

The Issue of Marriage in America

a Deliberative Poll® on
the Proposed Pennsylvania
Marriage Protection Amendment

Credits

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Carnegie Mellon Document Development Committee

Ashley Birt, Coro Intern in Local Democracy

Mike Bridges, Eberly Center for Teaching Excellence

Robert Cavalier, Center for the Advancement of Applied Ethics and Political Philosophy

Tim Dawson, Lead Document Developer, English

Carol Goldberg, Economics

Tim Haggerty, Humanities Scholars Program

Dan Hood, University Libraries

Andy Norman, Philosophy

Afeworki Paulos, University Libraries

Brad Porter, Coro Intern in Local Democracy

James Vroom, University Libraries

Special thanks to

Doug Cloud, Department of English, Carnegie Mellon University

Joanna Dickert, Project Manager, Southwestern Pennsylvania Program for Deliberative Democracy

Charles Ess, Department of Philosophy and Religion, Drury University

Reverend Deirdre King Hainsworth, Pittsburgh Theological Seminary

Suguru Ishizaki, Department of English, Carnegie Mellon University

Julie Gurner, Behavioral Sciences Department, Community College of Philadelphia

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Welcome

Thank you for joining our Deliberative Poll®.

The history of democracy in America is characterized by healthy, sometimes contentious public debate. Our nation is founded in the belief that we all have the inalienable right to Life, Liberty and the Pursuit of Happiness. Some believe this means that we should be entirely free to make choices about how to live our lives. For others, our true happiness —indeed our life and liberty — are grounded in traditions, both secular and religious. These traditions give meaning to the society in which we live, and they should provide guidance as we make our choices.

Broadly speaking, these perspectives lead to differing ideas about what role individual choice and a community's traditions should play in the decisions we make about critical issues. Rather than simply relying on one or the other, however, many of us see our lives reflecting a mixture of choice and tradition. Thus, although some may argue that America has split into the Reds and the Blues, it is probably more useful to recognize the various shades of purple that are reflected in the specific decisions made by particular citizens. Indeed, one might argue that our willingness to maintain an ongoing dialogue about critical issues—to place our ideas in conversation with the ideas and traditions of others—is what distinguishes America as a nation and us as Americans.

From the earliest days, Americans have developed forums for civil discussion that can provide guidance to policy-makers. The Deliberative Poll® continues that tradition in ways that account for the increasing complexity and diversity of America. By providing a representative group of citizens with background information, the opportunity for group deliberation, and access to a resource panel of experts, we provide citizens with a unique opportunity to work together as they develop informed opinions. These informed opinions may in turn become a valuable resource to policy-makers as they work to address critical issues.

So, once again, welcome. We look forward to hearing what you have to say.

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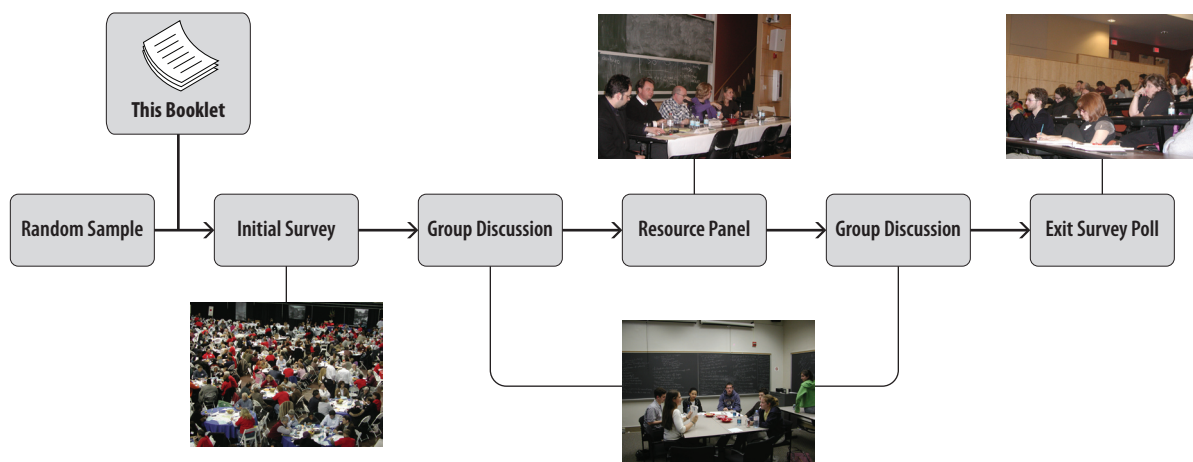
What is a Deliberative Poll®?

Deliberative polling is a democratic decision-making process capable of articulating the informed voice of the people and potentially raising that voice to a level where it can be heard by those who make public policy. The process was developed and trademarked by Professor James Fishkin, now at Stanford University's Center for Deliberative Democracy. During a deliberative poll, people who have received balanced information about an issue develop their informed opinion by working with others to discuss and raise questions about the issue. The resulting informed opinions can then be shared with policy-makers who are considering taking action on the issue.

Deliberative polling has three main components:

- Balanced information about the issues (e.g., this booklet)
- Discussion in small groups
- The opportunity for participants to pose questions to a resource panel of experts

The figure below details each element of a Deliberative Poll®, a unique process of small-group engagement accompanied by interaction with a resource panel of experts. These experts do not come to debate the issue; instead, they come to answer participants' questions about the issue.



Ground Rules for Participating in a Deliberative Poll

- » Please explain your own perspective
 - » Please listen to other people's views; don't interrupt
 - » Please focus on reasoned arguments, challenging experiences, and relevant facts
 - » Please treat your group members with respect at all times.
-

Introduction

The Issue of Marriage in America

The institution of marriage rests on a foundation of several traditions. Today marriage is considered one of the most intimate private relationships anyone can have. However what many now see as a private relationship has historically been publicly regulated by laws and traditions. Some of these traditions, of course, are religious: marriage is a sacrament for some faith communities and a religious obligation for many others.

Recent debates over same-sex marriage have raised many questions about marriage and its traditions. For some, same-sex marriages threaten the institution of marriage itself, and so, these people argue, the institution of marriage must be protected. For others, debates over same-sex marriage are fundamentally about the civil rights of homosexuals, and these people argue that it is these rights that must be protected. This debate, in turn, has presented a challenge to the institutions--the courts and legislatures--that make up our democracy.

The democratic practice of public reasoning has played an important role in the debates surrounding same-sex marriage. As judges and legislators throughout the United States have engaged the issue, they have looked for the 'Voice of the People' to decide the question: Who should be allowed to marry?

This deliberative poll provides an opportunity for the people of Pennsylvania to speak on the Issue of Marriage in America. By participating in the poll, you will have the opportunity to develop and then share an informed opinion about the proposed Pennsylvania "Marriage Protection Amendment".

A "Marriage Protection Amendment" has twice been introduced in the Pennsylvania General Assembly: in 2006 (House Bill 2381) and again in 2008 (Senate Bill 1250). Both bills propose an amendment to Pennsylvania's constitution that would achieve two things. First, it would limit the legal definition of marriage so that the term is only used to describe the union between one man and one woman. Second, the amendment seeks to bar the legal recognition of any other relationship between unmarried individuals that is "substantially" similar to marriage (e.g., civil unions).

We have developed this booklet to help you prepare for the Deliberative Poll®. There are two sections. Each section contains a wealth of information, so you may wish to pace your reading by taking a break as you move from section one to section two. We encourage you to use this booklet as a source of information, a spur to reflection, and as a shared point of reference during the discussion on the day of the poll.

In the first section of this booklet we provide background information about the social and religious histories related to marriage, homosexuality, and democracy. In the second section of this booklet you will read arguments for and against the ways several states have addressed the Issue of Marriage in America:

Pennsylvania’s “Marriage Protection Amendment”, the creation of civil unions in Vermont, and the judicial decision in Massachusetts that provides legal recognition to same-sex marriages.

In the end, the Issue of Marriage in America raises a fundamental question: How do we enact democratic values in our increasingly diverse and pluralist society? Your willingness to engage in a respectful discussion about critical issues is perhaps the best response to this question.

What’s your FRAME of mind?

Thinking about Marriage

The terms we use to discuss any issue call to mind many associations, some of which we may not explicitly acknowledge. Together these terms and their associations make up a Frame, and these Frames play an important role in public deliberations. Specifically, the terms used to name or describe an issue encourage each of us to attach particular values or concerns to the issue.

