



## DEFINING MARRIAGE

# A Module for Democracy/Civic Mission Classrooms

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# Defining Marriage

## Overview

In November 2003, the Supreme Judicial Court of Massachusetts decided by a 4-3 vote that the Commonwealth of Massachusetts could not “deny the protections, benefits, and obligations conferred by civil marriage to two individuals of the same sex who wish to marry.” The response was immediate both in Massachusetts and across the country. In January 2004, President George W. Bush said he would support an amendment to the U.S. Constitution to limit marriage to one man and one woman. Same-sex marriage was a leading issue in the presidential elections and dozens of state elections. By November 2004, less than a year after the Massachusetts decision, a total of 13 states had passed constitutional amendments prohibiting gay marriage. These events have raised important questions about the legal meaning of marriage in the United States. What are the “protections, benefits, and obligations” of marriage? Who has been able to marry in the past, and how is that different from today? And what role does the government have in endorsing marriage?

This unit gives an overview of the legal history of marriage in the United States. It presents some of the privileges, benefits, and obligations that go along with getting married. It explains the current controversy about same-sex marriage by looking at the 2003 decision of the Massachusetts Supreme Court and the response of Congress and the response of 13 state referenda during the 2004 elections. And it provides a model for discussion, called “structured academic controversy,” for exploring the facts, arguments, and options surrounding these issues.

## Focus Question

§ Should Congress amend the U.S. Constitution by defining “marriage” as the union of one man and one woman?

## Objectives

- § Enhance understanding of the legal history of marriage in the United States.
- § Assess the debate surrounding marriage within the larger context of federalism.
- § Explain the privileges and responsibilities of persons who are legally married.
- § Identify the arguments – historical, cultural, and political – in favor and in opposition to defining marriage as solely between one man and one woman.
- § Introduce “structured academic controversy,” a model for deliberating controversial issues.

## Materials

- A: Reading: A Brief History of Marriage in the United States
  - B: Source: An Act Relating to Civil Unions (Vermont, 2000): Excerpts
  - C: Deliberation Strategy: Structured Academic Controversy
  - D: Handout: Arguments for and against Same-Sex Marriage
  - E: Taking a Stand: Position Paper on Defining Marriage
- Defining Marriage: Selected Community, Print, and Internet Resources

## A: Reading: A Brief History of Marriage in the United States

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In the United States today, the institution of marriage is considered to be in trouble by many observers. The U.S. Census Bureau reports that about 90 percent of all persons will be married at one point in their lives, which is lower historically than at other period in American history, and over 50 percent of marriages will end in divorce (“Number, Timing, and Duration Marriages and Divorces: 1996,” 2002). More people than ever have chosen to delay marriage or plan not to marry at all. Children are raised in single-parent homes as well as by two parents who are not married.

Yet one of the most explosive issues of the last decade surrounding marriage has been generated not by anything that married people are doing but instead by a group of people who would like to enter into marriage but in most places cannot: same-sex couples. The controversy over whether gay and lesbian couples can legally marry has raised a larger question: What is marriage today?

### Defining Marriage

Marriage, as defined in a popular textbook, “is a contract between two persons who agree to live together as husband and wife” (“Marriage,” *Street Law: A Course in Practical Law* (7<sup>th</sup> Ed.), 2005). In the English common law, the tradition which forms the basis and the context for the American legal system, marriage could occur only with the consent of both parties. While having more than one spouse (polygamy) was practiced in other cultures—such as the patriarch Jacob in the Hebrew Bible—in the English legal tradition, marriage was unmistakably between one and one woman (“Marriage: an Overview,” Legal Information Institute).

Marriage has been part of many religious legal systems for thousands of years. In the common law and in the United States, the state has offered civil marriage, a completely secular (not religious) institution. Both civil and religious marriages in the United States fall under the government’s “police power” or lawmaking authority. In every state, the government sets certain rules about marriage, including a minimum age for marriage, and prohibitions on marrying certain close relatives, such as a parent, brother or sister, or aunt or uncle. All states also limit marriage to monogamy, or two people; in fact, bigamy or polygamy is grounds for divorce in most states. And every state except Massachusetts limits marriage to one man and one woman. Each state government also establishes the conditions for when a marriage can end, such as when someone is forced into marriage or marries when they are under age.

