

Marriage and the Law: Questions and Answers



1. How does Maryland law define marriage?

"Only a marriage between a man and a woman is valid in this State." ¹

2. Why is marriage a prominent issue this year in Maryland?

A 2005 lawsuit claimed that Maryland's marriage law was unconstitutional because it violated the state's equal rights amendment, which bans gender discrimination. The state's highest court disagreed with that claim and, in September 2007, issued a final ruling upholding the law. The court also said, however, that the General Assembly could overturn the law and redefine marriage if it chose to do so. As a result, the 2008 legislative session will see efforts both to support traditional marriage and to change its definition.

3. What did the court rule?

The state's high court ruled that the equal rights amendment governs relationships between the sexes; that it never was intended to apply to same-sex relationships. Therefore, the court said, the law "does not discriminate on the basis of sex," and is constitutional. At the same time, however, the door is not closed on same-sex marriage. The court also stated that its "opinion should by no means be read to imply that the General Assembly may not grant and recognize for homosexual persons civil unions or the right to marry a person of the same sex."² The decision to maintain or overturn the state's marriage law was left to the people of Maryland and to the democratic process.

4. What else did the court say?

It affirmed the vital role marriage between a man and a woman plays in securing a stable society: "In light of the fundamental nature of procreation, and the importance placed on it by the Supreme Court [of the United States], safeguarding an environment most conducive to the stable propagation and continuance of the human race is a legitimate government interest."³ The court added that, "In light of Maryland's history of limiting marriage to those unions between members of the opposite sex, coupled with the policy choices of nearly every other state in the Nation, we do not find that same-sex marriage is so deeply rooted in this State or the country as a whole that it should be regarded at this time as a fundamental right."⁴

5. What proposals is the Maryland General Assembly considering?

Four kinds of marriage-related bills are expected in the 2008 session:

- A constitutional amendment to protect marriage as the union of one man and one woman. This would prevent additional constitutional challenges to the state's marriage law, and would need approval by voters in a statewide referendum.
- A same-sex marriage bill, likely entitled the "Religious Freedom and Civil Marriage Protection Act," to grant same-sex couples the right to marry. The title of the bill is misleading. The "religious freedom" it refers to is merely an acknowledgement that religious institutions would not be forced to violate their religious beliefs and perform same-sex marriage ceremonies. Moreover, the bill would not protect civil marriage; it attempts to redefine it.

- A civil union bill to provide the same benefits as marriage without using the term "marriage."
- Other efforts to extend some limited benefits currently unavailable to unmarried couples, whether same-sex or heterosexual.

6. What are the Church's positions on these proposals?

- The Church supports efforts, including a state constitutional amendment, to protect traditional marriage.
- The Church opposes the "Religious Freedom and Civil Marriage Protection Act" and other efforts to alter the legal definition of marriage through same-sex marriage or civil union bills.
- The Church does not oppose efforts to allow all unmarried couples access to certain rights automatically granted to married couples, such as medical decision making rights, as long as the proposals do not create an alternative legal definition of marriage, or impose requirements on private institutions contrary to their moral or religious beliefs. (See also Question #13)

7. Why does the Church take these positions?

Man and woman, by their nature, have the unique capacity to create new life through their sexual union. Marriage is therefore properly entrusted only to them. While marriage benefits both husband and wife, the legal protections afforded this relationship are most important for children. A child deserves a stable and nurturing environment that is best provided by the marriage of his or her biological mother and father.

