

Search

Navigation Menu



Member Login: username

GO Help



Federal Relations

Why HSLDA is Fighting Against Same-Sex

http://nche.hsllda.org/docs/news/hsllda/200404/200404150.asp

JUN APR JUL

Close



15 captures
20 Jun 04 - 18 Mar 15

9
2013 2014 2015

Help

HSLDA

April 15, 2004

Federal Relations home

About Federal Relations

Federal legislation

Lobbying resources

Congressional Action Program

Bright Spots in homeschooling

Navigation Menu

Members' Home Page

Questions and Answers Regarding a Constitutional Amendment on Same-Sex Marriage

Michael Farris, J.D.
Chairman, Home School Legal Defense Association
President & Professor of Government, Patrick Henry College

- [Why is a constitutional amendment the correct approach to solve the problem of same-sex marriage?](#)
- [Why shouldn't we leave this issue to the state legislatures?](#)
- [Didn't Congress already pass the Defense of Marriage Act? Won't that stop our state from being required to accept same-sex marriages from Massachusetts?](#)
- [Doesn't a federal constitutional amendment on marriage violate the principles of federalism?](#)
- [Won't this open the door for other constitutional amendments that we may not like?](#)
- [What will be accomplished by the proposed "Marriage Protection Amendment"?](#)
- [What is the difference between civil unions and same-sex marriage?](#)
- [Why not ban same-sex marriage in a federal constitutional amendment and leave civil unions to the state legislatures?](#)
- [But don't the backers of the MPA claim that their amendment will stop courts from forcing their state to recognize civil unions from another state?](#)
- [Is there language that would ban both same-sex marriage and civil unions?](#)

We are all aware of the unbelievable actions of judges in Massachusetts and the lawless actions of the Mayor of San Francisco which are forcing this nation to accept same-sex marriage. The President has recently endorsed the concept of a constitutional amendment to preserve traditional marriage. The President did not endorse a specific constitutional text as there are various ideas floating on Capitol Hill at this time.

There are two competing texts that conservatives have endorsed. Some conservatives have endorsed the Marriage Protection Amendment (MPA). Other conservatives have endorsed the Institution of Marriage Amendment (IMA). The texts of each version are quoted below. Briefly, the MPA is designed to stop same-sex marriage and to allow state legislatures to create civil unions. The IMA is designed to stop same sex marriage and civil unions (since civil unions give same-sex couples 100% of the legal rights and benefits of marriage). The MPA protects only the word "marriage." The IMA protects the legal rights and status of marriage.

There is much confusion on this issue. This summary is intended to help bring accurate and simple answers to the complex swirl of questions on a constitutional amendment.

- Why is a constitutional amendment the correct approach to solve the problem of same-sex marriage?**
There are at least two strong reasons why a federal constitutional amendment is necessary. First, it is no more acceptable to have same-sex marriage in some states than it is to have abortion or slavery in some states. Some issues are of such fundamental moral consequence that our nation needs to stand united in favor of that which is right. Second, the current text of the Constitution causes a big part of the problem. The Full Faith and Credit Clause in Article IV requires that marriages, which are recognized as legal in one state, be recognized as legal in all states. The only way to fix this problem is a federal constitutional amendment. Otherwise, if Massachusetts legalizes same-sex marriage, all 49 other states will have to recognize the legality of same-sex marriages performed in Massachusetts. If not Massachusetts, then the same principle is true of any state which legalizes same-sex marriage.
- Why shouldn't we leave this issue to the state legislatures?**

ADVERTISEMENT



Because of the Full Faith and Credit Clause, this is not a situation where each state can decide its own policy. The entire nation's policy will be set by the legislature of one state. Unless you live in Massachusetts, you will have no voice in the outcome of this issue. The decision of your state officials will become legally irrelevant. There is no rational reason that the voters of all other states should be willing to leave this to the legislature of a single state. In other words, if one state legislature or state court legalizes same-sex marriage, all states will be forced to recognize them. This is not federalism. This is tyranny by a single state.

3. Didn't Congress already pass the Defense of Marriage Act? Won't that stop our state from being required to accept same-sex marriages from Massachusetts?

We will not know the "official" answer to this legal question until there are officially-recognized same-sex marriages in one state that are then transported to another state. We are a few weeks away from these events.

