



# REDEFINING MARRIAGE WOULD THREATEN RELIGIOUS LIBERTY

*April 2011*

## **Overview**

The New York State Legislature will soon consider a bill that would radically change the definition of marriage, to include same-sex relationships. Marriage has always been defined in our culture as a union of one man and one woman, dedicated to the good of the spouses and for the procreation and education of children.

The "Marriage Equality Act" would re-define marriage to ignore the fundamental biological fact that the union of man and woman is the only relationship that is capable -- and designed -- to unite them and to create and nurture children. Same-sex relationships just cannot fit into that definition. Same-sex couples certainly have the right to live as they wish, but nobody has the right to re-define marriage and parenthood for all of society.

## **Doesn't the "Marriage Equality Act" Contain Protection for Religious Liberty?**

The sponsors of the "Marriage Equality Act" correctly point out that the bill contains an exemption for clergy who do not wish to solemnize same-sex "marriages", the reality is that this is meaningless -- the First Amendment would never permit the state to force clergy to engage in religious rites that are contrary to their religious beliefs.

The real threat to religious liberty in the bill is its failure to include an exemption that would permit individuals and organizations to decline to recognize same-sex "marriages", if that would be against their religious beliefs.

## **If Marriage is Redefined, What Laws Might Be Used to Threaten Religious Liberty?**

Without a genuine religious liberty exception in the law, same-sex "spouses" will be able to bring complaints against religious institutions, businesses, and individuals under various state and local anti-discrimination and human rights laws -- none of which were ever envisioned as applying to same-sex "marriage".

Among the state laws are:

- Civil Rights Law § 40-C -- "No person shall, because of ... marital status... be subjected to any discrimination in his or her civil rights... by any other person or by any firm, corporation or institution, or by the state or any agency or subdivision of the state." There is no religious liberty exemption.

- Executive Law § 291 -- "the opportunity to obtain employment without discrimination because of... marital status... is hereby recognized as and declared to be a civil right... The opportunity to obtain education, the use of places of public accommodation and the ownership, use and occupancy of housing accommodations and commercial space without discrimination because of ... marital status... is hereby recognized as and declared to be a civil right." There is no religious liberty exemption.
- Executive Law § 296 -- bans discrimination on the basis of marital status in areas of education, employment, housing, use of public accommodations. There are narrow religious liberty exemptions for some employment and housing decisions.
- Executive Law § 312 -- state contractors must not "discriminate against employees or applicants for employment because of ... marital status". There is no religious liberty exemption.

## **In what Specific Ways Will Religious Liberty Be Attacked ?**

Religious organizations will face threats to their religious liberties in some of these areas:

- **Public grants and contracts** -- No organization that receives funds under a state contract or grant could "discriminate" against a same-sex "marriage" couple. That would certainly include all Catholic hospitals and social service agencies, and may even include Catholic schools that receive state textbook or technology aid. Catholic and other religious organizations have already been excluded from government contracts and other government programs because of their refusal to recognize same-sex "marriages".
- **Employment** -- There is a very narrow exemption in current state law that permits religious organizations to hire those of the same faith or those who will promote their religious mission. There is a similar narrow exemption under federal law, called the "ministerial exemption", but the extent of this is currently being challenged before the Supreme Court. These exemptions do not apply to a large number of positions at religious organizations, such as administrative staff. As a result, churches and religious organizations will be required to hire people in same-sex "marriages" -- and provide them with the same benefits they provide to spouses.

- **Professional Licenses** -- There are approximately 49 professions that require state licenses (e.g., lawyers, doctors, and nurses). The state may seek to revoke the license of anyone who "discriminates" against a same-sex "marriage" couple.
- **Business Permits** -- There are approximately 434 types of businesses that require state licenses or permits. State licenses are also required for health clinics, nursing homes, hospitals, educational institutions, and social services agencies. These businesses may see their licenses at risk if they "discriminate" against same-sex "marriage" couples. This has already happened to adoption and foster care agencies in several states.
- **Education** -- Health and family life education, which are required by the state, will be adjusted to include the recognition of same-sex "marriage". Parents of public school children have only limited rights to opt their children out of these classes. In other countries, efforts have been made to require religious schools to teach messages about homosexuality that are contrary to their religious mission.
- **Tax Exempt Status** -- Religious and other non-profit organizations are typically granted tax exempt status, freeing them from the burden of income, property and sales taxes. The United States Supreme Court has already held that such a tax ruling may be revoked if the organization's religious beliefs and practices violate "public policy". This has already happened to organizations that decline to recognize same-sex "marriages".
- **Exclusion from Public Facilities** -- Religious and other organizations that decline to recognize same-sex "marriages" may be denied access to public facilities for events, such as parklands, campgrounds, public message boards to announce events, etc. This has already happened to the Boy Scouts .

### Isn't This Threat Being Exaggerated?

The threat to religious liberties is not theoretical -- it is very real, and is already happening elsewhere. Legal scholars -- both supporters and opponents of same-sex "marriage" -- recognize the inevitable conflict between same-sex "marriage" laws and the religious liberties of organizations and individuals.

Without a robust provision recognizing the right to decline to recognize same-sex "marriage" based on one's religious beliefs, passage of this law will not "settle" the issue at all. Instead, we will merely begin a long, costly and difficult legal struggles in courts and "human rights commissions", with a steady and irreversible decline in religious liberty in New York.

### What Should We Do to Defend Marriage?

Please contact your Senator and Assembly representative and urge them not to redefine marriage.

Here are some suggestions:

- **Send them an email** . Use the Catholic Advocacy Network (go to <http://www.nycatholic.org>, and click on "Take Action"). There is a sample email there, or you could use your own language. The message is simple: *"Marriage is a union of one man and one woman. Same sex couples have the right to live as they wish, but nobody has the right to re-define marriage for all of society. Plus, redefining marriage would threaten religious liberty of organizations and individuals who oppose same-sex relationships based on their religious beliefs. Please oppose any effort to re-define marriage."*
- **Write them a personal letter**. Here is a sample letter:

*I am writing to express my strong opposition to the so-called "Marriage Equality Act", which would redefine marriage and legalize same-sex "marriage" in New York. Same-sex couples have the right to live however they wish, but nobody has the right to re-define marriage for all of society. Marriage is the union of one man and one woman, ordered both to the good of the spouses and for having and raising children. It is a foundation of human society that deserves special protection and recognition in the law. Plus, redefining marriage would endanger the religious liberties of organizations and individuals who oppose same-sex relationships based on their religious beliefs. Please do all you can to oppose this legislation. Thank you for your consideration.*

The address is:

New York State Senate, Albany, NY 12247  
New York State Assembly, Albany, NY 12248

- **Keep yourself informed**. Visit the Family Life/Respect Life Office website for regular updates and more resources: [http://www.flrl.org/Defend\\_Marriage.htm](http://www.flrl.org/Defend_Marriage.htm).
- **Pray**. Ask God to grant our elected officials the wisdom to recognize the importance of marriage, and to defend it.