### Marriage: Benefits and Responsibilities

Getting married brings with it a great many benefits that cover virtually every aspect of a person’s life. Married people can automatically hold joint property and inherit the property of a loved one who dies without a will. They are protected (in most cases) from testifying against each other in court. Spouses are entitled to collect Social Security, veterans benefits, and death benefits if their spouse is injured or dies. Married people can automatically visit a spouse or a child in hospital, and they are legally entitled to family leave for extended illness or the birth of a child. Any children born to them are assumed to be theirs.

There are some important responsibilities that go with marriage as well. They share responsibility for rearing their children and sending them to school; if they fail to take care of their children, the state can remove their children from their home. They must take care of and pay for any property they own. There are tax breaks for married couples; conversely, if one person cheats on taxes, the spouse not legally liable but the couple’s assets (what they have) may be severely affected. And in divorce, the couple must take steps to provide economically, if necessary, for their former partner.

## The Federal Government and Marriage: Polygamy and Miscegenation

The federal government also plays a role in regulating marriage. In 1997, the General Accounting Office of the United States identified over 1,000 federal laws “in which benefits, rights, and privileges are contingent [dependent] on marital status.” These laws touch on such issues as benefits from Social Security and related programs; housing, and food stamps; military service and Veterans' Benefits; employment benefits; taxation; crimes and family law; and many other topics (“Report on Defense of Marriage Act to House Judiciary Committee Chair Henry J. Hyde,” January 31, 1997). Federal law also includes important limits and permissions concerning who can marry.

In 1876, the Territory of Utah was home to many members of the Church of Jesus Christ of Latter-Day Saints (sometimes called Mormons). A man named Reynolds was arrested and charged with bigamy, or having more than one wife. Among other arguments, Reynolds claimed that the First Amendment to the Constitution protected his religious expression, which included having more than one wife. The U.S. Supreme Court decided against him in *Reynolds v. U.S.* (1876). Writing for the court, Chief Justice Waite said that “[T]here never has been a time in any State of the Union when polygamy has not been an offence against society, cognizable by the civil courts and punishable with more or less severity.... [I]t is impossible to believe that the constitutional guaranty of religious freedom was intended to prohibit legislation in respect to this most important feature of social life. Marriage, while from its very nature a sacred obligation, is nevertheless, in most civilized nations, a civil contract, and usually regulated by law” (98 U.S. 145, 165). While the law cannot regulate what a person believes, Chief Justice Waite wrote, it can and must regulate what a person does. Today, Latter-Day Saints condemn polygamy.

Almost a century later, the U.S. Supreme Court expanded the circle of marriage by striking down an anti-miscegenation (race-mixing) statute in Virginia. In the 1950s, sixteen states had such laws which prohibited marriage between white and non-white people. This legacy of racial prejudice was struck down as a violation of the Due Process and Equal Protection clauses of the Fourteenth Amendment by the Court in *Loving v. Virginia* (1967). While agreeing with Virginia that marriage is subject to the state's police power, Chief Justice Warren wrote for the Court that

There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause... These statutes also deprive the Lovings of liberty without due process of law in violation of the Due Process Clause of the Fourteenth Amendment. The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.... Marriage is one of the “basic civil rights of man,” fundamental to our very existence and survival.... The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. (388 U.S. 1, 12).

## The Defense of Marriage Act of 1996

Since the 1960s, members of the gay and lesbian community have followed many other groups in advocating for equal rights under the law. In January 2005, for example, Illinois became the fifteenth state to “outlaw discrimination against gays and lesbians by landlords, real estate agents, employers and lenders” (Christi Parsons, “Gay Rights Sails Through House,” January 12, 2005). Gay and lesbian people in Illinois also can adopt children singly or as same-sex couples, and they have child visitation and custody rights.

Many members of the gay and lesbian community have also worked to gain legal sanction from the state for their long-term relationships – in a word, marriage. This effort, however, has raised tremendous controversy. In 1993, the Hawaii Supreme Court held in the decision *Baehr v. Miike* that the state's ban against granting same-sex couples a marriage license appeared to violate the

state's equal protection clause and therefore appeared to be unconstitutional. The court required the state to show a "compelling state interest," which is the legal standard required whenever the government wants to treat a group of people differently because of a common characteristic, such as race or sex. Many same-sex couples immediately flew to Hawaii to get married.

