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Policy Brief: LD 1020 - An Act to End Discrimination in Civil Marriage and Affirm Religious Freedom

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Policy Brief

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SUMMARY

In May 2009, Maine's Governor John Baldacci signed into law LD 1020, “An Act to End Discrimination in Civil Marriage and Affirm Religious Freedom,” making Maine the fifth state to support marriage between two people regardless of sex. A People's Veto calling for the repeal of the “same-sex marriage” law is currently in process and will be on the ballot for public vote in November 2009.

This policy brief is intended to inform voters and policymakers by presenting a discussion of LD1020 and research related to issues brought up in these deliberations about (1) definitions of marriage, (2) impacts on society, and (3) impacts on children. Social scientists are often asked about research that speaks to the questions people are raising about impacts, and social science is increasingly being brought into such discussions. Because the research is located in academic journals, the findings can be hard for the average person to find. Thus, the intent here is to summarize these findings. The research evidence suggests that there would be no harm to couple relationships, society, or children in Maine as a result of keeping the “Act to End Discrimination in Civil Marriage and Affirm Religious Freedom.”

BACKGROUND

The law passed by Maine's legislature and signed by Governor Baldacci focuses on the cessation of discrimination in civil marriage and supports religious institutions to honor or refuse marriages of same-sex couples within the institutions. The language of the law does not specifically focus on same-sex couples. It does repeal an earlier provision that explicitly prohibited same-sex marriage. The bill states:

Marriage is the legally recognized union of 2 people. Gender-specific terms relating to the marital relationship or familial relationships, including, but not limited to, "spouse," "family," "marriage," "immediate family," "dependent," "next of kin," "bride," "groom," "husband," "wife," "widow" and "widower," must be construed to be gender-neutral for all purposes throughout the law, whether in the context of statute, administrative or court rule, policy, common law or any other source of civil law.¹

The law was scheduled to go into effect 90 days after Maine's Legislature adjourned in June 2009. However, by early July of 2009, opponents of LD1020 collected enough signatures to get the Maine Same-Sex Marriage People's Veto on the November 2009 ballot. Currently, the law may or may not go into effect--it will be decided by how the citizenry votes in November on the following statement: “Do you want to reject the new law that lets same-sex couples marry and allows individuals and religious groups to refuse to perform these marriages?” Those who vote “no” are in favor of the law passed in May. Those who vote “yes” are in opposition to the law passed in May.

Three issues are raised in discussions about the law and its impact:

- **Issue 1:** How might the institution of marriage be affected by same-sex marriages?
- **Issue 2:** What might the effects on society be if more couples marry as a result of same-sex marriages?
- **Issue 3:** What might the effects on children be of same-sex marriages?

Each of the three is linked to different concerns. In the remainder of this policy brief, the issues are noted and research related to each is summarized.

Issue 1. The institution of marriage

The *definition* of marriage is a large issue in this debate. Those in support of LD1020, who will oppose the People’s Veto, say that marriage is a union between two adults in a committed relationship, regardless of their sex. They focus on the civil rights of individuals to marry whom they choose in order to be entitled to the legal rights and equality that are granted within the institution of marriage.²

Those opposed to LD1020, who will support the People’s Veto, focus on the definition of marriage as a union between a man and a woman. They believe that unions between two members of the same sex are immoral, experimental, and not worthy of being considered marriages.^{3,4} Many in the opposition say that same-sex marriage is a threat to traditional definitions of marriage, and the inclusion of same-sex couples in the definition of marriage will lead to the dissolution of the meaning of marriage.

LD1020 is less about establishing a law that allows same-sex couples to marry than it is about opening the marriage laws in Maine to include same-sex couples. Opponents of the bill warn citizens of the “threat to marriage and society” that will be posed by passage of LD1020.⁵ But for those who are on the cusp of being legally able to marry, marriage “validates that we can have the same traditional values that anybody else can have.”⁶ Ultimately, the voter must decide on the freedom of individuals to marry the partner of their choice if there is a long-term commitment to the relationship.

Why “marriage”? Marriage and civil union or domestic partnership (which was signed into Maine law in 2004) are not the same things. In many cases, married couples are afforded rights and access that those in civil unions or domestic partnerships are not. Maine does not have Common Law Marriage, where a couple decides to accept the responsibilities and be recognized as married if Common Law Marriage is accepted in their state. Although many employers and academic institutions in Maine honor domestic partnerships between any two individuals, regardless of sex, there are additional legal rights that require legal marriage in order for eligibility. These include social security benefits, tax incentives, insurance, and loans.

Research that followed couples in Vermont over time who were united in civil union found that couples in civil unions were more likely to stay together than those not in civil unions. However, many of the couples in the Vermont study expressed frustration at not having all the legal benefits that would be afforded to them with marriage.⁷

Issue 2. The effect of same-sex marriage on society

If more couples are interested in being married, what might the effect be on society? Depending upon the definition of marriage (see Issue 1), there is debate about the degree to which LD1020 will strengthen society. Those in favor of LD1020 believe society would be strengthened with the law in place, whereas those opposed to LD1020 believe society would be weakened if the law were in place.

Marriage itself is widely thought to support society, because couples affirm their commitment to a historically societal value. According to the Witherspoon Institute, an organization strongly in support of marriage but against same-sex marriage, when men and women share in marital commitment, they tend to have better marriages.⁸ The couple also benefits from the “normative commitment to the institution of marriage.” According to the Witherspoon Institute, civil society benefits from a “stable marital order,” and the couple is better off financially, emotionally, physically, and socially.⁸

Those who wish to repeal LD1020 argue that the legalization of same-sex marriage will lead to the dissolution of a moral society. If marriage is viewed as good for society, good for the couple, and positive in that it “binds two individuals together for life,” those against LD1020 argue that these benefits cannot include couples of the same sex. According to this view, because of the biological imperative of reproduction for traditional couples, and the impossibility for same-sex couples, the institution of marriage must be only for the former group or there will be a negative impact on society.

