

# FAMILY FINDINGS

NEW JERSEY FAMILY  
POLICY COUNCIL



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## State Constitutional Amendment: The Highest Form of Protection

### EXECUTIVE SUMMARY

**T**his report explains why the best way to preserve marriage in New Jersey is to pass a constitutional amendment as soon as possible defining marriage to be between one man and one woman only. Even though New Jersey already has legalized civil unions with all the state rights and benefits of marriage, it is imperative that the distinction remains with regard to the title “marriage” and the definition of marriage. Without a constitutional amendment, judges will have free rein to redefine marriage to include any other relationships they see fit, including polygamous unions and eventually even adult/child relationships.


Same-sex “marriage” activists in New Jersey have vowed to continue to press for the title of “marriage,” which will force society to affirm such relationships regardless of their deeply held beliefs. Unless New Jerseyans rise up and petition their legislators for a constitutional amendment, the granting of the title of “marriage” inevitably will happen. As a result, individuals will lose freedom of speech and freedom of religious expression on this issue, and parents will lose the ability to protect their children from homosexual lifestyle indoctrination in school. In addition, the unique importance of the institution of marriage will be further diminished, eventually causing the marriage rate to drop precipitously. Adults and children will suffer social consequences while taxpayers will be asked to fund the multitude of needs created with government-funded social programs.

### Why a Constitutional Amendment to Preserve Marriage?


**O**ur representative government is designed to be “of the people, for the people and by the people.” So when the judicial and legislative branches of government are not affirming the values of the vast majority of people, the constitutional amendment process is a legal way to correct the situation.

The time for sitting back and trusting our judiciary and Legislature to protect our families from marriage being radically redefined is over. The N.J. State Supreme Court overstepped its legal bounds on Oct. 25, 2006, when it ordered the Legislature to give same-sex couples the rights and privileges of marriage without the consent of the people at the ballot box. Same-sex “marriage” proponents have made an end run around the legislative process, which is supposed to include the people, and our activist Supreme Court and state Legislature have allowed them to do so. Therefore, in order to preserve the freedoms granted to “we the people” by the constitution, to preserve our democracy (balance of powers), and to preserve marriage for the good of all society, we must not allow the judiciary to rule. Allowing the judicial branch to rule is called an oligarchy — a government by the few — and it is taking us down the road to moral relativism.<sup>1</sup>

At this point, a state constitutional amendment to preserve marriage is our only way to prevent activist judges from granting the title of marriage in a future lawsuit by same-sex couples and prevent them from reinterpreting and rewriting the law to legalize and codify additional types of relationships to be equal to marriage.



“... male/female,  
 mother/father,  
 husband/wife ...  
 ...really *does* mean  
 something, and our  
 humanity is demonstrated  
 in our complementary  
 beings as male and  
 female.”



In the past, our state Supreme Court justices have shamelessly reinterpreted and rewritten our constitution (Boy Scout decision, Parental Notification for abortion, Lautenberg Decision legislating election law, Same-Sex “Marriage Ruling” that resulted in civil unions), but a clear constitutional amendment to preserve marriage will make it difficult, if not impossible, to do so in the future. (See “What Must We Do?,” pgs. 3-4)

The final legal reason why a state constitutional amendment is necessary is because we have no specific federal law that prohibits an individual state from redefining marriage. The Federal Defense of Marriage Act (DOMA) passed by our U.S. Congress in 1996 does not stop individual states from legalizing same-sex “marriage,” such as was done in Massachusetts. The DOMA simply prevents federal benefits and legal recognition from being granted to same-sex couples.

The only other intervention that would preserve marriage in New Jersey, and in every state in the union, would be if the U.S. Congress passed a federal constitutional amendment. Unfortunately, with the current makeup of Congress, this prospect is highly unlikely, and therefore, the preservation of marriage must then be confronted and won on the state level.