Many opponents of same-sex marriage were alarmed by this development. Traditionally, marriage is one of a host of laws that are respected from one jurisdiction to another; if a person is married in one state or country, then the person is considered married everywhere. In addition, Article IV of the U.S. Constitution says that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." Gay marriage opponents in other states saw that Hawaii could provide a "back-door" loophole for same-sex couples to legally marry.

The U.S. Congress responded quickly by passing the Defense of Marriage Act of 1996. Signed into law by President Clinton, the law did two things. First, it permitted states to retain control over their own definitions of marriage by allowing them not to recognize "any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State." Second, the law also defined marriage in any federal statute or proceeding as "only a legal union between one man and one woman as husband and wife." The possibility of same-sex marriage remained only in Hawaii; even there, in 1998 the original court decision was rendered moot (no longer an issue), by a state constitutional amendment that restricted marriage to heterosexual couples.

### Same-Sex Marriage: From Massachusetts to the Marriage Amendment

In 2003, the issue of same-sex unions resurfaced when the Supreme Judicial Court of Massachusetts ruled in the case of *Goodridge v. Department of Public Health*. Hillary and Julie Goodridge had been in a committed relationship for thirteen years and had a five-year-old daughter. The Goodridge parents and twelve other citizens of Massachusetts had been denied a license to marry from the Department of Public Health, the state agency that issues marriage licenses. They filed a lawsuit on the grounds that this denial of "the legal and social status of civil marriage, as well as the protections, benefits and obligations of marriage, violates Massachusetts law." The lower Court held that limiting marriage to heterosexual couples did not offend the liberty, freedom, equality, or due process provisions of the Massachusetts Constitution, and that "the Massachusetts Declaration of Rights does not guarantee 'the fundamental right' to marry a person of the same sex." The state could rationally limit marriage to heterosexual couples because this restriction advanced the primary goal of marriage, which was procreation; heterosexual marriage represented the best setting for raising children; and this limit helped the state conserve limited resources. Both parties appealed the decision directly to the Supreme Judicial Court.

The Supreme Judicial Court disagreed. In a 4-3 decision, the court held that the denial of civil marriage to persons who entered into "an intimate, exclusive union with another of the same sex" was "incompatible with the constitutional principles of respect for individual autonomy and equality under law." The court acknowledged that the Massachusetts legislature clearly understood 'marriage' as meaning a union between a man and a woman, and that this had always been the understanding under the law. Writing for the Court, Chief Justice Marshall held that while the state's power to regulate civil marriage was "broad," the larger question "is whether, as the department claims, government action that bars same-sex couples from civil marriage constitutes a legitimate exercise of the State's authority to regulate conduct, or whether, as the plaintiffs claim, this categorical marriage exclusion violates the Massachusetts Constitution. We have recognized the long-standing statutory understanding, derived from the common law, that "marriage" means the lawful union of a woman and a man. But that history cannot and does not foreclose the constitutional question."

In her opinion, Marshall wrote that “the marriage ban does not meet the rational basis test for either due process or equal protection.” In rejecting the reasons offered by the state, she first noted that Massachusetts does not require applicants for a marriage license to be able to conceive children in the traditional manner. Regarding an optimal setting for raising children, Marshall wrote that “promoting the welfare of children is a paramount state policy,” but that restricting marriage to heterosexuals “cannot plausibly further this policy.” “The task of child rearing for same-sex couples is made infinitely harder by their status as outliers to the marriage laws.... Given the wide range of public benefits reserved only for married couples, we do not credit the department’s contention that the absence of access to civil marriage amounts to little more than an inconvenience to same-sex couples and their children.” Finally, Marshall observed that Massachusetts’ marriage laws do not depend on the financial condition of married people: they receive the benefits and privileges of marriage whether they are rich or poor. She concluded, “We construe civil marriage to mean the voluntary union of two persons as spouses, to the exclusion of all others.” The first civil marriages for same-sex couples in Massachusetts began in May 2004.

