

MARRIAGE EQUALITY

Position Statement

NASW, Iowa Chapter, affirms the right of same-sex couples to enter into civil marriage and to receive all the accompanying rights, protections and privileges. The NASW position is based on the ethical principle of social justice, as stated in our Code of Ethics.

Discussion

- *Same-sex couples in Iowa*

According to analysis of census data by the Williams Institute (Gates & Cooke, n.d.), there were an estimated 4,093 same-sex households in Iowa, or 3.3 per 1,000 households in 2010. Of those, 1,373 or 34% identified themselves as married, while 2,720 identified themselves as unmarried partner couples. Iowa ranked 45th among states in the number of same-sex households per 1,000 households, and 4th among states in the percentage of same-sex couples identifying themselves as married.

- *Civil marriage vs. religious marriage*

Marriage is the social institution in the U.S. through which couples enter into legal and/or religious unions. Same-sex couples have sought legal recognition of their relationships through civil marriage. Civil marriage is a legal, relational contract between two persons that conveys the rights, protections and responsibilities of marriage under the authority of the state.

Because the First Amendment of the Constitution provides for the separation of church and state, religious bodies retain their own separate authority to determine whether or not to affirm, sanctify or conduct sacramental marriages or religious ceremonies for same-sex couples. Religious congregations may choose not to conduct marriage ceremonies for same-sex couples, even when the state legally recognizes same-sex civil marriages. Conversely, religious congregations may choose to perform same-sex religious marriages, absent any legal recognition of same-sex civil marriage by the state. Thus, extending civil marriage to same-sex couples in no way infringes upon the separate rights of religious congregations regarding marriage.

- *Marriage benefits*

Marriage provides couples with a wide array of rights and benefits ranging from access to health coverage to financial issues to legal and family protections. The U.S. Government (United States General Accounting Office, 2004), for example, has reported that there are 1,138 rights and privileges exclusively afforded to married couples that are not available to committed couples who are denied the legal right to marry. These rights include, but are not limited to:

- accessing benefits such as family health coverage;
- filing joint tax returns, and claiming income and estate tax benefits;
- assuming pension or Social Security benefits upon the death of one's spouse;
- having hospital visitation rights and making medical decision on behalf of an incapacitated spouse;
- taking a work-related leave of absence to care for a seriously ill spouse;
- having legal protection regarding child custody and parenting;
- automatically inheriting a spouse's property in the absence of a will; and
- having child support and legal protection of communal property upon divorce.

- *Federal Defense of Marriage Act (DOMA)*

In 1996, Congress enacted the Defense of Marriage Act (DOMA), which defined marriage as a legal union between one man and one woman, barred federal recognition of same-sex marriages, and allowed states the option of not recognizing same-sex marriages formed in other jurisdictions. Many states quickly followed suit, enacting their own version of DOMA; Iowa did so in 1998 (National Conference on State Legislatures [NCSL], 2010).

- *Iowa Supreme Court decision on marriage equality*

In December 2005, six same-sex couples challenged Iowa's DOMA statute and sought the legal right to marry. The case of *Varnum v. Brien* ultimately reached the Iowa Supreme Court, which on April 3, 2009 ruled unanimously to overturn the ban on same-sex marriage in Iowa. In its decision, the Court both recognized Iowa's DOMA statute as a violation of the equal protection clause of the Iowa Constitution, and affirmed the freedom of religious congregations to perform or not perform marriages for same-sex couples in accordance with their particular faith traditions (Iowa Supreme Court, 2009). As a consequence, Iowa became the fifth state in which same-sex marriages were legally recognized (NCSL, 2010).

- *Federal court decisions on marriage equality*

On June 26, 2013, the US Supreme Court issued two decisions related to the federal DOMA. In the first, *Windsor vs. United States*, the Court overturned the provision in DOMA that denied federal benefits to same-sex married couples. While the decision did not guarantee a right to same-sex marriage, it did allow people who live in states that allow same-sex marriage to receive the same federal benefits as heterosexual couples. In the second decision, *Hollingsworth et al. v. Perry et al.*, the Court overturned a lower court decision on California's same-sex marriage ban, known as Proposition 8, saying the proponents of the law didn't have the legal right to defend it; thereby allowing same-sex marriages in California to resume (Liptak, 2013). The Supreme Court also declined to hear lower court decisions that overturned prohibitions on same-sex marriage in five states (Barnes, 2014).

In addition, several federal Circuit Courts of Appeals have issued decisions overturning state DOMAs and constitutional amendments prohibiting same-sex marriage. On November 6, 2014, however, a three-judge panel of the U.S. Court of Appeals for the 6th Circuit reversed 6 pro-marriage lower court rulings out of Kentucky, Michigan, Ohio and Tennessee (Eckholm, 2014). On November 14, 2014, gay and lesbian couples filed petitions asking the U.S. Supreme Court to decide whether there is a constitutional right to same-sex marriage (Liptak, 2014).

