



Research behind heightened scrutiny of the *Defense of Marriage Act*

Overview of same-sex couples in the U.S.

There are 50,000 to 80,000 legally married same-sex couples in the United States today¹

17% of same-sex couples are raising nearly 250,000 children²

50% of gay men and more than 40% of lesbians report the desire to have children some day³

Psychological research: why have heightened scrutiny?

Marriage as a fundamental right

- >> Marriage improves individual and social well-being regardless of other demographic indicators.⁴
- >> *Domestic partnership* does not bestow the same social and symbolic meaning as *marriage*.⁵
- >> Relationships and relationship processes are very similar between same-sex couples and different-sex couples.⁶
- >> Same-sex parent families and children show the same levels of well-being.⁷
- >> Permitting same-sex marriage will not affect the stability of heterosexual marriage and does not affect the fundamental right that heterosexuals have to marry.⁸

LGB could be considered a protected class

- >> LGB individuals experience discrimination which is linked to negative mental health outcomes.⁹
- >> The heterosexual model of sexuality and marriage can be used to marginalize and devalue same-sex marriage.¹⁰
- >> Sexual orientation therapies are ineffective and can cause painful psychological and social trauma.¹¹
- >> Social stigma can make it difficult to settle on a sexual orientation.¹²
- >> LGB sexual orientation is normally a stable identity just like heterosexuality.¹³

Legal terms

Rational Basis

The minimal level of judicial scrutiny. No legitimate purpose need be provided unless a statute implicates a fundamental right or suspect classification.

Heightened scrutiny ***(i) Intermediate scrutiny***

A statute must show *substantial* relation to a government objective. It is used in challenges with quasi-suspect classification (e.g. gender).

(ii) Strict scrutiny

Statute must aim to further a compelling government interest. It is used in challenges that implicate a fundamental right or suspect classification (e.g. race)

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- ¹ The Williams Institute (2011) New Estimate of 50,000 to 80,000 Married Same-Sex Couples in the U.S, *Press Release*. Available at <http://williamsinstitute.law.ucla.edu/press/press-releases/new-estimate-of-50000-to-80000-married-same-sex-couples-in-the-us/>
- ² The Williams institute (2011) United States Census Snapshot: 2010.
- ³ *Adoption and Foster Care by Gay and Lesbian Parents in the United States* (2007). The Williams Institute and The Urban Institute.
- ⁴ Letter from Kevin Shelley, California Secretary of State, to Registered Domestic Partners used by plaintiff Gregory Harek in the Judge Walker report on Proposition 8 (2010).
- ⁵ Peplau, L. A., and Fingerhut, A. W. (2007). The Close Relationships of Lesbians and Gay Men. *Annu. Rev. Psychol.* 58:405–24
- ⁶ Peplau, L. A., and Fingerhut, A. W. (2007). The Close Relationships of Lesbians and Gay Men. *Annu. Rev. Psychol.* 58:405–24
- ⁷ US Department of Health and Human Services (2004). Marital Status and Health: United States, 1999–2002.
- ⁸ Bramlett, M. D., and Mosher, W. D. (2001). First Marriage Dissolution, Divorce, and Remarriage: United States, *US Department of Health and Human Services*.
- ⁹ Meyer, I. H., (2003) Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence *Psychological Bulletin*, Vol. 129, No. 5, 674–697
- ¹⁰ Badgett, M. V. L. (2011) Social Inclusion and the Value of Marriage Equality in Massachusetts and the Netherlands. *Journal of Social Issues* 67.
- ¹¹ Just the Facts About Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel. The American Psychological Association. Available at <http://www.apa.org/pi/lgbt/resources/just-the-facts.pdf>
- ¹² DeLeon, P. H. (1998). Proceedings of the American Psychological Association, Incorporated, for the legislative year 1997: Minutes of the annual meeting of the Council of Representatives. *American Psychologist*, 53, 882–939.
- ¹³ Laumann, E. O., et al (2004) The Social Organization of Sexuality: Sexual Practices in the United States. *The University of Chicago Press*.