

# Should same-sex marriage be legal?

Lane Kenworthy

Fall 2011

# *Outline*

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Current policy

Outcomes

- Fairness

- Well-being and happiness

  - Gays and lesbians

  - Children

- The institution of marriage

Public opinion

# Current policy

## *Current policy*

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Policy options for same-sex unions

Marriage

Civil unions

No recognition

## *Current policy*

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### Federal

Marriage: the 1996 Defense of Marriage Act specifies that a marriage is a union between one woman and one man

Civil unions: not recognized

### State

Same-sex marriage is legal in 6 states: Iowa, Massachusetts (the first in 2004), New Hampshire, New York, Vermont, plus Washington DC. Not legal in the other 44 states

Civil unions are legal in 13 states

## *Current policy*

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Same-sex marriage is legal in some countries

Argentina

Norway

Belgium

Portugal

Canada

South Africa

Iceland

Spain

Netherlands

Sweden

**Fairness**

# *Fairness*

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Government should not discriminate on the basis of sexual orientation unless there is some compelling reason to do so (equal protection principle, 14th amendment)

Is there a compelling reason?

# **Well-being and happiness: gays and lesbians**

## *Well-being and happiness: gays and lesbians*

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Marriage confers a number of legal rights and financial benefits

Stay with your spouse in a hospital room

File a joint tax return

Receive spousal and survivor Social Security benefits

Eligible for health insurance through spouse

And so on ...

## *Well-being and happiness: gays and lesbians*

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Why not civil unions?

Some employers — mainly governments, universities, and large firms — make benefits available to domestic partners

Laws could be changed to ensure most or all relevant benefits are available to people joined via a civil union

# *Well-being and happiness: gays and lesbians*

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Why not civil unions?

Married persons tend to be healthier and happier than non-married persons, controlling for age, race, education, income, and other factors

But this is based on comparison between married and not-yet-married/divorced/widowed. We don't have enough data for a comparison between married and civil unioned

## *Well-being and happiness: gays and lesbians*

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Why not civil unions?

The argument that civil unions are an effective substitute for marriage is similar to the "separate but equal" notion used to justify different schools, restaurants, and public facilities for African Americans prior to the 1960s

WHITE

COLORED



# **Well-being and happiness: children**

## *Well-being and happiness: children*

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On average, children fare better with two parents than with one

*Growing Up with a*  
**SINGLE  
PARENT**

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**WHAT HURTS, WHAT HELPS**

SARA McLANAHAN  
*and*  
GARY SANDEFUR

## *Well-being and happiness: children*

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On average, children fare better with two parents than with one

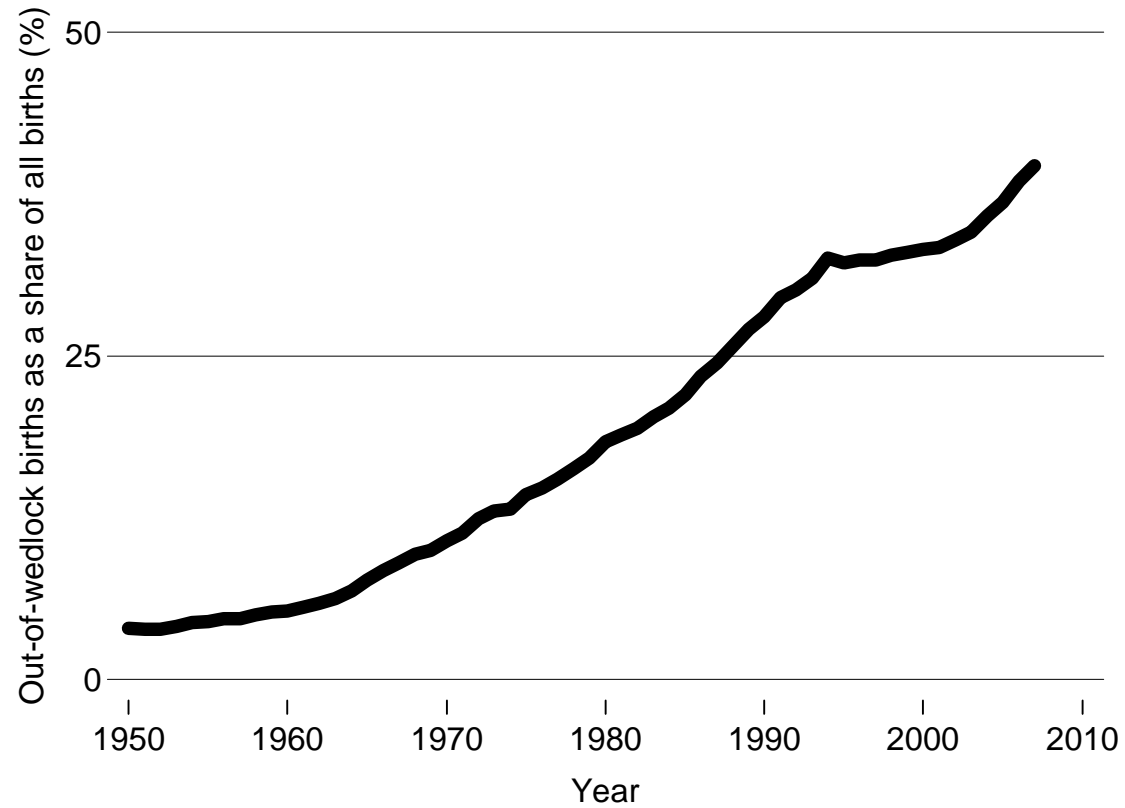
Might same-sex marriage weaken the link between marriage and childrearing and thereby encourage out-of-wedlock births?

