

## 3. Same-Sex Marriage

A 2003 decision by four Massachusetts Supreme Court judges requiring the state to recognize same-sex unions as “marriage” forced a national debate on this fundamental institution of society. The Massachusetts decision goes against the cumulative weight of human history, the beliefs of all major world religions, Western legal precedent, and the long-held views of most Americans supporting the natural order of marriage as one man and one woman. This act of legislating from the bench has been met with calls for legislative action at the state and federal levels, including an amendment to the U.S. Constitution that would define marriage as the union of one man and one woman.

by *Robert Rector*

### Notes

#### Recommendations

**1. Use all legislative and judicial means at the state and local levels to preserve and protect marriage.** Decisions about sex, marriage, and childbearing are not merely personal. Public policy should be based ultimately not on adults’ personal fulfillment, but on the social welfare of all concerned—children first and foremost. Marriage is the cornerstone of the family: It produces children, provides them with mothers and fathers, and is the framework through which relationships among mothers, fathers, and children are established and maintained.

A series of significant judicial decisions—beginning with a trial court judge in Hawaii, followed by decisions in Alaska and Vermont, and culminating in the Massachusetts Supreme Court ruling in the *Goodridge* case—has brought the issue of same-sex “marriage” to the forefront of our nation’s attention. These decisions and the litigation strategy behind them seek to redefine the institution of marriage for the whole nation. In response, many states have been acting to strengthen their existing statutory language that recognizes marriage between a man and a woman or to amend their constitutions to preserve the traditional understanding of marriage. State leaders should continue to pursue such measures in defense of marriage.

**2. Adopt an amendment to the U.S. Constitution to protect the traditional definition of marriage.** In 1996, Congress overwhelmingly passed the Defense of Marriage Act (DOMA), which both defines

marriage for purposes of federal law as the union of one man and one woman and allows states not to recognize other states' conflicting definitions. But DOMA will not survive activist judges bent on using their evolving constitutional interpretations to advance their policy objectives. The trend of Supreme Court precedents and jurisprudence in recent decades does not bode well for DOMA. Forcing marriage to mean all things will ultimately force marriage to mean nothing at all. The most significant and responsible step Congress can take to protect marriage is to send a constitutional amendment that protects the institution of marriage to the states for ratification.

## Facts and Figures

■ Forty-four states have laws that preserve the traditional definition of marriage; 18 states have passed constitutional amendments protecting marriage; and 11 states have ballot initiatives or legislative action pending in 2006.

■ Strengthening marriage is good for society as a whole. New research from European countries that have legally recognized same-sex unions shows higher break-up rates for same-sex couples and an increased rate of non-marital childbearing.

■ A 2004 study of national register data in Sweden found that male homosexual couples were 50 percent more likely, and female couples 167 percent more likely, to terminate their legal relationship than were heterosexual couples to divorce.

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*This chapter can be read online at [issues2006.org/ssmarriage](http://issues2006.org/ssmarriage).*

## Notes

### Additional Reading

Edwin Meese III, "Marriage Amendment Protects Federalism," Heritage Foundation *WebMemo* No. 531, July 12, 2004, at [www.heritage.org/Research/Family/wm531.cfm](http://www.heritage.org/Research/Family/wm531.cfm).

Matthew Spalding, Ph.D., "A Defining Moment: Marriage, the Courts, and the Constitution," Heritage

Foundation *Backgrounder* No. 1759, May 17, 2004, at [www.heritage.org/Research/LegalIssues/bg1759.cfm](http://www.heritage.org/Research/LegalIssues/bg1759.cfm).

Jennifer Marshall, "Marriage: What Social Science Says and Doesn't Say," Heritage Foundation *WebMemo* No. 503, May 17, 2004, at [www.heritage.org/Research/Family/wm503.cfm](http://www.heritage.org/Research/Family/wm503.cfm).