- *Same-sex marriage in the United States*

As of November 19, 2014, 35 states allow same-sex couples to marry. In an additional 9 states, judges have issued rulings in favor of the civil marriage for same-sex couples, with many of these rulings now stayed as they proceed to appellate courts. As a result, over 64% of the U.S. population lives in a state currently issuing marriage licenses to same-sex couples state-wide (Freedom to Marry, 2014).

- *Same-sex marriage in Iowa*

According to the Iowa Department of Public Health (IDPH) (2014), there were 1,247 same-sex marriages in Iowa in 2012, the most recent year for which data are available. This represents 5.94% of all marriages during that period. (Note that 773 couples, or 3.69% of all couples, did not report their gender.) This represents a decrease of 347 same-sex marriages (or 2.18%), from the 1,594 same-sex marriages in 2010 (IDPH, 2012). Of the total 1,247 same-sex marriages in 2012, 896 were between two females and 351 were between two males.

- *Public opinion*

A February 2014 Public Policy Polling survey found that 46% of Iowa voters thought that same-sex marriage should be allowed, while 45% thought it should not, and 9% were unsure. A separate question on the survey found that 14% of respondents said that same-sex marriage had a positive impact on their life, 23% said it has a negative impact on their life, and 64% said it no impact at all.

A July 2013 Quinnipiac University poll of 1,256 voters found that 55% of Iowans oppose a constitutional amendment banning same-sex marriages, with 36% in favor (Dorman, 2014).

- *Judicial retention*

Groups opposed to same-sex marriages have campaigned to remove those justices who ruled on the Varnum vs. Brien Iowa Supreme Court case, arguing that the Court overstepped its constitutional role. In 2010, groups opposing civil marriage of same-sex couples successfully campaigned against the retention of three Supreme Court Justices (Marsha Ternus, Michael Streit, and David Baker) who were among the seven justices who issued the unanimous decision in Varnum v. Brien. In 2012, groups again campaigned against retention of Justice David Wiggins, who also was among the seven justices who issued the unanimous decision in Varnum v. Brien. Their effort was unsuccessful, however, with 54.5% of Iowa voters voting to retain Justice Wiggins, and 45.5% voting “no” on retention (Eckhoff, November 7, 2012).

- *Constitutional amendment*

Groups opposed to same-sex marriage have also campaigned to amend the state constitution defining marriage as between one man and one woman. However, legislation that would allow the referendum has not been brought up for a vote in the Senate.

- *Iowa birth and death records*

In 2010, a married same-sex couple filed suit against IDPH after the Department refused to issue a birth certificate that listed both women as parents (Ickes, 2012). On May 3, 2013, the Iowa Supreme Court ruled in Gartner v. Iowa Department of Public Health that married same-sex couples have the same right as married heterosexual couples to have both parents listed on the birth certificates of their newborn children (Eckhoff, 2013).

In 2012, a married same-sex couple filed a lawsuit against IDPH, seeking a new death certificate for their stillborn child after one of their names was removed from the original death certificate (“Iowa same-sex couple sues”, 2012). On December 14, District Judge Robert Hutchison ordered the Iowa Department of Public Health to change its form for issuing fetal death certificates to treat same-sex parents equally in situations involved a stillborn baby’s death (Eckhoff, November 18, 2012), and the Department subsequently complied.

- *Discrimination against same-sex couples by private businesses*

In August 2013, the Gortz Haus Gallery (a gallery, bistro, & private event center outside Des Moines) refused to host a wedding for a same-sex couple, with the owners citing their religious beliefs as justification. The couple filed a complaint with the Iowa Civil Rights Commission, claiming the business violated the Iowa Civil Rights Act (ICRA). Subsequently, in October 2013, Betty and Richard Odgaard, the owners of Gortz Haus, filed a suit against the Iowa Civil Rights Commission contending that if the commission attempts “to force the Odgaards to host events in violation of their religious beliefs,” it would be a violation of the Iowa Civil Rights Act (Jackson, 2013).

Iowa Code Chapter 216, section 7, paragraph 1a, however clearly prohibits public accommodations from refusing or denying “to any person because of race, creed, color, sex, *sexual orientation*, gender identity, national origin, religion, or disability the accommodations, advantages, facilities, services, or privileges thereof”. The only exception provided is for bona fide religious institutions when it is related to a bona fide religious purpose (Iowa Code 216, section 7, paragraph 2a).

Recommendations

NASW, Iowa Chapter, recommends the following to support the right of same-sex couples to enter into civil marriage and to receive all accompanying rights, responsibilities, protections and privileges.

- Oppose a statewide referendum on a constitutional amendment banning same-sex marriage, on the principle that civil rights should not be subject to a public vote.
- Uphold Section 216.7 of the Code of Iowa, which prohibits discrimination in public accommodations based on sexual orientation.

- Oppose removal of justices or judges solely because they have issued legal rulings in cases involving same-sex marriage.

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