## Learn From Other States

**We must learn from what same-sex activists are doing in other states. Currently in the nearby northeastern state of Connecticut, where only two years earlier (October 2005) civil unions were legalized, (as they now are in New Jersey), the Legislature is poised to contemplate same-sex “marriage” in the current legislative session.**

The reason New Jersey was targeted in the first place for a same-sex “marriage” lawsuit by the activist law group Lambda Legal, is because it is one of the minority group of states that has no “lawsuit proof” law or constitutional amendment protecting the definition of marriage. Likewise, Massachusetts was one of those targeted states, and it became the only state where the Supreme Judicial Court mandated same-sex “marriage.” The people of Massachusetts however, have risen up and have just successfully petitioned the Legislature to let the people vote on a constitutional marriage amendment in 2008. All eyes are on the highest courts in three states where there is no constitutional amendment to protect the definition of marriage: California, Connecticut and Maryland, where decisions on the constitutionality of gay marriage are likely this year.<sup>2</sup>

More than half of the states (27) already have passed laws and amendments to preserve marriage. Bills seeking to put a constitutional amendment to define marriage on the ballot in

2008 are pending in 11 additional states: Arizona, Illinois, Indiana, Maryland, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Washington and West Virginia.<sup>3</sup>

## People support marriage amendment

In New Jersey, 54 percent of all adults and 57 percent of likely voters support passing an amendment to preserve marriage.<sup>4</sup> It also is likely that support will increase once the prospect of an amendment is imminent, as it did in all the other states where amendments have passed, with an average of 70 percent support.<sup>5</sup> By passing a state constitutional amendment and asserting their rights as citizens and voters, New Jersey has one last chance to preserve marriage for the sake of our children and the welfare of the entire state.

## Marriage: What’s in a Word?

One may ask, what’s the difference what we call a same-sex union, if the state has already granted equal benefits to this alternative union? Make no mistake about the distinction:

**A same-sex couple can never become a man and a woman to provide the same unique, complementary influence to children — and to one another — that marriage affords. It doesn’t matter what you label the relationship, it will never be equal to marriage. Therefore it is only logical to reserve the term “marriage” for the union of one man and one woman.**

## Definition of marriage

**The institution of marriage is a public virtue in that it responsibly regulates human sexuality, brings the two parts of humanity together in a cooperative and mutually beneficial relationship, and it delivers mothers and fathers to children for the proper development of the next generation.**

What same-sex activists are asking for is a radical redefinition of the term “marriage.” They wish to redefine marriage as a “loving relationship,” thereby saying that heterosexual and homosexual families are interchangeable; that male/female, mother/father, husband/wife does not really matter for society and there is no real difference. However, male and female really *does* mean something, and our humanity is demonstrated in our complementary beings as male and female. Once you remove one gender from marriage, you actually destroy the institution that natural, spiritual and physical law has verified throughout virtually every culture for thousands of years.

## The power of words

Homosexual activists know how to use the power of words and understand the power of the title “marriage,” which is why they continue to push for it. In their incremental drive for



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recognition in court case after court case, they have used the power of words and yet have been disingenuous to the public. They have insisted that their main goal was to obtain “equal protection” for their “families,” and in doing so they have gained sympathy from the public. But their true goal is full, government enforced acceptance and recognition within society, which would force everyone to accept their radical redefinition of the ideal family. They know that this ultimately can only be accomplished if it is codified and defined in law as being equal to one-man, one-woman marriage. The danger of such a move, as we have seen in both the Netherlands and Canada, is that the force of law will be used to gain acceptance and recognition of same-sex relationships, and limit the rights of the majority with regard to free speech and religion, parental rights and the welfare of children and society at large. In addition, it opens up the legal doors to legalizing other counterfeit unions.

## Why Is Preserving the Unique Definition & Upholding the Ideal of Marriage So Important?

**A functioning [traditional] marriage culture serves to protect political liberty, gives children the best opportunity for healthy, successful lives and fosters limited government.**<sup>6</sup>

Below are just a few points illustrating the critical importance of preserving the definition of marriage.

For a more complete explanation of these critical points below, please see our publication *So What — How Will Same-Sex ‘Marriage’ Affect Me?*, and our publication *Preserving Marriage and Protecting Children* at [www.njfp.org/html/resources.asp](http://www.njfp.org/html/resources.asp).

