorce rates have dropped since civil unions were allowed there. That is true, but homosexual activists are telling you about the silver lining in some very ominous storm clouds, or to state it differently, this is a case where two negatives make a dubious positive.

The percentage of marriages ending in divorce has increased over that same period. But, because so many fewer couples are bothering to get married in the first place there is a net decrease, overall. So, two negatives: fewer marriages and higher divorce rates equal a positive of sorts: lower numbers of divorces overall.

I asked before how will we be able to persuade or young people to commit to a long-term marriage if we allow activists to redefine marriage? The Netherlands is failing to do so, very likely we will as well.

The second situation is one that has many black leaders concerned. They see a disturbing parallel between the young male "hunting parties" I mentioned earlier and the activities of urban gang members. They see the gang members siring children across multiple households but they are not fathering them.

The women involved seem to tolerate the situation, in part, because they can look to the state to provide through welfare and other government programs what their children's fathers are not. Government programs can partially provide temporal support, but they do not and cannot give emotional and spiritual support.

This is why some black leaders are speaking out, saying that marriage must not be undermined by allowing same-sex marriage or civil unions. They believe that their communities would be further harmed. They have become convinced that it would result in greater dependence on welfare and a further decline of overall conditions.

Because other portions of our population are beginning to catch up to the out-of-wedlock birth rate of the black population we can only deduce that a similar effect would be felt society-wide. If you would like to see use descend into a welfare state do nothing. If you want our's to be a strong, productive society, do all you can to preserve marriage. Give the people of Kansas a chance to do all they can to preserve marriage. Give us a strong amendment to our state constitution.

Kent Hampton

WHAT WAS REALLY LEARNED FROM TASKER AND  
GOLOMBOK'S (1995) STUDY OF LESBIAN  
AND SINGLE PARENT MOTHERS?<sup>1</sup>

WALTER R. SCHUMM

*Kansas State University*

*Summary.*—Limitations of research on gays and family life are discussed, including the low statistical power of small samples, a condition which increases the likelihood of failing to reject null hypotheses. In particular, it is observed that Fitzgerald in 1999 shifted from very tentative arguments in her review of literature to rather conclusive statements in her abstract about outcomes for children of gay parents. Furthermore, an often quoted 1995 article by Tasker and Golombok, upon closer examination, appears to indicate that being raised in a lesbian family increases the odds of a child later adopting a homosexual lifestyle even in the absence of homosexual attractions. For such reasons, scholars and policymakers all should be very cautious in accepting, at face value, at least some of the research being reported on gays and family life.

Research with gay samples is often limited because samples are small and bias is introduced through volunteer or convenience samples (3, 4, 6, 13). Many authors who favor a gay-neutral or progay perspective have a hypothesis that homosexual groups are no different than heterosexual groups on selected outcome variables (11). Because gays represent only 2-3% of the U.S. population and some are reluctant to identify their sexual orientation to researchers, it is difficult to obtain a group of gays large enough to compare with heterosexual groups (in a random sample) without having such low statistical power as virtually to guarantee a "successful" outcome from a gay-rights perspective. For example, Fitzgerald (6) in her review of the literature on gay parents, cited studies with as few as 17, 22, 30, 36, 37, 45, 46, 55, 75, and 82 subjects—many of which yielded no statistically significant differences between children of gay and heterosexual parents. In contrast, a recent article (11) based on a large sample of 174 Australian children reported significant effects of family status (lesbian, gay, heterosexual relationships) on child outcomes. Although Fitzgerald (6, p. 69) noted findings were "suggestive, rather than conclusive" given methodological limitations, her abstract states "The body of literature generally concludes that children with lesbian and gay parents are developing... in positive directions, and that the sexual orientation of parents is not an effective or important predictor of successful child development" (6, p. 57).

A particular case in point cited by both Fitzgerald (6) and Cameron (3) includes the results of Tasker and Golombok (14), who stated that 36% of lesbians' children compared to 20% of single heterosexual mothers' children reported same-sex attraction. Even though the odds ratio would be 2.25 (125% greater chance of same-sex attraction in one group), the sample size (45 cases) is so small the differences were not significant statistically. Remarkably, in spite of the small sample, when one reads the Tasker and Golombok article, one may find some statistically significant and possibly relevant, interesting evidence, which would be easy to

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overlook. Notably, of those children who reported having had same-gender sexual attractions, 67% (6/9) of those raised by lesbian mothers versus none of those raised by single heterosexual mothers (0/4) reported *actual experience* with same-gender sexual relationships [a result that was statistically significant ( $\chi_1^2 = 4.95$ ,  $p < .03$ , two-tailed; Fisher's Exact Test,  $p < .05$ , one-tailed)]. Furthermore, 57% (4/7) of sons and 67% (10/15) of daughters of lesbian mothers said they had considered the possibility of becoming involved in same-gender sexual relationships compared to 20% (2/10) of sons and 13% (1/8) of daughters of heterosexual mothers [Odds ratio of 8.61 (1.83 to 40.53, confidence interval),  $p < .01$ , with Nagelkerke  $R^2$  of .284;  $\chi_1^2 = 8.94$ ,  $p < .005$ , two-tailed; Fisher's Exact Test,  $p < .005$ , one-tailed]. Thus, their data show that a much higher percentage of children from lesbian homes actualized their attractions and, moreover, at least 20% (5/25) of the children from lesbian homes had considered the possibility of becoming involved in homosexual relationships, even though they had never experienced same-gender attractions. Rather than indicating the neutrality of an open lesbian environment at home, their results, if assessed fairly, suggest that open homosexuality may encourage consideration of homosexual conduct even in the absence of homosexual attraction. Yet much of the literature (6) concludes the opposite and would lead us to believe that the environment of a lesbian home, or by implication any other supportive environment, is neutral with respect to such outcome variables.

