

Civil Marriage & Freedom of Religion

(Updated: December 2011)

A myth: A major myth about ending discrimination in civil marriage is that it will somehow compel religious faiths to change their doctrine or practices about who they marry. This is flatly incorrect. We have freedom of religion in this country. When a court or legislature ends discrimination in civil (governmental) marriage, there is no compulsory impact on any faith. Each faith is—and will remain—free to define its own requirements for its marriage rite: who, what, when, where and why.

Some people say marriage is a sacrament. And it is for some religious faiths. But the government is not in the sacrament business. The only “marriage” to which same-sex couples are seeking access is civil/governmental marriage. Governmental marriage already exists side by side with each faith’s different rules for their religious rite of marriage. Nothing can change that.

Two Types of Marriages

Though people may think about marriage in different ways, there are only two types of marriage – either civil or religious. In some ceremonies, both are celebrated at once. Couples may have one or both types of marriage. However, to receive the legal protections of marriage, a couple must have a civil marriage. It is only civil marriage that can be addressed by courts or legislatures.

Civil Marriage

Any couple can have a civil marriage if they meet the government’s requirements. Right now, the requirements in Massachusetts are that the partners be adults and not be already married or closely related. Most of us also think about marriage as a public commitment of love and support by adult couples. The government does, too, and uses the commitment of marriage as a gateway to hundreds of legal protections, responsibilities and benefits established by the state, and over 1100 by the federal government. Ever since the founding of this country, states have regulated who may enter into a marriage and under what conditions.

Religious Rite of Marriage

Only couples who meet the requirements of a particular faith tradition can have a religious marriage. Religions have complete autonomy in deciding which marriages they will consecrate; they do whatever suits their faith tradition. Some religions will not marry people who were divorced, or people of different faiths, even though these same people could have a civil marriage. Every religious community always has the right to perform or not perform any marriage rite it deems appropriate, regardless of the partners’ sex. Religious marriages do not convey legal rights or responsibilities.

Freedom of Religion

The First Amendment to the U.S. Constitution protects every citizen’s right to freedom of religion: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” The founders of American government, who fled religious persecution in Europe, made it clear from the beginning that in this new nation religion and government would exist side by side, and the law would not define religious practice.

In addition to allowing free rein to religious practice, our Constitution protects freedom of religion by preventing any one religion from dictating the content of law. For all religious views to be protected and respected, it is critical that laws not be made with a particular religious viewpoint in mind, including laws about civil marriage.

As a result of American freedom of religion, each faith can independently answer the question of whether they wish gay and lesbian couples to marry within their religious tradition, and this will remain true no matter what the government does with regard to civil marriage.