

## 2004 Ballot Measure Report Measure 36

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### Constitutional Amendment State of Oregon Ballot Measure 36:

AMENDS THE CONSTITUTION: ONLY MARRIAGE BETWEEN ONE MAN AND ONE WOMAN IS VALID OR LEGALLY RECOGNIZED AS MARRIAGE.

Your committee listened carefully to proponents of Measure 36 who argued in favor of limiting marriage to opposite-sex couples. Ultimately, we were not persuaded that the institution of marriage would be strengthened by codifying the exclusion of same-sex couples by a constitutional amendment. Your committee believes strongly in the institution of marriage and in its vital importance to families in Oregon; marriage should be encouraged and fostered in all our communities. For these reasons, your committee concludes that denying same-sex couples the status of marriage discriminates against and harms same-sex couples and their families, and does not benefit opposite-sex couples in any meaningful way. Your committee also reiterates previous City Club concerns over the process and precedent of amending the Oregon Constitution on contentious issues by a simple majority vote. One does not have to be in favor of same-sex marriage to find good reasons to vote against this measure.

**For these reasons, your committee unanimously recommends a NO vote on Measure 36.**

*City Club members voted on October 22, 2004 to adopt the contents and recommendation of this report as the Club's official position. City Club recommends a NO vote on Ballot Measure 36.*

## I. INTRODUCTION

Ballot Measure 36 will appear on the ballot as follows:

**AMENDS THE CONSTITUTION: ONLY MARRIAGE BETWEEN ONE MAN AND ONE WOMAN IS VALID OR LEGALLY RECOGNIZED AS MARRIAGE.**

**Result of "Yes" Vote:**

"Yes" vote adds to the Oregon Constitution a declaration of policy that only marriage between one man and one woman is valid or legally recognized as marriage.

**Result of "No" Vote:**

"No" vote retains existing constitution without provision declaring that only marriage between one man and one woman is valid or legally recognized as marriage.

**Summary:**

Amends the constitution. Oregon statutes currently provide that marriage is a civil contract entered into in person between individuals of the opposite sex, that is, between males and females at least 17 years of age who solemnize the marriage by declaring, "they take each other to be husband and wife." The existing Oregon Constitution contains no provision governing marriage. Currently, the State of Oregon recognizes out-of-state marriages that are valid in the state where performed, unless the marriage violates a strong public policy of Oregon. Measure adds to Oregon Constitution a declaration that the policy of the State of Oregon and its political subdivisions is that "only a marriage between one man and one woman shall be valid or legally recognized as a marriage."

**Estimate of Financial Impact:**

There is no financial effect on the state or local government expenditures or revenues.

*(The language of the caption, question, and summary was certified by the Oregon Secretary of State.)*

Proponents of Measure 36 seek to amend the Oregon Constitution by adding a statement of policy that only marriage between one man and one woman is valid or legally recognized as marriage. The measure is part of a national trend to clearly define marriage in state constitutions so that the definition excludes same-sex couples. In addition to Oregon, 11 other states will vote on marriage definition laws in the November 2004 election.

City Club formed a committee of nine members to analyze Measure 36. In keeping with Club standards of fair and impartial analysis, City Club screened committee members to ensure that no member had taken a public position on same-sex marriage. Your committee met for six weeks; interviewed proponents, opponents and several legal experts; and independently researched relevant articles, reports and other materials.

## II. BACKGROUND

The debate over same-sex marriage in the United States is not new. In 1971, two men in Hennepin County, Minnesota, filed suit after being denied a marriage license by the county clerk. In its ruling, the Minnesota Supreme Court concluded that same-sex couples had no legal right to marry because marriage was "inherently" an opposite-sex union.<sup>1</sup> Two years later, the Kentucky Supreme Court also ruled against a same-sex couple seeking a marriage license, citing three different dictionary definitions stating marriage to be a union between one man and one woman.<sup>2</sup>

