

Civil Marriage v. Civil Unions

What's the difference?

(Updated August 2009)

Framing the conversation: What's really at stake?

First, let's be clear. This discussion is about substance—not symbols. The human stakes are enormous. This document explains why civil marriage, and not civil unions, is the only way to make sure gay and lesbian couples have all of the same legal protections as other married couples.

Second, the discussion is about ending governmental discrimination against gay and lesbian families with respect to civil marriage and its legal protections and responsibilities—not about any religious rite of marriage. Every faith is and will remain free to set its own rules about who can marry and on what terms.

Third, marriage is many things to many people. But it is also a legal institution in which governmental discrimination has no place.

Let's compare civil marriage as a legal institution to civil unions as a legal institution.

What is marriage?

Marriage is a unique legal status conferred by and recognized by governments the world over. It brings with it a host of reciprocal obligations, rights, and protections. Yet it is more than the sum of its legal parts. It is also a cultural institution. The word itself is a fundamental protection, conveying clearly that you and your life partner love each other, are united and belong by each other's side. It represents the ultimate expression of love and commitment between two people and everyone understands that. No other word has that power, and no other word can provide that protection.

What is a civil union?

A civil union is a legal status created by the state of Vermont in 2000 and subsequently by the states of Connecticut, New Hampshire and New Jersey. It provides legal protection to couples at the state law level, but omits federal protections as well as the dignity, clarity, security and power of the word "marriage."

What are some of the limitations of civil unions?

Civil unions are different from marriage, and that difference has wide-ranging implications that make the two institutions unequal. Here is a quick look at some of the most significant differences:

Portability:

Marriages are respected state to state for all purposes, but questions remain about how civil unions will be treated in other states since very few states have civil unions.

Ending a Civil Union:

If you are married, you can get divorced in any state in which you are a resident. But if states continue to disrespect civil unions, there is no way to end the relationship other than by establishing residency in a state that respects the civil union.

Federal Benefits:

According to a 1997 GAO report, civil marriage brings with it at least 1,138 legal protections and responsibilities from the federal government, including the right to take leave from work to care for a

family member, the right to sponsor a spouse for immigration purposes, and Social Security survivor benefits that can make a difference between old age in poverty and old age in security. Civil unions bring none of these critical legal protections.

Taxes & Public Benefits for the Family:

Because the federal government does not respect civil unions, a couple with a civil union will be in a kind of limbo with regard to governmental functions performed by both state and federal governments, such as taxation, pension protections, provision of insurance for families, and means-tested programs like Medicaid. Even when states try to provide legal protections, they may be foreclosed from doing so in joint federal/state programs.

Filling out forms:

Every day, we fill out forms that ask us whether we are married or single. People joined in a civil union don't fit into either category. People with civil unions should be able to identify themselves as a single family unit, but misrepresenting oneself on official documents can be considered fraud and carries potential serious criminal penalties.

Separate & Unequal -- Second-Class Status:

Even if there were no substantive differences in the way the law treated marriages and civil unions, the fact that a civil union remains a separate status just for gay people represents real and powerful inequality. We've been down this road before in this country and should not kid ourselves that a separate institution just for gay people is a just solution here either. Our constitution requires legal equality for all. Including gay and lesbian couples within existing marriage laws is the fairest and simplest thing to do.

How real are these differences between marriage and civil unions, given that a federal law and some state laws discriminate against all marriages of same-sex couples?

Right now, a federal law, the Defense of Marriage Act (DOMA) denies recognition of same-sex unions conferred by any state for purposes of all federal programs and requirements. Only married same-sex couples have the right to challenge this discrimination, and, in fact, GLAD has filed a federal lawsuit to do just that. For more information see www.glad.org/doma. If GLAD wins this lawsuit, or if Congress repeals DOMA, then married same sex-couples will have access to the 1138 laws that pertain to marriage, but civil union couples will still not have this access.

About 40 state laws have laws and/or constitutional amendments that prevent same-sex couples from marrying. Using the term "marriage" rather than "civil union" is an essential first step to opening the door and addressing whether continued governmental discrimination against civil marriages of gay and lesbian people makes sense.

Marriage and civil unions remain different, both in practice and in principle.

First, a few states have not taken a discriminatory position against civil marriages of gay and lesbian couples. In those states, civilly married gay and lesbian couples should be able to live and travel freely and without fear that their relationship will be disrespected.

Second, even as to those states with discriminatory laws and/or constitutional amendments, legally married gay and lesbian couples from those states may well face some discrimination in some quarters, but their marriages will also be treated with legal respect in other arenas. Marriages are far more likely to be respected by others than newly minted "civil unions."

Using the term marriage also prompts a discussion about fairness. Allowing same sex couples to marry (rather than enter a separate status) will allow gay and lesbian people to talk with their neighbors, their local elected officials, and the Congress about whether discrimination against their marriages is fair. Where gay and lesbian people and their children are part of the social fabric, is it right to continue discriminating against them in civil marriage? The federal government and states that have taken discriminatory positions against marriages of gay and lesbian couples could rethink those policies and go back to respecting state laws about marriage, as they have done for hundreds of years. In the end, we will not be able to have this discussion until gay and lesbian folks have what everyone else has: civil marriage.