If so, should we also outlaw marriage among the elderly?

Out-of-wedlock births have been increasing steadily for half a century

# *Well-being and happiness: children*

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Source: National Center for Health Statistics.

## *Well-being and happiness: children*

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On average, children fare better with two parents than with one

Will marriage make same-sex parents more likely to stay together?

Among heterosexuals, married parents are more likely to stay together than cohabiting parents

But it's difficult to tell how much of the difference is caused by being married



# **COHABITATION, MARRIAGE AND CHILD WELLBEING**

A Cross-National Perspective

**DAVID POPENOE**

# Cohabitation, marriage and child outcomes

IFS Commentary C114

Alissa Goodman  
Ellen Greaves

## *Well-being and happiness: children*

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Do children fare better with opposite-sex parents?

The best available research suggests no

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JUDITH STACEY *New York University\**

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## How Does the Gender of Parents Matter?

*Claims that children need both a mother and father presume that women and men parent differently in ways crucial to development but generally rely on studies that conflate gender with other family structure variables. We analyze findings from studies with designs that mitigate these problems by comparing 2-parent families with same or different sex coparents and single-mother with single-father families. Strengths typically associated with married mother-father families appear to the same extent in families with 2 mothers and potentially in those with 2 fathers. Average differences*

likely to end up in prison. They are more likely to have behavioral problems, or run away from home, or become teenage parents themselves.

—Barack Obama

In 1999 *American Psychologist* unleashed a public furor when it published an article that challenged a popular discourse on the dangers of fatherlessness. “Deconstructing the Essential Father” (Silverstein & Auerbach, 1999) contended that successful parenting is not gender specific and that children do not need fathers, or mothers either, for that matter. Rather, any gender configuration of

**BRIEF OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION,  
THE CALIFORNIA PSYCHOLOGICAL ASSOCIATION,  
THE AMERICAN PSYCHIATRIC ASSOCIATION, AND  
THE AMERICAN ASSOCIATION FOR MARRIAGE AND FAMILY THERAPY  
AS AMICI CURIAE IN SUPPORT OF PLAINTIFF-APPELLEES**

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# The institution of marriage

# *The institution of marriage*

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Will same-sex marriage cause the institution to decay?

It's possible, but ...