But the answer is already clear. Last summer the Supreme Court issued its historic (and terrible) ruling in *Lawrence v. Texas* which gave a blank check to the homosexual rights movement. Any law which the Supreme Court deems to be "anti-gay" is now presumptively unconstitutional. DOMA will not survive.

You can read my [testimony](#) before the United States Senate Constitution Subcommittee on the constitutionality of DOMA if you would like more information.

4. Doesn't a federal constitutional amendment on marriage violate the principles of federalism?

No. Not at all. Not even a little. People who make this argument misunderstand the principles of federalism. If Congress tried to pass a regular law on marriage, this would violate the principles of federalism.

The key reason that federalism is preserved in this case is that to have a valid amendment, Congress proposes it, but 38 states must ratify the amendment. It will be the states that make the ultimate decision whether or not to ban same sex marriage via an amendment to the United States Constitution. Remember, this is the Constitution of the United States, not the Constitution of the Federal Government.

It is also important to note that every proposed version of a same-sex marriage amendment does *not* include any provision that gives Congress any authority to legislate in this arena. Many amendments contain such language and these grants of power to Congress have often been exploited. Again, no grant of power to Congress to regulate marriage (or do anything else) is contained in either the MPA or the IMA.

It is also very important to remember that one state alone can force the entire nation to accept same-sex marriage. How is it consistent with the principles of federalism for Massachusetts (or any other state) to be allowed to decide the issue of same-sex marriage for the entire nation?

5. Won't this open the door for other constitutional amendments that we may not like?

No. Absolutely not.

One needs to understand that there are two completely different procedures for amending the Constitution. One process is for specific amendments to be proposed. The other is for a Constitutional Convention.

There is NO PROPOSAL for a CONSTITUTIONAL CONVENTION.

Constitutional Conventions can only be called by state legislatures. Congress has no power at all to call for a Constitutional Convention. There is no proposal in any state legislature to call for a Constitutional Convention for this purpose.

Some people believe that Constitutional Conventions are dangerous because they could deal with other issues other than the one for which they were called. Other people disagree with this and contend that a Constitutional Convention can only deal with the subject matter for which the convention was called. However, it is very important to recognize that this is a completely different method from what is being advocated and has absolutely nothing to do with the current proposed amendments.

The method that is being used is the one that has been used to give us all twenty-seven of the existing constitutional amendments. We have never had a Constitutional Convention since 1787 (when the Constitution was originally drafted), so obviously amending the Constitution does not require a convention.

This is the process dictated by the Constitution:

- Congress must propose a specific amendment by a two-thirds vote in both Houses.
- The specific amendment must be ratified by three-fourths (38) of the states.
- The President has no role in the amending process.

6. What will be accomplished by the proposed "Marriage Protection Amendment"?

The Marriage Protection Amendment (also known as the Musgrave Amendment) provides:

"Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman."

The principal sponsors of this amendment have made it absolutely clear that they believe that this amendment, while it bans same sex-marriages, will allow each state to decide its own policy on civil unions or other forms of same-sex unions which give couples all the legal rights of marriage.

7. What is the difference between civil unions and same-sex marriage?

There is absolutely no difference except for the name. Want proof? Here are the actual words of the

Vermont and California civil union laws. (California gives it the term "domestic partnership," but we will call all such laws "civil unions" for the sake of simplicity).

Here is the actual wording of the key portion of the Vermont law: "Parties to a civil union will have all of 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."

In California the law says: "Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses."

Civil unions are not just about hospital visits and insurance benefits. These are marriage relationships that require a license from the government to enter and a divorce-like decree to end. They have 100% of the rights and benefits of marriage. They make the partners legally spouses. Same-sex couples have all the legal rights of marriage; they simply cannot use the word "marriage" to officially describe their relationship.

Civil unions are nothing more than a cheap attempt at a political compromise. It is a political trick that deserves to be ridiculed by both sides of this issue. Those who support same-sex marriage can legitimately ask, "If you give us all the rights and make us legal spouses, why not give us the word marriage also?" Those who oppose same-sex marriage can ask, "If we are saying they are not married, why do we make them spouses and give them all the rights of marriage?" Everyone should be outraged at civil unions.