In 1993, the Hawaii Supreme Court ruled its state marriage laws likely violated the Hawaii Constitution.<sup>3</sup> The ruling never took effect because Hawaii voters amended their Constitution; nonetheless, the court's action spurred federal lawmakers to create the Defense of Marriage Act. DOMA defines marriage as the union of one man and one woman and prevents any state from being required to recognize contrary definitions from other states. The federal Defense of Marriage Act was passed by both houses of Congress and signed into law by President Clinton in 1996.<sup>4</sup>

As of September 1, 2004, 38 states have passed similar statutory laws, and four states have passed constitutional amendments banning same-sex marriage. Oregon has no state law similar to DOMA. Chapter 106 of the Oregon Revised Statutes regulates marriage in this state.<sup>5</sup>

Passage of DOMA and various state laws prohibiting same-sex marriages has not settled the matter. The Vermont Supreme Court ruled, in 1999, that Vermont's marriage laws were unconstitutional because they denied legal benefits and protections to same-sex couples that are available

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<sup>1</sup> *Baker v. Nelson* (Minn. 1971)

<sup>2</sup> *Jones v. Hallahan* (Ken. 1973)

<sup>3</sup> *Baehr v. Lewin/Miike* (Haw. 1994). The court did not rule that Hawaii's marriage laws were unconstitutional. Rather, it ruled that they were subject to "strict scrutiny" because they were a form of gender discrimination. The court ordered the state to show that its marriage laws furthered a compelling state interest. The order was made moot when Hawaii voters amended their state constitution. The amendment to the Hawaii Constitution reads, "The legislature shall have the power to reserve marriage to opposite-sex couples." (Haw. Const. Art. 1, §23).

<sup>4</sup> No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship (28 U.S.C. §1738(c)).

<sup>5</sup> A definition of marriage is contained in ORS 106.010: "Marriage is a civil contract entered into by males at least 17 years of age and females at least 17 years of age, who are otherwise capable, and solemnized in accordance with ORS 106.150." Various other sections of ORS 106 form the broader legal understanding of marriage.

to opposite-sex couples.<sup>6</sup> The court ordered Vermont's Legislature to remedy this inequity; the Legislature in turn created same-sex "civil unions." Several states have subsequently refused to recognize same-sex civil unions performed in Vermont.<sup>7</sup> Moreover, many legal scholars have questioned the constitutionality of DOMA on grounds that it is an over-extension of congressional power<sup>8</sup> and violates equal protection and due process rights under the U.S. Constitution.<sup>9</sup>

In November 2003, the Supreme Judicial Court of Massachusetts ruled that denial of marriage licenses to same-sex couples is unconstitutional.<sup>10</sup> In response, President Bush, in his January 2004 State of the Union address, warned that the courts could rule DOMA unconstitutional and called for an amendment to the United States Constitution banning same-sex marriage.<sup>11</sup> The proposed amendment came to the floor, but failed to pass the U.S. Senate in July 2004. On November 2, 2004 Oregon, along with 11 other states, will vote on proposed legislation to limit marriage to opposite-sex couples.

Proponents of "traditional marriage" in Oregon responded to the Massachusetts ruling in February 2004 by submitting two "defense of marriage" constitutional amendments. The proposed amendments were submitted to the Oregon Secretary of State for pre-election review on February 19, 2004.<sup>12</sup> Chief petitioners of both measures withdrew their initiatives on March 2, 2004. That same day, two significant things also occurred: a third initiative, which subsequently became Measure 36, was submitted to Oregon's Secretary of State; and Multnomah County officials announced they would begin issuing marriage licenses to same-sex couples the following day. Following the Multnomah County decision, more than 3,000 same-sex couples were married, before a state court ordered Multnomah County to stop issuing marriage licenses to same-sex couples.

<sup>6</sup> *Baker v. State* (Ver. 1999)

<sup>7</sup> *Rosengarten v. Downes*, 802 A.2d 170 (Conn. App. Ct. 2002) (trial court had no jurisdiction to dissolve civil union); *Burns v. Burns*, 253 Ga. App. 600 (2002) (mother was not married to her civil union spouse and thus, under divorce consent decree, could not have visitation with children while cohabitating with civil union spouse). A trial court in Texas respected a civil union for purposes of dissolving it, but later vacated its decision at the request of the state Attorney General and granted a new trial. *In the Matter of the Marriage of R.S. & J.A.*, No. F-185.063, Agreed Final Decree of Divorce (Tx. Dist. Ct., 279th Judicial Dist. Mar. 3, 2003). The parties subsequently withdrew their suit.