Thus, there are at least two issues in evaluating claims that gay marriage is neutral with respect to socially valuable outcomes. First, use of small samples with low statistical power can create artificial situations in which the gay rights hypothesis will appear to have been supported (by failure to reject the null hypothesis of no differences) for faulty methodological reasoning rather than on valid data. As Cohen (5, pp. 1307-1308) argued, one does not "prove" the null hypothesis; failure to reject the null hypothesis does not warrant the conclusion that the null hypothesis is true. Secondly, when the null hypothesis is not rejected, reporting the upper limit of the magnitude of the effect may be more informative (10, p. 186) rather than reporting failure to reject the null hypothesis. Hoenig and Heisey (8, p. 23) noted that "In matters of public health and regulation, it is often more important to be protected against erroneously concluding no difference exists when one does." Using small samples is a most likely way to make the erroneous conclusion of accepting the null hypothesis (incorrectly) as evidence for no genuine difference. Further, even those who have reviewed the same data and literature often have reached different conclusions (1, 2, 3, 5). While some would argue that homosexuality is an inherited condition and not "curable", others have reported successful interventions aimed at sexual orientation changes (1, 9, 12). For those interested in more issues related to research on homosexuality, some of the challenges of studying homosexuality were highlighted recently in two articles (4, 13) in response to Herek (7).

In sum, one has to be very careful in interpreting research on homosexual issues and be wary of outcomes when samples are very small and often nonrandom, so the null hypothesis is not rejected but is used for political purposes as if a meaningful result had been obtained. Such a result may reflect poor methodology or selective review of the literature rather than valid science. Policy makers should interpret research on gays and family life (or any very small subset of any population) with extreme caution.

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DIFFERENTIAL RISK THEORY AS A SUBSET OF SOCIAL  
EXCHANGE THEORY: IMPLICATIONS FOR MAKING GAY  
MARRIAGE CULTURALLY NORMATIVE AND FOR  
UNDERSTANDING STIGMA AGAINST HOMOSEXUALS<sup>1</sup>

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*Summary.*—Differential risk theory, a subset of social exchange and equity theories, is proposed as an explanation for stigma towards homosexuals and as a basis for normative preferences for heterosexual marriage. Numerous gender differences involved in long-term relationships require members of such close relationships to assume greater interpersonal and social risks and thus costs, compared to same-gender relationships. Without compensating rewards or reduced costs, heterosexual relationships would be unfairly disadvantaged. Resistance to making gay marriage normative and/or equivalent legally to heterosexual marriage may be traced, rather than to homophobia, to societal attempts to maintain equity between classes of relationships characterized by inherent differential risks.

Social exchange theory has a well established reputation in family social science (3). Herek (2) has considered at length the issue of homosexuals and stigma. One key to understanding both stigma against homosexuals and some of the issues surrounding the question of making gay marriage normative in the western world may be a subset of social exchange theory and equity theory that I have labeled "differential risk theory". In social exchange theory, risk, although a potential consequence, is treated as a real cost. Costs and rewards are summed to yield an overall anticipated profit for any potential choice. There are many situations today in which groups naturally experience differential risks (that are not due to personal error or recklessness, as in drunk driving or engaging in "unsafe" sex) and are compensated in various ways for assuming those risks. Combat zone pay or special pay for aviators or demolition experts are examples of ways in which those who accept higher risks are granted higher compensation, financially or through higher social status. Shame, even stigma, and more formal punishment are often consequences for those who avoid risks that others are expected to assume (especially when benefits are equal across groups). For those who fail to appreciate the risks involved, such differential compensation or punishment will appear to be unfair, discriminatory, or even prejudiced. If that line of reasoning is accepted in order to reinstate "equality",

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what has actually occurred is the reinstatement of inequality in the guise of creating equality, a perversion of genuine equality within the context of differential risk theory. Another way of saying this is that if everything else is equal, a group that accepts higher risks without compensation anticipates lower profit and becomes underbenefitted or disadvantaged relative to other groups that do not accept higher risks. To maintain equity and to provide an incentive for those who accept higher risk, society may either reward the risk-takers or penalize those who do not accept the risks. When the risk avoiders are in a small minority, societies may be more likely to adopt an approach that "penalizes the minority" rather than one that "rewards the majority", basically because it is less expensive overall (not that the minority feels better about that). That may be especially likely if the risks assumed have profound benefits for the society as a whole, even if they are a disadvantage for individual members of society. Examples might be that child-birth is a disadvantage and risk for individual women, but childbearing is essential for the survival of a society; being wounded or killed is a disadvantage for an individual soldier, but the survival of a society may depend on national self-defense.