For example, there are various terms used in discussions of the issue of marriage in America: defense of marriage, marriage equality, gay marriage, traditional marriage, same-sex unions, civil unions, civil marriage. Each of these terms suggests a framework of values and concerns.

The terminology that presents marriage as a matter of religion or tradition encourages particular associations, but these associations may change when we think about marriage in terms of civil rights and our relationships as citizens in a democracy. Still other associations are awakened when the terms we use connect the issue of marriage to questions about homosexuality.

In responsible democratic deliberation, participants should be explicit about the reasons why they hold their views, and they should be willing to offer the rationale that supports their positions. They should also be willing to listen to and consider the rationale and positions of others. When you join the conversation about the Issue of Marriage in America, we hope you will be mindful and explicit about the terms and associations—the Frames—with which you and others discuss the issue.

Section One

A Brief History of Marriage

Every human culture has established a social practice connected to biological and cultural reproduction. However, across cultures, the exact nature of the relationship defined by terms like marriage has reflected the changing realities of particular societies at particular times. Throughout history, marriage practices have changed as political, economic, and social realities change.

After an extensive review of the historical and anthropological research concerning marriage, historians, such as Stephanie Coontz, author of *Marriage, A History*, conclude that what some consider a 'traditional marriage'-a nuclear family centered around the relationship between one man and one woman-is a recent invention that developed over the last 250 years in the West. Historically, traditions of marriage have been established to provide for peaceful and stable relationships among groups much larger than the nuclear family (i.e., clans, tribes, nations, etc.).

Ceremonies that accompany marriage reflect this history. Marriage ceremonies give public recognition to a couple's declaration that they intend to abide by the expectations and fulfill the obligations that have been established by the societies in which they live. By meeting these expectations and fulfilling these obligations the couple receives social benefits that are reserved for married couples.

In ancient Greece and classical Rome, marriage was a private affair arranged by parents to facilitate relationships among families. Marriage ceremonies were informal. Religious officials might bless, but they did not sanctify, the union, and no civil authorities or legal documents were required. Moreover, marriage was not viewed as an exclusive or indissoluble (life-long) relationship. Monogamy was not expected, and divorce was readily available to both men and women.

In the Middle Ages, Christianity, and the Catholic Church specifically, began to exert a shaping influence on the acceptable form of marriage. This influence was largely felt by royalty, whose marriages were of particular interest to the Catholic Church-and more and more so as the Church became a political force in Europe. However, the Christian ideal-marriage as a monogamous and indissoluble relationship-was not firmly established as the norm in Western Europe until the 17th century.

Along with the influence of the Church, cultural changes occurred that introduced affection as a valuable foundation for marriage. While not equated with love-which had always been considered a dangerous basis for a marriage-the idea that marriage should be grounded in a mutual affection encouraged parents to cede some of the choice about marriage partners to their children.

By the 18th century, the ideal of marriage as a life-long monogamous relationship between two consenting adults was beginning to hold sway. In addition, in most European countries the powers of the Church and the State had been integrated, formally or informally, and either the State or the Church

"Marriage usually determines rights and obligations connected to sexuality, gender roles, relationships with in-laws, and the legitimacy of children. It also gives participants specific roles within the larger society."

—*Marriage, A History*

"By the end of the 1700s personal choice of partners had replaced arranged marriage as a social ideal, and individuals were encouraged to marry for love. For the first time in five thousand years, marriage came to be seen as a private relationship between two individuals rather than one link in a larger system of political and economic alliances."

—*Marriage, A History*

or both had assumed the power to regulate what had once been the private affair of marriage. These influences came together in the British Parliament's Marriage Act of 1753. This act established marriage as a civil matter involving a contract between two consenting adults. However, because England was an Anglican nation, the act required that the civil marriage be 'solemnized' in a church.

Marriage in America

Common-Law Marriage

As of 2007, 10 states continue to legally recognize a couple's long-term cohabitation, shared financial arrangements, and childrearing as a 'common-law marriage.' However, as of 2005, Pennsylvania no longer legally recognizes common-law marriage.

When European colonists came to America, they retained the idea that marriage is a contract between consenting adults that should be regulated by the state. However, in America, colonists insisted on the 'separation of church and state.' Instead of church doctrine, colonists chose common law rule—a system based in traditional practices that become established as legal precedents—as the basis for state regulation of marriage. In the 19th century, states increasingly saw the need to regulate marriage, generally to secure the rights of those involved in the union. Prior to the 19th Century, however, marriage practices in America were very informal by today's standards.

What historians call 'self-marriage' and 'self-divorce' were common in America, especially along the ever-expanding western frontier. Self-marriage involved little more than a local community giving (or withholding) public recognition of a couple's cohabitation and procreation as a marriage. In keeping with common law, community practices came to be reflected in local regulations, which in turn came to be reflected in the laws of individual states. Because federalist principles encouraged states to respect each other's laws, legislators paid considerable attention to the laws enacted in other states.

In the 19th century, states became concerned that self-marriage practices left financial and child-rearing obligations uncertain. Indeed, a popular concern, voiced by many legislators at the time, was that, in America, it was simply too easy for a man to abandon his responsibilities in one community and start a new life in another. Thus, beginning in the 1830's, state legislatures began to exert more control over marriage. However, because legislators were addressing the need to clarify responsibilities when a marriage dissolved, state legislators focused their legislative efforts on establishing proper procedures for divorce.

Divorce had been made legally available in some states shortly after the American Revolution, and by 1800 most states had established some procedure for divorce. In the process of defining acceptable reasons for divorce (e.g., adultery, desertion, sexual incapacity), states assumed increasing responsibility for the personal relationships of their citizens.

The need to firmly establish divorce laws was just one example of how the unique conditions of social and economic uncertainty in America made common notions about marriage practically difficult. According to traditional practice, for example, marriage made one person from two—and the husband became the one public person in a marriage. Legislators adopted this common-law notion under the principle of coverture, which meant that a husband assumed his wife's legal rights and financial responsibilities, as well as taking ownership of all her property.

Marriage and Federal Legislation

Marriage is regulated by state law. Federal law and federal powers, however, have historically been employed to encourage specific norms associated with marriage. For example, throughout the 19th Century, federal legislators sought to eradicate 'complex' or 'plural' marriage practices, which were seen as overly casual, uncivilized, or even 'barbaric' and akin to slavery.

Such practices were traditional among Native Americans, and, until the 1890's, Mormons considered polygamy to be a sacred practice ordained by God. However, with the policies of the Bureau of Indian Affairs the federal government linked the free exercise of property and citizenship rights to the adoption of monogamy. Mormons faced political, economic, and even military pressure to comply with "the law of the land"—monogamy. Mormons revised the tenets of their faith and publicly rejected polygamy in 1892.

After the 19th Century, Congress took little action on marriage until 1996, when it passed the Defense of Marriage Act (DOMA). According to DOMA for the purposes of federal rights, obligations, and benefits, the federal government will only recognize the union between one man and one woman as a marriage.

In America, however, coverture proved problematic. For example, the agricultural economy, based in small family farms, was not as secure as nostalgia suggests. When husbands faced financial ruin, state legislators came to believe that a family should be able to rely on property that had been reserved in the wife's name. As a result, in the 1850's states began to pass "Married Women's Property Acts," which allowed a wife to retain ownership (but not management) rights to her property.

The emancipation of slaves after the Civil War spurred a third wave of state legislative activity concerning marriage. Many legislators were concerned that they might be opening the door to marriages between blacks and whites when they granted civil rights to emancipated slaves. Religious views of the time held that racial separation was part of the divine plan of creation, and scientific views held that races were in fact separate species. These ideas encouraged many states to pass 'anti-miscegenation' laws, or laws forbidding the "mixing of races." These laws paved the way for state prohibitions against 'mixed marriages' between whites and any other 'race' of people; few state laws addressed 'mixed marriages' that involved non-whites.

At the beginning of the 20th century, social trends in Europe and America also began to affect traditional marriage practices. Sentimental affection and, eventually, love began to be considered an important foundation for the relationship between a husband and wife (of whatever race). Cultural changes in dating and courtship also placed the couple rather than the family at the center of a marriage. Couples of all classes enjoyed the opportunity to explore new freedoms as they left family parlors and front porches and journeyed to amusement parks and nickelodeons.

In the 1920s, psychological theories of sexuality (e.g., Freud) were popularized, and love increasingly meant sexual compatibility in addition to personal affection. By the end of the 1920s the "companionate marriage" had emerged: marriage is now conceived of as a choice that the two partners make based upon mutual attraction and affection.

