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## **The Texas Marriage Amendment: Policy Brief**

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The essence of constitutional Bill of Rights is to reify constructs of civil and human rights into tangible privileges that can be upheld and defended. Such a purpose is evident in Texas' Bill of Rights: "the general, great and essential principles of liberty and free government may be recognized and established", the grounding for equality under the law (Texas Constitution, 1876, p.1). With this equality legally founded, many states are scurrying to arrest any chance that this equality extends to the lesbian, gay, bisexual, and transgender community through defense of marriage acts and constitutional amendments. When did this threatening rash of homosexual marriage occur to warrant such precautionary measures? Even if a separate, lesser form of marriage were provided for under such equality clauses, i.e., civil unions, there would be an insignificant rise in such from the gay community. If every self-identified homosexual sought civil unions to formalize and protect domestic partnerships, only 1.0 to 1.5 percent of the population would be rushing to the courthouse (Hertzog, 1996).

Outside of this apparent negation of civil rights, there is an underlying issue that portrays the mass' attitude toward different others. Many power holders, such as the Texas legislature, continue to deny science through overt measures to separate and refuse civil rights to homosexuals; their shameless resistance is antithetical to scientific founding that "homosexuality is not indicative of psychological disturbance" and to purport otherwise is in the "service of hatred and bigotry" (Gonsoriek, 1995, p.24). The religious right has cultivated the argument that homosexual-parented families are not stable, a scientifically unfounded statement; children raised in same-sex parent families are just as healthy, stable, and capable as children in heterosexual families (Appleby & Anastas, 1998). Religion and civics have been fused by supporters of the Texas Marriage Amendment, another violation against the establishment of religion clause in the nation's constitution.

On November 8, 2005, Texas voters, in a definitive 76% majority, voted to amend the state constitution by passing Proposition 2, The Texas Marriage Amendment (Bear, 2006). Marriage is defined as between a man and a woman only, now amended in the Bill of Rights, Article 1, Section 32, and reads: "(a) marriage in this state shall consist only of the union of one man and one woman"; and "(b) this state or a political subdivision of this state may not create or recognize any legal status identical or similar to marriage (Added Nov. 8, 2005)" (Texas Constitution, 2005, Section 32). Of note is that in 2003, the 78<sup>th</sup> Texas legislature had already adopted the Defense of Marriage Act (DOMA), which prohibits issuance of marriage licenses or civil union legitimization to same-sex couples, Section 6.204 Family Code Section 2.001 (b) (House Research Organization, 2005). This amendment is not based on research; it is based on moral ideology, which is now a winning catalyst for conservative and exclusionary policy.

### *How It Happened*

How did the “homosexual marriage menace” come to forefront? The Texas Marriage Amendment began as House Joint Resolution 6 (HJR 6), authored by the Pampa Republican Warren Chisum, an oil and gas producer and rancher, one of few legislators with no college education. Chisum’s district is in the panhandle and is comprised of mostly Anglo, farming, ranching, and rural populations. HJR 6 was passed by the House by 101 yeas and 29 nays. The Senate passed HJR 6 with 21 yeas and 8 nays. The public majority vote passed the amendment at 76%, with 24% objecting, a one in five voter turn out (Bear, 2006). Travis County (Austin) was the only county where the amendment was not supported (Selby, 2005). The farther away from an urban area, the higher the proportion of votes cast for the amendment (Daily Kos, 2005). However, this does not explain the fact that all urban areas but Austin supported the amendment.

The Texas Marriage Amendment is an incontrovertible extension of the Defense of Marriage Act; a policy adopted only by the state legislature without public consent. The Texas Marriage Amendment is consequent of the initiation of a codification posturing between gay rights’ activist and conservative pastors over fortifying the DOMA (Selby, 2005). Chisum and the conservative Texas legislature thus posed the route to cementing the definition of marriage between one man and one woman via a constitutional amendment that could not be altered through court judgments.

### *Fears of the Homosexual Marriage Menace*

Texas is the 19<sup>th</sup> state to have voters approve of a marriage definition added to their state constitution (Selby, 2005). This legalistic anticipation represents the same issue originating in other states from lawsuits. The Texas DOMA and Marriage Amendment are safety measures to perceived threats from court action by homosexual citizens who challenge the state’s definition of marriage. Major cases in other states directed the Texas Marriage Amendment. One of the first challenges to marriage laws occurred in Hawaii with *Baehr V. Miike* (House Research Organization, 2005). Legal representatives argued that Hawaii’s marriage laws were unconstitutional because they did not align with equal protection laws in Hawaii’s constitution. In 1997, voters supported an amendment to their constitution before the case was decided; the amendment defined marriage between a man and a woman (House Research Organization).

Vermont’s Supreme Court ruled in favor of homosexual couples by determining they were worthy of the same marital privileges as were heterosexual couples in *Baker v. State* in 2000. However, the legislature chose to legalize civil unions for homosexual couples and thus not afford the exact marriage system to any unions other than heterosexual (House Research Organization, 2005). Connecticut did the same as Vermont in 2005, affording civil unions but also securing marriage between man and woman before any process of litigation had occurred in the state. California’s legislature proposed the antithesis to the Texas Marriage Amendment in 2005, defining marriage between two persons. However, the governor has promised to veto this bill (House Research Organization).

In 2003, *Goodridge v. Department of Public Health*, ruled on by the Massachusetts’ Supreme Court, stated that civil unions were upheld by the constitution; however, the legislature then accepted a proposed amendment to define marriage between heterosexuals only and allow for homosexual partnerships as civil unions in a separate system (House Research Organization, 2005). This amendment was rejected in 2005 and now presently movements are pressing a ban on same-sex marriage, to be put to voters in 2008.