<sup>8</sup> Johnson, Julie. 1997. "The Meaning of 'General Laws: The Extent of Congress' Power Under the Full Faith and Credit Clause and the Constitutionality of the Defense of Marriage Act." *University of Pennsylvania Law Review* 145:1611-1647. See also Ruskey-Kidd, Scott. 1997. "The Defense of Marriage Act and the Overextension of Congressional Authority." *Columbia Law Review* 97:1435-1482.

<sup>9</sup> Note. 2004. "Litigating the Defense of Marriage Act: The Next Battleground for Same-Sex Marriage." *Harvard Law Review* 117:2684-2707.

<sup>10</sup> *Goodridge v. Department of Public Health* (Mass. 2003)

<sup>11</sup> Text of State of the Union address on White House Web site: [www.whitehouse.gov/news/releases/2004/01/20040120-7.html](http://www.whitehouse.gov/news/releases/2004/01/20040120-7.html)

<sup>12</sup> One proposed amendment read, "Only marriage between one man and one woman is valid or recognized; same legal status for unmarried individuals is prohibited." The other read: "Marriage is a civil contract entered into in person by one male and one female" (Office of the Secretary of State, Oregon).

In April 2004, a Multnomah County Circuit Court judge found Oregon's marriage statutes to be in violation of the privileges and immunities clause, Article 1, Section 20 of the Oregon Constitution.<sup>13</sup> The Court thereby ordered the state of Oregon to register all same-sex marriages already performed in Multnomah County. The court simultaneously ordered Multnomah County to stop issuing same-sex licenses until the Legislature had an opportunity to consider amending the marriage statutes. The court also barred further legal proceedings until the Oregon Supreme Court ruled on the matter.<sup>14</sup>

Should Measure 36 fail, the focus of the debate likely will shift to the lawsuit currently before the Oregon Supreme Court. The court's decision may settle the debate outright, or it may turn the matter over to the Legislature for consideration.

Should Measure 36 pass, it will almost certainly be challenged in state and federal courts. Meanwhile, the status of the same-sex couples married in Multnomah County is likely to remain in limbo.

### III. ARGUMENTS PRO AND CON

#### A. Arguments Advanced in Favor of the Measure

Proponents of Measure 36 contend the following:

##### Rights and Legal Issues

A constitutional amendment is necessary to stop the actions taken by Multnomah County in issuing marriage licenses to same-sex couples.

Measure 36 has provided an opportunity for public debate on Oregon's willingness to accept same-sex marriage.

Passage of Measure 36 will insert into the Oregon Constitution an unambiguous and commonly accepted definition of marriage.

Changing the traditional understanding of marriage will open the door to marriages based on a host of other relationships.

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<sup>13</sup> "No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens."

<sup>14</sup> Mary Li et al. and Multnomah County vs. State of Oregon et al vs. Defense of Marriage Coalition et al. (Mult. Co. 2004)

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Oregon must retain its position on traditional marriage regardless of actions taken in other states.

Measure 36 does not preclude extending other legal benefits to same-sex couples.

### Purpose and Benefits of Traditional Marriage

Traditional marriage has always been between one man and one woman.

The purpose of marriage is to bear and rear children. The state has long had an interest in supporting traditional marriage as an institution to promote stability and an optimal environment for child rearing.

Evidence of the effects on children reared in same-sex households is at best unclear; at worst it suggests children who grow up in same-sex parenting environments are disadvantaged.

### Equality

Measure 36 would treat homosexuals and heterosexuals equally because both would be allowed to marry someone of the opposite sex.

Homosexuality is a choice, not an immutable characteristic, such as race or sex. It is appropriate for the state to regulate behavioral choices.