This new ideal of marriage, combined with the new housing and material comforts of the years following the Great Depression and World War II, led to a marriage boom in the late 1940s and early '50s. "This unprecedented marriage system," writes Stephanie Coontz, "was the climax of almost two hundred years of continuous tinkering with the . . . marital model invented in the late eighteenth century."

Some argue that, ironically, the cultivation of affection, compatibility, and the 'pleasure principle' as essential ingredients of marriage led to a "marriage crisis" in America. On the one hand, it became difficult for some to imagine affection and compatibility, much less eroticism, lasting across a lifetime. On the other hand, some came to question the traditional view that held marriage as one of the necessary elements of a full life.

In the 1950s and continuing through the 1960s, both men and women began to raise questions about the meaning and purpose of marriage. These questions were reflected in the magazines and books of the era. Playboy, for example, published stories featuring "sorry . . . regimented husbands," and, in *Sex and*

Update: Divorce

Divorce was originally an adversarial proceeding, a couple had to prove that one of the partners had broken the marriage contract before the state would dissolve the marriage.

'No-fault' divorce emerged in the late 20th century as many people became concerned about the perjury and fraud that resulted from the "fictions" that couples created to prove wrongdoing in the adversarial proceedings. As of 1983, every state allows some form of no-fault divorce.

Update: Coverture

The last legal vestiges of coverture were repealed in the 1970's, when laws were passed that allowed wives to make financial decisions (e.g., sign loans, get credit cards) without their husbands' permission.

Update: Interracial Marriage Laws

Laws prohibiting interracial marriages were ruled unconstitutional in 1967 by the Supreme Court's decision in *Loving v Virginia*. In overturning the Virginia law, the Court wrote that marriage was "one of the 'basic civil rights of man,' fundamental to our very existence and survival."

the Single Girl, Helen Gurley Brown cautioned single women that marriage "is insurance for the worst years of your life. During the best years you don't need a husband. . . ."

Throughout the 1960s and 1970s increasing freedoms encouraged new views about marriage. Women came to enjoy more financial freedom, and the legalization of birth control made 'sexual freedom' possible for both men and women. By 1982, according to the editors of the *New York Times*, "the decision to marry or remain single is now considered a real and legitimate choice between acceptable alternatives, marking a distinct shift in attitude from that held by Americans in the past."

In the 1980s—during the Reagan Years—marriage proved a central concern as social conservatives responded to what they saw as the excesses of the 1960s. Groups such as the Moral Majority advanced positions on marriage and other issues that were informed by a fundamentalist religious perspective. Other conservatives, rather than grounding their views in religious perspectives called for a return to "traditional values." Such concerns addressed the free-love and feminist "attacks" against the institution of marriage, as well as the influence of the Gay Rights movement on broader lifestyle issues.

What has come to be known as the "culture wars" emerged in the 1990s as social liberals responded to social conservatives. The sometimes extreme positions that characterize contemporary debates over social values issues developed at this time. Marriage continues to be a central battlefield of this struggle, and the role religious perspectives should play in defining our understanding of contemporary marriage remains a central question.

The Institution of Marriage

As contemporary debates over marriage developed, people began to raise questions about the special status of this institution. Some have argued that alternative relationships and family structures should gain access to the benefits, rights and responsibilities that are currently reserved for married couples. Recently, countries such as Canada, France, and the Netherlands have extended marriage-like legal and financial benefits to various types of care-giving, resource-pooling, and other long-term relationships between unmarried individuals, regardless of their sexual orientation. This has encouraged historians of marriage, such as Stephanie Coontz, to suggest that "For better or worse, marriage has been displaced from its pivotal position in personal and social life."

Social conservatives point to these changes when they argue that marriage, as a special relationship, needs to be protected or defended. In responding to these social conservatives, some have pointed out that the way to increase respect for marriage and to protect it as a special institution is to make the institution more widely available.

Since the 18th century, changes in laws and even social attitudes related to the issue of marriage have tended to focus attention on the relationship between two people. Recently, however, sociologists have cautioned that contemporary discussions of marriage must not neglect the long tradition of a wider commitment to family and society associated with marriage.

Marriage is an important social good, associated with an impressively broad array of positive outcomes for children and adults alike. Marriage is an important public good, associated with a range of economic, health, educational, and safety benefits that help local, state, and federal governments serve the common good.

—*Why Marriage Matters: Twenty-Six Conclusions from the Social Sciences*

Marriage as a universal human institution 'is everywhere the word we use to describe a public sexual union between a man and a woman that creates rights and obligations between the couple and any children the union may produce.' The social institution of marriage communicates a shared ideal of exemplary relationship, but it is in crisis because we have forgotten 'its great universal anthropological imperative: family making in a way that encourages ties between fathers, mothers, and their children--and the successful reproduction of society.'

—Maggie Gallagher, *The Case for Marriage*

A Moment of Reflection

- » How much influence should historical marriage practices and traditions have on how we think about and practice marriage today?
 - » How much influence does your own cultural background have on the way you view marriage?
-

Religious Perspectives

Religion involves, among other things, a set of core beliefs that largely define a basic understanding of human nature and right and wrong behaviors. Religious perspectives on marriage derive from religious teachings about right and wrong behavior pertaining to one aspect of human nature: human sexuality. Put simply, for most religious traditions, marriage is the institution that provides for the proper expression of human sexuality. In the various debates over same-sex marriage in America, those who oppose and those who support same-sex marriage have primarily framed their positions in response to the views on marriage developed within monotheistic, Abrahamic traditions, primarily that of Christianity.

*This at last is bone of my bones,
and flesh of my flesh;
This one shall be called Woman
for out of Man this one was
taken.
Therefore a man leaves his father
and his mother and clings to his
wife, and they become one flesh.
—Genesis, 2:23-24*

Within Abrahamic traditions, views on marriage are traced to Scripture, and specifically to the creation story in Genesis (cf., Qur'an 7:1-24). Those adhering to these traditions argue that God created woman, not solely or even primarily for procreation, but, rather, woman was created to complete the plan of creation. That is, woman was created because "It is not good that the man should be alone . . ." (Genesis 2:18).

In certain Christian traditions, marriage is considered a sacrament—a sacred rite initiated by Jesus Christ through which God communicates his grace to the faithful. In Judaism marriage is regarded as a mitzvah, or religious obligation, and it is considered unholy not to marry. Muslims are also encouraged to view marriage as a requirement; however, for Muslims, marriage is considered a civil rather than a religious matter (although civil law in many Islamic countries is fundamentally based in religious law). For each tradition, Scripture establishes heterosexual marriage as the ideal. In the words of one prominent Jewish intellectual, "The union of male and female is not merely some lovely ideal; it is the essence of the biblical outlook on becoming human."

The contemporary views concerning marriage in Judaism and Islam reflect an unbroken tradition grounded in the scriptural accounts of creation. According to the accepted interpretations of Scripture, marriage and sexuality are both goods through which one experiences pleasures that are right and natural because both are a part of the plan of creation.

In contrast, early Christian views on marriage were shaped by the expectation that the Second Coming of Christ was imminent. Concerned that worldly relationships such as marriage would impede full Christian devotion, church leaders preached celibacy as an ideal. Paul, for example, expresses what some have seen as the early Church's hostile view towards marriage: "It is good for a man not to touch a woman . . . But if they cannot contain, let them marry: for it is better to marry than to burn" (I Corinthians, 7: 1-9).

As the Christian church gained acceptance and power, marriage took on both social and religious implications. Church teachings in the Middle Ages and the Renaissance presented marriage as both part of God's design for creation, stressing the particular roles of men and women, as well as a way of promoting social stability and the orderly transfer of land and property across families and

generations. The church, rather than the government, recognized and recorded marriages. During the Reformation, the 16th century schism within the Christian church that led to the formation of Protestant denominations (e.g., Anglicans, Lutherans, Presbyterians, etc.), two enduring approaches to marriage emerged.

In the Roman Catholic tradition, marriage is one of seven sacraments. A sacrament is a rite through which participants experience God's grace. Sacraments must be administered by an ordained priest, and one must experience God's grace in order to achieve eternal salvation. Protestant denominations, on the other hand, do not view marriage as a sacrament. Protestants see marriage as a covenant between two people which God and the community are called to bless and witness. Reformation leaders such as John Calvin also urged that marriage be recognized and regulated by the state as well as the church; this was the beginning of civil marriage. Today, Protestant churches recognize the validity of civil marriage alone while strongly urging couples to seek religious blessing as well.