- **Children must not be purposefully denied the mutually complementary influence of a mother and father.** A loving and compassionate society comes to the aid of motherless and fatherless children, but no compassionate society intentionally subjects children to motherless or fatherless families. Yet, this is what every same-sex home does — and for no other reason but to satisfy adult desire.
- **Freedom of Speech & Religion.** In the Netherlands and Canada where same-sex “marriage” is legal, there have been numerous civil rights violations. In

Sweden, Pastor Ike Green was threatened with prison and dragged through court for preaching from the Bible in his church against the practice of homosexual behavior. In Toronto, Canada, a business owner incurred fines and court costs of \$100,000, and was then ordered to print propaganda material for a homosexual activist group even though it violated his deeply held religious beliefs.<sup>7</sup>

- **Parental rights in raising our children will be taken away.**

In Massachusetts (where same-sex “marriage” has been legal since 2004), parents David and Tania Parker and Robert and Robin Wirthlin have so far been denied legal remedy in the courts to ensure that their school will notify them how and when their 6-year-old children will be taught about same-sex families. Massachusetts law allows parents to “opt out” their children from sex-ed classes as necessary, yet federal judge Mark Wolf has ruled that the issue here was mainly diversity and not human sexuality, so the schools are not required to notify the parents.<sup>8</sup>

- **Marriage rates will decline to the detriment of families and government (welfare state).**

In the Netherlands, registered partnerships have been legal since 1998 and same-sex “marriage” has been legal since 2001. By 2002, the number of unmarried couples with children had increased by 60 percent.<sup>9</sup> This is bad news for children since studies throughout Scandinavia and the West have shown that unmarried/cohabiting couples break up at a rate two to three times higher than married couples with children. This adds to the state/taxpayer burden to fiscally provide for more broken families. This same pattern of less heterosexual marriage and rising cohabitation is already being observed in Canada,<sup>10</sup> where same-sex “marriage” has been legal for more than two years. More specifically, the *average* duration of “committed” homosexual relationships is only 1.5 years, with an *average* of eight partners outside of that relationship per year.<sup>11</sup>

- **Civil unions is only a stepping stone.**

If we take the leap to say that marriage is not about husband and wife, mother and father, where do we stop in our redefinition? The same legal arguments that were used in courts to legalize same-sex relationships can be used to legalize polygamy, and eventually the North American Man/Boy Love Association will be asking to marry children. Already, lawsuits both here and abroad have argued for legalizing polygamy. On Feb. 26, 2007, the U.S. Supreme Court denied to

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hear the appeal of a Utah man who said his legal rights were being denied by not having legal recognition of his polygamous marriage. The Supreme Court denied hearing this case regarding polygamy, but same-sex activists heard those same denials just a decade ago. Yet this denial will not stop further lawsuits just as it did not stop same-sex activists in their quest just a decade

ago. In Canada, the Ontario Court of Appeal ruled Jan. 2, 2006, that a 5-year-old Ontario boy now has *three* legal parents: the boy’s father, biological mother and the mother’s lesbian partner with equal rights and responsibilities under law.<sup>12</sup> If three parents, why not four or five? Where will the line be drawn in future multiple parent rulings, and what is the future environment for our children?

## What Must We Do?

**Citizens can and must consistently unite to urge legislators to pass a constitutional amendment to preserve marriage. Right now there is a proposal to place this issue before the voters, which has recently been introduced in both the N.J. Assembly and Senate.** On March 5, 2007, Assemblywoman Alison Littell McHose, District 24, and Assemblyman Michael J. Doherty, District 23, announced their proposal of a constitutional amendment (ACR250), which stipulates that New Jersey voters be given the final say on the definition of marriage. In the N.J. Senate, this same proposal was introduced back in January by Senators Gerald Cardinale, District 39, and Robert E. Littell, District 24, as SCR 124.

**CALL FOR PETITIONS: Right now you can call 1-800-NJFPC-04 (1-800-653-7204) and ask for petition forms to collect as many signatures as possible from the majority of New Jerseyans who support preserving marriage.** Circulate them to your families, neighbors and friends. If they are unsure about the need for a constitutional amendment, explain the need from the text of this paper, and/or give them a copy of this paper and/or direct them to download a copy from our website at [www.njfpcc.org](http://www.njfpcc.org). Send the completed petitions to the N.J. Family Policy Council, P.O. Box 6011, Parsippany, NJ 07054. We will make sure our legislators and the media hear your voice loud and clear. If legislators hear from enough New Jerseyans on this issue and believe that our concerns are strong enough to put their next election in jeopardy, they will make sure the people get their lawful say on this vitally important issue.