In particular, differential risk theory may be applied to the issue of homosexual stigma and gay marriage. It can be argued that heterosexuality involves the acceptance of risks that are nonexistent or minimal for homosexuals. Obvious answers are pregnancy and (for unwanted pregnancies) abortion, both of which may involve financial and emotional costs. The costs and risks of contraception, both short and long term, are also relevant. The risks of rejection before or during heterosexual dates are well known. For many traditional heterosexuals, socially approved sex can only be obtained after accepting the risks of marriage, which involves many varieties of future costs and risks, many of which cannot even be predicted or foreseen accurately. A less obvious risk of heterosexual relationships is related to the costs associated with gender differences in physiology, sexual response, and communication, among others. In essence, living with a member of the opposite sex exposes one to increased risk because of the difficulties inherent in trying to understand and communicate effectively with someone whose physiological and psychological makeup are vastly different, even though individual differences also contribute in both heterosexual and homosexual relationships. Another risk accepted by heterosexuals involves the risk of becoming a victim of verbal or physical abuse because of the inherent differences in capability among men and women. It is common knowledge that the average man is physically stronger than the average woman while the average woman is more adept verbally than the average man. That asset differential creates a vulnerability that in some cases elicits abuse. The more balanced profile of assets in same-gender (highly committed) relationships, I believe, should

reduce the risk of abuse, although there may be much greater risk of abuse in low commitment relationships of any type. Nevertheless, in heterosexual relationships, risk associated with gender differences is guaranteed while the opposite is true of homosexual relationships.

In fact, years ago Cameron (1) argued, as do gay recruiting Internet sites, according to one reviewer, that homosexual sex is usually better for the self in the short run, even if it is not as constructive for the self in the long run or for society. While marital sex may be poorer initially and even permanently, a gay person or group can, with all candor and sincerity, invite others with "come, sex my way and I will give it to you straight and hot. Pleasures of the best quality, almost on demand..." (1, p. 17). When heterosexuals come together, successful interaction depends critically on new learning and significant efforts to understand and communicate, because of innate differences in physiology, anatomy, and hormonal systems, among others. Initial efforts are almost guaranteed to fall short of what might (no guarantees!) later be achieved. It can be questioned whether most men and women ever fully understand their complex gender and sexual differences, even after years of living together. Thus, with homosexuality, not only are the risks lower, but the rewards are usually superior in the short run, because of a reduced learning curve. From the perspective of differential risk theory, equating the social value of the two sexual orientations, which Cameron (1, p. 49) claimed has never been done by any society for all social classes for very long, makes fools, perhaps "noble" fools, out of those who take the path of fewer rewards and greater legitimate risks.

Many societies have tried to deal with this differential risk by penalizing homosexuality through social stigma, although I would prefer that heterosexuals were rewarded for their risks rather than having homosexuals punished. While eliminating stigma against homosexuals is a noble objective, it will establish inequality if heterosexuals are not compensated positively for the risks they assume automatically in gendered relationships. To establish a pseudo-equality between heterosexuality and homosexuality, when in fact the risks differ, will effectively reward a minority at the expense of the majority. Creating such an inequality in the name of equality is not social progress. To make homosexual behavior more normative (rather than merely tolerated) would create an artificial equality between dissimilar lifestyle choices that are, in fact, associated with differential risk for the participants and have differential benefits for society.

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Senior Pastor Dr. Jerry Johnston

Dear Representative,

The polls across America indicate Americans in the majority desire a marriage amendment defined as one man for one woman. Our President has clearly expressed his support for such an amendment and even this month the Federal Marriage Amendment is being reintroduced in the United States Senate.

WATCH US ON TV  
EVERY SUNDAY!

ALL TIMES ARE CENTRAL  
STANDARD TIME

KC METRO AREA

KMCI TV Ch. 38  
7:30-8:00 a.m.



KSHB TV Ch. 41  
10:00-10:30 a.m.  
(NBC affiliate)



PAX TV Ch. 50  
10:30-11:00 p.m.



REGIONAL

KPTM-FOX  
Omaha, NE  
Lincoln, NE  
7:00-7:30 a.m.

KWCH-CBS  
Wichita, KS  
7:00-7:30 a.m.

KBSD-CBS  
Dodge City, KS  
7:00-7:30 a.m.

KBSH-CBS  
Hays, KS  
7:00-7:30 a.m.

KBSL-CBS  
Goodland, KS  
7:00-7:30 a.m.

NATION-WIDE

ANGEL ONE TV NETWORK  
1:00-1:30 p.m.



LIVE VIDEO STREAMING DURING ALL  
FFC SERVICES, SUN. 8:00, 9:15 &  
10:45 A.M. & WED. 6:30 P.M. (CST)  
AT WWW.FFC.ORG.

Kansans, as you know, are morally conservative, hard-working people. There is no question the men and women of our great state will vote for this marriage amendment if they are given that opportunity. They deserve the right to vote on marriage. Give them that chance.

Repeated studies and trends from other nations reveal that the gay community has a post same-sex agenda. It is an agenda that dilutes marriage as we as Americans have historically known it. It is my prayer that you will take the time to become literate to the major societal changes that will take place in our state and nation IF same sex marriage were to become law. The enclosed bestselling book by my friend, Dr. James Dobson, "*Marriage Under Fire*," clearly articulates those changes foot-noted by reputable studies. Please take the time to read this informative book.

The request of nearly 1,000 evangelical pastors in Kansas is simple: Give Kansans the opportunity to exercise their citizenship and vote on a marriage amendment. We remain ever committed to this cause until such an amendment because law as it has in many other states.

