

# Same-Sex "Marriage"

## Public Policy Statement

### Definition and History of Marriage

Marriage is a consensual, exclusive and lifelong commitment between one man and one woman, expressed in a physical union uniquely designed to produce and nurture children.<sup>1</sup>

The universal recognition of conjugal marriage by virtually every civilization throughout history, arrived at from both secular<sup>2</sup> and theistic perspectives, testifies to the natural evidence for marriage, its objective structure and its significant contribution to human flourishing and societal stability (see Public Policy statement on Marriage for a theistic perspective).

### Contemporary Revisions

Ignoring millennia of legal and cultural affirmation of conjugal marriage, a radical revisionist view would uproot and replace marriage with a subjective notion based on emotional relationship, divorced from the natural and objective marital elements of physical union and procreation. While this revisionist notion initially has led to the cultural acceptance and legal sanctioning of "same-sex marriage," its abject subjectivity offers no rational parameters that would exclude further redefinitions of "marriage" as between multiple partners or related persons (see ethics statement on Homosexuality).

An affirmation of the exclusivity of marriage as between one man and one woman does not preclude separate personal, societal or legal sanction of any other consensual relationship.<sup>3</sup> The core debate hinges not on a moral evaluation of various types of relationships, but rather on the objective qualities that make marriage, marriage.

### Public Policy Context

Government maintains a valid and vital interest in sanctioning conjugal marriage, given demonstrated benefits to children raised by both a mother and a father,<sup>4</sup> economic factors favoring father-mother families<sup>5</sup> and the high cost to government and society when marriage breaks down.<sup>6</sup> In contrast to the decades of research that supports traditional marriage, research has not clearly demonstrated similar benefits associated with "same-sex marriage." CMDA will continue to monitor the research.

Court decisions have asserted wrongly that the government's interest in advancing conjugal marriage has no rational basis and can only be based on animus toward those who seek "same-sex marriage."<sup>7</sup> Such judgments lay the legal groundwork for lawsuits, firings, censure, denial of government funds, denial of student organization privileges, loss of professional license and privileges and other severe forms of bias and discrimination against adherents of conjugal marriage.<sup>8</sup>

## Faith and Conscience Freedom

(See also ethics statement on Healthcare Right of Conscience.)

America's founders recognized as central to all civil liberties the freedom to think and speak freely and to live out the convictions of conscience. The First Amendment reflects this recognition: *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech....*<sup>9,10</sup>

To protect such individual freedoms, the Constitution limits the reach of government, as the Declaration of Independence asserts, to the boundaries of self-evident Truths and unalienable Rights endowed by our Creator.

Government unbounded by objective, universally recognized standards can wield its power to abridge faith and conscience freedoms and advance its own ideology, privileging those who submit to the government's view and punishing those who dissent.<sup>11</sup> Once the government adopts an official position that opposition to “same-sex marriage” is based solely on animus<sup>12</sup> and constitutes discrimination, the state can assert a compelling interest to advance this social policy—even if doing so means trampling the rights of religious conscientious objectors.<sup>13</sup> This assertion of government power to enforce the ideology of the state threatens not only the individual exercise of conscience but also the entire constitutional balance of the church-state relationship.

As the Supreme Court was striking down a federal conjugal marriage law, court cases, sanctions and other actions around the country were suggesting an assault against those who hold the conjugal view of marriage. “Same-sex marriage” and homosexuality advocates have successfully challenged, and the government and other institutions have issued penalties against, professionals, private business owners, organizations, students and others who for reasons of faith and conscience decline to participate in homosexuality-related events, ideology and issues.<sup>14</sup>

Such an aggressive, state-sponsored squelching of the free exercise of religion, as expressed in faith-based dissent, creates a powerful deterrent to free speech and the exercise of conscience. Apart from the intervention of courts and/or a reversal of societal values, faithful supporters of conjugal marriage stand to face a virtual ideological Inquisition of increasing intensity.

As assaults on faith and conscience freedoms target commerce including medical practices, physicians stand to face increasing legal challenges, for example, regarding how they counsel patients who are engaging in homosexual activity or questioning their sexual orientation or seeking endorsements to adopt children.

For these reasons, the Christian Medical & Dental Associations (CMDA) strongly support measures to protect rights of faith and conscience in law and policy. Recognizing the imperative of our mission to influence hearts and minds, we also support and encourage educational, professional, advocacy and artistic efforts to influence the culture toward America's historic tolerance of diverse views, free speech and the free exercise of faith and conscience--principles on which the future of our democratic republic rests.

