

**MARRIAGE AND
SAME SEX
COUPLES
IN NEW YORK
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S.5884**

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ANSWERS TO COMMON QUESTIONS

Why do New York same-sex couples want access to marriage?

Access to marriage is a necessary part of achieving equality for lesbian, gay, bisexual and transgender (LGBT) families. Beside the 1,138 rights and responsibilities that are bestowed on married couples from the federal government, there are another 1,324 rights and responsibilities that come from New York State government with marriage. These state protections include medical decision-making authority, inheritance rights, immunity from having to testify against a spouse in court, access to Family Court for orders of protection from domestic violence, divorce and the ability to adopt children as a couple. Many of these protections (for example, a Workers Compensation death benefit for a surviving spouse) can be achieved only through marriage or some other governmental recognition of a family and cannot be obtained by any legal document a family may create in an attempt to protect itself, like a will or living will.

LGBT families need these rights and responsibilities as much as any other family and expect equal access to the structures government has created to support families in times of need. This reason for marriage, of course, is in addition to the reason that most people get married: because two people in love want to make a civil, social and spiritual statement to themselves, their loved ones and their community.

Is it legal for New York State to bar same-sex couples from marrying?

In July 2006, New York's highest court, the Court of Appeals, found that New York's Constitution did not require that marriage be made available to same-sex couples. The court said it was up to the New York State legislature to pass a law allowing same-sex couples to marry.

What is the difference between civil unions, domestic partnerships and marriage?

Civil unions are an institution created by individual states (such as Vermont, Connecticut and New Jersey) to give same-sex couples the rights and responsibilities granted by state government to married couples. Domestic partnership is the status granted by some public and private entities (such as an employer, or a local or state government) to legally recognize an unmarried couple. Sometimes domestic partnerships are catalogued in a public registry, like those in a number of New York localities including the City of Albany, Suffolk County, Westchester County and New York City. Some domestic partnerships create select rights and responsibilities for the couple, while others give no substantive rights at all other than having the partnership documented.

Neither civil unions nor domestic partnerships are the same as marriage, however. Neither secure the federal rights and responsibilities that come with marriage, such as Social Security survivor benefits, pensions, immigration rights and taxation advantages and obligations. Because it is undetermined whether civil unions or domestic partnerships will be recognized outside of the jurisdictions that grant them, same-sex couples in civil unions and domestic partners may lose their legal protections or fail to be recognized when they relocate or travel. There is also far stronger precedence for private institutions like businesses recognizing marriage for benefits ranging from employee health insurance to bereavement leave. As a concrete example, in New Jersey some employers have refused to add civil union partners to an employee's health insurance because the partners are not married.

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Civil unions and domestic partners are also no substitute for marriage because as separate institutions they inherently imply that the love between people of the same sex is less valid than the love between people of the opposite sex. As long as same-sex couples are denied the choice of entering into marriage -- the legal institution used by the state to support loving couples and their families -- we are denied equality with our neighbors.

Is civil marriage the same thing as religious marriage?

No. Civil marriage is a relationship sanctioned and licensed by the state. It does not require the blessing of any religious institution. Religious marriage is the spiritual blessing of a relationship by a church, mosque, synagogue or other religious institution. A religious marriage in New York State is not legally binding on the married couple unless they also secure a state marriage license. No religious institution can be required to marry two people even if their marriage is licensed by the state, a fact that is explicitly stated in the current marriage equality legislation.

Are the marriages of same-sex couples legally recognized in New York?

Yes. Under a New York appellate level court decision, New York is required under longstanding legal precedent and practice to treat as fully married couples -- including same-sex couples -- who have been legally married in another jurisdiction, even if that marriage would be illegal if conducted within the state. In this way, a same-sex couple who has gone to Canada and gotten married is as married as an opposite-sex couple holding a New York marriage license. This decision follows the opinion of the New York State Attorney General, and the practice of a number of public and private actors. The State Comptroller recognizes the legal marriages of same-sex couples for the purposes of the New York State Retirement System, and the Department of Civil Service allows the 1.2M state and local employees participating in the New York State Health Insurance Program to add their same-sex spouses to their insurance. Several New York localities including Albany, Brighton, Buffalo, Ithaca, New York City, Nyack, Rochester and Westchester County have all stated that they will respect the legal marriages of same-sex couples. The pension systems of New York City municipal employees are fully respecting the marriages of same-sex couples, as is the Local 295/Local 851 Welfare Fund of the International Brotherhood of Teamsters at JFK Airport. A number of private businesses and companies, including insurance companies like Allstate, Electric, Geico and State Farm, are also treating as married same-sex couples who have been legally married.

What is the current public opinion around marriage for same-sex couples?

A growing majority of New Yorkers support marriage for same-sex couples. A Global Strategy Group poll with a +/-3.8% margin of error commissioned by the Pride Agenda in March 2006 found that 53% of likely New York voters support the right of same-sex couples to marry and 38% oppose. What was an almost even split in opinion two years ago in a 2004 poll by Global Strategy Group (47% for, 46% against) has now become a 15 point margin in favor of marriage for same-sex couples.

Has there been legislation opposing legal recognition of LGBT couples?

Yes. Forty-five states have passed state Constitutional Amendments or so-called "Defense of Marriage Acts" (DOMA's) which define marriage for state purposes to exclude same-sex couples. New York is one of only five states (along with the District of Columbia) without such a law explicitly barring state recognition of marriages by same-sex couples. A New York DOMA has been introduced in both chambers of the legislature but has never received a vote in any committee. It has not been determined whether these state anti-marriage laws are constitutionally permissible in denying full faith and credit to another state's marriages.

Is legalization of lesbian and gay marriages good or bad for the state?

Strong families make for strong communities. LGBT families are in just as much need of governmental support as are other families. The last U.S. census in 2000 counted 46,490 New York households as being comprised of same-sex "unmarried partners," with 1 in 4 of them raising an average of 2 children. This number is widely viewed as being only a fraction of the actual number in New York State as many same-sex unmarried partners are reluctant to disclose their relationship to a government entity out of fear of reprisal or discrimination. If these families are left without the social safety net that government provides to all other families, they are more likely to become a social or financial burden on society as a whole. It has yet to be shown how extending the rights and responsibilities of marriage to LGBT families undermines, threatens or diminishes other marriages. Likewise, there is no evidence showing that children are harmed in any way by being raised by parents of the same sex.