Respectfully yours,

Dr. Jerry Johnston  
Senior Pastor

FEDERAL AND STATE AFFAIRS

Date 1-25-05

Attachment 19



## ***SAME SEX MARRIAGE vs. MARRIAGE GOD'S WAY***

**Dr. Jerry Johnston's Sermonar**

Message #1 in the series *ISSUES INFLUENCING AMERICA'S DESTINY*

Bible Text: Ephesians 5:31-33, pp. 1991-2 in the *Nelson Study Bible*

**GEORGE WASHINGTON: "It is impossible to rightly govern the world without God and the Bible."**

- **Paul is quoting God's exclusive plan for marriage in Genesis 2:24 as only one man for one woman. God allows *no* other definition for marriage!**

### **IF SAME SEX MARRIAGE BECOMES LEGAL IN THE U.S.**

- 1. The legalization of homosexual marriage will quickly destroy traditional marriage and families.**

**>>> You May Ask, "Jerry, how do we know that gay marriage will destroy traditional marriage - ONE man for ONE woman?"**

**LOOK at the Scandinavian nations of NORWAY, DENMARK, and SWEDEN, whose leaders made gay marriage possible in the 90's ...**

**The CONSEQUENCES for traditional marriage have been DEVASTATING ...**

**The institution of marriage in those countries is dying, with most young couples living together or simply choosing to remain single.**

**IN FACT, in some areas of Norway, 80% of firstborn children are conceived out-of-wedlock ... think about that, I said 80%! It is 60% for subsequent births ... that's more than 1 out of 2!**

**>>> The institution of marriage represents the very foundation of HUMAN SOCIAL ORDER!**

**I think of it like a recipe in cooking ... when you change the proper recipe ... the outcome is disastrous!**

**MEN ARE DESIGNED FOR WOMEN, & WOMEN FOR MEN, this is how God planned it. God did not design MEN to have SEX with MEN, or WOMEN to have SEX with WOMEN.**

**It does not work ANATOMICALLY - the body was not designed for sex together by the same gender ...**

**It does not work SOCIALLY ... the vast majority of homosexuals have scores of relationships ... MONAGAMY is represents the smallest percentage of homosexual relationships! Coroners and counselors have reported the brutality of domestic abuse and murder within the gay community. It is horrible!**

**It does not work SPIRITUALLY ... when you engage in any form of perverted sex ... particularly homosexual sex, you die spiritually!**

**Evidence indicates homosexual relationships are radically different from traditional marriage in several strategic areas:**

- **relationship duration**

- **monogamy vs. promiscuity**
- **relationship commitment**
- **health risks**
- **rates of intimate partner violence**

**>>> In *The Sexual Organization of the City*, University of Chicago sociologist Edward Laumann argues that “typical gay city inhabitants spend most of their adult lives in ‘transactional’ relationships, or short-term commitments of less than six months.”** Adrian Brune, “City Gays Skips Long-term Relationships: Study Says,” *Washington Blade* (February 27, 04): 12.

**>>> A study of homosexual men in the Netherlands published in the journal *AIDS* found that the “duration of steady partnerships” was 1.5 years.** Maria Xiridou, et al, “The Contribution of Steady and Casual Partnerships to the Incidence of HIV Infection among Homosexual Men in Amsterdam,” *AIDS* 17 (2003): 1031.

**>>> In his study of male homosexuality in *Western Sexuality: Practice and Precept in Past and Present Times*, Pollak found that “few homosexual relationships last longer than two years, with many men reporting hundreds of lifetime partners.”** M. Pollak, “Male Homosexuality,” in *Western Sexuality: Practice and Precept in Past and Present Times*, ed. P. Aries and A. Bejin, translated by Anthony Forster (New York, NY: B. Blackwell, 1985): 40-61, cited by Joseph Nicolosi in *Reparative Therapy of Male Homosexuality* (Northvale, New Jersey: Jason Aronson Inc., 1991): 124, 125.

**>>> In *Male and Female Homosexuality*, Saghir and Robins found that the average male homosexual live-in relationships lasts between two and three years.** M. Saghir and E. Robins, *Male and Female Homosexuality* (Baltimore: Williams and Wilkins, 1973): 225; L. A. Peplau and H. Amaro, “Understanding Lesbian Relationships,” in *Homosexuality: Social, Psychological, and Biological Issues*, ed. J. Weinrich and W. Paul (Beverly Hills: Sage, 1982).

## **2. Children will suffer in significant ways.**

**If the proponents of same sex marriage have their way they will never stop at just this victory. LISTEN CAREFULLY TO ME ...**

**They will continue to work until there is a UNIVERSAL ACCEPTANCE of the gay lifestyle in culture!**

**>>> They will infiltrate mainline denominations and through their liberal clergy and seminary professors they will DISCREDIT and distort Scriptures that condemn homosexuality.**

**>>> Homosexuals will seek special privileges and rights in future laws.**

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**>>> Other deviant groups will follow their example and OVERTURN LAWS prohibiting pedophilia (SEX WITH CHILDREN) such as the MAN-BOY organization,**

**>>> Further, homosexuals will the help of the National Education Association will seek further ways to indoctrinate your children beginning in the ELEMENTARY LEVEL in homosexuality, same-sex marriages ... you will see bold homosexuals leading the PTA, the school boards, faculty, and counselors to your children.**