8. Why not ban same-sex marriage in a federal constitutional amendment and leave civil unions to the state legislatures?

There are two quick reasons this is a bad idea. First, there is no legal difference between same-sex marriage and civil unions. Thus, a federal constitutional amendment will accomplish absolutely nothing if it relies on this distinction. Second, if we allow one state to create civil unions, it will infect all other states under the Full Faith and Credit Clause. So we would be right back in the mess we are in today. One state can force its policy to be accepted and honored in every state of the nation even if the Marriage Protection Amendment (MPA) is ratified.

9. But don't the backers of the MPA claim that their amendment will stop courts from forcing their state to recognize civil unions from another state?

Yes, indeed they make such a claim. But it is based on a very doubtful reading of their text. Remember, that the MPA is based on this phrase "marriage or the legal incidents thereof." If the MPA passes, then marriage is by definition one man and one woman. Civil unions will be a distinct, but parallel, legal institution. Courts will be free to order a state to give a couples "civil union" benefits. Nothing in the MPA stops this cheap legal trick and will not stop judicial activism.

Since the authors only desire to protect the word "marriage" and not the legal rights and status of marriage, we should not be surprised that their wording leaves gaping holes that activist judges will readily fill.

10. Is there language that would ban both same-sex marriage and civil unions?

Yes. It reads:

"Marriage in the United States shall consist only of the union of a man and a woman. Neither the United States nor any State shall recognize or grant to any unmarried person the legal rights or status of a spouse."

This is called the Institution of Marriage Amendment (IMA). The MPA protects only the word "marriage." The IMA protects the institution of marriage. It preserves for marriage and marriage alone the legal rights and status of a spouse. The IMA is clear. The language of the MPA is very confusing. The IMA stops the courts and the legislature of any state from imposing its will on the rest of the nation. It is the only proposal that will work to truly protect marriage. By its express terms, the IMA stops the creative attempts of the pro-homosexual activists and the courts from bestowing the rights and status of marriage on unmarried persons—period.

The IMA has been endorsed by the Home School Legal Defense Association, Concerned Women for America and other state-based organizations.

GENERAL

[Home](#)
[About](#)
[Join](#)
[Donate](#)
[Contact](#)
[Advertising](#)
[Our Speakers](#)
[Media](#)
[Español](#)

MEMBERS

[Members homepage](#)
[Renew online](#)

SHOP

GET ANSWERS

[Legal questions](#)
[Preschool-8th grade](#)
[High school](#)
[Courses & curriculum](#)
[College/employment](#)
[Special needs/struggling learners](#)
[Groups • Group services](#)
[Child abuse](#)
[Sports](#)
[Military](#)
[Drivers ed](#)

STAY INFORMED

[News](#)
[Cases](#)

DEFEND FREEDOM

[Take action](#)
[Contact my legislator](#)
[My state](#)
[National](#)
[International](#)
[Generation Joshua](#)
[Parental Rights Amendment](#)
[Support HSLDA](#)

COMMUNITY

[Facebook](#)
[Twitter](#)
[HSLDA blog](#)
[HSLDA YouTube](#)
[E-lets & e-newsletters](#)

RELATED ORGANIZATIONS

[Generation Joshua](#)
[PHC Prep Academy](#)
[HSLDA PAC](#)
[Home School Foundation](#)
[ParentalRights.org](#)
[Patrick Henry College](#)

NATIONAL ORGANIZATIONS

[NHERI](#)
[NCFCA](#)
[NATHHAN](#)
[HSLDA of Canada](#)
[See more...](#)

QUICK NAVIGATION

[Teaching my kids](#)
[My state](#)
[Support groups](#)
[National advocacy](#)
[International](#)
[HSLDA channel](#)
[E-lets & e-newsletters](#)
[Helping families in need](#)
[Shopping](#)

STAY CONNECTED



HSLDA Store
Curriculum Market
PerX member discounts
Clicks for Homeschooling
Teacher Discounts

E-lets & e-newsletters
Home School Court Report
Home School Heartbeat
@home e-vents
Issues & research library

Conferences near me
Groups in my state
Group leader services
@home e-vents
Contests

Copyright © 2014 HSLDA. All Rights Reserved.

P.O. Box 3000 • Purcellville, VA 20134-9000 • Phone: 540-338-5600 • Fax: 540-338-2733 • Email: [Click here](#)

[Privacy Policy](#) | [User Agreement](#)