

## **ANALYSIS OF PROPOSED MARRIAGE LAWS IN MARYLAND LEGISLATURE**

William C. Duncan  
Marriage Law Foundation

The Marriage Law Foundation is a nonprofit organization providing legal resources in defense of the legal definition of marriage as the union of a husband and wife. Based on extensive experience in marriage litigation, state marriage amendments and legislation, the Foundation offers this analysis of two proposed laws now pending in the General Assembly of Maryland.

### Senate Bill 647 (House Bill 913)

The proposed Marriage Protection Amendment is a simple measure meant to protect marriage between a man and a woman as the foundation of the family, the basic unit of society.

The measure is simple both in language and effect. It would prevent judges or future legislatures from redefining marriage in a way that would undermine society's interest in the institution. It does this by specifying that only marriages between one man and one woman can be entered into in Maryland or recognized from other jurisdictions. It also makes clear that neither courts nor legislatures can create a legal status equivalent to marriage in all but name. Such statuses have been used by courts in other States (California and Connecticut) as evidence that marriage must be redefined.<sup>1</sup>

Although there are many reasons for individuals to be interested in marriage, the government recognizes marriage because it provides the best way of making real a child's opportunity, wherever possible, to know and be raised by his or her own mother and father. This is, in part, what the Maryland Court of Appeals recognized in its 2007 marriage decision: "This 'inextricable link' between marriage and procreation reasonably could support the definition of marriage as between a man and a woman only, because it is that relationship that is capable of producing biological offspring of both members."<sup>2</sup>

This court decision is important but that decision rested only on a one-vote margin and the makeup of the court has subsequently changed. This amendment would provide the best protection for Maryland's paramount interest in encouraging those who create children to be responsible for each other and the children they create.

The amendment would also help to avoid conflicts with religious liberty caused by legal recognition of same-sex unions. Most religious denominations believe and teach that sexual behavior is only appropriate in marriage between a husband and wife. Thus, they cannot promote other arrangements, such as same-sex unions or cohabitation. If marriage is redefined, third parties including religious groups and individuals will be forced to treat same-sex unions as equivalent to traditional marriage in areas such as employment benefits, providing services, etc. If marriage remains the union of a man and a woman, these groups and individuals would be free to treat marriage as unique without risking problems with the law.

The experience of the 30 States with marriage amendments, including 19 that include language addressing marriage equivalent statuses makes clear that the amendment will not have negative unintended consequences on other areas of the law. For instance:

- Since private parties do not create marriages or give legal status, businesses would still be free to give employment benefits to unmarried couples.<sup>3</sup>
- No marriage amendment has ever prevented a State from extending domestic partnership protection to unmarried persons and courts have specifically held that this is the case.<sup>4</sup>
- Only one court (in Michigan) has said a marriage amendment prevents the extension of public employment benefits to unmarried couples. In that case, the court was construing language (“or similar union for any purpose”) significantly broader than the proposed Maryland amendment. In any event, the Michigan decision is still being appealed to that State’s supreme court.

The Marriage Protection Amendment would merely reaffirm Maryland’s legal definition of marriage and prevent the redefinition of marriage or the imposition of a legal equivalent. Perhaps more importantly, it secures the right of the people of Maryland to act to preserve the unique and uniquely beneficial understanding of marriage inherited from countless generations of human experience.

#### Senate Bill 565 (House Bill 1055)

This bill would radically redefine marriage as the union of any two persons. This legislation would dramatically undercut the social interests in marriage, reducing the institution to nothing more than a way of giving the government’s stamp of approval to adult desires.

Redefining marriage in this way sends a powerful message that men and women, mothers and fathers are essentially interchangeable. For instance, redefining marriage would dramatically alter current law in such areas as the presumptions of parentage, joint adoption, custody and visitation. It would create a legal structure to facilitate motherless and fatherless homes for children and endorse the idea that neither a mother nor a father is necessary or even beneficial for a child.