## **B. Arguments Advanced Against the Measure**

Opponents of Measure 36 contend the following:

### Rights and the Constitution

Traditionally the purpose of the Constitution has been to protect the rights of minorities—especially unpopular minorities. Amending the Constitution to deny rights to minorities is wrong.

Amending the Constitution is a drastic step that should be taken slowly and carefully; it requires sustained public deliberation. Measure 36 has been pushed forward too quickly and threatens to deprive the public of a meaningful discussion on same-sex marriage.

If Measure 36 passes, the legal limbo in which same-sex couples married in March and April find themselves could continue for years.

Oregon state law does not prohibit discrimination based on sexual orientation. If Measure 36 passes, the Legislature could view it as a reason to forego new civil rights legislation to protect homosexuals in areas other than marriage.

### Benefits and Protections

It is in the state's interest to encourage stable families. Defining marriage as an opposite-sex union denies same-sex couples and their families hundreds of legal benefits and protections that foster stable families.

Measure 36 does nothing to promote stable homes or the well-being of children.

### Dignity and Respect

Measure 36 attempts to codify in the Constitution the concept that same-sex relationships are less worthy than opposite-sex relationships, and by implication that homosexuals are less worthy than heterosexuals.

Same-sex marriage is as much about attaining dignity and respect as it is about obtaining legal and economic benefits. Even if Measure 36 does not specifically prohibit "civil unions" or a similar, marriage-like status, it fails to recognize that dignity and respect are principal social benefits of marriage.

Measure 36 is not solely about "defending marriage;" it is also about some members of the public being uncomfortable with homosexuality.

The institution of marriage and "traditional family life" in Multnomah County have not suffered from the issuance of marriage licenses to same-sex couples. Recent experience with same-sex marriages in Multnomah County shows that concerns voiced by proponents of Measure 36 are exaggerated.

## **IV. DISCUSSION**

Your committee believes marriage has served society remarkably well over the ages. It reflects the value society places on love, fidelity and commitment. Marriage is vital to the stability of families and, by extension, the stability of society. Changes to the institution of marriage should be undertaken with caution and only after serious deliberation.

Your committee interviewed many witnesses and independently researched this issue. We recognize the significance of the institution of marriage, and we are convinced that both sides care

deeply about its place in society. After careful deliberation, we recommend a NO vote on Measure 36. The most significant issues we considered are summarized below.

### Language of the Measure

The proposed constitutional amendment reads: "It is the *policy* of Oregon, and its political subdivisions, that only a marriage between one man and one woman shall be valid or legally recognized as a marriage."<sup>15</sup> To understand the legal language, the committee heard testimony from retired Oregon Supreme Court Justice Hans Linde.

The drafters' choice of the word "policy" seems an attempt to limit Oregon's obligation to recognize same-sex marriages performed in other states. Judge Linde testified:

"The United States Constitution (Art. IV, §1) requires every state to give 'full faith and credit' to 'the public acts, records, and judicial proceedings' of other states (presumably including decisions involving marital status), but courts have carved out an exception if doing so would contravene the state's 'public policy.' The measure seeks to invoke this exception against recognizing same-sex marriages that were legally contracted in other states."<sup>16</sup>

At the same time, the amendment language does not address the question of providing legal benefits of marriage to same-sex couples in the form of "civil unions" or similar arrangements. Every legal expert who testified before your committee thought that even if Measure 36 passes, Oregon would be free to create same-sex civil unions. Your committee struggled to understand why proponents should want to deny legal standing to the civil unions of other states while leaving open the possibility of creating civil unions in Oregon. For this reason, we believe the language of Measure 36 will not contribute to a speedy legal resolution of this issue for Oregonians.

### The Nature of Homosexuality

Proponents of Measure 36 stated that homosexuality is a choice. They further testified that Measure 36 would, therefore, treat homosexuals and heterosexuals alike by enabling both to marry someone of the opposite sex. Conversely, Measure 36 would prohibit both homosexuals and heterosexuals from marrying someone of the same sex. Your committee finds this argument disingenuous. Measure 36 is clearly designed to exclude homosexuals from marriage and, as such, from the legal and emotional benefits that flow from marriage.