**>>> AND, at some point, as they have done in Canada, they will MUZZLE ministers who would dare speak out against their lifestyle!**

**>>> WE ARE AT AN EXTREMELY SERIOUS FORK IN THE ROAD ... THROUGH THE ELECTIONS, THE PRIMARIES (August 3) and in November when we chose a PRESIDENT for the next 4 years ... WE WILL DECIDE.**

**>>> Only 1 out 4 evangelical Christians voted in the last election! There are enough of us to change this potential doomsday scenario! YOU MUST REGISTER TO VOTE. And, you must know how STATE**

**Representatives, Senators, and how our Senators and Representatives in Washington VOTED or FEEL ABOUT THIS ISSUE AND other crucial ones ....ISSUES WHICH INFLUENCE AMERICA'S DESTINY!**

- **THINK ABOUT IT! Political action groups, which have liberal ministers on their boards, have tried to threaten and silence us this week ALREADY ... and this is not even the LAW OF THE LAND ... YET! They have threatened to send spies to see if ministers are violating the law ... and they are here today! Sure, it is ridiculous ... their tactic is to scare preachers from speaking up for righteousness and BOLDY proclaiming the TRUTH about sin!**
- **WELL, I WON'T BE SILENCED ... and there is no way they will shut me up or intimidate me. I AM GOING TO PROCLAIM THE TRUTH! They only motivate me to motivate more ministers, like the nearly 200 who will be here on Tuesday to STAND UP and SPEAK UP! NOW IS THE TIME! Cowards and spiritual traitors and turn-coats are not needed! WE NEED SOME PROPHETS!**
- **What in the world do you think they would try to do IF same-sex marriage was approved coast-to-coast!**

**>>> Let me say two names and tell me who you recognize: NEVILLE CHAMBERLAIN ... do you know who he was? How about, WINSTON CHURCHILL? Yeah, I thought so!**

**When Nazi Germany marched its troops into Austria and then "annexed" Czechoslovakia in the**

**late 1930's - the response of Europe was startling:  
IT DID NOTHING!**

**France was freaked with fear ... Russia tried to cut a deal ... The Swiss and the Swedes declared themselves neutral. The Italians joined forces with Germany!**

**And England's timid, weak Prime Minister Neville Chamberlain essentially ignored the threat, gave ADOLF HITLER what he wanted, and hoped that the trouble would pass.**

**Eventually CHAMERLAIN was forced to resign in shame!**

**ENGLAND stood alone against Hitler, and the Third Reich ... but, with the help of their bold NEW PRIME MINISTER, WINSTON CHURCHILL, and the U.S. Hitler was squelched!**

**>>> We MUST not be overcome with weakness or even more treacherous ... ambivalent about an IMMORAL ISSUE seeking acceptance as if it is NORMAL, natural, and healthy!**

**>>> CNN and other news media everyday reports on bomb attacks, and deaths in IRAQ, they want to present every negative report possible ... as if the people of IRAQ are mourning because SADDAM HUSSEIN, a man responsible for the murder of over 1 million people, is not still their leaders.**

**>>> BUT NOTICE the silence of the media regarding the enslaving lifestyle of homosexuality, toning down the horrible deaths of AIDS, presenting in their place numerous sitcoms of supposedly "happy gay people" - it is all such a farce!**

**>>> WE ARE AT D-DAY in the CULTURE WAR and the professional media doesn't say a WORD ABOUT IT!**

**>>> THE FAITH PAGE, FAITH PAGE of the K.C. STAR yesterday recommended that we take "a deep breath" and then quoted a former Episcopalian who was civilly wed to his same sex partner!**

**3. Public Schools in every state will teach homosexuality to children as a normal lifestyle.**

- **Every public school in the nation would be forced to teach that same-sex "marriage" and homosexuality are perfectly normal - *Heather Has Two Mommies* in K-12. Picture text books changed to show same-sex couples as normal.**

**>>> A Canadian study of homosexual relationships lasting longer than one year found that only 25% of those interviewed reported being monogamous. According to study author Barry Adam, "Gay culture allows men to explore different ... forms of relationships besides the monogamy coveted by heterosexuals." Ryan Lee, "Gay Couples Likely to Try Non-monogamy, Study Shows," *Washington Blade* (August 22, 2003): 18.**

**WILLIAM GLADSTONE: "It is the duty of government to make it difficult for people for people to do wrong and easy to do right."**

**4. Foster-care programs will be forced to accept homosexual families.**

**>>> The much lower rates of homosexual and lesbian civil "marriages" in Sweden and the Netherlands must be viewed in the light of much**

**lower marriage rates in both of those countries, a trend that the introduction of gay "marriage" in the 1990s has not reversed. Thus, as writer Stanley Kurtz argues, the granting of marriage rites to homosexuals and lesbians "has further undermined 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."** Stanley Kurtz, "The End of Marriage in Scandinavia," *Weekly Standard* (February 2, 2004): 26.