## The Debate

Controversy about the Massachusetts decision began with the Court itself. Each of the dissenting justices wrote an opinion, and their arguments have been repeated in subsequent discussions across the country. Justice Sosman noted in her dissent that the Legislature need not accord the full benefits of marital status on every household raising children. Rather, “the Legislature need only have some rational basis for concluding that, at present, those alternate family structures have not yet been conclusively shown to be the equivalent of the marital family structure that has established itself as a successful one over a period of centuries.” She continued:

Absent consensus on the issue (which obviously does not exist), or unanimity [agreement] amongst scientists studying the issue (which also does not exist), or a more prolonged period of observation of this new family structure (which has not yet been possible), it is rational for the Legislature to postpone any redefinition of marriage that would include same-sex couples until such time as it is certain that that redefinition will not have unintended and undesirable social consequences. Through the political process, the people may decide when the benefits of extending civil marriage to same-sex couples have been shown to outweigh whatever risks—be they palpable or ephemeral—are involved.

In a separate dissent, Justice Cordy argued that in his view the marriage statute did not “impair the exercise of a recognized fundamental right.” “The court has transmuted the ‘right’ to marry into a right to change the institution of marriage itself.” Nor did the statute violate the equal protection rights of same-sex couples. Unlike the case of *Loving v. Virginia*, Cordy wrote that “neither the purpose nor effect of the Massachusetts marriage statute is to advantage or disadvantage one gender over the other.... More fundamentally, [in *Loving*] the statute at issue burdened marriage with a requirement that was both constitutionally suspect and unrelated to protecting either the underlying purposes or nature of the institution. In contrast, the limitation of marriage to one man and one woman preserves both its structure and its historic purposes.” In the final analysis, Cordy argued that “Although it may be desirable for many reasons to extend to same-sex couples the benefits and burdens of civil marriage (and the plaintiffs have made a powerfully reasoned case for that extension), that decision must be made by the Legislature, not the court.”

## After *Goodridge*

Since the Massachusetts decision, debate has continued on this issue. By November 2004, thirteen states had passed constitutional amendments defining marriage as the union between a man and a woman. Anticipating the decision, Members of Congress proposed in May 2003 the Marriage

Amendment, although it was not passed. Advocates on both sides continue to debate the merits of traditional monogamy, same-sex marriage, and civil unions at the state and federal level.

"It's ironic and interesting," says Harvard historian Nancy Cott, "that same-sex marriage advocates and conservatives of the 'family-values' school...have both contributed to a re-evaluation of marriage in the last 20 to 25 years." The author of *Public Vows: A History of Marriage and the Nation*, Cott adds that "By the late '90s there [has been] a resurgence of appreciation for marriage." These claims from both the left and the right "came together—at least on the rhetorical level—for what marriage...accomplishes and how crucial it is as a social institution" (Harbour Fraser Hodder, "The Future of Marriage," *Harvard Magazine*, November-December 2004).

## B: Source: An Act Relating to Civil Unions (Vermont, 2000): Excerpts

It is hereby enacted by the General Assembly of the State of Vermont:

### Sec. 2. PURPOSE

(a) The purpose of this act is to respond to the constitutional violation found by the Vermont Supreme Court in *Baker v. State*, and to provide eligible same-sex couples the opportunity to "obtain the same benefits and protections afforded by Vermont law to married opposite-sex couples" as required by Chapter I, Article 7th of the Vermont Constitution.

(b) This act also provides eligible blood-relatives and relatives related by adoption the opportunity to establish a reciprocal beneficiaries relationship so they may receive certain benefits and protections and be subject to certain responsibilities that are granted to spouses.

Sec. 3. 15 V.S.A. chapter 23 is added to read:

### CHAPTER 23. CIVIL UNIONS

#### § 1201. Definitions

As used in this chapter:

(1) "Certificate of civil union" means a document that certifies that the persons named on the certificate have established a civil union in this state in compliance with this chapter and 18 V.S.A. chapter 106.

(2) "Civil union" means that two eligible persons have established a relationship pursuant to this chapter, and may receive the benefits and protections and be subject to the responsibilities of spouses.

(3) "Commissioner" means the commissioner of health.