***Proponents of Measure 36 ... testified that Measure 36 would, therefore, treat homosexuals and heterosexuals alike by enabling both to marry someone of the opposite sex.***

<sup>15</sup> Emphasis added.

<sup>16</sup> Memorandum written by Judge Hans Linde for your committee

Science has not discovered a single cause of homosexuality, but there is wide agreement in the medical community that homosexuality is not a choice. In 1973, the American Psychiatric Association removed homosexuality from its list of mental disorders.<sup>17</sup> Since then the Association has resolved to fight discrimination based on sexual orientation in housing, public accommodations and licensing. Today, the American Medical Association's official position is that homosexuality is not a mental disorder and that patients cannot change their sexual orientation.<sup>18</sup> And the American Psychology Association states, "[H]uman beings cannot choose to be either gay or straight. Sexual orientation emerges for most people in early adolescence without any prior sexual experience. Although we can choose whether to act on our feelings, psychologists do not consider sexual orientation to be a conscious choice that can be voluntarily changed."<sup>19</sup>

In 1994, a City Club study committee examined the nature of homosexuality. Their report concluded, "There is a strong biological component in the genesis of homosexuality. Given this, sexual orientation appears to be more an immutable trait than a personal choice."<sup>20</sup> Proponents of Measure 36 offered testimony they believed refuted this conclusion, but your committee was not persuaded.

Your committee believes that the Constitution should treat all citizens equally. As homosexuality is not a choice, it is wrong to amend the Constitution to deny same-sex couples equal access to marriage.

### **The Tradition of Marriage**

Witnesses in support of Measure 36 argued that the measure would only codify what has long been accepted by society: that marriage has always been between one man and one woman. They further argue that no one can know the full consequences of changing this definition to include same-sex relationships. Your committee does not dispute this, but we nonetheless find it an unconvincing justification for denying same-sex couples the right to marry. Marriage is not a static institution. It has undergone considerable change in its legal definition over time. Wives were once considered the property of husbands. In many states, marriages between people of different races were legally prohibited. Such laws today are deemed unjust in a modern, democratic society. Attitudes and patterns of behavior are also changing. Many individuals are choosing to marry later, if at all, and have fewer children; far

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<sup>17</sup> American Psychiatry Association. [www.psych.org/public\\_info/homose~1.cfm](http://www.psych.org/public_info/homose~1.cfm)

<sup>18</sup> American Medical Association policy H160.991 "Health Care Needs of the Homosexual Population"

<sup>19</sup> American Psychological Association. <http://www.apa.org/pubinfo/answers.html>

<sup>20</sup> City Club of Portland. 1994. "Homosexuality in Oregon." Vol. 76. No. 6

more women work outside the home than just a few decades ago. All of these trends bear witness to the changing nature of our families and society. At the same time, homosexuals have struggled and achieved a measure of acceptance in society. Your committee believes homosexuality should not be a legal basis for discrimination.

Traditional beliefs about marriage are often grounded in religious teaching. Your committee recognizes that marriage includes a religious component. Churches, synagogues and mosques most certainly can, and do, have their own views on who can marry, and many choose to consecrate only opposite-sex marriages. No law should infringe upon that right. Ultimately, however, the state regulates marriage as a civil—not religious—contract. And as such, the state is obligated to set aside particular religious beliefs and provide same-sex couples equal access to civil marriage.

### Impact on Children

Supporters of Measure 36 argue that only traditional marriages (i.e., opposite-sex marriages) should be sanctioned by the state because they have proved the best model for a stable environment in which to bear and rear children. Your committee does not dispute the benefits of raising children in two-parent families, but we are not convinced that families headed by opposite-sex couples offer a more beneficial environment to children than families headed by same-sex couples. Most scientific research has found no differences in the welfare of children reared by same-sex parents compared to children reared in traditional families.<sup>21</sup>

***Voters will decide ... whether the parents of children being raised by same-sex couples have the right to marry.***

Witnesses in support of Measure 36 allege that scientific literature on same-sex parenting lacks methodological rigor and long-term observation. A study in the *American Sociological Review*, the most thorough review of same-sex parenting research to date, echoed some of these concerns.<sup>22</sup> However, your committee believes this alone is not an adequate reason to support Measure 36 because the right of same-sex couples to rear children is not in dispute. Same-sex couples raise children now and will continue to do so if Measure 36 passes. Voters will decide, however, whether the parents of children being raised by same-sex couples have the right to marry. Your committee finds Measure 36 to be inconsistent with proponents' stated belief that children should be raised in stable two-parent families.