Decades of social science research has effectively demonstrated that the best arrangement for children’s well being is to be raised by their own mother and father who are married to each other. Even married couples that do not have children benefit society by providing an example to those that do and, by observing their marriage vows, preventing the creation of other motherless or fatherless homes. Redefining marriage is a repudiation of all we know about how marriage benefits children.

Few, if any, people are concerned that government will force clergy to perform same-sex marriage ceremonies. Yet, that is the only religious liberty issue addressed by this legislation. The legislation thus ignores a series of real conflicts that arise for religious freedom when the government redefines marriage or creates an equivalent status for same-sex unions.

For instance, in Massachusetts, after marriage was redefined and the Legislature refused a waiver, Massachusetts Catholic Charities was forced out of the adoption placement business because it could not, consistent with its religious mission, place children with same-sex couples.<sup>5</sup> The Ocean Grove Methodist Camp Association in New Jersey had part of its tax exemption revoked and was being subjected to a discrimination action because it declined to allow a pavilion on its property to be used for a same-sex civil union ceremony.<sup>6</sup> A wedding photographer in New Mexico was fined for declining to photograph a same-sex commitment ceremony.<sup>7</sup> These are only a few examples.

When marriage is redefined, public schools have to teach that same-sex marriage is exactly the same as marriage between husbands and wives. In Massachusetts, following the *Goodridge* decision that

redefined marriage, parents of very young elementary school students were disturbed when their children's schools were trying to promote acceptance of same-sex marriage to students. In one situation, a kindergartner brought home books about "different kind of families" and in another, a first grader's class had a discussion about same-sex marriage. Federal courts even said the parents had no ability to prevent this indoctrination of their children because public schools "have an interest in promoting tolerance, including for the children (and parents) of gay marriages."<sup>8</sup>

Although general religious exemptions may prevent some religious liberty conflicts for denominations, there is no similar protection for para-church organizations (such as nondenominational charitable ministries, religious broadcasters or religious fraternal organizations) or individual religious believers (such as owners of businesses with a religious element, like a Christian bookstore).

This proposed law is a radical redefinition of marriage. It would affect children's interests, religious liberty and sound public policy in profoundly negative ways.

### Endnotes

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<sup>1</sup> See *In re Marriage Cases*, 183 P.3d 384, 428 (Cal. 2008), *Kerrigan v. Department of Public Health*, 2008 WL 4530885, \*15 (Conn. 2008).

<sup>2</sup> *Conaway v. Deane*, 932 A.2d 571 (Md. 2007).

<sup>3</sup> See Opinion of the Virginia Attorney General at 2, Sept. 14, 2006 (requested by Sen. Stephen Newman, et al.) (available at <http://www.vaag.com/OPINIONS/2006opns/06-003Newmanetal.pdf>).

<sup>4</sup> See *State v. Carswell*, 871 N.E.2d 547 (Ohio 2007).

<sup>5</sup> John Garvey, *State Putting Church Out of Adoption Business* BOSTON GLOBE A15 (March 14, 2006).

<sup>6</sup> *OGCMA v. Vespa-Papaleo*, D.N.J. Case No. 3:07-cv-03802 (U.S. Dist. Ct., N.J. pending). The tax exemption was provided to groups which permit open access to beachfront property. See also New Jersey Office of the Attorney General, Press Release, *Division on Civil Rights Finds Probable Cause in Ocean Grove Camp Meeting Association Case on Civil Union Ceremonies—Finding Says Lesbian Couple Discriminated Against When Request to Hold Civil Union Ceremony at the Boardwalk Pavilion Was Denied*, December 29, 2008 at <http://www.nj.gov/oag/newsreleases08/pr20081229a.html>.

<sup>7</sup> *Willcock v. Elane Photography*, HRD No. 06-12-20-0685, New Mexico Human Rights Commission, April 9, 2008.

<sup>8</sup> *Parker v. Hurley*, 514 F.3d 87 (1<sup>st</sup> Cir. 2008).