(4) "Marriage" means the legally recognized union of one man and one woman.

(5) "Party to a civil union" means a person who has established a civil union pursuant to this chapter and 18 V.S.A. chapter 106.

#### § 1204. Benefits, Protections and Responsibilities of Parties to a Civil Union

(a) Parties to a civil union shall have all the same benefits, protections and responsibilities under law, whether they derive from statute, administrative or court rule, policy, common law or any other source of civil law, as are granted to spouses in a marriage.

(b) A party to a civil union shall be included in any definition or use of the terms "spouse," "family," "immediate family," "dependent," "next of kin," and other terms that denote the spousal relationship, as those terms are used throughout the law.

(c) Parties to a civil union shall be responsible for the support of one another to the same degree and in the same manner as prescribed under law for married persons.

(d) The law of domestic relations, including annulment, separation and divorce, child custody and support, and property division and maintenance shall apply to parties to a civil union.

(e) The following is a nonexclusive list of legal benefits, protections and responsibilities of spouses, which shall apply in like manner to parties to a civil union:

(1) laws relating to title, tenure, descent and distribution, intestate succession, waiver of will, survivorship, or other incidents of the acquisition, ownership, or transfer, inter vivos or at death, of real or personal property, including eligibility to hold real and personal property as tenants by the

entirety (parties to a civil union meet the common law unity of person qualification for purposes of a tenancy by the entirety);

(2) causes of action related to or dependent upon spousal status, including an action for wrongful death, emotional distress, loss of consortium, dramshop, or other torts or actions under contracts reciting, related to, or dependent upon spousal status;

(3) probate law and procedure, including nonprobate transfer;

(4) adoption law and procedure;

(5) group insurance for state employees under 3 V.S.A. § 631, and continuing care contracts under 8 V.S.A. § 8005;

(6) spouse abuse programs under 3 V.S.A. § 18;

(7) prohibitions against discrimination based upon marital status;

(8) victim's compensation rights under 13 V.S.A. § 5351;

(9) workers' compensation benefits;

(10) laws relating to emergency and nonemergency medical care and treatment, hospital visitation and notification, including the Patient's Bill of Rights under 18 V.S.A. chapter 42 and the Nursing Home Residents' Bill of Rights under 33 V.S.A. chapter 73;

(11) terminal care documents under 18 V.S.A. chapter 111, and durable power of attorney for health care execution and revocation under 14 V.S.A. chapter 121;

(12) family leave benefits under 21 V.S.A. chapter 5, subchapter 4A;

(13) public assistance benefits under state law;

(14) laws relating to taxes imposed by the state or a municipality other than estate taxes;

(15) laws relating to immunity from compelled testimony and the marital communication privilege;

(16) the homestead rights of a surviving spouse under 27 V.S.A. § 105 and homestead property tax allowance under 32 V.S.A. § 6062;

(17) laws relating to loans to veterans under 8 V.S.A. § 1849;

(18) the definition of family farmer under 10 V.S.A. § 272;

(19) laws relating to the making, revoking and objecting to anatomical gifts by others under 18 V.S.A. § 5240;

(20) state pay for military service under 20 V.S.A. § 1544;

(21) application for absentee ballot under 17 V.S.A. § 2532;

(22) family landowner rights to fish and hunt under 10 V.S.A. § 4253;

(23) legal requirements for assignment of wages under 8 V.S.A. § 2235; and

(24) affirmance of relationship under 15 V.S.A. § 7.

(f) The rights of parties to a civil union, with respect to a child of whom either becomes the natural parent during the term of the civil union, shall be the same as those of a married couple, with respect to a child of whom either spouse becomes the natural parent during the marriage.

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Source: <http://www.sec.state.vt.us/otherprg/civilunions/civilunionlaw.html>

## C: Deliberation Strategy: Structured Academic Controversy

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The model is designed to help students:

- § Gain a deeper understanding of the issue.
- § Find common ground.
- § Make a decision based on evidence and logic.