**5. Adoption rights will be extended to homosexual unions.**

**>>> In 1995 Sweden passed the Registered Partnership Act which created civil unions for homosexual couples. In 2003 that law was amended to give registered homosexual couples the same right to adopt or have legal custody as married couples.**

**>>> The same thing will happen in the United States IF same sex marriage becomes the LAW of the LAND! We cannot let that happen!**

**>>> HAVE YOU NOTICED WITH REGARD TO THIS ISSUE OF HOMOSEXUALITY ... the American people have not been asked their opinion?**

**On June 26, 2003 the U.S. Supreme Court DECIDED that the constitution guaranteed the right to sodomy ... a court decided, not the American people, very FEW American agreed with the decision, BUT THEY WERE NEVER ASKED! Now think about that ... an unelected and seemingly unaccountable judiciary appointed for LIFE, decided that two men engaging in sex warranted striking down the sodomy law that WAS in Texas!**



**>>> The Massachusetts Supreme Court followed their example, and without the consent or vote of the people of Massachusetts voted 4 to 3 in November 2003 that the state legislature HAD TO RECOGNIZE the legitimacy of homosexual "marriage."**

**>>> Perhaps the worst day for the institution of marriage in the history of the world, May 17, Massachusetts began issuing marriage licenses to homosexual couples!**

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**>>> Many of those couples are now legally married and are fanning out across the nation, demanding recognition of their new legal status!**

**>>> Further, a S.F. Mayor decided to issue marriage licenses to 3,000 gay couples in spite of proposition 22 which had been passed in California!**

**>>> The Mayor became the law ... forget about laws passed by the vote of the American people!**

**>>> And when we needed the vote of KANSAS REPRESENTATIVES in early MAY for a KS MARRIAGE AMENDMENT ... our elected KS REPRESENTATIVES elected that you and I should not have the opportunity to vote on a MARRIAGE AMENDMENT! That is wrong! They must now be accountable for their actions.**

**6. The health care system will be severely tested and potentially collapse.**

**>>> Bell and Weinberg, in their classic study of male and female homosexuality, found that 43% of white male homosexuals had sex with 500 or more partners, with 28% having 1,000 or more sex**

**partners.** (A. P. Bell and M. S. Weinberg, *Homosexualities: A Study of Diversity Among Men and Women* (New York: Simon and Schuster, 1978), pp. 308, 309; See also A. P. Bell, M. S. Weinberg, and S. K. Hammersmith, *Sexual Preference* (Bloomington: Indiana University Press, 1981).

**>>> Think about the future of marriage IF same-sex marriage becomes law.**

**In Utah, polygamist TOM GREEN, who claims 5 wives, is citing Lawrence vs. Texas as the legal authority for his appeal.**

**>>> So polygamy will gain acceptance ... don't have one wife ... marry 5 or 10 wives!**

**>>> The ACLU of Utah has actually suggested that the state "will have to step up and prove that polygamy is detrimental to society."**

**>>> THE ACLU went on to say that the nuclear family "MAY NOT BE NECESSARILY THE BEST MODEL!"**

**>>> No doubt another renegade judge or mayor will soon rule that 3 men and 3 women can marry. OR, how about GROUP MARRIAGE ... 2 men and 4 women, or MARRIAGE between a man and younger girls ... what about a man and an animal?**

**>>> BRACE YOURSELF ... it is coming unless we regain our spiritual and moral sanity and stop this!**

**7. Religious freedom will be threatened with ensorship and potential criminalization.**

**>>> Only months after legalizing same-sex marriage in Canada, activists there successfully passed C-250, a bill *CRIMINALIZING* public statements *AGAINST* homosexuality, punishable by up to two years in prison. Say the wrong thing; go to jail. The same thing could happen in the U.S.**

**EDMUND BURKE: "All who have ever written on government are unanimous, that among a people generally corrupt, liberty cannot long last."**

**>>> IN CANADA NOW, ANYTHING DEEMED TO BE "HOMOPHOBIC" IS PUNISHABLE BY 6 MONTHS IN PRISON OR OTHER SEVERE PENALTIES.**

**>>> In Canada, Pastors and Priests are wondering if they can preach from Leviticus or Romans chapter 1 or other biblical passages on homosexuality.**

**>>> WILL A NEW BIBLE be mandated that deletes these passages because they are deemed "hate literature?"**

**>>> Focus on the Family's radio program was judged by the Canadian Radio and Television Commission to be "homophobic." The radio station that carried the broadcast was censured for airing it and FOCUS has gotten no where in their appeal.**

**>>> HOWARD STERN IS ACCEPTABLE, but a preacher presenting God's Word on homosexuality is not.**

**>>> The PASSION OF THE CHRIST is unacceptable, but gay sitcoms and movies are okay. We are lost!**

**>>> Churches will be legally pressured to perform same-sex weddings. When courts - as happened in Massachusetts - find same-sex "marriage" to be a constitutional and fundamental human right, the ACLU will successfully argue that the government is underwriting discrimination by offering tax exemptions to churches and synagogues that only honor natural marriage.**

**>>> You know, don't you, most gays and lesbians do not really want to marry. That would entangle them in all sorts of legal constraints.**

**>>> Their aim is to create an entirely different legal structure. With marriage, as we have known it gone, everyone would ENJOY all the legal benefits of marriage (custody rights, tax-free inheritance, joint ownership of property, health care and spousal citizenship, etc.) WITHOUT LIMITING THE NUMBER OF PARTNERS OR THEIR GENDER.**

**>>> Nor would couples be bound to each other in the eyes of the law. This is where this movement is headed!**

**>>> You doubt it? Activists have created a new word to replace the old terms of "infidelity," "adultery," and "promiscuity."**

**>>> The new concept is POLYAMOROUS. It means the same thing (literally "many loves") but with the agreement of the primary sexual partner. THIS IS SCARY!**