For those in favor of LD1020, this law will strengthen our society’s commitment to marriage. If marriage is good for society, LD 1020 could be viewed as a benefit to society, because more of the unmarried couples in Maine would be married. According to Census research figures from 2000, 8.95% of the unmarried-couple households in Maine were same-sex couples.⁹ Many of these couples are in long-standing relationships, of many years, and of a monogamous nature. These couples are interested in long-term committed relationships with one other person.

Another concern sometimes voiced about legalizing same-sex marriage is that doing so could lead to legalizing polygamy or even marriage with animals.³ The argument that polygamy is a natural consequence of the legalization of same-sex marriage does not find support in historical data. According to researchers who explored the claim that same-sex marriage leads to the legalization of polygamy by researching South Africa (where polygamy is legal) and the United States (where polygamy is illegal), “no predestined link and no unidirectional gradient govern relationships between these two forms of marriage.”¹⁰

Issue 3. The effect of same-sex marriage on children

Concern is often expressed about the well-being and emotional growth of children in same-sex parent families. In Maine, children live in a multitude of family configurations: with single parents, married heterosexual parents, same-sex parents, stepfamilies, adoptive parents, foster parents, and relatives. According to Census estimates, 52.5% of the households in Maine are married couple households, 30.4% of households in

Maine have children under age 18, and 16% of same-sex couples are raising children under the age of 18. With respect to adoption in Maine, married couples can adopt children, and for same-sex couples, joint adoption is legal, with 5% of Maine's adopted children living with a lesbian or gay parent.⁹

There is no science that suggests that children in same-sex parent households are at risk for future failure in school or work, in relationships, or in their own future marriages.¹² Research shows that same-sex couples raise children with positive male *and* female role models, children who function well in their own friendships, children who do not have confusion with their own sexual identities, and children who grow up to be socially competent.^{14,15} The American Psychological Association summarizes the research on same-sex relationships and parenting, and concludes that same-sex and heterosexual couples are equivalent on measures of relationship satisfaction, relationship goals, and commitment.¹³

The Family Research Council, a group that is opposed to same-sex marriage, reports that same-sex couples pose a danger to children and cite Census data suggesting that same-sex couples are more likely to be polyamorous and to be in unstable relationships, instilling emotional harm upon children.⁴ In addition, there is concern about "intentional subjection" of children to households without mothers or fathers. Further, there is a caution that growing up in same-sex households is considered to be an untested social experiment.³

Researchers William Meezan from the Ohio State University and Jonathan Rauch from the Brookings Institution note that legal marriage could be beneficial for children of same-sex families for three reasons. First, marriage may increase children's material well-being through such benefits as reduced taxes, family leave from work, and spousal health insurance eligibility. Second, same-sex marriage may benefit children by increasing the durability and stability of their parents' relationship. Finally, marriage may bring increased social acceptance of and support for same-sex families, although those benefits might not materialize in communities that meet same-sex marriage with rejection or hostility.¹⁴

Children of heterosexual couples are equally at risk for being harmed, unloved, and being influenced negatively as children of same-sex couples. As well, with divorce rates at 50% in the United States, children of heterosexual couples are at great risk for experiencing family transitions in their lives. Research tells us that children raised by same-sex couples (who are often biological children from previous marriages) fare as well as children from divorced families who live with single parents, or in new heterosexual stepfamilies. Children of divorce tend to be more at-risk than children from intact, healthy marriages, regardless of the configuration of parents. The research is consistent that children of same-sex parents, including young children as well as adolescents, are not faced with confusion or poor adjustment. In fact, it is the quality of the relationship between a child and the parents and the relationship between the parents, that is of primary importance in the child's adjustment.¹⁵

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ADVANTAGES OF LD 1020 OUTWEIGHT DISADVANTAGES

Taken together, existing research findings do not support a rationale for the repeal of LD1020. The law provides an opportunity for all couples to become legally married with the same rights and responsibilities that are part of the marriage contract.

As well, the possibility does exist that the repeal of LD 1020 could be *detrimental* to family stability and to the children within same sex families. This could happen because the repeal of LD1020 reinforces the perspective that same-sex couples are in some way immoral, unfit, or not socially acceptable. According to the 2005 Future of Children report (from non-partisan Princeton University and the Brookings Institution), the “time-honored preference for marriage over nonmarriage as a context for raising children could prove as justified for same-sex couples as for opposite-sex couples, for many of the same reasons.”¹⁴

It is difficult to not be drawn into an emotional and religious debate over this legislation. Many people of faith feel strongly on both sides. It should not go without notice that the latter half of LD1020 is explicit in the support of religious freedom. In the law, no court can “compel...or interfere in any way with any religious institution’s religious doctrine, policy, teaching or solemnization or marriage.”¹ LD1020 should not be interpreted as a law that will try to change religious practice or belief or force religious institutions to perform marriage ceremonies.

If LD1020 is repealed, families will be prevented from the increased security and support the institution of marriage provides. Research suggests that couples, families, and society will be strengthened by the existence of a law like LD1020. Supporters of LD1020 argue that a loving family and equal and civil rights are what matters. They will go to the polls in November to vote “no” to the People’s Veto. Critics of LD1020 argue that the law is a threat to the definition of marriage, which should remain between a man and a woman. They will go to the polls in November to vote “yes” to the People’s Veto.

If LD1020 is repealed, there are clear implications for equal rights and the definition of marriage in Maine, not to mention the power of our legislature to pass laws that reflect their constituents’ voices.

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