Things to consider when using this model:

1. Issue should be specific but reflect a larger issue that reoccurs through history.  
For example: Should the Elgin marbles (a famous collection of ancient Greek statues that are in the British Museum in London) be returned by Great Britain to Greece? In what circumstances should ancient and important artifacts be returned to the country of their origin?
2. Background should contain facts and represent multiple points of view (Could also be a video or lecture)

Procedures

1. **GROUPING:** Divide class into groups of 4 to 5.
2. **GROUP ASSIGNMENT:** Read a common piece of background material and, as a group, summarize the most important information in the article. Everyone should pick out something he/she thinks is important and share the information with the group. No one should take a stand or position.
3. **QUESTION FORMULATION:** The specific question needs to be posed to the class along with the larger question. This may be the job of the teacher or can be done in collaboration with the students. The question should be open-ended and displayed so that the groups can continue to refer to it to help them keep on track.
4. **LEARNING ARGUMENTS:** Divide each group into two teams--each assigned to read a piece supporting one side of the argument or select arguments from a piece in support of the side they have been assigned. (It may be the same piece as originally read. However, the conversation will probably be greatly enriched if the piece is different.) The teams are responsible for selecting the most compelling arguments and making sure that everyone on the team is prepared to give at least one argument.
5. **PRESENTING ARGUMENTS:** Team A presents to Team B with Team B asking **CLARIFYING** questions only. (This is not adversarial—it is informational). The process is repeated with Team B presenting to Team A with **CLARIFYING** questions. Each group should take notes. (Essential for the next step; helpful for the larger discussion.)
6. **REVERSING POSITIONS:** Team B then summarizes what Team A has said followed by A summarizing B's arguments. The theory is that they understand the positions and are validated by hearing their own arguments come back to them. (May omit this step if not needed)
7. **TEAMS DISCUSS:** The teams can now drop the roles and begin discussion of the issue(s) using what they have learned and their own personal experiences and ideas. This is the first time that personal experiences can enter into the conversation. This step involves trying to reach consensus on something even if individuals only articulate points of disagreement.

8. TEAMS DEBRIEF: Teams talk about the discussion (either in a large group or in their small group).
  - § Did you agree, disagree, or are you still undecided? Why?
  - § What were the most compelling arguments for each side?
  - § If you question these points, where can you get more information?
  - § If you care about this issue, what can you do?

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Adapted from Johnson, David W. & Roger T. Johnson, "Critical Thinking Through Structured Academic Controversy," *Educational Leadership* (May 1988), pp. 58 –64.

## D: Handout: Eight Arguments For and Against Same-Sex Marriage

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The primary purpose behind the “marriage amendment” to the U.S. Constitution is to prohibit marriages of same-sex couples. Here are eight arguments for and against same-sex marriage.

Question: Should same-sex couples (gay and lesbian) be allowed to legally marry?

### Arguments Against Same-Sex Marriage:

1. Marriage is not a civil rights issue. It is an institution that has been understood and defined through centuries of English and American law as a union between one man and one woman.
2. If a state sanctions homosexual relationships, younger generations will become confused about their sexual identity and lose their understanding of a lifelong commitment.
3. The fundamental right to marriage has always been about procreation.
4. No matter what we call a new arrangement that includes same-sex marriage, it will effectively be the end of “marriage” as we now know it. Marriage will become a mere contract between any two people.
5. Same-sex marriage would start us down a “slippery slope” towards legalized incest, bestial marriage, polygamy and lead to all kinds of other frightening consequences.
6. History and tradition—and the teachings of Jews, Muslims, and Christians—support the overwhelming empirical evidence: The family, led by a married father and mother, is the best available structure for both child-rearing and cultural health.
7. There are still very little data on how same-sex parenting affects children. As Massachusetts Justice Sosman said, “it is rational for the Legislature to postpone any redefinition of marriage that would include same-sex couples until such time as it is certain that that redefinition will not have unintended and undesirable social consequences.”
8. Legalization of same-sex marriage could lead to lawsuits against persons, churches or businesses who refuse to perform a marriage ceremony on religious or moral grounds.