**>>> In 1972 the National Coalition of Gay Organizations demanded the 'repeal of all legislative provisions that RESTRICT the sex or number or persons entering into a marriage unit; and the extension of legal benefits to all persons who cohabit regardless of SEX or NUMBERS.'" Group marriage could comprise any combination of genders."**

**>>> Stanley Kurtz, a research fellow at the HOOVER INSTITUTION, summed up the situation in a recent WEEKLY STANDARD article. He noted that if gay marriage is legalized, "marriage will be transformed into a variety of relationship**

**contracts, linking two, 3, or more individuals in every conceivable COMBINATION of male and female ... the bottom of this slope is visible from where we now stand.”**

**>>> The homosexual agenda is not marriage for gays ... it is marriage for no one,” Dr. James Dobson.**

**8. The United States will become the catalyst for the destruction of the family and moral decay globally.**

**>>> Data from Vermont, Sweden, and the Netherlands reveal that only a small percentage of homosexuals and lesbians identify themselves as being in a committed relationship, with even fewer taking advantage of civil unions or, in the case of the Netherlands, of same-sex “marriage.” This indicates that even in the most “gay friendly” localities, the vast majority of homosexuals and lesbians display little inclination for the kind of lifelong, committed relationships that they purport to desire to enter.**

**9. Other deviant behaviors will seek acceptance and normalization.**

**“For these men the term ‘monogamy’ simply doesn’t necessarily mean sexual exclusivity ... The term ‘open relationship’ has for a great many gay men come to have one specific definition: *A relationship in which the partners have sex on the outside often, put away their resentment and jealousy, and discuss their outside sex with each other, or share sex partners.*”**

**--Homosexual writer and activist Michelangelo Signorile, *Life Outside* (New York: Harper Collins, 1997) : 213.**

**10. Similar to the disobedient nations of the Old Testament, America could experienced the judgment of God.**

***Romans 1:18, "For the wrath of God is revealed from heaven against all ungodliness and unrighteousness of men, who suppress the truth in unrighteousness."***

***Psalms 9:17, "The wicked shall be turned into hell, and all the nations that forget God."***

**Pastor Jerry recommends the following resources for more information on same sex marriage vs. traditional marriage:**

**CitizenLink. "Same-Sex Unions and Parenting." Go to [www.family.org/cforum/fosi/marriage/ssuap](http://www.family.org/cforum/fosi/marriage/ssuap). (This includes an up-to-date list of where each U.S. Senator stands on the Federal Marriage Amendment.**

**Family Research Council. Go to [www.frc.org](http://www.frc.org). For specific articles on "gay marriage," go to [www.frc.org/file.cfm?f=KEYWORD&key=DP](http://www.frc.org/file.cfm?f=KEYWORD&key=DP).**

**The Alliance for Marriage. Go to [www.allianceformarriage.org](http://www.allianceformarriage.org).**

**American Family Association. See [www.afa.net](http://www.afa.net). (Offers an excellent publication which keeps you informed on current issues).**

**National Association for Research and Therapy for Homosexuality (NARTH). Go to [www.narth.com](http://www.narth.com).**

**Exodus International. Go to [www.exodus-international.org](http://www.exodus-international.org). This is the largest evangelical Christian outreach to those affected by homosexuality.**

**Glenn T. Stanton and Dr. Bill Maier. *Marriage on Trial: The Case Against Same-Sex Marriage and Parenting*. Downers Grove, IL: InterVarsity Press, 2004.**

**The U. S. Senate will vote on The Federal Marriage Amendment on or about July 15. Send an email of support to your Senators: <http://capwiz.com/afanet/issues/alert/?alertid=6007136&type=C0>**

RIGHT  
Presented by Dr. Richard L. Miller

Spring is coming soon to the beautiful Flint Hills that will be a rolling sea of lush green blue stem grass dotted by Black Angus. A most peaceful setting that encourages one to lean back and engage in the folly of reflection.

My bride of 44 years and I have had a wonderful life that included the privilege of serving our Country for 23 years in the military, followed by 12 successful years helping to build a company, 12 years in four wonderful universities, then living a lifelong dream of touring beautiful America in a recreation vehicle for 3 years. It has truly been a wonderful life. But today my heart is heavy. My wife and I have been blessed with five exciting grandchildren and I don't know what life lies ahead for them. Our beautiful America is being battered and tested as never before. We have had enemies before, but things are different now.

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As a soldier, I had been taught the importance of knowing the nature and strength of the enemy. The enemy was easy to identify in 1775, also in 1812 and in 1917 and 1941, even in 1952. By 1968 it was getting more difficult to identify our enemy and after 9/11 our enemies seem to be everywhere. Yet my fear is that our greatest enemy is within and that enemy's name is "CONFUSION". We are confused about what is right.

I have always been an engineer. As a child, I was always building things. Now after more than 50 years of dealing with scientific processes, I have learned to appreciate facts, for in the physical world, the research scientist looks for facts and repeatability. Since I am also a human who interacts daily with myself and other people, I have also learned to appreciate feelings. The challenge is to keep the two in perspective and in their proper place. Facts remain facts regardless of time and opinion. Feelings are subjective and vary greatly from person to person and from day to day.

Then logic would advocate the premise that facts, not feelings, are the basis for determining what is right and what is not right. Therefore, an analysis of a theory or a trend could be performed from either basis: We can search for the facts or we can believe our feelings. Feelings are wonderful when your team is winning but horrible when your son dies.