Similar to the Protestant tradition, Judaism and Islam regard marriage as a covenant between a man and a woman that does not need to be sanctified by a religious official. The inclusion of a rabbi in Jewish ceremonies, for example, is only considered necessary because the presence of a religious or civil official is required under United States civil law. Indeed, marriages performed by clergy in the United States are recognized as legally binding only if the local government's process of application, licensing and recording is followed. For religious communities, the debate over same-sex marriage centers around the relationship between human laws and God's law, which is presumed to be embodied in religious traditions.

Religious Perspectives and Homosexuality

For religious communities, the debate over same-sex marriage involves questions about the relationship between God's eternal law and human (or civil) law. In the Christian tradition, for example, Thomas Aquinas speaks of natural law as that aspect of eternal law that deals with human behavior, morality, and social order. Human laws, such as traffic regulations and tax codes can vary from place to place, but they may never, in this view, violate natural law. The principles of natural law are general (e.g., preserve life) but they have been interpreted in ways that have far-reaching consequences. Some see natural law as prohibiting, for example, 'physician-assisted suicide', birth control, and homosexuality.

Aquinas and others also point to another law—divine law—which comes through revelation. Scripture is considered a record of God's revelations, and, thus, for many religious communities Scripture provides the basis of authority. Religious traditions have emerged as the authority of Scripture has been moderated by various means of interpretation. For example, Roman Catholics rely on the office of the *divine magisterium*, the teaching authority of the Church, for guidance about the acceptable interpretations of the Bible. Among Protestants, the Methodists are perhaps most famous for John Wesley's "Quadrilateral," which identifies four sources of authority: Scripture,

Position of the Anglican Communion

- » Homosexuality is condemned in the Bible (e.g., in Genesis, Leviticus, Mark, Romans, and I Corinthians)
- » Promoting and/or giving validity to homosexual relationships is on par with supporting premarital or extramarital sexual activity
- » This issue threatens to tear apart the Anglican Communion, the third largest church in the world. The result would be two competing church bodies espousing the same faith.

Position of the Episcopal Church

- » The Bible speaks of God's love and acceptance, which were both promoted by Jesus.
- » The Anglican Communion and the Episcopal Church teach "unity in diversity". By denying privileges to homosexuals, the church is going against this teaching.
- » The Church will not be able to adequately address these issues until its regularly scheduled annual meeting in 2009. No decisions can be made until after this meeting.

tradition, reason, and experience. Religious discussions over authority and the authoritative interpretation of Scripture mirror other discussions in America about the courts and the proper interpretation of the US Constitution. That is, in religious communities there are 'fundamentalists' who regard Scripture as the source of all authority and the wellspring of tradition. For others, texts such as the Bible are 'living documents,' and traditions arise when we read Scripture in light of reason and experience.

Homosexuality has encouraged some to question how their religious community regards the authority of traditional interpretations of Scripture. One example of these struggles over homosexuality, Scripture, and religious authority can be seen in the recent conflict between the worldwide Anglican Communion and its American branch, the Episcopal Church.

In 2003, the Diocese of New Hampshire appointed an openly gay bishop, and, more recently, the Episcopal General Convention granted individual dioceses the option of choosing whether they wished to confer a religious blessing on same-sex unions. As a result, Anglican communities in Africa, Asia, and South America have threatened to expel the Episcopal Church from the worldwide Anglican Communion. In addition to these international pressures, the Episcopal Church is threatened by an internal divide. Several conservative dioceses, including the one in Pittsburgh, PA, have threatened to sever their ties with the Episcopal Church and associate themselves with Anglican communities in other countries.

This and other religious debates over the acceptance of homosexuality and the recognition and/or blessing of same-sex marriages rest on different ways of reading Scripture and the various texts that offer interpretations of Scripture.

Nevertheless, Islam, most branches of Christianity, and Orthodox and Conservative Judaism teach that the only acceptable expression of human sexuality is a man and a woman joined in marriage. Moreover, each of these traditions regards homosexual acts as unnatural. Among Christians, for example, those who oppose same-sex marriage appeal to Scriptural prohibitions against homosexual acts and they regard heterosexuality and the marital union of a man and women as natural in light of how humans were created by God. Indeed, while acknowledging what appears to some as the natural occurrence of homosexuality, certain Jews and Christians have developed what some see as a qualified stance on homosexuality itself. In this view, homosexuality is not a sin but it is still a sin to be a 'practicing' homosexual.

On the other hand, those Christians who would accept same-sex marriage believe that all humans were created for relationships with each other and with God; they regard marriage as a covenant between two people, a view that does not specify gender; and they point to the absence of Scriptural teachings on homosexual acts in Jesus' teachings. Taking all this into consideration, they argue that contemporary societies should take care to maintain a distinction between the cultural norms of the past and divine or eternal law.

A Moment of Reflection

- » What influence do you think religious perspectives should have on questions about marriage in America?
 - » What influence do religious perspectives have on how you think about the Issue of Marriage in America?
 - » How do you imagine religious perspectives influence the views of others?
-

Society and the Law

Homosexuality: A Question of Percentages

There is currently some conflict about what percentage of the population should be considered as homosexual. Various statistics suggest between 3% and 10% of the population.

However, statistics concerning homosexuality have been difficult to assess, because assessment depends on how one defines homosexuality.

Although contemporary debates about marriage are informed by social and religious histories, these debates are, in many ways, fundamentally about citizens' attitudes towards homosexuality. Sexuality, however, has rarely been a matter of public deliberation, even though, throughout American history, a significant number of people have had their sex lives regulated by laws and other public sanctions on their behavior (e.g., the criminalization of fornication and adultery in the early colonies, 19th century laws prohibiting interracial marriages). Laws regulating consensual sexual activity, however, have ultimately been found to violate constitutional guarantees of civil rights. Over the last fifty years, medical research and judicial decisions have encouraged some to argue that we should reframe the questions raised by homosexuality as questions about the civil rights of homosexuals.

Homosexual relationships were an accepted part of ancient Greek civilization, and anthropology reveals that a number of societies have developed socially accepted forms of same-sex relationships. Indeed, in Western cultures, until the late 19th century, the belief that men and women were fundamentally different encouraged people to seek fulfillment, although not necessarily sexual gratification, in same-sex relationships. These relationships were intimate in ways contemporaries might find alarming. Nevertheless, few societies have publicly celebrated homosexual relationships, and in the United States, beginning in the 19th Century and continuing until very recently, homosexuality has been actively discouraged and criminalized.

The views about homosexuality presented in the current debates about marriage, even religious views that trace their history back to Scripture, involve ideas about homosexuality that developed over the last 100 years. Early in the 20th century, homosexuality began to be viewed as a medical (or psychological) issue. For example, some argued that homosexuality resulted from a degenerative disease, which caused individuals to be 'inverted'; that is, it was believed that some individuals possessed the emotional characteristics of the gender to which they did not belong biologically. Thus, an 'inverted' male would seek out males and an 'inverted' female would seek out females. These attempts to describe a physiological basis for homosexuality contributed to the belief that homosexuality could be cured through medical or psychological treatment.

Although early attempts to explain homosexuality physiologically maintained that homosexuality was abnormal, they nevertheless provided a basis for the development of contemporary views that propose a genetic basis for homosexuality. During the late 1950s and early '60s, a number of researchers within the fields of psychology and sociology began to regard homosexuality as neither a pathological condition nor as a congenital defect; instead, they began to argue that homosexuality was an immutable part of a person's makeup. The results of this research encouraged the American Psychiatric Association (APA) to remove homosexuality as a 'sociopathic personality disorder' from its Diagnostic and Statistical Manual, Mental Disorders in 1973.

Today, views on homosexuality exist on a spectrum. While scientific consensus regards homosexuality as immutable and for the most part genetically determined, some still maintain that homosexuality, or at least the decision to live as a homosexual, is a personal choice. Thus, for example, the Roman Catholic Church now teaches that some may be born with a genetic predisposition towards homosexuality, but the decision to engage in homosexual acts remains a matter of choice.

"The revision . . . does not sacrifice scientific principles Quite to the contrary: it has been the unscientific inclusion of homosexuality . . . in a list of medical disorders which has been the main ideological justification for the denial of the civil rights of individuals whose only crime is that their sexual orientation is to members of the same sex."

