

## **ACHIEVING MARRIAGE EQUALITY IN NEW HAMPSHIRE:**

### **OVERVIEW**

Gay and lesbian families share the same love, commitment and responsibility in taking care of each as any other family. Some have been together for decades. They work in our communities and pay taxes. Some have served in the armed forces, and others still put their lives on the line as police and firefighters. They are parents and caregivers of elderly parents and relatives.

And they live in every county in New Hampshire according to the 2000 census. Of 2,703 same-sex couples who were willing to acknowledge themselves in that census, 29% of female couples and 23% of male couples had a child under the age of 18 living at home with them. These couples and their kids are our neighbors and co-workers, relatives and friends.

Yet, in 1987 New Hampshire amended its laws to make clear that a man is forbidden from marrying a man and a woman is forbidden from marrying a woman. In April 2004, New Hampshire further amended its marriage laws to prevent recognition of any out-of-state same-sex marriages. Currently, New Hampshire's same-sex couples must go to Massachusetts, Connecticut and Canada to marry.

In 2008, New Hampshire joined Vermont, Connecticut and New Jersey as the fourth state to allow same-sex couples to enter into a civil union, which is a legal status parallel to civil marriage at the state law level. Civil unions provide all the benefits, protections and responsibilities that are granted to a spouse under state law.

However, civil unions are not equal to marriage, nor will they ever afford the same degree of respect, security and benefits that marriage offers. This publication is designed to help supporters working towards achieving marriage equality in New Hampshire understand the basics of the debate over marriages vs. civil unions for same-sex couples so that they can effectively advocate for marriage equality in New Hampshire.

### **Why Marriage?**

- **Marriage is a unique institution that is unparalleled in status and respect.**

Marriage is a unique legal status conferred by and recognized by our society and government. It brings with it a host of reciprocal obligations, rights, and protections. Yet it is more than the sum of its legal parts. It is also a cultural institution. The word itself is a fundamental protection, conveying clearly that you and your life partner love each other, are united and belong by each other's side. It represents the ultimate expression of love and commitment between two people, and everyone understands that. No other word has that power, and no other word can provide that protection.

- **The essence of marriage is the love and commitment of the two partners.**

Gay people who fall in love and want to marry do so for the same mix of reasons as non-gay people. In our society, marriage is many things: a loving, committed, lifelong partnership between two people; an adult rite of passage; a way for two people to honor their relationship; an opportunity for family and friends to bind together; a bundle of legal rights; and a respected cultural institution.

In New Hampshire, any qualified couple can become part of this cherished institution – except for same-sex couples. All that is required for a marriage license is that the two individuals be adults, not currently married or closely related, and of different sexes. The exclusion of same-sex couples from marriage constitutes discrimination against our relationships and stigmatizes and harms our families.

- **It's a matter of fairness.**

It is discrimination that we have marriage for different sex couples but have created another whole legal structure with a different name for gay and lesbian couples. We know that it is not fair to treat people differently in other areas of life for no good reason – it should be no different for marriage.

Couples throughout New Hampshire are now experiencing this unfairness and discrimination. No one else benefits from the extra hardship imposed on these families. It makes no sense. Same-sex couples simply want their government to treat them equally and fairly.

- **It's a basic human right.**

In this country, the right to marry the person of your choice is a fundamental constitutional right. In 1967, the U.S. Supreme Court said that the freedom to marry is a vital personal right of all Americans and basic to human happiness. It is discrimination when the state government denies only gay people this precious and basic right. While the government can limit the exercise of a right when it has a compelling reason for doing so, there is no reason for singling out gay people who seek to marry the one person of their choice.

- **Excluding same-sex couples from marriage causes them harm.**

Same-sex couples work very hard to stay together, overcoming social disapproval and massive governmental discrimination. When same-sex couples are excluded from marriage, they are excluded from the single most important institution of our society. When government denies marriage to same-sex couples, it denies them access to federal rights and protections tied to marriage. It marks them as inferior and less worthy than all other residents of New Hampshire. As individuals, as a couple, and as a family, they are designated unqualified to participate in this profoundly important institution.

Children of same-sex couples, alert to the discrimination surrounding them, receive the clear message that their family is not even worthy of making the choice to marry.

- **Marriage equality is good for the community.**

Marriage is a major building block for strong families and communities. The legal and social protections provided by marriage can strengthen families, and strong families are the building block of strong communities. In Massachusetts, where same-sex couples have been able to marry for five years, marriage equality has brought only good to the state. And seeing is believing; support for marriage of same-sex couples has continued to increase since marriage became available to these couples.