## Policy Recommendations

CMDA supports:

### A: Legislative Measures that

- Recognize marriage as exclusively between one man and one woman.
  - Accord protections, incentives and privileges that reflect a recognition of the economic, social and child-related benefits to the state of conjugal marriage.
  - Do not conflate conjugal marriage<sup>15</sup> with same-sex relationships.<sup>16</sup>
- Comport with the original intent of Amendment XIV<sup>17</sup> of the US Constitution.
  - Maintain equal protection of applicable laws for those who engage in homosexual activity without according special status or privileges based on that activity.
- Parallel and reinforce the guarantees of the First Amendment<sup>18</sup> of the US Constitution by protecting the broadest possible free exercise of religion, speech, press, assembly and petition.
  - Prohibit requiring an individual to perform or assist in the performance of any program or activity that the individual deems contrary to his religious beliefs or moral convictions.<sup>19</sup>
  - Specifically prohibit adverse governmental actions against any person or other entity that acts in accordance with a religious belief or personal conviction that marriage is or should be recognized as the union of one man and one woman, or that sexual relations are properly reserved to such a marriage.
- Allow the fullest expression of speech and exercise of faith and do not equate opposition to sexual relations outside of marriage with "hate speech" or "hate crimes."
- Provide conscience protections for organizations and individuals who hold a conjugal view of marriage and sex, including an ability for those who experience discrimination or other harm on the basis of those convictions to seek justice and compensation in the courts.

### B: Executive Actions that:

- Establish government-wide programs that help eliminate government employment-related barriers to organizations and individuals who hold a conjugal view of marriage and sex.
- Ensure that federal grant programs do not discriminate against organizations and individuals on the basis of their conjugal view of marriage and sex.
- Designate impartial agencies and officials to receive complaints and investigate and adjudicate cases of discrimination within the government against organizations and individuals who hold a conjugal view of marriage and sex.
- Establish programs to advance the study of the personal, social and economic benefits of conjugal marriage and to develop policies designed to help advance these benefits.
- Establish programs to educate the public about and advance support for religious and conscience freedoms.

**C: Judicial Interpretations and Rulings** grounded in the historical context and the Founders' original intent in the US Constitution's First Amendment protection of the free exercise of religion, speech, press, assembly and petition.

**D: Regulatory Measures** that enforce freedom-protecting legislation and principles with broad construction, clear definitions and effective compliance measures.

**E: Professional Organization and Institutional Policies** that protect individuals and organizations who hold a conjugal view of marriage and sex by prohibiting discrimination against them such as the withholding of certification, licensure, advancement, office-holding, or other privileges or benefits.<sup>20</sup>

*Adopted unanimously by the Board of Trustees on September 18, 2014.*

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<sup>1</sup> For a thorough discussion of these characteristics, see Girgis S, Anderson RT and George RP, What Is Marriage? Man and Woman: A Defense New York: Encounter Books, 2012.

<sup>2</sup> Even ancients such as Xenophanes, Socrates, Plato, Aristotle, Musonius, Rufus, and Plutarch reached remarkably similar views on marriage.

<sup>3</sup> In cases where a government nevertheless adopts a form of civil union, strong and broad exemptions for faith and conscience objections must accompany such measures. Civil unions can avoid endorsing homosexual activity by aiming to protect adult domestic partners who have pledged themselves to a mutually binding relationship of care, without regard for sexual activity. See Anderson RT and Girgis S, A real compromise on the same-sex marriage debate: An invitation to Rauch and Blankenhorn. *Public Discourse*, Feb. 24, 2009, <http://www.thepublicdiscourse.com/2009/02/84/> accessed May 14, 2014.

<sup>4</sup> (a) Rosenberg J, Wilcox WB. The importance of fathers in the healthy development of children. Office of Child Abuse and Neglect, U.S. Children's Bureau, U.S. Department of Health & Human Services; 2006; (b) McLanahan S., & Sandefur, G. Growing up with a single parent: What hurts, what helps. Harvard University Press; 1994. (c) Moore, KA Marriage from a child's perspective: How does family structure affect children, and what can we do about it? Child Trends Research Brief; June 2002 (d) Rohner, RP, & Veneziano RA. The importance of father love: History and contemporary evidence. *Review of General Psychology*, 2001; 5.4:382-405; (e) Sigle-Rushton W & McLanahan S. Father absence and child well-being: A critical review. In Moynihan DP, Smeeding TM, & Rainwater L (eds.), The Future of the Family 2004, New York: Russell Sage Foundation:122. (f) Wilcox WB. Why Marriage Matters, 2<sup>nd</sup> ed.: Twenty-six conclusions from the social sciences. New York: Institute for American Values, 2005. (g) Fomby P & Cherlin AJ. Family instability and child well-being. *American Sociological Review*, 2007;72:181-204.

<sup>5</sup> Fagan P, The wealth of nations depends on the health of families; *Public Discourse*, February 6, 2013.