—American Psychiatric Association, 1973

"The liberty protected by the Constitution allows homosexual persons the right to choose to enter upon relationships in the confines of their homes and their own private lives and still retain their dignity as free persons."

— *Lawrence v. Texas*, Majority Decision

In a statement that accompanied the American Psychiatric Association's 1973 decision, the APA connected the revision of its manual to a concern about the civil rights of homosexuals. This decision and its rationale were welcomed by a growing Gay Rights movement. Although a small number of political organizations advocating for the civil rights of homosexuals had been organized prior to World War II, the contemporary Gay Rights movement is usually dated from June 28, 1969. On that night police raided the Stonewall Inn, a gay bar in New York's Greenwich Village. Patrons responded to the raid by initiating what would become three days of rioting. After Stonewall, gay rights advocates drew lessons from the Civil Rights movement. They began advocating for equal rights, for an end to discrimination, and for increasing levels of inclusion in all aspects of society.

Advocates argue that a guarantee of equal rights for homosexuals is consistent with America's movement towards greater equality. However, others have argued that the Gay Rights movement is part of a larger social crisis. The legal scholar Robert Bork, for example, considers the Gay Rights movement and other indicators, such as rising rates of divorce and increases in out-of-wedlock births, as evidence that American society is in decline.

Gay rights advocates, however, see recent judicial decisions as a vindication of their calls for equal rights. In 2003, for example, the United States Supreme Court ruled sodomy laws unconstitutional (*Lawrence v. Texas*). Sodomy laws had been used to define certain sexual acts, usually ones that do not lead to procreation, as sex crimes. In *Lawrence v. Texas*, the Court concluded that the ways in which homosexuals have sex provides no grounds for infringing on the civil rights of homosexuals. In a dissenting opinion, Justice Antonin Scalia argued that the majority decision "dismantle[d] the structure of constitutional law that has permitted a distinction to be made between heterosexual and homosexual unions, insofar as formal recognition of marriage is concerned."

The structure of law to which Justice Scalia refers is the traditional view, which is reflected in legal precedents, that procreation is, ultimately, the purpose for marriage. According to this logic, marriage laws reflect a state's interest in supporting relationships that lead to procreation. Recently, however, the supreme courts in various states, most notably in Massachusetts, have rejected the argument that marriage laws reflect a state's interest in procreation. That is, because states legally recognize the marriage of heterosexuals who do not procreate, marriage must serve some other state interest. These courts conclude that, rather than procreation, marriage laws reflect a state's interest in supporting long-term, stable relationships because such relationships contribute to the general health and stability of individuals, children, and society as a whole.

Gay rights advocates argue that these court decisions draw attention away from questions about sexuality and sexual behavior, and, instead, they properly focus attention on the civil rights of individuals. Thus, these decisions support the rights of homosexuals to not have their private behavior considered in questions of public policy. Nevertheless, in contemporary America, the position of Gay Rights advocates coexists alongside traditional and religious views that still consider homosexuality an unnatural act or a moral failing.

A Moment of Reflection

- » In your opinion, which views about homosexuality (medical, societal, religious) should govern legal decisions involving the relationships of homosexuals? Why?
 - » How much weight should be given to prior legal decisions concerning homosexual activity (e.g., dismissal of sodomy laws) when we consider the question of whether homosexuals should be allowed to marry?
-

Civil Rights and the Courts: A Constitutional Question

Two Views on Constitutional Change

“Originists” read the Constitution literally and argue that the burden of social reform rests solely with the citizens and their representatives in the legislature. That is, unless a law or a constitution is changed through the legislative process, judges should assume that they express the will of the people.

“Living Constitution” proponents believe that, when faced with evolving social circumstances, courts may be guided by the meaning embodied in Constitutional guarantees rather than by the specific language used to express these guarantees.

Some have charged that the various court decisions cited by Gay Rights advocates result from ‘judicial activism,’ or an inappropriate exercise of power by the judiciary. In the legislative debates surrounding the so-called Marriage Protection Amendments, many of those who support such amendments express a concern about “activist judges.” In Pennsylvania some legislators argue that judges in other states acted outside of their judicial powers when making the decisions that lead to the creation of civil unions in Vermont and the legalization of same-sex marriage in Massachusetts. In fact, in a dissenting opinion from the Massachusetts court, one justice seems to support this idea when he argues that: “Although it may be desirable for many reasons to extend to same-sex couples the benefits and burdens of civil marriage . . . that decision must be made by the Legislature . . .”

In both Vermont and Massachusetts, the courts pointed to the guarantees of equal protection and equal rights found in each state’s constitution when they made their decisions. Moreover, in the published opinions from both cases, the courts acknowledged that it is indeed the responsibility of the legislative branch to make laws. In both Vermont and Massachusetts, however, the judges also pointed out that it is the proper role of the judiciary to insure that the laws passed in the legislature do not violate the constitution of the state.

As one of dissenting justices in Massachusetts put it, constitutions represent the will of the people. To address the Issue of Marriage in America, legislatures across the nation have considered proposals to amend their state’s constitution, but any change to a state’s constitution must be voted on by the people of that state. As of 2008, voters in twenty-seven states have passed constitutional amendments declaring same-sex marriages “void or

“Ultimately it’s the people who must decide whether they want to add this [ban on gay marriage] language to the constitution.”

—Senator John Gardner
(R-Columbia County), 2008

“Am I to understand, Mr. Speaker, that when it was the will of the people that I should be discriminated against, that was all right? When it was the will of the people that law should be enacted that said that Blacks were unequal, that was all right? When there were laws that said it was all right to segregate, that was all right? That seems to be what we are saying, Mr. Speaker . . . and we ought not go back to those days . . .”

—Rep. James R. Roebuck
(D-Philadelphia), 2006

invalid.” Forty-one states have laws that deny same-sex couples the right to marriage, but in five states legislatures have made provisions for marriage-like arrangements or ‘domestic partnerships’ between unmarried individuals, regardless of their sexual orientation.

Constitutional debates engage technical questions about legislative and judicial processes. However some do not believe the matter to be technical at all. Marriage is described as a civil right by the US Supreme Court (*Lawrence v. Texas*), and some have argued that issues concerning fundamental civil rights should not be put to a vote. Others maintain, however, that decisions about ‘social values’ issues like same-sex marriage must reflect the values of the people. Although there is conflict between these positions, they seem to express agreement on at least one point: a society’s laws should reflect what it values.

Although these Constitutional questions are important, in the Deliberative Poll, we are seeking to learn what the citizens of Pennsylvania believe about marriage. Thus, we hope that, on the day of deliberation, your discussions will remain focused on the issue of marriage--on the question of who ought to be allowed to marry--rather than on questions about the separation of powers in our democracy.

The Importance of Public Reasons

When we engage in democratic deliberations, those who appeal to sacred texts or particular traditions should recognize that those with other beliefs and from other traditions may justifiably expect that the rationale offered for any position will involve ‘public reasons’ that everyone can understand and evaluate.

Martin Luther King Jr. provides perhaps the most famous example of a devout man who relied on public reasons to advance his calls for justice. Guided by religious principles, Dr. King, nevertheless, called upon public reasons when he spoke before the nation in 1963:

When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men, yes, black men as well as white men, would be guaranteed the unalienable rights of life, liberty, and the pursuit of happiness.

Public reasons—like our constitution, our laws, and the justification for those laws—result from public reasoning. They emerge from discussions in open forums where citizens of many different faiths and traditions take part. In a democratic society like America, forums for public reasoning provide a valuable place for us to discuss controversial issues like same-sex marriage.

Section Two

Three Voices

Voice 1—Pennsylvania

A Marriage Protection Amendment

Currently twenty-seven states have amended their constitution to prohibit same-sex marriage. This is the option that is being proposed for Pennsylvania.

Voice 2—Vermont

Civil Union Laws

Recently four states--Connecticut, New Hampshire, New Jersey, and Vermont-- have created the separate category of *civil union* to provide same-sex couples with all of the legal rights, benefits, and obligations of marriage that are controlled by the state. However, civil unions do not allow partners to access the the rights and benefits made available to married couples by the federal government.

Note: Although not the same as civil unions, five states--Hawaii, Maine, Oregon, and Washington--allow the legal recognition of marriage-like relationships. Called *reciprocal beneficiary agreements*, these relationships are more commonly referred to as *domestic partnership agreements*.

Voice 3—Massachusetts

Legalizing Same-Sex Marriage: Goodridge v. Department of Public Health

Currently two states, California and Massachusetts, legally recognize the marriage of same-sex couples. However, like civil unions, these marriages are not legally recognized by the federal government.

