

# WebMemo



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## Five Impacts of the New York Same-Sex Marriage Vote

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The New York legislature's June 24 vote to redefine the family and recognize homosexual marriage will have a number of short-term and long-term impacts within and well beyond the Empire State.<sup>1</sup> The vote does not signal an end to the now two-decade fight over the meaning of marriage. A new phase—not an endgame—has begun. Here are five key impacts whose full import will unfold in the coming months.

**1. The vote continues an adverse trend for marriage law in New York.** Last year, the Empire State became the 50th state to repeal a fault-based divorce law.<sup>2</sup> Weakened emphasis on the durability of marriage as a heterosexual institution has helped to undermine the stability of the institution and has contributed to the rising incidence of cohabitation and out-of-wedlock births, a phenomenon that is now nearly universal in Western nations.<sup>3</sup>

Rather than a natural institution designed to bring the two sexes together around the mutual task of forming homes and raising the next generation of children, marriage has become in some locales a list of temporary bargains between adults that is meant to secure interests and benefits. The result is a less child-centered, duty-based, and future-focused institution. Redefining marriage continues a trend away from policies that focus social resources on children and long-term civil society.

**2. The policy change emanates from a legislature and is reversible by the legislature.** Changes in the meaning of marriage have been initiated

by both legislatures and court rulings, but judicial activism has often taken the lead.<sup>4</sup> Court rulings regarding homosexual marriage have sparked sharp debates in Hawaii (1993); Vermont (1999, creating homosexual civil unions); Massachusetts (2003); Connecticut (2008); and Iowa (2009). In other cases, legislatures have acted alone to adopt homosexual marriage: California (2005, vetoed by then-Governor Arnold Schwarzenegger); Maine (2009); New Hampshire (2009); the District of Columbia (2010); and now New York (2011).

The California Supreme Court ultimately ruled to create same-sex marriage in the Golden State, but that decision was reversed by referendum in 2008—the only occasion to date when a state court ruling imposing same-sex marriage has been overturned by popular vote. The New Hampshire legislature is set to vote on repealing its same-sex marriage law early next year.<sup>5</sup> Pro-traditional marriage groups vow to take the New York law to referendum,<sup>6</sup> and Minnesota will hold its own referendum on the issue in November 2012. Steps have been taken toward ballot initiatives in Iowa and Indiana as well. The importance of all these votes is elevated by the action in New York.

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**3. Religious liberty is suffering a death of a thousand cuts, and the collision of religious/moral conscience and nondiscrimination laws still looms.**

The debate in New York and the votes of several Republican lawmakers came down to complex questions of religious liberty and whether the law would protect religious institutions and individuals from forced participation in and recognition of homosexual marriages.<sup>7</sup> Some lawmakers would like to protect religious institutions from the aftermath of marriage redefinition, but doing so can be difficult when nondiscrimination laws put religious entities and people who support traditional morality and marriage as the union of one man and one woman on par with the racially bigoted.<sup>8</sup> As a result, nondiscrimination statutes, even without but especially with marriage/family redefinition laws, imperil a host of religious and moral freedoms, including:

- Closing of religious adoption agencies,
- Forced participation of private businesses in same-sex marriages,
- Elimination of marriage benefits in employment, and
- Loss of access to professional licenses in counseling.

These conflicts show no sign of abating.

**4. Redefinition of the family is the clear goal of same-sex marriage activists.** States have a variety of legislative tools at their disposal to ease the abilities of same-sex and others couples to do such things as making medical decisions for one another, securing hospital visitation privileges, reducing estate taxes, and the like. Public agencies and businesses, measuring their own fiscal needs and the wisdom of the decision, can choose to allow employees to designate another person to receive company benefits without creating a new relationship status to facilitate those benefits.

It is increasingly clear that the primary purpose of same-sex marriage laws is not to alleviate legal hurdles or provide particular benefits but to confer social approval on a new understanding of the institution of the family. As Democratic State Senator Carl Kruger of Brooklyn admitted before the New York vote, “What we’re about to do is redefine what the American family is. And that’s a good thing.”<sup>9</sup>

**5. Marriage is a mega-issue and merits a full-scale national debate in 2012.** The creation of same-sex marriage in New York does not necessarily signal a sea change in the marriage issue nationwide.