Measure 36 proponents also argue that procreation is an essential element of marriage. One witness testified that "the only reason the state is involved in marriage is for the procreation of chil-

<sup>21</sup> Perrin, Ellen, C., and the Committee the Psychosocial Aspects of Child and Family Health of the American Academy of Pediatrics. 2002. "Technical Report: Co-parent and Second-Parent Adoption by Same-Sex Parents." *Pediatrics* 109:341-346.

<sup>22</sup> Stacey, Judith, and Timothy J. Biblarz. 2001. "(How) Does the Sexual Orientation of Parents Matter." *American Sociological Review* 66:159-183.

dren." Your committee disagrees. Couples marry with a variety of intentions; some choose to have children and others do not. Couples are not required to state their intentions or capabilities to bear children to the government prior to qualifying for a marriage license.

### **Legal Benefits and Obligations**

Comparisons between unmarried same-sex couples and married opposite-sex couples are difficult because married couples receive more than 1,000 legal protections and benefits not available to unmarried couples. There are 1,138 federal marriage benefits and hundreds of state benefits accorded to married couples.<sup>23</sup> Love and commitment brings couples together, but legal benefits help keep married couples together. The legal benefits of marriage include:

The right to medical benefits; including hospital visitation and the ability to make medical decisions for an incapacitated partner.

The right to economic benefits; including Social Security, health insurance, retirement savings and pensions.

The right to family care benefits; including the right to unpaid leave from their jobs to care for an ill spouse, and the right to live together in nursing homes.

Marriage, however, is more than a collection of benefits; it also carries with it certain obligations. Your committee believes it is important for voters to acknowledge that one element of marriage is the legal "road map" it provides for conflict resolution. While divorce is an unfortunate reality, a marriage contract allows a court to order a fair distribution of the couple's assets and ensure each parent takes responsibility for his or her children. Same-sex couples in long-term relationships currently face great legal uncertainty when their relationships end. This is an unfortunate burden to the couple and is a wholly unreasonable and unnecessary burden for their children.

### **Societal Benefits**

Beyond the legal benefits of marriage, there are also many social benefits of marriage. A 1995 review of major scholarly literature on marriage found that married people engage in fewer risky behaviors, such as alcohol and drug abuse, have lower mortality rates, and greater wealth than single or cohabitating individuals.<sup>24</sup> In a separate review, the American Academy of Pediatrics concurred:

"Marriage is beneficial in many ways. Married men and women are physically and emotionally healthier and are less likely to engage in health risk behaviors, such as alcohol or drug abuse, than are unmarried adults. Married men and, to a slightly lesser extent, married women live longer. These positive health

<sup>23</sup> United States General Accounting Office. [www.ndrights.org/publications/pubs/2004GAO.pdf](http://www.ndrights.org/publications/pubs/2004GAO.pdf)

<sup>24</sup> Waite, Linda, J. 1995. "Does Marriage Matter." *Demography* 32:483-507.

outcomes of marriage are not primarily the result of self-selection but reflect that people behave differently when they are married."<sup>25</sup>

Your committee recognizes that marriage is not a panacea and not necessarily the right choice for every couple. But we also believe that the benefits of marriage extend to the public at-large: longer, healthier and economically secure lives are in everyone's interest. There is no evidence that the societal benefits of marriage would not extend to same-sex couples. Therefore, we feel it is in the state's interest to encourage marriage for all citizens, including same-sex couples.