### **Why not civil unions?**

In 2008, New Hampshire joined Vermont, Connecticut and New Jersey as the fourth state to allow same-sex couples to enter into a civil union, which provides all the rights, obligations and responsibilities that are granted to a spouse under state law. It is true that civil unions provide important state-based legal rights that normally come along with marriage, and that is a tremendous advance over where things stood previously in New Hampshire. However, civil unions are not equal to marriage; instead, they keep in place existing discrimination against committed same-sex couples regarding marriage.

While civil unions are a constructive first step toward addressing the legal void in which same-sex couples lived their lives, marriage provides better protection and avoids the inequities fostered by creating separate laws and institutions just for a minority group.

The differences between civil unions and marriage – both symbolic and tangible – are significant. Because marriage is a social, cultural and legal institution, access to marriage provides protections to the married family on each of those levels. In addition, marriage is more than the sum of its legal parts.

- **Separate & Unequal -- Second-Class Status**

Even if there were no substantive differences in the way the law treated marriages and civil unions (which there are), the fact that a civil union remains a separate legal status created just for gay people represents real and powerful inequality. We have long learned that separate is not equal; our constitution requires legal equality for all.

Moreover, treating one group of people differently stigmatizes that group and denotes them as unworthy. This mark of inferiority harms the children of same-sex couples in particular, who must grow up learning the hard lesson that our society and our government does not believe that their families are worthy of full respect.

Three state supreme courts – Massachusetts, California, and Connecticut – have now held that civil unions only perpetuates unconstitutional discrimination against gay people and same-sex couples. As the Massachusetts Supreme Judicial Court said in 2004, to

create civil unions in lieu of marriage would be “assigning ... same sex ... couples to a second class status,” and “maintaining and fostering a stigma of exclusion.” Opinion of the Justices, 440 Mass. 1201, 1208 (Mass. 2004). As the California Supreme Court held that assigning a different designation to families of same-sex couples (in that state, “domestic partners”) denies same-sex couples “equal dignity and respect,” “cast[s] doubts” on whether the families of same-sex couples are equal to married couples, and is a “mark of second class citizenship.” In re Marriage Cases, 43 Cal. 4<sup>th</sup> 757, 784-85 (Cal. 2008). And finally, most recently in Connecticut, the Supreme Court held that “... the institution of marriage carries with it a status and signficance that the newly created classification of civil unions does not embody...” Kerrigan v. Comm’r of Pub. Health, 957 A.2d 407, 412 (Conn. 2008).

Including gay and lesbian couples within existing marriage laws is the fairest and simplest thing to do.

- **Unequal respect**

Marriages are far more likely to be respected than civil unions by others. Because of their relative newness and because they were create precisely as a separate and inferior institution for gay people only, civil unions do not receive the same dignity and respect by society that marriage does. Many do not even know what a civil union is, and same-sex couples in a civil union are constantly forced to have to explain their relationship to people they interact with every day. Others may know of civil unions, but do not understand that it is supposed to confer familial protections in emergency rooms and hospital settings, for example. Moreover, telling people that you do not know, such as the clerk at the bank, that you are in a civil union can out a person as gay and expose them to discrimination, a problem they would not necessary face if they could simply say that they are married.

Marriage tells the community that two people are committed to each other as a family. Since others understand and respect this, it makes being married something important and something that protects us in daily life as well as in times of crisis. Civil unions cannot come close to conferring these broader protections of marriage.

The word “marriage” is itself a protection. Every day, we fill out forms that ask us whether we are married or single. People ask us if we’re married or single. People joined in a civil union don’t fit into either category. People with civil unions should be able to identify themselves as a single family unit, but misrepresenting oneself on official documents can be considered fraud and carries potential serious criminal penalties.

- **Portability**

It will be harder to gain respect for one’s civil union in many other states – in whole or in part – than it would be for a marriage. While marriages of same-sex couples will face discrimination in some places, marriages are advantaged over civil unions because all

states have a marriage-system (with rich histories of respect for marriages validly licensed elsewhere).

For that reason, marriages are generally respected state to state for all purposes. However, because civil unions are a new and unfamiliar institution that only a few states have, questions remain about how civil unions will be treated in other states. There are strong arguments that civil unions deserve respect across the country just like marriages. But the two appellate courts that have addressed the issue (in Connecticut and Georgia) have disrespected them based on the fact that their states do not grant civil unions themselves (although since that decision Connecticut has created its own civil union system).

- **Ending a Civil Union**

If you are married, you should be able to get divorced in any state in which you are a resident. But if states continue to disrespect civil unions, there is no way to end the relationship other than by establishing residency in the state where you entered into the civil union and filing for divorce there. This has already created problems for some couples who now have no way to terminate their legal commitment.

- **Federal Benefits**

According to a 1997 GAO report, civil marriage brings with it at least 1,138 federal rights and protections, including the right to take leave from work to care for a family member, the right to sponsor a spouse for immigration purposes, and Social Security survivor benefits that can make a difference between poverty and security in old age.