Similar worries in the past about inter-class and interracial marriage proved unfounded

Interracial marriage was illegal in 30 states prior to 1948 and remained illegal in 16 (mostly southern) states until a 1967 Supreme Court ruling

# *The institution of marriage*

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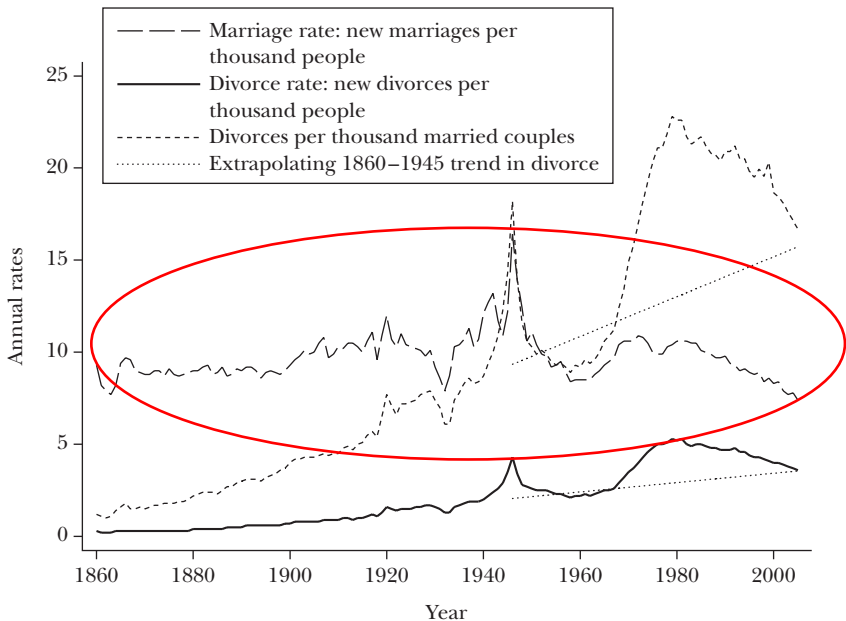
Will same-sex marriage cause the institution to decay?

It's possible, but ...

The marriage rate already has been decreasing for several decades

Figure 1

## Marriages and Divorces per Thousand People, United States 1860–2005



Sources: Data for 1860–1919 are from Jacobson (1959); 1920–1998 from Carter et al. (2006); 1999–2005 from U.S. Census Bureau (2007).

## *The institution of marriage*

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Will same-sex marriage eventually lead to legalization of polygamy (slippery slope)?

Why would it? Same-sex marriage embraces the traditional stipulation of one and only one partner

## *The institution of marriage*

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Some contend that marriage's opposite-sex stipulation is sensible because homosexuality is "unnatural"

But scientists agree that while environment and choice may matter, homosexuality is caused at least partly by biology and by what happens in utero

## *The institution of marriage*

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Ross Douthat: Opposite-sex-only marriage law "holds up the domestic life ... in which children grow up in intimate contact with both of their biological parents as a uniquely admirable approach to child-rearing."

Should we, then, prohibit someone with a child from marrying anyone who isn't the child's other biological parent?

