

## CIVIL MARRIAGE

### *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.

### *Discussion*

- *Same-sex couples in Iowa*

According to the 2010 Census (The Williams Institute), there are an estimated 4,093 same sex households in Iowa, a 10.6% increase over the 3,698 same-sex households reported in 2000. This represents 3.4 same-sex couples per 1,000 households. Due to the fear of reprisal associated with identifying oneself as lesbian or gay, and the manner in which same-sex couples are counted by Census demographers, the Williams Institute estimated that the total number of same-sex couples is significantly underreported. Demographically, same-sex couples reflect a similar gender balance (52% female to 48% male) and racial makeup (94% white to 6% non-white) as their heterosexual counterparts, though in terms of age, fewer same-sex couples include a partner who is over age 65 (7% to 21%). Individually, they are more likely to hold college degrees, yet same-sex couples have lower household earnings and are less likely to own their own homes than their heterosexual counterparts. Additionally, a smaller percentage of same-sex couples are raising children (19% to 45%), and their families tend to be somewhat smaller overall.

- *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.

- *Marital inequality*

U. S. culture has long valued marriage as a mechanism to support family unity, health and wellbeing. Those opposing the extension of civil marriage argue that same-sex couples are seeking “special rights”. This argument is patently false. The U.S. government itself (United States General Accounting Office, 2004) has reported that there are 1,138 rights and privileges *exclusively* afforded to married, heterosexual couples; these rights and privileges are not available to committed same-sex couples unless such couples are denied the legal right to marry. Rather than seeking “special rights”, same-sex couples are seeking equal rights. These rights include (but are not limited to) the right to:

- access benefits such as family health coverage;
- file joint tax returns, and claim income and estate tax benefits;
- assume pension or Social Security benefits upon the death of one’s spouse;
- be entitled to hospital visitation and medical decision-making on behalf of an incapacitated spouse;
- petition for a spouse to immigrate;
- take a work-related leave of absence (up to 12 weeks) to care for a seriously ill spouse or the spouse’s child or parent;

- be entitled to legal protection regarding child custody and parenting;
- assume automatic inheritance of spouse's property in the absence of a will;
- receive exemptions from property tax increases upon the death of one's spouse; and
- be entitled to child support and legal protection of communal property upon relationship dissolution and 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. Currently, thirty-seven states have DOMA provisions (National Conference of State Legislatures, 2010).

In an effort to counter DOMA, advocates promoted various marital provisions – specifically civil unions and domestic partnerships -- intended to gain some legal status for same-sex couples. However, while ten states passed laws in favor of domestic partnerships or civil unions, these laws fall seriously short of extending to same-sex couples and families the equal protections and privileges of civil marriage. Since neither domestic partnerships nor civil unions confer a legal spousal status, none of the approximately 400 statutes in the Iowa Code applicable to married couples would have applied to same-sex couples under such arrangements. Only a civil marriage automatically activates the spousal benefits encoded in Iowa law.

Numerous plaintiffs have challenged the federal DOMA. In recent years, four federal district courts and two appeals courts have struck down the provision of DOMA that defines marriage as between a man and a woman for the purpose of deciding who can receive federal benefits (Sherman and Finney, December 8, 2012). Currently, there are 10 cases before the U.S. Supreme Court involving the legality of state and federal laws that prohibit or limit same-sex marriages (Justices face historic test, November 30, 2012). On December 7, 2012, the U.S. Supreme Court agreed to take up two of those cases – one involving California's ban on same-sex unions and one involving a case in which a woman challenged a \$363,000 federal estate tax bill after her partner died in 2009 (Sherman and Finney, *ibid.*).

- *Varnum v. Brien*

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, in April of 2009, ruled unanimously to overturn the ban on same-sex marriages 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, yet 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 (National Conference of State Legislatures, 2010). However, despite this state recognition, same-sex marriages are not federally recognized. Since many of the privileges extended to heterosexual married couples are linked to federal laws and provisions in the tax code, same-sex couples continue to be denied full marital equality.

- *Same-Sex Civil Marriage in Iowa*

According to the Iowa Department of Public Health (May, 2012), there were 1,594 same-sex marriages in Iowa in 2010, the most recent year for which data are available. This represents 7.63% of all marriages during that period. (Note that 814 couples, or 3.9% of all couples, did not report their gender.). Of the total 1,594 marriages, 1,082 were between two females and 512 were between two males.

- *Public Opinion*

An August 2011 Public Policy Polling survey found that 46% of Iowa voters thought that same-sex marriage should be legal, while 45% thought it should be illegal, and 9% were not sure. A separate question on the same survey found that 70% of Iowa voters supported the legal recognition of same-sex couples, with 40%

supporting same-sex marriage, 30% supporting civil unions but not marriage, 20% favoring no legal recognition and 2% not sure.

A February 2012 Des Moines Register poll found that a 56% of Iowans opposed passage of a state constitutional amendment banning same-sex marriage, 38% favored such an amendment and 6% were unsure (Petroski, February 26, 2012).

- *Judicial Retention*

Those opposed to same-sex marriages have campaigned to remove those justices who ruled on the Varnum vs. Brien Supreme Court case, arguing that the Court overstepped its constitutional role. In 2010, groups opposing civil marriage of same-sex couples spent roughly \$1M in their successful effort to have 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 not retained by Iowa voters. Through November 2, 2012, groups opposing civil marriage of same-sex couples had spent \$434,788 to remove Justice David Wiggins in the 2012 retention vote (Dorman, T., November 2, 2012). Their effort was unsuccessful, however, with 54.5% of Iowa voters voting to retain Justice Wiggins, and 45.5% voting “no” on retention (Des Moines Register, November 8, 2012).

- *Constitutional Amendment*

Those opposed to same-sex marriage have also campaigned to promote an amendment to the state constitution defining marriage as between one man and one woman. Iowa Senate Majority Leader, Michael Gronstal, however has indicated that we would continue to block legislative proposals for a statewide referendum on a constitutional amendment to ban same-sex marriage (Eckhoff, November 8, 2012).

- *Iowa Birth and Death Records*

In 2010, a married same-sex couple filed suit against the Iowa Department of Public Health after they refused to issue a birth certificate that listed both women as parents (Birth certificate issue, May 23, 2012). The Iowa District Court in Polk County ordered the state agency to correct the birth certificate, but agency officials refused to comply and have appealed the case to the Iowa Supreme Court. The Court is scheduled to hear oral arguments on this case December 11, 2012 (Iowa Judicial Branch website).

In 2012, a married same-sex couple filed a lawsuit against the Iowa Department of Public Health, 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 . . . , February 8, 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, J., December 18, 2012).

### ***Recommendations***

NASW recommends the following provisions:

- Oppose all proposals to remove justices and judges who have issued legal rulings in cases involving same-sex marriage.
- Oppose a statewide referendum on a constitutional amendment banning same-sex marriage.
- Amend state policy to ensure that both legal parents’ names are included on birth and death certificates in cases involving same-sex marriages.

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