### Arguments For Same-Sex Marriage:

1. Marriage is a basic civil right, which, if offered to straight couples, cannot be denied to same-sex couples without branding them as second-class citizens.
2. Each state should be allowed to recognize any marriage-like relationship of same-sex couples that has been recognized by another state.
3. Marriage is about many things, including companionship, physical security, property, and love. If marriages can only be based on the possibility of procreation, then marriages among the elderly, couples who don’t want children, and infertile individuals couples are meaningless.
4. Although the institution of marriage is definitely worth preserving, our tradition of discriminating against interracial or gay couples is not. It was not so long ago in the U.S. that couples of different races were not permitted to marry.
5. Allowing same-sex couples to marry does not prevent opposite-sex couples from doing so and the fact that gays want the right to marry actually pays homage to the institution.
6. If passed, an amendment that defines marriage as between a man and a woman would be only the second Constitutional amendment to restrict, rather than expand, the civil rights of individuals in the United States.
7. To date, social science data do not conclusively show that children suffer any adverse effects from being raised by gay parents as compared to those raised by heterosexual parents.
8. People who object to same-sex marriage on religious grounds retain the right to practice a religion that does not recognize it. No church, synagogue, or mosque will be forced by the government to recognize or perform same-sex marriages. Even in Massachusetts, the mandate affects county clerks, not country priests.

## E: Taking a Stand: Position Paper on Defining Marriage

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Should Congress amend the U.S. Constitution by defining “marriage” as the union of one man and one woman?

### Steps for Writing Your Position Paper

1. Choose a position for, against, or as an alternative to the policy above.
2. Then team up with classmates who take the same position and as a group, write a persuasive paper arguing the benefits associated with your position on this policy.
3. In your essay, be sure to call on the most convincing arguments and specific evidence and examples from:
  - § the reading
  - § discussion and other classroom activities
  - § people in your community
  - § any other sources available to you
4. Include in your paper the most convincing arguments from the opposing side. List what you think are the best arguments your policy rivals would make. Acknowledge these points, and do your best to refute the importance of these details.

### Specifications for Your Paper

Length. Your paper should be between 300 and 500 words.

Format. Each paper must have the name of the school in the heading and the policy being addressed in the title. No student names will appear on the position papers.

### Sharing Your Views on Defining Marriage

You can contribute your views on this policy by writing to your Representative in Congress and/or your U.S. Senators.

## Defining Marriage: Selected Community, Print and Internet Resources

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### Community

HRC Marriage Center  
Human Rights Campaign  
[www.hrc.org](http://www.hrc.org)

No Gay Marriage  
<http://www.nogaymarriage.com/>

Marriage Project  
Lambda Legal  
<http://www.lambdalegal.org/cgi-bin/iowa/issues/record?record=9>

Marriage Equality  
Gay & Lesbian Advocates & Defenders  
<http://www.glad.org/marriage/>

Marriage: Cases and Resources  
Street Law, Inc.  
[http://www.glencoe.com/sec/socialstudies/street\\_law/textbook\\_activities/cases\\_resources/chapter31.php](http://www.glencoe.com/sec/socialstudies/street_law/textbook_activities/cases_resources/chapter31.php)

### Documents

An Act Relating to Civil Unions, Vermont Secretary of State  
Source: <http://www.sec.state.vt.us/otherprg/civilunions/civilunionlaw.html>

Defense Of Marriage Act of 1996  
<http://www.lectlaw.com/files/leg23.htm>

"Families (750 ILCS 5/) Illinois Marriage and Dissolution of Marriage Act"  
<http://www.ilga.gov>

Goodridge v. Department of Public Health (Mass. 2003)  
[http://www.hrc.org/Template.cfm?Section=Background\\_Information2&Template=/ContentManagement/ContentDisplay.cfm&ContentID=13600](http://www.hrc.org/Template.cfm?Section=Background_Information2&Template=/ContentManagement/ContentDisplay.cfm&ContentID=13600)

Loving v. Virginia, 388 U.S. 1 (1967)

Marriage: An Overview. Legal Information Institute  
[www.law.cornell.edu/topics/marriage.html](http://www.law.cornell.edu/topics/marriage.html)

Number, Timing, and Duration Marriages and Divorces: 1996. U.S. Census Bureau (2002).  
<http://www.census.gov/prod/2002pubs/p70-80.pdf>

Parental Kidnaping Prevention Act of 1980, (Public Law No. 96-611)  
<http://www.law.arizona.edu/Depts/Clinics/CAC/pkpatx.html>

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