The Issue of Marriage in America engages questions about historical, religious, and social traditions, so we expect that you will find the information in the previous section helpful as you prepare for the deliberative poll. However, the arguments contained in the following section provide the information that will be essential for the deliberative poll.

Currently the Issue of Marriage in America is primarily focused around a debate over the legal recognition of same-sex marriages. The central questions that have emerged in this debate are:

What type of relationship can be termed a legal marriage?

Do state laws that prohibit same-sex marriages violate other rights that are guaranteed by states' constitutions?

This debate began in 1991, in Hawaii, when three same-sex couples sued the Hawaii Department of Health, claiming that their rights were violated when the Department refused to issue them a marriage license. In 1993, the Hawaii Supreme Court ruled that a state law prohibiting same-sex marriage may violate the guarantee against sex discrimination found in the state's constitution. In 1998, the voters of Hawaii approved a constitutional amendment that allows only opposite-sex couples the right to the term marriage. Thus, because the state's constitution was amended, in Hawaii today same-sex couples cannot marry.

Since 1991, many other states have engaged this debate. Currently forty-one states, including Pennsylvania, have a state law that reserves the term marriage for opposite-sex couples. Recently, however, California's Supreme Court ruled that a voter-approved state law prohibiting same-sex marriages, which was passed in 2000, violates a right to marry (or "to form a family relationship") that is guaranteed by that state's constitution. Same-sex couples can now be legally married in California. However, opponents of this decision have placed a constitutional amendment banning same-sex marriages on the ballot in California. In November of 2008 voters in California will decide whether to amend their state's constitution so that it prohibits same-sex marriages.

In the following pages you will read about three options that have emerged as states have sought to resolve the issue of marriage in America. We have organized this section into 'Voices.' Within each Voice we present the arguments that have been made for and against each option. As you prepare for the deliberative poll, we ask that you respectfully 'listen' to the various positions and that you carefully consider the arguments made in the courts and legislatures of each state. Each Voice has been developed as a self-contained section, so please feel free to read them in any order. For your convenience, a summary of the arguments is provided at the end of each Voice.

Finally, after all the Voices have been given a chance to speak, you will find a position map--a graphical representation-- of all the legal arguments that have been advanced both for and against same-sex marriage (pp. 35-36).

Voice 1–Pennsylvania

The Marriage Protection Amendment

An Amendment in PA?

Recent events in Vermont and Massachusetts featured prominently in the legislative debates in Pennsylvania.

Proponents of the MPA argued that, because of events in other states, Pennsylvanians needed to take decisive action immediately.

Opponents of the MPA argued that, because there had been no challenges to the Pennsylvania Defense of Marriage Act (DOMA) there was no compelling need for a constitutional amendment.

The Proposed Amendments

House Bill 2381 (2006)

Only a marriage between one man and one woman shall be valid or recognized as a marriage in this commonwealth, and neither the commonwealth nor any of its political subdivisions shall create or recognize a legal status identical or substantially equivalent to that of marriage for unmarried individuals.

Senate Bill 1250 (2008)

No union other than a marriage between one man and one woman shall be valid or recognized as marriage or the functional equivalent of marriage by the Commonwealth.

Background

Since 1996 Pennsylvania has had a law restricting marriage to one man and one woman. In other states laws that prohibit same-sex unions have been ruled unconstitutional. As a result some legislators have proposed that Pennsylvanians need to amend the Commonwealth's constitution. The Commonwealth's constitution can only be amended if a bill proposing the amendment is passed in separate but consecutive sessions of the General Assembly (House and Senate). After passage in the General Assembly, the amendment must be put before the voters in a state-wide referendum. Two recent attempts to enact a marriage protection amendment have not achieved the first step--passage by the General Assembly.

In 2006 the General Assembly considered House Bill 2381 : the Pennsylvania "Marriage Protection Amendment" (MPA). HB 2381 passed in the Pennsylvania House and a modified version of the bill passed in the Pennsylvania Senate. The Senate version did not explicitly forbid the legal recognition of marriage-like relationships. Because the Senate and the House never met to rectify the disparity between the two versions of the bill, the process of amending the constitution did not move forward.

In 2008, a separate marriage protection amendment was introduced in the Pennsylvania Senate (SB 1250). However, legislators in the Senate halted action on SB 1250 ('tabled' the bill) because they believed that legislators in the House would not take action on the bill.

Arguments For:

Proponents of the Marriage Protection Amendment

Proponents of the MPA argue that what is often termed a 'traditional marriage'-that between one man and one woman-has measurable benefits for individuals and society as a whole. They contend that 'traditional marriage' contributes to longer, more productive lives for those who are married and that children benefit from having the influence and commitment of a male and female parent.

Proponents worry that there may be unintended consequences from an altered definition of marriage. While we cannot yet perceive what these consequences might be, they argue that we should rely on the evidence of tradition. Proponents contend that tradition reveals unique benefits from 'traditional marriage', and we risk losing these benefits if we allow other types of relationships to be called marriage. Because this relationship is uniquely valuable to society, proponents believe the state has a responsibility to protect this relationship.

“Homosexual and unmarried heterosexual individuals . . . should not have the freedom to redefine the institution of marriage for everyone.”

—Rep. Daryl Metcalfe
(R-Butler), 2006

Proponents also point out that marriage is not guaranteed to anyone. In fact, the Commonwealth limits access to marriage in other ways that are related to perceived public goods. For example, it requires that people be of a certain age, and it forbids marriage to close blood relations. Limiting marriage to one man and one woman is consistent with these other limitations because, like them, it seeks to support long-term stable relationships and the creation of an environment for raising healthy children.

Proponents argue that couples who cannot marry have other legal means to acquire the healthcare, inheritance, and employer benefits that are available to married people. All people are free to enter into contractual relationships, for example, through living wills or power of attorney, which will guarantee that any individual’s wishes related to healthcare or inheritance are respected by the state.

Moreover, proponents argue that the MPA will have no effect on the relationship between employers and employees. If the amendment is passed, employees and employers will still have the option of negotiating for any type of benefits package (e.g., domestic partnership benefits) that they deem appropriate. However, proponents worry that any attempt to provide legal recognition to same-sex unions will constrain an employer’s freedom to make choices about which employees should receive spousal benefits. They argue that, if more relationships are legally regarded as marriages, businesses will be unable to afford the added costs of providing spousal benefits for more employees.

Finally, proponents argue that the citizens of Pennsylvania should have the opportunity to vote on a referendum about how to define marriage in Pennsylvania. Before the referendum can be placed on a ballot, the MPA must first be passed in two separate sessions of the Pennsylvania legislature. Therefore, the legislature has a responsibility to pass the MPA so that citizens will get the opportunity to vote on the amendment.

Arguments Against:

Opponents of the Marriage Protection Amendment

Opponents of the MPA point out that Pennsylvania already has a law—the Defense of Marriage Act (DOMA)—defining marriage as a relationship between one man and one woman. DOMA was passed by the General Assembly in 1996, and it has never been challenged in any Pennsylvania court. Thus, the MPA appears unnecessary.

In addition, opponents are concerned that the amendment is divisive and discriminatory. The Constitution, they argue, has traditionally been amended to extend or expand rights; however, as it is written, the MPA asks that citizens amend the constitution in a way that it will limit the rights of certain people.

Opponents also argue that, if the citizens of Pennsylvania amend their constitution, the state will find it increasingly difficult to attract new business. Specifically, businesses may be concerned that they will be unable to attract and retain employees in a state that appears “intolerant.”

“While the Constitution has been amended in the past, it has never been altered with the express intent to deny equal protection to an entire class of citizens.”

—Senator Jim Ferlo
(D) Allegheny, 2006

Finally, opponents are concerned about “unintended” effects that may result from the unclear language of the MPA. The issue of marriage, they argue, is not solely about same-sex marriages. There are other relationships that unmarried heterosexuals have that may be threatened by the language of the MPA. If, as the amendment reads, the state is forbidden from recognizing any relationship between unmarried people that is “substantially equivalent” to marriage, employees may find it difficult to negotiate ‘domestic partnership’ benefits with their employers and lawyers and judges may run into problems when they are asked to negotiate disputes among unmarried individuals who have made contractual arrangements that appear similar to marriage.

