



MARRIAGE AND SAME-SEX UNIONS

by Whitney Gustin

Introduction

In November, Coloradans will be asked to vote on as many as four measures addressing marriage and same-sex unions. These proposals are some of the latest developments in a larger public discussion of marriage and family that started in 1993 when the Hawaii Supreme Court ruled that laws denying same-sex couples the right to marry violated state constitutional equal protection rights. Hawaii voters subsequently passed a constitutional amendment allowing the legislature to reserve marriage for opposite-sex couples. Since then, a number of states have adopted same-sex union laws and many courts have considered related cases. The electorate in at least seven states will vote this year on constitutional amendments to ban same-sex marriages, and 16 lawsuits around the country are currently challenging established bans. This issue brief provides information regarding significant actions taken by Colorado, other states, Congress, and the courts.

Colorado

House Bill 06-1344, a measure referred to the voters by the General Assembly, is currently the only same-sex union issue that is certain to be on the November ballot. The referendum creates domestic partnerships for same-sex couples and confers upon them the benefits, protections, and responsibilities granted to legally married spouses.

The other potential ballot measures are three separate citizen initiatives that must collect enough valid signatures before they appear on the ballot. Each one adds a different provision regarding marriage and same-sex unions to the state constitution as follows.

- A union between one man and one woman is the only valid and recognized marriage in the state. (Colorado has had a similar statutory law since 2000.)
- The state and local governments cannot create or recognize any unions that may be similar to marriage.
- Domestic partnerships are a valid relationship between same-sex adults.

Bans on Same-sex Unions

Other states. Forty-four states have adopted laws that prohibit same-sex marriage. Most of them are modeled after the federal Defense of Marriage Act. Of the 44 states, 25 have defined marriage only in statute, 3 have done so only in the state constitution, and 16 have placed the language in both statute and the constitution. Constitutional amendments have been pursued by opponents of same-sex marriage because they are generally believed to be more difficult to reverse and may prevent court decisions affirming a right to same-sex unions.

Federal Defense of Marriage Act. In 1996, Congress passed and President Clinton signed the Defense of Marriage Act (DOMA) defining marriage as a legal union between one man and one woman. It also allowed states to disregard same-sex marriages performed elsewhere. Shortly after the law passed,

members of Congress requested a review of federal laws and policies in which personal benefits, rights, and privileges are affected by marital status. The U.S. General Accounting Office identified 1,138 laws and policies, including Social Security, family medical leave, and federal taxation policies.

Federal Marriage Amendment. The Federal Marriage Amendment is a proposed amendment to the U.S. Constitution that defines marriage as being between a man and a woman. A number of versions have been introduced since 2002, including those sponsored by Colorado Representative Marilyn Musgrave and Senator Wayne Allard. The amendment is expected to be reintroduced in the Senate by Republican leaders some time after the Memorial Day Recess. Amendments to the U.S. Constitution require two-thirds vote in both chambers of Congress and must be ratified by three-quarters of the state legislatures before they are adopted.

Laws Allowing Same-sex Unions

Same-sex marriages. Massachusetts is the only state to allow same-sex couples to marry. The state began issuing marriage licenses to same-sex couples on May 17, 2004, after the Massachusetts Supreme Judicial Court ruled that barring such unions violated constitutional due process and equal protection provisions. Between May 17 and December 31, 2004, 6,000 gay couples were married — 18 percent of all marriages during that period. Opponents of the state's policy are seeking to end same sex marriages through the citizen initiative process, but the earliest the initiative could appear on the ballot is 2008.

Washington State is very close to finding out if it will join Massachusetts in legalizing same-sex marriages. The state Supreme Court is expected to rule any day on two lower court rulings that found the state's ban on same-sex marriage unconstitutional. The court could: (1) declare the state law unconstitutional and grant same-sex couples the same marriage rights as heterosexuals; or (2) uphold the law. It is the first state high court to tackle same-sex marriage since Massachusetts's Supreme Judicial Court issued its ruling.

Civil unions. Two states, Vermont and Connecticut, have legalized civil unions between same-sex partners. The laws in both states provide that same-sex couples who enter into a civil union "have all the same benefits, protections, and responsibilities under (state) law . . . as are granted to spouses in a marriage."

The Vermont legislature created civil unions as a parallel system to marriage in 2000. It did so in response to a state Supreme Court ruling that found same-sex couples are entitled to the same benefits and protections as married couples under the state constitution's Common Benefits Clause. In 2003, 1,397 civil unions were performed in Vermont — 19 percent of all unions and marriages during that period.

The Connecticut legislature legalized civil unions in 2005 without prompting from the courts. Between October 1, when civil unions were first allowed, and December 31, 2005, 635 couples entered into civil unions — 10 percent of all unions and marriages during that period.

Registries. Four states offer a registry of domestic partners and have conferred limited marriage rights to same-sex partners: California, Hawaii, Maine, and New Jersey.

**Table 1
State Policies on Same-sex Unions**

	Permit Gay Marriage	Permit Civil Unions	Offer Registry of Domestic Partnership	Statute Defines Marriage	State Constitution Defines Marriage	No State Law or Policy
Number of States	1	2	4	41*	19 *	5

* States that define marriage both in statute and the constitution are included
Source: Stateline.org