<sup>6</sup> (a) A study by the Brookings Institution revealed that between 1970 and 1996, \$229 billion in welfare expenditures could be attributed to social problems related to the breakdown of marriage. (b) Kim HS. Consequences of parental divorce for child development. *American Sociological Review*, 2011;76:487-511

<sup>7</sup> For example, in declaring unconstitutional a federal law upholding "traditional moral teaching" regarding marriage, the United States Supreme Court maintained that protecting conjugal marriage only "seeks to injure" non-heterosexual couples, to "impose a disadvantage, a separate status and so a stigma," to "impose inequality," "to degrade or demean" and "to disparage and to injure." United States, petitioner v. Edith Schlain Windsor, in her capacity as executor of the Estate of Thea Clara Spyer, et al., Justice Kennedy's delivery of the majority opinion of the Court, June 26, 2013.

<sup>8</sup> For an examination of potential actions against conjugal marriage supporters to which the Court's decision in Windsor gives rise, see Messner TM. Religious freedom and marriage in federal law. Heritage Backgrounder #2865, <http://www.heritage.org/research/reports/2014/01/religious-freedom-and-marriage-in-federal-law>.

<sup>9</sup> Thomas Jefferson stressed that no provision in the Constitution "ought to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority." (Jefferson, Letter to New London Methodists 1809).

<sup>10</sup> Jefferson also made clear that an individual's freedom of conscience is not subordinate to the government:

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“[O]ur rulers can have authority over such natural rights only as we have submitted to them. The rights of conscience we never submitted, we could not submit. We are answerable for them to our God.” (Jefferson, Notes on Virginia, 1785).

<sup>11</sup> As the Dutch prime minister and political theorist Abraham Kuyper (1837-1920) observed, once a government bases its power on such subjective determinants, “The law is right, not because its contents are in harmony with the eternal principles of right, but because it is law. If on the morrow it fixes the very opposite, this also must be right. [T]he ever-changing will of the State, which, having no one above itself, actually becomes God, has to decide how our life and our existence shall be” (Kuyper A. Lectures on Calvinism. Grand Rapids, MI: Wm. B. Eerdmans Publishing Co (Kindle Edition):81

<sup>12</sup> op cit reference #8

<sup>13</sup> The US government claimed just such a compelling interest, for example, in attempting to restrict the religious hiring rights of churches. In the case of *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, decided by the Supreme Court in 2012, the government unsuccessfully sought to assert a violation of federal employment discrimination laws over the First Amendment right of the church school to base its employment decisions on matters of faith. The government increasingly appears to seek to redefine the First Amendment's guarantee of the free exercise of religion as merely the freedom to worship, rather than the freedom to exercise conscience and belief in all arenas of life, public as well as private. See <http://www.scotusblog.com/case-files/cases/hosanna-tabor-evangelical-lutheran-church-and-school-v-eeoc/>, accessed Apr. 23, 2014.

<sup>14</sup> Instances involving same-sex weddings, counseling, accreditation, adoption services, academic freedom, Boy Scouts, social services, campus activities, IRS abuses, foster care services are documented: (a) Messner TM. Religious freedom and marriage in federal law. Heritage Foundation Backgrounder #2865, Jan. 30, 2014, <http://www.heritage.org/research/reports/2014/01/religious-freedom-and-marriage-in-federal-law> accessed Apr. 29, 2014; (b) Anderson RT. Marriage, reason, and religious liberty: Much ado about sex, nothing to do with race. Heritage Backgrounder #2894, Ap. 4, 2014, <http://www.heritage.org/research/reports/2014/04/marriage-reason-and-religious-liberty-much-ado-about-sex-nothing-to-do-with-race> accessed Apr. 29, 2014.

<sup>15</sup> See above section defining marriage. The conjugal marriage recognized and advanced by governments for millennia recognizes the union of a husband and wife in a permanent relationship, founded on a bodily union whose natural fulfillment is the conception of a child.

<sup>16</sup> Anderson RT & Girgis S, A real compromise on the same-sex marriage debate: An invitation to Rauch and Blankenhorn," Public Discourse, Feb. 24, 2009, <http://www.thepublicdiscourse.com/2009/02/84/> accessed May 14, 2014.

<sup>17</sup> Amendment XIV provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

<sup>18</sup> The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

<sup>19</sup> The only exceptions to such policies would include cases where the government or other authority can unequivocally demonstrate a compelling interest, such as protecting life, that supersedes the individual's freedom; in such cases the limitations on religious and conscience freedoms must be accomplished with the least restrictive means possible.

<sup>20</sup> Providing for the aforementioned exceptions, such as a compelling interest in protecting life.