

## Topics / Same-Sex Marriage / Same-Sex Marriage: Overview

Same-sex marriage has actually become legal in several countries, including Belgium, Canada, the Netherlands, Norway, South Africa, Spain, Portugal and Sweden. Many other nations have adopted civil unions, domestic partnerships, or other marriage-like arrangements that extend to same-sex couples nearly all of the same rights available to opposite-sex couples in a legal marriage.

In the United States, the debate over same-sex marriage involves arguments over a number of different issues. Proponents of the practice say that same-sex marriage is a civil right to which all American citizens are entitled, that same-sex marriage helps stabilize relationships between loving individuals of the same gender, and that same-sex marriage poses no threat to opposite-sex marriage that has been common for so many centuries.

Proponents of same-sex marriage also argue that same-sex couples should have the same civil and economic rights as those available to opposite-sex couples. People who are legally married are entitled to a number of economic benefits not available to unmarried individuals. Some examples include the right to adopt children, the right to inherit property, the right to visit one's spouse in the hospital, the right to file joint income tax returns, the right to receive Social Security benefits on the death of a spouse, and the right to have joint life, health, and vehicle insurance policies. In 1997, the U.S. General Accounting Office (GAO) conducted a study of the federal benefits available to legally married couples in the United States not available to individuals or nonmarried cohabiting couples. The agency found 1,049 federal statutory provisions that fell into this category, a number that had increased to 1,138 when the study was updated in 2004.

Opponents of same-sex marriage say that the practice legitimizes sinful behavior, that it sends the wrong message to children about an immoral type of sexuality, and that it gives special privileges to a certain class of American citizens. Some of these critics, in turn, argue that same-sex marriage threatens the institution of "traditional" marriage between one man and one woman.

If one reads the history of the battle for lesbian and gay civil rights up to about 1985, there is very little about same-sex marriage or same-sex adoption as a priority among movement leaders. Individual efforts to get a marriage license were extraordinarily rare. By far, the greatest emphasis by gay and lesbian organizations was on achieving fundamental civil rights, such as nondiscrimination in employment, housing, and public accommodation. By 1985, however, even that goal became secondary to other concerns of the HIV/AIDS epidemic. From the mid-1980s to the mid-1990s, tens of thousands of men and women were dying every year, and finding a cure for the disease and providing aid and comfort for the hundreds of thousands of individuals with the disease drained the movement of the energy and opportunity to maintain its drive for civil rights.

As the HIV/AIDS epidemic began to moderate in the mid-1990s, efforts by gay men and lesbians to achieve the rights of marriage and adoption that opposite-sex couples traditionally enjoyed reappeared, albeit once more in rare and isolated circumstances. Undoubtedly, the most significant of these efforts occurred in the state of Hawaii in December 1990, when three same-sex couples filed suit after being denied marriage licenses. They argued that they qualified for a marriage on every state requirement, except for being of the same sex. Further, they pointed out that



the Hawaii constitution prohibits discrimination on the basis of a number of criteria, including gender. The clerk's decision to withhold a marriage license, they argued, was therefore unconstitutional under the state constitution.



Judge Kevin S. C. Chang of the First Circuit Court for the state of Hawaii eventually ruled that the exclusion of the state's marriage law to same-sex couples was unconstitutional. Chang's ruling motivated the state legislature to take action in order to "preserve the intent of the existing marriage law", that is, to restrict the practice to one man and one woman. In November of 1998, voters ratified a proposed constitutional amendment, permitting (but not requiring) the state legislature to limit marriage to opposite-sex couples.

The same-sex marriage court ruling in Hawaii caused a wave of panic through most of the United States. During 1996, legislation banning same-sex marriages was introduced in 32 states, and the governors of Alabama and Mississippi issued executive orders banning the practice. (Utah had already banned same-sex marriage in 1995, the first state in the union to do so.) At the same time, state legislatures also became concerned about the possibility of having to recognize same-sex marriages conducted in other states. Under the so-called full faith and credit clause of the U.S. Constitution, states are generally expected to respect the "public acts, records, and judicial proceedings" of other states. Passing legislation renouncing that practice is very unusual, but Judge Chang's ruling in Hawaii inspired legislators in nearly every state to introduce bills taking just that action. Eventually, all but about a half dozen states passed laws of this kind, now known as "defense of marriage" acts. And in September 1996, the U.S. Congress passed and President Bill Clinton signed a national Defense of Marriage Act, prohibiting the U.S. government from recognizing same-sex marriages and allowing states to ignore any acts of marriage between individuals of the same sex conducted in other states. Despite these actions, however, several states legalized same-sex marriage. As a result, same-sex couples found that their legally valid state marriages were not recognized for federal purposes. Several launched challenges in court and in 2013, the U.S. Supreme Court ruled that the it was unconstitutional for the U.S. government to recognize some marriages and not others.

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### Further Reading

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[back to top](#)    Entry ID: 1580330