In contrast, same-sex couples in civil unions have no claim to these 1138 federal protections afforded to married couples only. While those protections are presently withheld from married couples of the same-sex (due to the so-called federal “Defense of Marriage Act”), we do not believe that discriminatory federal law will stand the test of time. President Obama and Congressional leaders now support repeal of the DOMA. More importantly, only by being legally married can same-sex couples legally challenge the discriminatory nature of DOMA.

## **House Bill 436** **An Act Relative to Civil Marriage and Civil Unions**

### **What would this bill do?**

This bill would end the discriminatory exclusion of same-sex couples from marriage, as well as offer same-sex couples already in civil unions the option of either opting into marriage or remaining in their civil unions.

### **Why aren't civil unions enough?**

In 2008, New Hampshire joined Vermont, Connecticut and New Jersey as the fourth state to allow same-sex couples to enter into a civil union, which is a legal status parallel to civil marriage at the state law level. Civil unions provide all the benefits, protections and responsibilities that are granted to a spouse under state law.

However, civil unions are not equal to marriage, nor will they ever afford the same degree of respect, security and benefits that marriage offers. It is time for New Hampshire to take that next step for full equality for its gay and lesbian citizens.

We recognize that civil unions lessen the discrimination and hardship that marriage discrimination inflicts on gay and lesbian families. But civil unions also enshrine discrimination into New Hampshire law by putting gay people alone in a separate legal institution created just for them – simply to accommodate other people's discomfort with gay people being treated as the full and equal citizens that they are. We have learned in this country that separate legal institutions for just some citizens – and separate lines at the clerk's office – is the wrong path.

Civil unions are a positive step, but they are no replacement for the legal and social protections marriage provides to families. Marriage has always been more than the sum of its legal parts. Even the word "marriage" is a protection, because others understand that when you are married, you are a family. People understand what it means to be "married"; they don't know what it means to be "civil union-ed" or if that is even a word.

### **But aren't civil unions basically the same as marriage – just with a different name?**

While civil unions do provide the same state rights and protections as marriage in New Hampshire, they are not the same as marriage, and they are not treated the same. The federal government does not recognize civil unions as marriages for purposes of the 1,138 federal rights and protections afforded to married couples. Society does not recognize or respect civil unions as the same as marriage. Gay and lesbian couples must constantly explain to their neighbors, coworkers, friends, or even the bank teller what being in a civil union means. And many other states do not recognize civil unions as equivalent to marriage for purposes of cross-border recognition issues.

Instead, civil unions are a parallel, separate and inferior institution to marriage, and they are treated as such by all sectors of our society.

## **Will this force religious clergy to have to solemnize marriages between same-sex couples?**

It is important to remember that we are talking about the exclusion of same-sex couples from civil marriage only. Religions will still be able to determine their own requirements for solemnization and religious marriage ceremonies, as they do now in refusing to marry couples of different religions or people who have been divorced. In fact, this bill codifies these constitutional protections of religious liberty in the text of the RSA.

Many people of faith struggle to reconcile their religious traditions with their desire to be fair to their fellow citizens. And many religious traditions embrace marriage equality for same-sex couples. The autonomy of religions would not change were New Hampshire to end the discriminatory exclusion of same-sex couples from civil marriage.

## **Where is public support for full marriage equality for same-sex couples?**

Polls have consistently shown growing support for full marriage equality for same-sex couples, both here in New Hampshire and nationally, as more and more people learn about the discriminatory effects of marriage discrimination on gay and lesbian families and their children.

Moreover, contrary to some political expectations, voting to support the freedom to marry and opposing anti-marriage measures helps rather than hurts politicians, a new study Pro-Marriage Legislators Win Elections released by Freedom to Marry, a national organization dedicated to ending marriage discrimination in our country, unequivocally shows.

For many years legislators across the country have voted on laws aimed at ending the exclusion of same-sex couples from marriage. Others have been asked to vote on state constitutional amendments aimed at discriminating against same-sex couples and their children by denying them the freedom to marry and other legal protections. A review of all of these votes from 2005 to the present shows that legislators who vote to end marriage discrimination for same-sex couples are consistently re-elected.

In fact, in Massachusetts, after 5 years of legislative votes on equal marriage rights for same-sex couples, not one state legislator has lost his or her seat due to their vote regarding marriage equality. And this trend has been reflected across the country, in red and blue states alike.

## **Why now?**

It is always the right time to do what is right. Same-sex couples simply want their government to treat them equally and fairly. It is discrimination when New Hampshire denies people a basic right. It is discrimination when we create two different categories for committed couples and create another whole legal structure with a different name and in a different system because they are gay and lesbian couples.

Only marriage represents and is understood by society as the ultimate expression of love and commitment between two people. It's time for New Hampshire to end marriage discrimination against same-sex couples and protect all families.