### *How the Amendment Works*

Texas' response to external court cases asserts that the citizenry of the state should define the conceptualization and legal format of marriage, not the courts. The Texas DOMA secured the definition of marriage between a man and woman, and the marriage amendment ensured that this definition could not be challenged in courts. Exact wording in the analysis of the amendment: "As further litigation is filed in numerous states and in federal court, states have decided the best way to protect their DOMA laws is to pass constitutional amendments" (Texas Legislature Online, 2005a, para. 4). However, courts would have the authority to invalidate any contract or agreement that is not defined as marriage under DOMA and the amendment (House Research Organization, 2005).

The marriage amendment also prohibits the state from recognizing or creating anything of legal status similar to marriage. Marriage in Texas is for heterosexuals who have completed the formal nuptials; no one else and no other form of relationship is claim to the benefits of such a union, including common-law marriage between heterosexuals, and prohibits the creation of any system for civil unions. Also included in the language of HJR6 is:

This state recognizes that through the designation of guardians, the appointment of agents, and the use of private contracts, persons may adequately and properly appoint guardians and arrange rights relating to hospital visitation, property, and the entitlement to proceeds of life insurance policies without the existence of any legal status identical or similar to marriage. (Texas Legislature Online, 2005b, para.5).

This language is not included in the amendment, which could legitimize other formal contracts and benefits between same-sex couples, including unmarried heterosexual couples (House Research Organization, 2005). Essentially, this amendment removes and prohibits any formal, legal, or beneficial recognition of domestic partnerships, thus denying homosexual and unmarried heterosexual unions the benefits and rights that are afforded to heterosexual married couples.

### *What It Means*

The amendment is politically, economically, and administratively feasible since it is cast in the highest of policy realms, the constitution. Arguments supporting the amendment are that there should be no legal ramifications or challenges since the citizens, not the courts, have endorsed the amendment. There is a national trend toward marriage for heterosexuals only; some assume this pattern is due to backlash from minimal rights and visibility won by the gay community in recent years. All campaigns against homosexual civil unions have won by wide margins. The president has endorsed a similar federal measure (Texas Legislative Council, 2005). Supporters also decry that any other form of union other than man and woman is not sacred, that marriage upholds traditional families and their values, and that the sanctity of marriage is an essential element to the power of the state. Supporters say same-sex couples can continue their lifestyles, but they cannot have them formalized nor receive any benefits from such unions (Texas Legislative Council).

Opponents argue that amending the constitution is symbolic overkill since DOMA already exists in Texas. Only 40 years ago interracial marriage was banned; the definition of what constitutes a family is changing as evidenced in formerly prohibited marriages between interracial persons, the increase in single parents, and the commonality of remarriage (Texas Legislative Council, 2005). Opponents also contest that the policy language is so broad that it

could allow courts to nullify or prohibit common-law marriages, living wills, and other legal safety measures between unmarried persons. If the sanctity of marriage is really the issue, then a more appropriate means to this end would be through state laws addressing family violence, infidelity, and divorce occurring in heterosexual marriages, which are more damaging to the family and welfare of children than same-sex marriage (Texas Legislative Council). The only fair and corrective course in this overt process of discrimination is to allow for legal protection for homosexual couples' domestic partnerships, securing benefits for healthy families, just as heterosexual couples are awarded.

Chisum stated after the election that the conservative victory "was won from the pulpits of the state of Texas" (Poe News, 2005, para.3). Civil rights are now being allocated or denied through religious condemnation. The denial of civil liberties is obvious in the majority ensuring that their means to legitimacy is theirs only and no other groups may reap the benefits of such legitimacy. Religion and civic life are melded and transformed into social reasoning. Why are followers of the religious right so adamant that the gay community not be allotted the same civil liberties that they have, since apparently no religious right follower is gay? Why the visceral and emotional reactions? When inquiring with fundamental religious persons as to why they voted for the amendment, the response was "my minister instructed me to do so" because it is interpreted as a biblical commandment that marriage is between a man and a woman only (non-profit institutions are mandated to follow narrow rules to lobbying their service recipients, and this includes churches). It is sometimes easier to be told what to do than to critically think how this action may hurt the homosexuals that the same person purports to love.

The ideology of the Texas Marriage Amendment is clear; domestic partnerships between opposite-sex married couples are the only unions worthy of civil benefits and rights legally, socially, and morally. In Texas, you must be heterosexual to marry, and only marriages will be afforded benefits from the state. Texas has announced also that it will not tolerate any discussion otherwise, now or in the future, via the constitutional amendment negating court action. The denial of civil rights is obvious, as is the segregation again of a community of different persons into illegitimate spaces where partnerships are not recognized. The amendment is symbolic in that it was unnecessary (DOMA exists and is enforced in Texas) and ensures that there can be no argument otherwise, consequently negating any other forms of relationship other than heterosexual. This religiously-based argument is adversative to our nation's founding value of separation of church and state, created to avoid violation of minority-status groups. Also furthered are the obvious scientific falsities set forth by the legislature and their fundamentalist supporters in their attempt to pathologize homosexuality. Rights violations are the fruit of the Texas Marriage Amendment. The question remains then as to why so many people support these measures and what is so frightening to them about gay domestic partnerships. From the research gathered here, this question could not be answered, even by some of the supporters of The Texas Marriage Amendment.

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