Arguments For

Proponents of Pennsylvania’s MPA

- » Traditional marriage has real and valuable stabilizing and socializing benefits for married couples and their children—these benefits may be threatened by a change in the definition of marriage
- » Marriage is not a civil right, and states have seen various reasons to limit access to this union
- » The benefits (health, inheritance, employment benefits) available to married couples are available to unmarried people through other legal means
- » Employers will find it more difficult to provide spousal benefits to their employees if they are forced to regard same-sex unions as legally equal to opposite-sex marriages
- » Judges and legislators should not make the decision. Instead, citizens should have the chance to vote on the amendment.

Arguments Against

Opponents of Pennsylvania’s MPA

- » Marriage in PA is already defined as one man/one woman by DOMA, and there have been no challenges to DOMA in PA since it passed in 1996
- » MPA will use Pennsylvania’s constitution to create a separate class of citizens
- » Employers will be reluctant to locate their business in a state that appears “intolerant” because they will be concerned about their ability to attract and retain employees
- » The language of MPA is unclear and may have unintended consequences for the legal arrangements made between unmarried heterosexuals.

Voice 2–Vermont

Civil Union Laws

Background

Common Benefits Clause of the Vermont Constitution:

[G]overnment is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family or set of persons, who are a part only of that community; and that the community hath an indubitable, unalienable, and indefeasible right, to reform or alter government, in such a manner as shall be, by that community, judged most conducive to the public weal.

“[T]he weight of evidence gathered during several decades using diverse samples and methodologies is persuasive in demonstrating that there is no systematic difference between gay and nongay parents in emotional health, parenting skills, and attitudes toward parenting. No data have pointed to any risk to children as a result of growing up in a family with 1 or more gay parents.”

—Journal of the American Academy of Pediatrics, Feb. 2002

In July of 1997, county clerks in Vermont denied marriage licenses to three same-sex couples. The couples filed suit against the counties and the state, charging that the laws barring same-sex couples from marriage violated the “Common Benefits Clause” of Vermont’s constitution. The case quickly made its way to the Vermont Supreme Court.

In December 1999, the Vermont Supreme Court issued a unanimous decision in *Baker v. State of Vermont*. The court found that laws prohibiting same-sex couples from the legal and civil benefits of marriage do violate the “Common Benefits Clause” of Vermont’s constitution. In response to this decision, the Vermont Legislature passed House Bill 847 in April 2001. This bill created a new relationship—the civil union—which grants same-sex couples access to “the same benefits, protections and responsibilities under law . . . as are granted to spouses in a marriage.” That is, in Vermont, couples who marry and those that enter a civil union have all the same legal rights and obligations, but the term marriage refers only to a union between a man and a woman.

In *Baker v. State of Vermont*, the state argued two points in its case against allowing civil marriage to same-sex couples. First the state argued that the purpose of marriage is procreation. Because same-sex unions cannot produce children, the state contends that same-sex marriages should not be allowed. Second, the state argued that same-sex marriages cannot provide an optimal environment for children. Because the state has a responsibility to “legitimize children and provide for their security,” the State believes that same-sex couples should not be allowed to marry.

On the first point, the court found that the state could not support its claim that procreation was the sole purpose of marriage. As an example, the court pointed out that the state does not deny marriage to heterosexual couples that do not or cannot have children. Thus, the state would be acting inconsistently if it denied marriage to same-sex couples solely because homosexual acts do not lead to procreation.

On the second point, the court agreed that marriage laws reflect the state’s “legitimate and long-standing interest in promoting a permanent commitment between couples for the security of their children.” However, the court pointed out that the Vermont legislature had passed a law allowing same-sex partners all the rights of parenthood—including adoption rights—in 1996. Therefore, the court concluded, when the state denies same-sex partners the benefits of a civil marriage it exposes the children of same-sex couples to “the precise risks that the . . . marriage laws are designed to secure against.”

Further, the Vermont Supreme Court recognized that “marriage laws transform a private agreement into a source of significant public benefits and protections.” According to the Court, the State cannot deny these benefits to one class of people without proving that the exclusion serves a ‘significant’ public interest. The court concluded that the state had not satisfactorily established a public interest that justified such exclusion.

The Vermont legislature responded to the court’s decision by passing the “Act Relating to Civil Unions,” (HB 847). Legislators argued that civil unions represent a viable compromise. By creating civil unions and reserving the term marriage for the union of one man and one woman, the legislature believes that it has given “due respect for tradition and long-standing social institutions.”

The legislators also took care to note that HB 847 was neither intended to have an effect on religious beliefs nor to compel religious organizations to recognize unions between same-sex couples. Vermont only recognizes civil unions between same-sex couples. It does not, however, recognize marriages between same-sex couples that have occurred in other states, nor is any other state required to recognize civil unions that occur in Vermont.

Arguments For:

Proponents of Civil Unions

Proponents of civil unions argue that society benefits when all citizens and their children have access to the institution of marriage.

The public benefits reserved for married couples reflect the state’s interest in supporting long-term, stable relationships. It is generally believed that such relationships contribute to a stable society. Proponents of civil unions point out that after many months of investigation, which involved public hearings, expert testimony, and intense deliberations, neither the Vermont Supreme Court nor the Vermont legislature were able to identify a public interest that is served by denying the public benefits of marriage to same-sex couples. On the contrary, they contend, denying public benefits to the stable relationships of same-sex couples may contribute to the instability of society.

Specifically, proponents point to the state’s interest in providing all children with the opportunity to experience the secure, stable environment of a committed two-parent relationship. Because there are children in Vermont who have same-sex partners as parents, same-sex relationships should enjoy the same legal protections and benefits as opposite-sex partnerships.

In response to those who might argue that civil unions are the first step down a ‘slippery slope’ that could eventually lead to state recognition of complex relationships involving more than two individuals as marriage (see below), proponents argue that civil unions are indeed a marriage-like partnership. That is, they are an attempt to extend marriage-like benefits in order to support and encourage stable, two-person relationships. In this sense, they do not create a new type of relationship. Rather, they represent an attempt to create an alternative legal relationship while remaining sensitive to the views of those who believe in so-called ‘traditional marriage.’ Thus, proponents argue that those who are concerned about relationships that involve more than two

Benefits of Marriage

Marriage provides couples access to nearly 1500 reciprocal rights, responsibilities and obligations. These are granted or imposed by both the state and federal government, and they include spousal access to health and disability insurance, pension and social security benefits, hospital visitation rights, family leave, inheritance, and preferential tax laws. The specific benefits enabled by marriage differ by state, but, generally, there are 1000 federal and 500 state benefits.

Civil unions enable couples to access state benefits but not federal benefits.

people are raising questions that are beside the point. These may be important questions, but, proponents argue, they are separate from questions about the legal recognition of committed two-party relationships.

Arguments Against: Opponents of Civil Unions

"[T]hose seeking to redefine marriage for their own purposes are the ones trying to impose their values on the rest of the population."

—Bishops of the Boston Province

A number of organized groups have maintained their opposition to civil unions: faith communities, social conservatives, citizen advocates, and advocates of equal rights for homosexuals.

As represented by the Catholic Bishops of the Boston Province, religious opposition to civil unions is grounded in the belief that marriage, as a sacred union of one man and one woman, is the basic unit of society established by the Creator. These opponents argue that the civil union act "imposes . . . values," diverts "resources from marriages and families," and undermines "the unique position of marriage in our society." Social conservatives have made similar claims in defense of 'traditional marriage'.

According to some social conservatives, civil unions are at the top of a 'slippery slope' that may lead to the state's legal recognition of plural or complex marriage arrangements. These opponents raise concerns that the logic that supports the creation of civil unions may someday encourage people to argue that the state should extend marriage-like benefits to any type of cohabitation or 'resource-pooling' relationship between unmarried individuals. Some also point out that, in order to procreate, same-sex couples must get the assistance of a third party. In the future, those involved in these complex relationships may demand that the state provide marriage-like benefits to these expanded networks of individuals. Others claim that once marriage is made available to same-sex couples there will be no rational ground for denying some type of legal recognition to polygamous groupings. At some point, conservatives claim, marriage will cease to describe any specific type of relationship, it will lose its social meaning, and the institution will dissolve.

Citizen advocates continue to oppose civil unions because they were "imposed" by the courts and the legislature rather than resulting from a citizen referendum. These opponents, as represented by an organization known as Take It to the People, argue that a referendum proposing a constitutional amendment concerning marriage should be placed on a ballot and put before the people for a vote.