# Public opinion

## *Public opinion*

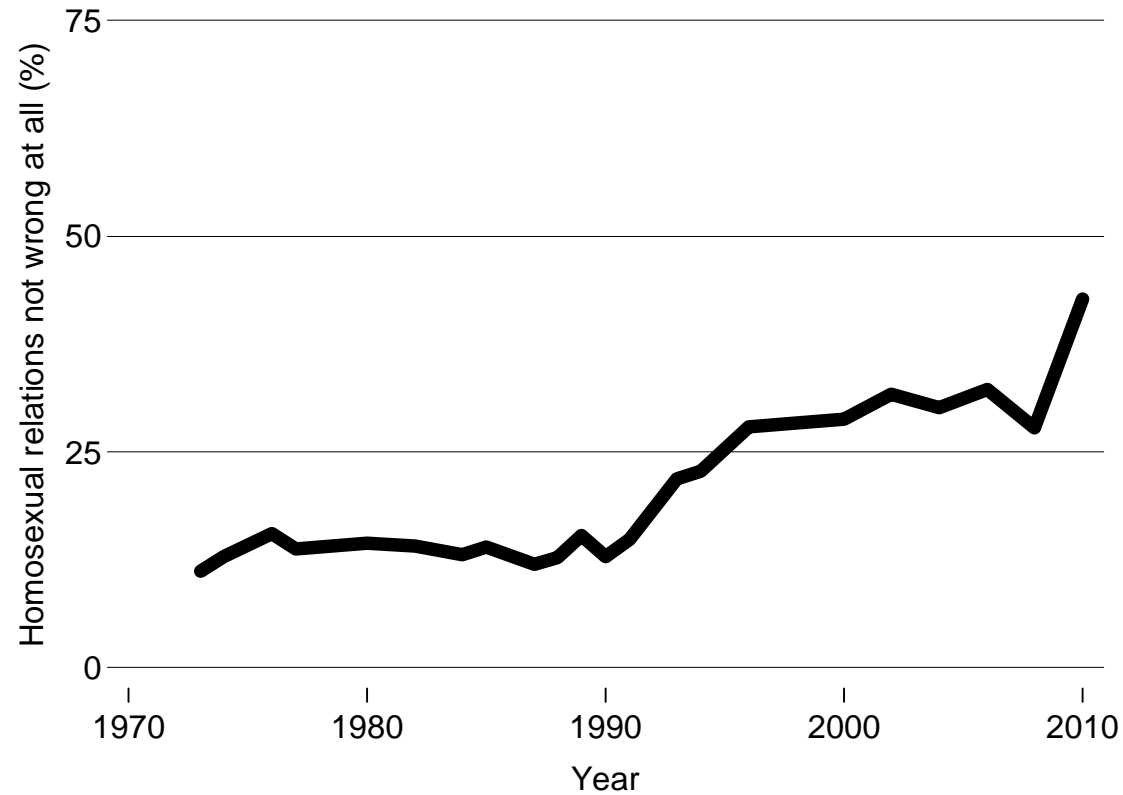
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Since the early 1990s there's been a sharp increase in support for gay rights, including marriage

The trend is especially prominent among the young, suggesting it's likely to persist

# Public opinion: homosexuality

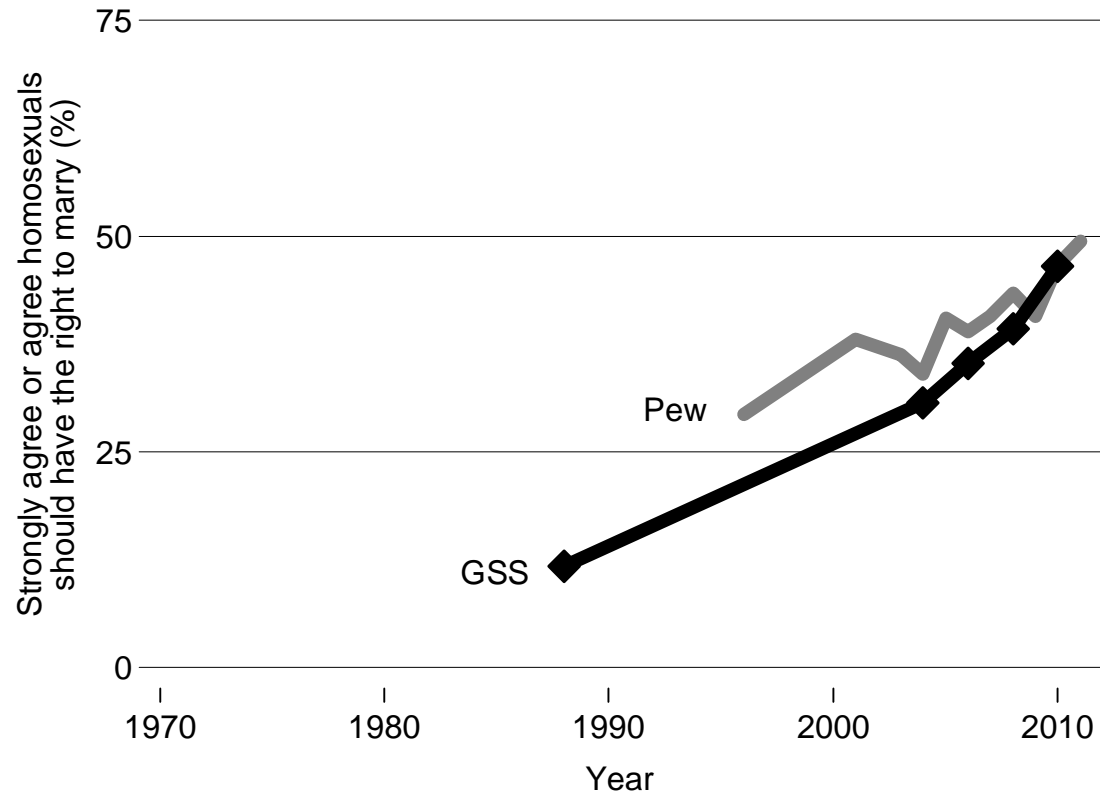
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Question: "What about sexual relations between two adults of the same sex?" Other response options: always wrong, almost always wrong, sometimes wrong. Source: General Social Survey (GSS), [sda.berkeley.edu/archive.htm](http://sda.berkeley.edu/archive.htm), variable = homosex.