## Activist Courts Must Be Stopped and Marriage Preserved

**This is ultimately up to "We the people," and the people of New Jersey must commit to taking just a small amount of time to stay informed, respond to N.J. Family Policy Council e-alerts, and pass them on to as many friends and family as possible. The N.J. Family Policy Council is only as valuable as the number of citizens it can mobilize, and unless each of us gets involved in the process to preserve marriage, we will see it redefined.** Homosexual activists are relentlessly pursuing their agenda at any cost, and we must not wane in our efforts to preserve marriage. Even as civil unions

became legal in New Jersey on Feb. 19, 2007, same-sex activists said it is still not good enough and have vowed to attain the title "marriage" through the courts within two years. They will not rest and neither must we. (SEE PICTURE BELOW showing same-sex activists demonstration held the day after civil union licenses were granted.)

"We the people" have the power to preserve marriage in our state, but we must do our part **today!**



*Demonstrators from New Jersey and Pennsylvania participate in the Garden State Equality-sponsored march across the New Hope-Lambertville Bridge yesterday, (2/20/07), asking the title of marriage be made available to same-sex couples. The event comes a day after New Jersey allowed same-sex couples to get licenses to join in civil unions. (Andrew Miller/The Times, reprinted with permission from Trenton Times.)*

### ENDNOTES

- 1 James Dobson, *Marriage Under Fire*, (Sister, Oregon: Multnomah Publishers, 2004), p. 40.
- 2 *Stateline.org*, "Gay Marriage Ripe for Decision in 3 Courts," Christine Vestal, March 1, 2007, linked to [DOMAwatch.org](http://DOMAwatch.org), Alliance Defense Fund.
- 3 *Ibid*.
- 4 Rutgers Eagleton poll, released Nov. 2, 2006, [http://eagletonpoll.rutgers.edu/polls/release\\_11\\_02\\_06.pdf](http://eagletonpoll.rutgers.edu/polls/release_11_02_06.pdf).
- 5 Institute for Marriage and Public Policy, Maggie Gallagher, Why Arizona? Or...Why Not Wisconsin?

sin? 2006 Exit Poll Data in Arizona, Virginia, and Wisconsin State Marriage Amendments, last updated Jan. 3, 2007.

6 *Marriage and the Public Good: Ten Principles*, Witherspoon Institute, Princeton N.J., May 2006, [www.princetonprinciples.org](http://www.princetonprinciples.org).

7 "Christian Business Ordered to Duplicate Homosexual Activist Videos," Robert Knight, Concerned Women for America, Washington D.C., April 25, 2006. <http://www.cwfa.org/printerfriendly.asp?id=10594&department=cfa&categoryid=family>.

8 "Federal Judge Mark Wolf Dismisses David Parker's Civil Rights Lawsuit," Brian Camenker, President, MassResistance, PO Box 1612, Waltham, MA, published Feb. 23, 2007. [http://www.massresistance.org/docs/parker\\_lawsuit/order\\_to\\_dismiss.html](http://www.massresistance.org/docs/parker_lawsuit/order_to_dismiss.html), and *The Sky is Falling, The Pilot* (newspaper of the Archdiocese of Boston), <http://www.thebostonpilot.com/articleopinion.asp?ID=4189>.

9 Statistics Netherlands, Press Release PB02, Sept. 18, 2002.

10 Stanley Kurtz, "Gay Marriage Up North," *National Review Online*, Feb. 7, 2005.

[www.nationalreview.com/thecorner/05\\_02\\_06\\_corner-archival.asp#055481](http://www.nationalreview.com/thecorner/05_02_06_corner-archival.asp#055481).

11 Maria Xiridou, et al., "The Contribution of Steady Partnerships to the Incidence of HIV Infection Among Homosexual Men in Amsterdam," *AIDS* 17 (2003):1031, as cited in "The Slippery Slope of Same-Sex Marriage," Timothy Dailey, Ph.D., Family Research Council, 2004.

12 Christian Legal Fellowship, <http://www.christianlegalfellowship.org/interventions.htm>, Press Release, Jan. 2, 2006.

## ABOUT US:

Organized in 1995, the New Jersey Family Policy Council is a nonpartisan, nonprofit research and education organization. Our goal is to serve as a voice for families and traditional family values in the public policy arena. We are supported solely by private contributions, which are tax deductible as provided by law. Our mailing address is P.O. Box 6011, Parsippany, NJ 07054. Phone: (973) 781-1414; Fax: (973) 781-1419. **Family Findings** is a publication of the New Jersey Family Policy Council and is intended to communicate research findings and perspectives on public policy issues that affect the family. Nothing written here should be construed as an attempt to aid or hinder the passage of any bill before Congress or the New Jersey General Assembly. Printed March 2007.