### **Is Same-sex Marriage the Beginning of a Slippery Slope?**

Witnesses in favor of Measure 36 argue that if marriage is extended to same-sex couples then the state could not place any restrictions on marriage eligibility. Proponents argue, for example, that the legality of same-sex marriages would open the door to polygamous marriages.

Your committee cannot determine all the long-term effects of allowing same-sex marriage, but we are not convinced that a "slippery-slope" argument justifies support for Measure 36. To the contrary, we are confident that the Legislature and the citizens of Oregon can reasonably define marriage while not denying marriage to same-sex couples. Oregon law already limits who can marry whom. If same-sex couples are allowed to marry, the state might have to revisit some of these limits, and this could be difficult. But your committee does not believe that same-sex couples should be denied the right to marry because the Legislature might be forced to review marriage eligibility laws.

Conversely, if there is a slippery slope to be avoided, your committee believes it could very well be the advent of civil unions. Your committee is deeply concerned that creating a legal alternative to marriage—such as civil unions—could serve to undermine the institution of marriage. A substitute institution would likely not be exclusive to same-sex couples and it could, more often than not, reflect economic expediency rather than a deep, emotional commitment. This in turn could have long-term negative consequences on the institution of marriage.

### **City Club's Position on Constitutional Amendments**

In 1996, City Club recommended three criteria for constitutional amendments:

- 1) Amendments should relate only to the structure, organization and powers of the government, and the rights of the people with respect to their government.
- 2) Initiated amendments qualifying for the ballot should first be referred to the Legislative Assembly for deliberative consideration and then submitted to the people at the next general election.

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<sup>25</sup> American Academy of Pediatrics. "Family Pediatrics: Report of the Task Force on the Family." *Pediatrics* 111: 1548.

3) Amendments should require three-fifths majority for approval.<sup>26</sup>

Measure 36 fails on the second and third criteria. The measure was not submitted to the Legislative Assembly for deliberative consideration. In fact, it was certified on August 1, 2004, leaving only three months for public debate. And Oregon requires only a simple majority vote to pass a constitutional amendment.

## V. CONCLUSIONS

The legal language of the measure is ambiguous and unlikely to lead to a resolution of the issue of same-sex marriage in Oregon.

Questions regarding the legal rights of individuals under Oregon's Constitution should not be decided by a simple majority vote.

Amendments to Oregon's Constitution should be publicly debated by the state's Legislature before being referred to voters.

Oregon defines and regulates marriage as a civil contract. The state therefore has an obligation to provide equal treatment before the law.

Sexual orientation should not be the basis for legal discrimination in Oregon.

Denying same-sex couples the status of marriage discriminates against and harms same-sex couples and their families. Further, allowing same-sex marriage would not harm opposite-sex couples or the institution of marriage in any meaningful way.

Marriage has proved health and social benefits to individuals and their families who participate in it.

The benefits of marriage extend to the wider public: longer, healthier and economically secure lives are in everyone's interest. Therefore, it is in the state's interest to encourage marriage for all citizens, including same-sex couples.

Legal alternatives to marriage—such as civil unions—are not adequate substitutes for the right to marry.

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<sup>26</sup> City Club of Portland. 1996. "The Initiative and Referendum in Oregon." Vol. 77. No. 36.

## VI. RECOMMENDATION

**Your committee unanimously recommends a NO vote on Measure 36.**

Respectfully submitted,

Alan K. Brickley  
Sylvia Golden  
John Horvick  
Tom K. Iverson  
Morgan O'Toole-Smith  
Khalid Wahab  
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Leslie Morehead, *research adviser*  
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## VII. APPENDICES

### Witnesses

Kelly Clark, Attorney, Defense of Marriage Coalition  
Charlie Hinkle, Affiliated Attorney, American Civil Liberties Union  
Mark Johnson, Attorney, Johnson Renshaw & Lechman-Su PC  
Judge Hans Linde, Justice, Oregon Supreme Court (ret.)  
Donna R. Meyer, Attorney, Fitzwater & Meyer LLP  
Georgene Rice, Communications Director, Defense of Marriage Coalition  
Roey Thorpe, Executive Director, Basic Rights Oregon

### Resources

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