8. Why does marriage matter to the state?

The state grants privileges to, and demands responsibilities of, marriage between man and woman to promote the procreation of children and provide for their proper care. The state rightly recognizes this as the only relationship that begets children. Furthermore, the stability of marriage is inextricably connected to the stability of the social order, and to the continued stability of future generations.⁵ “The U.S. Supreme Court has traditionally viewed marriage, not as a vehicle for satisfying the adult couple or individuals, but as ‘the foundation of the family and of society, without which there would be neither civilization nor progress.’”⁶

9. How do the federal government and other states define marriage?

Federal law recognizes marriage as “a legal union between one man and one woman as husband and wife.”⁷ Laws in 42 states, Maryland included, define marriage as between one man and one woman. Twenty-seven states have constitutional amendments that protect marriage. Of those 27 states, 24 have passed the amendments within the past five years. Only one state, Massachusetts, has legalized same-sex marriage. Four states recognize civil unions; the District of Columbia and four additional states recognize domestic partnerships.⁸

10. How would same-sex marriages differ from civil unions?

In terms of legal benefits, very little. The difference is in name only, since same-sex couples, whether joined by marriage or by a civil union, would have the same access to state-based benefits. New Jersey’s law, which is nearly identical to the laws in the three other states that recognize civil unions, says that, “Civil union couples shall have all of the same benefits,

protections and responsibilities under law... as are granted to spouses in a marriage.”⁹

11. Isn’t civil marriage a civil right that should be available to everyone?

“The fundamental right to marry is not absolute,” according to Maryland’s high court. Furthermore, the U.S. Supreme Court only recognizes a fundamental right to marry because of marriage’s “inextricable link to procreation, which necessarily and biologically involves participation (in ways either intimate or remote) by a man and a woman.”¹⁰ The state also protects marriage by considering other limitations before granting a marriage license, including a couple’s age, mental competence, and blood relationship.

12. What are some of the “legal benefits” of marriage?

Parental rights, tax benefits, property disposition rights, medical decision-making and hospital visitation rights, and access to health and life insurance coverage.

13. Where does the Church stand on benefits for same-sex and other unmarried couples?

Specific benefits must be considered on a case by case basis. The Church does not oppose allowing any two adults, regardless of marital status, to access certain benefits so long as alternative relationships are not granted legal status that is equivalent to marriage. For example, the Church supports the right of all people to designate someone to make medical decisions for them or visit them in the hospital. The Church opposes efforts that would compel it or other private institutions to violate their religious or moral beliefs.

14. Do same-sex and other unmarried couples in Maryland already have benefits?

Yes, significant benefits automatically provided to married couples are also already available to all unmarried couples. They include:

- the ability to adopt children
- the capacity to assign medical and end-of-life decision making rights through a power of attorney
- health and life insurance coverage for domestic partners if requested by an employer.¹¹

Drastically altering the legal definition of marriage in Maryland by recognizing same-sex marriage or civil unions is not necessary to achieve these benefits because they already exist in law. Instead, approving a same-sex marriage or civil union bill would significantly undermine the legal, social, and cultural status of marriage that is appropriately assigned only to the union of one man and one woman.

Learn more about this issue.

Encourage your legislators to preserve marriage in Maryland.

Go to www.mdcathcon.org

¹ Maryland Family Law §2–201.

² *Conaway v. Deane*, Court of Appeals of Maryland, September, 2007

³ *Ibid.*

⁴ *Ibid.*

⁵ W. Bradford Wilcox *et al.* 2005. *Why Marriage Matters, Second Edition: Twenty-Six Conclusions from the Social Sciences.* Institute for American Values at www.americanvalues.org

⁶ *Maynard v. Hill* 125 U.S. 190, 211 (1888), quoted in *How Does Legalizing “Same-Sex Marriage” Deny the True Nature of Marriage?* USCCB, www.usccb.org/laity/marriage/samesexeng.shtml

⁷ The Defense of Marriage Act, 1 U.S.C. Section 7

⁸ *State Policies on Same-Sex Marriage and A History of Same-Sex Marriage Laws*, Pew Research Center at www.stateline.org

⁹ New Jersey Statute Title 37 1-31. See also Connecticut Statute, Title 46b, Chapter 815f, §46b-38nn; New Hampshire Statute, Title XLIII, Chapter 457-A, §6; and Vermont Statute, Title 15, Chapter 23, § 1204a.

¹⁰ *Conaway v. Deane*, Court of Appeals of Maryland, September, 2007

¹¹ See the Insurance Article of the Maryland Code, Section 15-403.2 and Section 17-209.