Finally, advocates of equal rights for homosexuals argue that civil unions "create separate institutions for different groups of people and do not provide access to federal protections." When arguing for marriage equality, organizations such as the Gay and Lesbian Advocates and Defenders (GLAD) invoke the 14th Amendment to the United States Constitution, arguing that civil unions create a "separate but equal" institution that is inherently unconstitutional.

Arguments For

Proponents of Civil Unions

- » The State cannot deny access to civil institutions without presenting a compelling public interest for doing so
- » Civil unions further the State's interest to provide stable and secure environments for children, regardless of the sexual orientation of their parents
- » Civil unions neither infringe on traditional marriage practices, nor do they infringe on the rights of religious organizations to practice their faith free from governmental interference
- » Civil unions create an alternative legal relationship for couples; thus, 'slippery slope' arguments that raise concerns about polygamy or plural marriages are addressing a separate issue.

Arguments Against

Opponents of Civil Unions

- » Religious Position: Civil unions impose values, undermine the (sacred) and unique position of marriage, and divert government resources from families
- » Social Conservatives: Civil Unions are a start down a 'slippery slope' that leads to state recognition of plural marriage, 'resource pooling' among friends, and eventually the dissolution of the institution of marriage entirely
- » Citizen Advocates: Civil unions were imposed by the judicial and legislative branches without providing citizens adequate access to the process. The people must be allowed to vote on the issue of marriage
- » Equal rights advocates: Civil unions create a "separate but equal institution," which is inherently unconstitutional.

Voice 3—Massachusetts

Legalizing Same-Sex Marriage:

Goodridge v. Department of Public Health

Background

“The ‘marriage ban’ works a deep and scarring hardship on same-sex families for no rational reason. It prevents children of same-sex couples from enjoying the immeasurable advantages that flow from the assurance of a stable family structure in which children will be reared, educated, and socialized.”

—Majority opinion, Massachusetts

In May 2004, The Supreme Judicial Court of Massachusetts ruled that it is unconstitutional to allow only heterosexuals to marry (*Goodridge v. Department of Health*). In its decision, the court rejected the idea that procreation was the purpose of marriage. According to the court, the history of the marriage laws in the Commonwealth of Massachusetts demonstrates that “it is the exclusive and permanent commitment of the marriage partners to one another, not the begetting of children, that is the *sine qua non* of marriage.”

Nevertheless, even as it rejected procreation as the purpose of marriage, the court agreed that marriage laws should show consideration for children; thus they concluded that, “it cannot be rational under our laws to penalize children by depriving them of State benefits” because of their parents’ sexual orientation. In deference to the legislature, the court stayed execution of its decision for 180 days “to permit the Legislature to take such action as it may deem appropriate in light of this opinion.”

Since 2004 there have been numerous attempts in the Massachusetts legislature to pass laws that would create civil unions, as there have been attempts to advance a constitutional amendment banning same-sex marriage. Neither of these initiatives have been successful, and, as of today, ‘marriage equality’ is the law in the state of Massachusetts.

Arguments For:

Proponents of Same-sex Marriage

The Massachusetts court concluded that marriage was a civil right, a right that “means little if it does not include the right to marry the person of one’s choice, subject to appropriate government restrictions in the interests of public health, safety, and welfare.” The court agreed that marriage is a “vital social institution” that “brings stability to society,” and, therefore, the state has no right to deny same-sex couples access to the abundance of legal, financial, and social benefits provided by marriage.

Additionally, the justices argued that denying marriage to same-sex couples may be a violation of the Massachusetts Equal Rights Amendment. Among other protections, the Equal Rights Amendment protects people from discrimination based on their gender. Because no one is required to state their sexual orientation when applying for a marriage license, if the state denies

“That same-sex couples are willing to embrace marriage’s solemn obligations of exclusivity, mutual support, and commitment to one another is a testament to the enduring place of marriage in our laws and in the human spirit.”

—Majority opinion, Massachusetts

marriage to same-sex couples, its denial can be seen as being based on the gender of the applicants. Thus, denial of marriage to same-sex couples may violate the Equal Rights Amendment's protection against sex discrimination.

Similarly, in a separate 'advisory decision' delivered at the request of the Massachusetts legislature, the court rejected the option of civil unions. The Massachusetts constitution "affirms the dignity and equality of all individuals," and "forbids the creation of second-class citizens." Civil unions, the court decided, represent an attempt to create an institution that is "separate but equal," and such attempts violate the "Equal Protection" and "Due Process" clauses of the Massachusetts constitution.

In testimony before the court in Massachusetts, historian Nancy F. Cott pointed out that the Massachusetts system of civil marriage has always been "distinct from religious rites" and "controlled and authorized by state officials." Civil marriages, she argued, have "no impact on" the autonomy of religious communities, and religious rites confer "neither legal status nor any rights or obligations."

Arguments Against:

Opponents of Same-sex Marriage

Three justices in Massachusetts dissented from the majority opinion. All three argued that the state "has a legitimate interest in ensuring, promoting and supporting an optimal structure for the bearing and raising of children." Because tradition suggests that opposite-sex marriages are the optimal structure, these justices argued that the ban on same-sex marriages should be upheld. In a similar argument, Justice Susman proposed that the court postpone any attempts to redefine marriage until it can be certain that the decision would have no "unintended and undesirable" consequences.

Other arguments concerned the proper role of the judiciary. Justices Cordy and Spina argued that the legislature sets policy related to marriage, and, according to Justice Cordy, because the ban on same-sex marriage was the result of a legislative process, it should enjoy the "presumption of constitutional validity."

Justice Cordy also rejected the idea that marriage is a civil right, arguing instead that marriage is a choice. According to Cordy, by deciding in favor of same-sex couples, the majority on the court had neglected its responsibility to remain impartial and it had improperly endorsed the choice of some citizens over that of others.

Faith communities and proponents of traditional marriage continue to oppose same-sex marriage. They contend that marriage between a man and a woman has unique benefits. Expanding the definition of marriage to include other types of relationships, they argue, poses many risks to society. To support their arguments, these opponents point to places like the Netherlands, which has allowed same-sex unions since 2001. They claim that these societies are becoming destabilized as a result of allowing same-sex unions. Specifically, they point to an increase in out-of-wedlock births in the Netherlands as evidence that same-sex unions do irreparable harm to children and the structure of families.

Arguments For

Proponents of Same-Sex Marriage

- » The State has an interest in providing stable and secure environments for children, regardless of the sexual orientation of their parents
- » Marriage is a civil right, and the State cannot discriminate against individuals or act to deny the civil rights of any citizen
- » Marriage is a 'vital social institution,' and all citizens should have access to the benefits and responsibilities afforded by such an institution
- » Same-sex families are families, and denying them the right to marriage "works a deep and scarring effect" on children and their parents.
- » Civil marriage is a system distinct from religious marriage
- » Civil Unions effectively create a category of second-class citizens, and thus they are unconstitutional.

Arguments Against

Opponents of Same-Sex Marriage

- » The State has an interest to provide stable and secure environments for children, which has traditionally meant opposite-sex unions
- » Marriage is a choice, and the courts should not 'endorse or support' any one group's choice over another
- » The job of setting marriage policy belongs with the legislature; the ban on same-sex marriage comes from the legislature, and thus, it is constitutional
- » Same-sex marriage destabilizes key social structures and will result in harmful consequences.

Questions for Deliberation

The questions below are the types of questions we expect to discuss during the deliberative poll. Throughout this booklet we provide a number of chances for your reflection, and we hope you will consider those reflections as you think about the following questions.

A Final Reflection

- » How should the Commonwealth of Pennsylvania respond to the current debates over same-sex marriage (e.g., constitutional amendment, civil unions, legalize same-sex marriage)? Why?
 - » What traditions (cultural, religious, legal) do you think we should consider as we address questions about marriage in Pennsylvania? Why?
 - » Do you consider same-sex marriages a threat to the institution of marriage? Why?
 - » What effect do you imagine same-sex marriages will have on society?
 - » Do you believe that same-sex marriage will destabilize society? Why?
 - » Do you believe same-sex marriage will enhance societal stability? Why?
-

Position Maps

The following pages contain two position maps—graphical overviews of the general arguments that have been advanced in courts or legislatures as part of the debate over same-sex marriage. These maps can be a guide for your reflection, a trigger for good discussion, and they can help you develop questions for the resource panel of experts.

In developing these maps, we have made no attempt to distinguish good from bad arguments; instead, we have attempted to provide you with a clear representation of the various positions in the debates about marriage. The maps can be read from the top down or you can move up from each of the branches.