1. Jesse McKinley, “After Gay Marriage Vote, a Celebration in San Francisco, but Bittersweet,” *The New York Times*, June 27, 2011, at [http://www.nytimes.com/2011/06/27/us/27sanfrancisco.html?\\_r=2](http://www.nytimes.com/2011/06/27/us/27sanfrancisco.html?_r=2) (June 27, 2011).
2. Jay Rivera, “New York Finally Adopts No-Fault Divorce,” Legal Match Law Blog, August 23, 2010, at <http://lawblog.legalmatch.com/2010/08/23/new-york-finally-adopts-no-fault-divorce/> (June 27, 2011).
3. Charles A. Donovan, “A Marshall Plan for Marriage: Rebuilding Our Shattered Homes,” Heritage Foundation *Backgrounder* No. 2567, June 7, 2011, at <http://www.heritage.org/Research/Reports/2011/06/A-Marshall-Plan-for-Marriage-Rebuilding-Our-Shattered-Homes>.
4. Charles A. Donovan, “Extreme Judicial Activism on Marriage,” Heritage Foundation *Foundry*, August 4, 2010, at <http://blog.heritage.org/2010/08/04/extreme-judicial-activism-on-marriage/>.
5. Kasie Hunt and Andy Barr, “N.H. Gay-Marriage Test for 2012ers?” Politico, March 5, 2011, at <http://www.politico.com/news/stories/0311/50685.html> (June 27, 2011).
6. National Organization for Marriage, “Stop Same-Sex Marriage in New York!!” at [http://www.nationformarriage.org/c.omL2KeN0LzH/b.5105431/k.949D/New\\_York\\_SSM/siteapps/advocacy/ActionItem.aspx](http://www.nationformarriage.org/c.omL2KeN0LzH/b.5105431/k.949D/New_York_SSM/siteapps/advocacy/ActionItem.aspx) (June 27, 2011).
7. Nathan Diamant, “New York Must Provide Robust Protections for Religious Liberty,” *The Washington Post*, June 22, 2011, at [http://www.washingtonpost.com/blogs/on-faith/post/new-york-must-provide-robust-protection-for-religious-liberty/2011/06/22/AGCdskfH\\_blog.html](http://www.washingtonpost.com/blogs/on-faith/post/new-york-must-provide-robust-protection-for-religious-liberty/2011/06/22/AGCdskfH_blog.html) (June 27, 2011).
8. Susan Brooks Thislethwaite, “In Gay Marriage Debates, Don’t Cater to Bigots,” *The Washington Post*, June 22, 2011, at [http://www.washingtonpost.com/blogs/on-faith/post/in-gay-marriage-debates-dont-cater-to-bigots/2011/06/22/AGIazjfH\\_blog.html](http://www.washingtonpost.com/blogs/on-faith/post/in-gay-marriage-debates-dont-cater-to-bigots/2011/06/22/AGIazjfH_blog.html) (June 27, 2011).
9. Janie B. Cheaney, “The Not-So-Hidden Agenda,” *WORLD*, June 20, 2011, at <http://online.worldmag.com/cat/marriage> (June 27, 2011).

To date, no popular vote has validated same-sex marriage anywhere in the United States. In contrast, 30 states have enacted constitutional amendments designed to protect marriage. New York is one of the most liberal states in the union, and its action, apart from the fact that it has no residency requirement for marriage, may have no immediate effect on other states.

New York does illustrate, however, the potency of political leadership. Governor Andrew Cuomo (D) expended considerable energy on the issue, making it a cornerstone of his first year in office. He did not “lead from behind.” The outcome in New York will spur activists on the marriage issue to redouble their efforts to secure national political leadership for their cause, and next year’s presidential election

may come to resemble 2004’s in the intensity of the debate over the meaning of marriage.<sup>10</sup>

**A Decision Left with the American People.** Finally, the debates and votes in New York and elsewhere indicate something about the fundamental character of representative institutions: They have the ability to do—and undo—great good. Courts tempted to intervene in the process and create new and fictitious constitutional rights should recognize the limits of their role in this tidal battle. No court should have the final word in the debate over marriage, and no citizen should fail to see the risks the nation is running with the decline of marriage.

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10. Jonathan Capehart, “Same-Sex Marriage: Obama Is Not Cuomo—Part I,” *The Washington Post*, June 27, 2011, at [http://www.washingtonpost.com/blogs/post-partisan/post/same-sex-marriage-obama-is-not-cuomo--part-i/2011/03/04/AGwnQQnH\\_blog.html](http://www.washingtonpost.com/blogs/post-partisan/post/same-sex-marriage-obama-is-not-cuomo--part-i/2011/03/04/AGwnQQnH_blog.html) (June 27, 2011).