Engineering is possible because there are physical laws which are absolute, measurable and predictable. Could it be that a universe that has predictable and unchangeable physical laws also has social and moral laws just as predictable and unchangeable?

In the practice of engineering, when all the physical laws are used properly, we are able to accomplish magnificent feats. We build cars, ships, skyscrapers and rockets. In a particular item or structure, there may be 10, or 100 or 1000 physical laws involved. If just one of those laws is violated or misapplied, there is a failure. The failure may result in the recall of a series of cars or the explosion of a space vehicle killing the entire crew.

The same thing would apply to social laws. Correct application of the social laws by a group of people would result in prosperous, powerful and productive societies. When the laws are

FEDERAL AND STATE AFFAIRS

Date 1-25-05

Attachment 20



violated, the result may affect a small portion of society or it may result in the complete destruction of the group.

The problems come when our belief is based not on facts but on feelings. The engineers **believed** the Challenger space vehicle was ready to launch. The **fact** was that the temperature was below the threshold for the bushings to withstand the forces exerted on them during launch.

We hear a lot about moral laws. This is a misconception. In engineering, we talk about Kirchoff's Law and Bernoulli's Principle. Kirchoff and Bernoulli did not establish these laws and principles, they only discovered them and documented their repeatability. The law of electrical energy and physical equilibrium existed long before these scientists. The earth was also round long before Columbus lived. That a law is not known or is disbelieved does not alter the fact of the laws existence. Nor does the lack of knowledge or disbelief alter the consequences of violation of the law. The belief that the Challenger's rocket was flight worthy did not prevent the disaster that claimed seven lives.

Transfer this same logic to moral laws. Ignorance or disbelief has no effect on the consequence of violation of the laws. Morality is a system of actions based on knowledge of facts. Morality is simply doing what is right regardless of belief or feelings. If my belief is correct, and I do what is right, my behavior is moral. If my behavior violates a social law, my behavior is immoral regardless of my belief. Therefore, morality does not depend on my belief, but on what is right.

Now, how do we know what is right? In engineering, we know what is right by evaluating results and repeatability of a naturally occurring event, process or principle. When results are repeated a significant number of times, we learn how to use the law to produce positive results which add value to life and not damage life.

Consider the social issue of a homosexual life style that has prompted the issue of same sex marriage. If it is right, it is moral. If it is not right it is immoral. Put it to the test. Does it occur naturally in the universe and does it enhance life or damage life? First, it does not occur naturally in the universe, only in a small segment of humans, only sporadically in history and always with disastrous results. Homosexuals do not produce life and homosexual activity spreads a disease which damages life. Therefore, it fails the test and is immoral because it is not right.

Further, the premise that morals are based on religion is false. Look at history. Some of the greatest atrocities against the human race have been enacted in the name of religion. There are thousands of religions in the world. Obviously they cannot all be correct because they have widely varying concepts of the object of worship, supposedly a Supreme Being. Here again, the existence or non existence of a Supreme Being is not affected by the belief system of a person or a society. Either a Supreme Being exists or does not exist. If a Supreme Being exists, morality exists when laws of that Supreme Being are the basis for the actions of society, because to obey the laws of the Supreme Being would be right. If the laws are obeyed, the society prospers. If

the laws are disregarded or disobeyed through lack of knowledge, makes no difference, the society will be damaged by the effects of actions which are not right.

The final essence of the matter is this. Religious beliefs and opinions of society are not the determinants of the longevity and prosperity of a society. A society stands or falls because the actions of that society are either right according to the laws of the universe or wrong according to the laws of the universe.

Will our society fail because of the homosexuals? No. This is only one indicator of the disregard for the laws that enhance life. Our society will fail because we have lost the knowledge of what is right according to the universal law of social order.

Consider a simple example which occurs often in our society: A driver travels 50 mph in a 35 mph zone, runs a red light, strikes another car in the side and kills the driver. What was the cause of death? Violating a city ordinance? No. The death was caused by a violation of a physical law which prohibits two objects from occupying the same space at the same time. The red light and the speed limit are merely controls established to prevent the violation of the law of space. Was driving 50 mph and driving through the intersection immoral? No, these actions were illegal. The immorality occurred by violating the higher, universal law of space.

Since there is order and predictability in both the physical and the social order, it follows that all laws emanate from the same source, a Creator who established all laws to govern His creation. My belief system does not validate or negate the existence of a Creator. My belief system is a result of the discovery of the truth regarding the presence of the Supreme Being, which then logically is the Creator. Now, I can act morally because I can do what is right by understanding the nature of the universal laws established by the Creator in order for the creation to prosper and have value.

So, we do have an enemy, one that has been there all along, just in a different form. Is my task any less demanding or less urgent in combating this enemy whose name is Confusion, than the enemy whose name was Totalitarianism, Communism, or Terrorism? Indeed, this enemy is potentially more dangerous than all previous enemies because confusion dilutes the strength of the materials from which the foundation of our society is made. Therefore, the necessity for eternal vigilance mandates that we test every action and confront the enemy of confusion with the one weapon which will destroy that enemy: The knowledge of what is right

Marriage as a union of one man and one woman passes all the tests and is right. I respectfully request you affirm the right of the people of Kansas to vote on the issue. Thank you.