# Public opinion: same-sex marriage

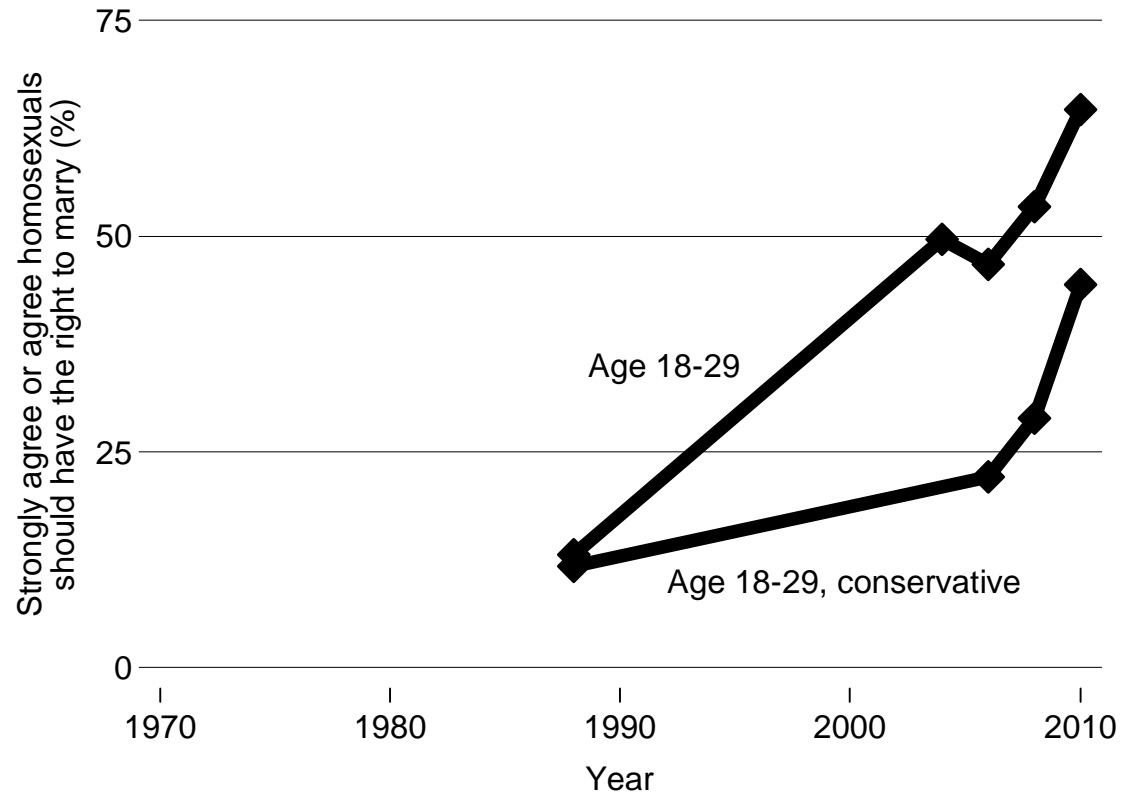
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GSS question: "Do you agree or disagree? Homosexual couples should have the right to marry one another." Other response options: disagree strongly, disagree, neither agree nor disagree. Pew question: "Do you strongly favor, favor, oppose, or strongly oppose allowing gays and lesbians to marry legally?" Other response options: oppose, strongly oppose. Sources: General Social Survey (GSS), [sda.berkeley.edu/archive.htm](http://sda.berkeley.edu/archive.htm), variable = marhomo; Pew Research Center, [pewresearch.org](http://pewresearch.org).

