

## THE CASE AGAINST CIVIL UNIONS

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### Talking points

**Civil unions for same-sex couples are not the goal, just a stepping stone toward redefining marriage.** If we've learned one thing from the state battles it's that the goal is the complete redefinition of marriage. In the states which have adopted civil union laws, activists have always found them insufficient; only the redefinition of marriage would suffice.

**Vermont**--The state court mandated that the legislature move to treat same-sex couples the same as married couples, and in 2000 it was the first state to adopt civil unions. Activists pushed until marriage was redefined in in state law in 2009.

**California**--Domestic partnership laws there were expanded until they included every state right and responsibility of marriage. The domestic partnerships there are marriage in all but name, but that did not stop activists from pushing to redefine the word marriage, and disputing the passage of Proposition 8 in federal court.

**New Jersey**--Within a few months after the state's civil union law, a commission had been set up to investigate the success of the civil unions and, not surprisingly, found civil unions to be insufficient and only the redefinition of marriage would suffice. Current Gov. Chris Christie supports one-man, one-woman marriage.

The civil union bill looks like a political compromise, but it would be a compromise only for pro-family groups; we have no reason to think that the goal is anything less than same-sex marriage.

**Marriage does not have to be redefined to care for unmarried people.** Hawaii's reciprocal-beneficiary agreements provide for all kinds of domestic situations in which care is made available to two people regardless of sexual relationship.

**Marriage is recognized by governments for a reason.** Governments have recognized marriage for one reason: the procreative potential of the sexual relationship in marriage. Married mothers and fathers provide a great service to the community and the state--the next generation of responsible citizens and taxpayers.

**The adoption of same-sex marriage almost certainly guarantees the infringement of the religious liberties of people of faith.** This is not disputed by legal scholars on the right or the left, and HFF should consider this carefully as they move ahead.

## **PRACTICAL ARGUMENTS**

### **Introduction of a SSM bill**

It seems probable--given the election results--that a same-sex marriage bill would be introduced. In light of a Democrat majority, *why would legislators consider a civil union bill with slightly more benefits than the current RBs, rather than the SSM bill?*

Secondly, how could HFF defend one-man, one-woman marriage, while party to promoting a civil union bill that would be the redefinition of marriage in all but name?

### **Threatens the credibility of HFF as a defender of motherless and fatherless children**

Promotion of a civil union bill will set up HFF as promoting motherless or fatherless homes, and this is not in the best interest of children. The HFF has a reputation as a defender of children, but a promotion of civil unions ignores the extensive research that tell us that children need both a mother and a father, and that they thrive when raised in married homes.

### **Biblical orthodoxy**

A decision to promote a civil union bill will also bring into question the biblical orthodoxy of the organization. HFF has long-championed marriage and family. Given the track record of civil union bills as stepping stones to same-sex marriage, it will be difficult to see the championship of a civil union bill as anything other than a compromise of the integrity of biblically orthodox adherence of the organization.

## **LEGAL ARGUMENT**

Domestic partnerships and civil unions are part of the legal slippery slope toward the redefinition of marriage--according to activist courts who have written it in their opinions.

The courts that have found a constitutional right to same-sex marriage have argued from the existence of other pro-homosexual state laws - such as CU/DP laws, non-discrimination laws, same-sex adoption laws, etc. - that the state has already agreed that there's an "emerging awareness" or even a "concession" that homosexuals are being granted equal rights in everything important except marriage. In some cases the courts have held that the state, by creating DPs and CUs, is guilty of creating a "separate but equal" scheme to deny gays their 14<sup>th</sup> Amendment rights.

Bill Duncan, of the Marriage Law Foundation, outlined the legal slippery slope in this way,:

The experience of other states makes clear that creating legal statuses for unmarried couples such as domestic partnerships and civil unions also threatens the longstanding

legal definition of marriage as the union of a man and a woman in at least two ways. First, courts in Massachusetts, California and Connecticut have specifically held that those States' decisions to "draw no distinction between married couples and domestic partners with regard to the legal rights and responsibilities relating to children raised within each of these family relationships, [means] the asserted difference in the effect on children does not provide a justification for the differentiation in nomenclature set forth 2 in the challenged statutes."<sup>3</sup> In other words, by granting parenting rights to domestic partners, the State had undercut the traditional role of marriage as a way of providing an opportunity for children to know and be raised by their own mother and father. Thus, the courts saw no reason they should not entirely sever the link between marriage and childrearing by redefining marriage.

Second, the creation of alternative legal statuses for the unmarried was understood by these courts as evidence that sexual orientation deserved heightened judicial scrutiny. This finding, in turn, was used by the court to discount the State interests in marriage as the union of a man and a woman.<sup>4</sup>

Neither is a statutory disclaimer likely to prevent a court from reaching these conclusions. When the Massachusetts Legislature approved sexual orientation discrimination in 1989 it specified that "[n]othing in this act shall be construed so as to legitimize or validate a 'homosexual marriage', so-called."<sup>5</sup> In its decision redefining marriage in Massachusetts, the majority did not even take note of this language, though it was quoted in a dissenting opinion.<sup>6</sup>

If the proposed legislation is merely meant to provide benefits to individuals who are dependent on one another, it need not create a new legal status defined by "a relationship of mutual caring and support." In fact, this definition, coupled with the exclusion of related persons from the status suggests that the bill would not help those in dependent relationships as much as endorse cohabiting relationships.

<http://marriagelawfoundation.org/publications/NMtestimony.pdf>

**More information to support the legal argument above:**

"The majority said the enactment of a civil union status showed that same-sex couples were so disadvantaged they had to have a special status created for them."

<http://spectator.org/archives/2008/10/14/inferiority-redefined>

[Trading Civil Unions for Religious-Liberty](http://www.nationalreview.com/corner/177727/trading-civil-unions-religious-liberty-protection/maggie-gallagher)

[Protection?http://www.nationalreview.com/corner/177727/trading-civil-unions-religious-liberty-protection/maggie-gallagher](http://www.nationalreview.com/corner/177727/trading-civil-unions-religious-liberty-protection/maggie-gallagher)