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The future for marriage and similar unions for same-sex couples in the United States is difficult to predict. On the one hand, a number of states have approved marriage, civil unions, and domestic partnerships. On the other hand, more states have taken legislative and/or constitutional actions that specifically prohibit same-sex marriage and, in many cases, any comparable type of union.

A state can legalize, or outlaw, marriage between individuals of the same-sex in one of three ways. First, the citizens of the state can vote to approve such an arrangement; alternatively, they can also vote to restrict marriage to opposite-sex couples only. Every state has some type of provision, usually a referendum or initiative petition, by which an issue can be placed on the ballot on which all citizens of the state can vote. By mid-2010, over 40 states had adopted laws defining marriage as an institution existing between one man and one woman; 30 states had passed constitutional amendments to the same effect.

As with same-sex marriage, many individuals oppose the institutions of civil union and domestic partnership. States that have passed laws or constitutional amendments banning same-sex marriage sometimes include all other legal entities that might be considered comparable to marriage, such as civil unions and domestic partnerships. More than a dozen of the constitutional amendments passed by states to ban same-sex marriage have included explicit bans against civil unions.

A second route to the approval of same-sex marriage is through action by a state legislature. Three states that have taken this route are Vermont, New Hampshire, and New York. The third mechanism by which same-sex marriage may become legal in a state is through judicial action. A judge or a court may determine that a law prohibiting same-sex marriage is unconstitutional and that, therefore, the state is required to permit such marriages. Same-sex marriage became legal in Connecticut, Iowa, and Massachusetts by this route.

This question of same-sex marriage is thus a complex legal issue about which some of the finest legal minds in the nation have argued. Courts at all levels have weighed in on one side or another of the issue. In September 2007, for example, the Maryland Supreme Court ruled that the state's 34-year-old law banning same-sex marriage did not violate the state constitution's equal protection provision because the state had a legitimate interest in promoting heterosexual marriage as a way of having children and raising families. By contrast, the California Supreme Court took the opposite view. In their 2008 decision on same-sex marriage, the court ruled that "the California Constitution properly must be interpreted to guarantee this basic civil right to all Californians, whether gay or heterosexual, and to same-sex couples as well as to opposite-sex couples."

ban Some observers thought that the key to the future of same-sex arrangements in the United States might lie in the court battle over the state of California's actions on same-sex marriage. The case began in June 2004 when a superior court judge in San Francisco consolidated a group of separate lawsuits on the legality of same-sex marriage under the California constitution. The judge eventually ruled that the state law banning same-sex marriage violated

the state's constitutional guarantees of equal rights for all citizens of the state. In the fall of 2006, a state appeals court reversed the trial judge's decision. The city of San Francisco then appealed to the state supreme court, which, on May 15, 2008, reversed the appeals court decision and declared that bans on same-sex marriage violated the equal protection provisions of the state constitution.

Acting under the state supreme court's decision, county clerks in California began issuing marriage licenses to same-sex couples on June 16, 2008. At the same time, opponents of same-sex marriage began a campaign to place a proposition on the November 2008 ballot that would amend the state constitution to prohibit same-sex marriage and override the court's. Proposition 8 passed by a margin of 52% to 48%. Although that action appeared to end the battle over same-sex marriage in California, it did not. Instead, opponents of the proposition filed suit in federal district court in San Francisco, asking that the result of the election be overturned. In August 2010, Judge Vaughn Walker, chief judge of the district court, ruled that Proposition 8 violated the due process and equal protection clauses of the Fourteenth Amendment. His ruling was upheld in early 2012 by a three-judge panel from the Ninth Circuit Court of Appeals and the case was appealed to the Supreme Court. Although some hoped that the Supreme Court would issue a sweeping ruling on same-sex marriage or a major ruling on the rights of same-sex couples, the Court did not do so. On June 26, 2013, the Supreme Court ruled that the supporters of Prop 8 did not have standing to appeal and vacated the Ninth Circuit's decision. This left Judge Walker's ruling as the controlling decision in the case and opened the path for same-sex marriage in California..

Also on June 26, 2013, the Court ruled that Section 3 of the federal Defense of Marriage Act, which limited marriage to "one man and one woman," was unconstitutional because it treated one groupâ€"legally married same-sex couplesâ€"differently and intruded on the state prerogative of controlling marriage regulations. While this ruling renewed some calls for a constitutional amendment to limit marriage to heterosexual couples, it also increased the likelihood that the continuing battle over same-sex marriage would be fought mostly at the state level.

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Further Reading

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