# Public opinion: same-sex marriage

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# Support for Same-Sex Marriage, State by State

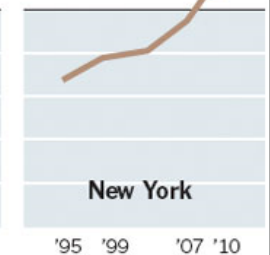
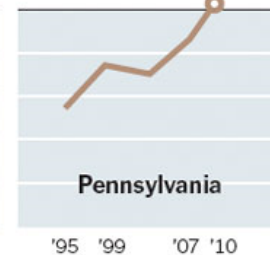
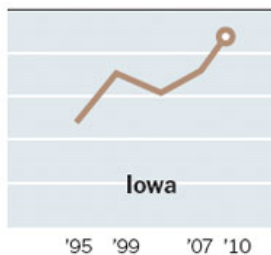
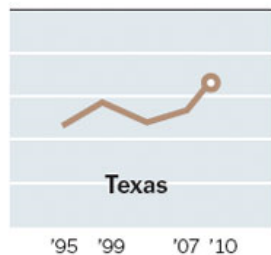
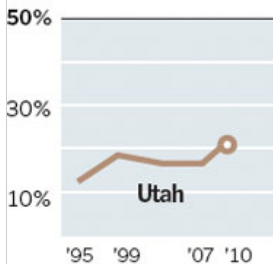
Related Article » |  Graphic: Support for Same-Sex Marriage Over Time »

## Support in the states for same-sex marriage, from least to most in 2010

Since 1996, 30 states (■) have passed constitutional amendments banning same-sex marriage. It is currently allowed in five states (□), but support has risen across the country, even in relatively conservative states.

SELECTED STATES

1994-6			2010			1994-6			2010			1994-6			2010		
■ Utah	12%	22%	■ Tex.	24%	35%	W.Va.	21%	41%	■ Ariz.	25%	48%	■ Hawaii	28%	54%			
■ Okla.	16	26	■ Neb.	20	35	■ Fla.	26	41	Ill.	26	48	Me.	29	55			
■ Ala.	17	26	■ La.	23	36	■ Va.	24	42	N.M.	24	49	■ N.J.	27	55			
■ Miss.	17	27	N.C.	21	36	□ Iowa	24	44	Del.	29	50	□ N.H.	30	55			
■ Ark.	17	29	■ Kan.	24	37	■ Wis.	26	44	■ Nev.	26	50	■ Calif.	32	56			
■ Tenn.	19	31	■ Mo.	26	37	■ Alaska	23	45	Md.	29	51	□ Conn.	34	57			
■ Ky.	18	31	Ind.	22	37	■ Ohio	24	45	Pa.	27	51	■ N.Y.	36	58			
■ S.C.	21	32	Wyo.	19	37	■ Mont.	23	45	■ Ore.	26	52	□ Vt.	32	59			
■ Idaho	17	33	■ S.D.	23	38	■ Mich.	26	46	■ Colo.	27	52	R.I.	34	60			
■ Ga.	21	34	■ N.D.	22	38	Minn.	26	47	Wash.	29	54	□ Mass.	33	62			



## *Public opinion*

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My guess is that many of those who oppose same-sex marriage do so due to discomfort, rather than for a substantive reason

That helps account for why opinion has shifted so rapidly

Gays and lesbians have become common in TV shows, movies, music, novels, so discomfort has diminished

When the discomfort fades, there's nothing left on which to ground one's opposition

# Summary

## *Summary*

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Denying marriage rights to same-sex couples violates the equal protection principle unless same-sex marriage is likely to cause bad outcomes

The available evidence doesn't support the bad-outcome hypotheses. If anything, it suggests outcomes will tend to be better with same-sex marriage legalized

The case against legalizing same-sex marriage thus hinges on uncertainty: we can't (yet) be sure it won't harm children or the institution of marriage