



# CRC Memorandum

## STATE BALLOT ISSUES ON THE NOVEMBER GENERAL ELECTION BALLOT

### PROPOSAL 04-01: Requiring Statewide and Local Votes on New Forms of Gambling

### PROPOSAL 04-02: Banning Same-Sex Marriage or Similar Unions

#### Proposal 04-01

On November 2, 2004, Michigan voters will be asked to amend the 1963 Constitution to require a statewide vote on any state actions to expand gambling opportunities and voter approval in any municipality to which gambling is proposed for expansion.

#### The Proposal

The proposal would amend Article IV, Section 41, of the Michigan Constitution to provide as follows:

*The legislature may authorize lotteries and permit the sale of lottery tickets in the manner provided by law. No law enacted after January 1, 2004 that authorizes any form of gambling shall be effective, nor after January 1, 2004, shall any new state Lottery games utilizing table games or player operated mechanical or electronic devices be established, without the approval of a majority of electors voting in a statewide general election and a majority of electors voting in the township or city where gambling will take place. This section shall not apply to gambling in up to three casinos in the City of Detroit or to Indian tribal gaming.* [language of proposed amendment in italics]

Proposal 04-01 would not terminate the expansion of gambling in the state, but would require voter approval of proposed expansions. Any legislation that authorizes any form of gambling – such as authorization of new casinos or the so-called racinos – would require voter approval on a statewide ballot before it could become effective. Likewise, any new games introduced by the Bureau of State Lottery that utilize table games or player operated mechanical or electrical devices would require voter approval in a statewide ballot before they could become effective. “Player operated mechanical or electronic devices,” although not defined by the proposal, can include slot-machines, video poker machines, video lottery terminals, and electronic pull-tab machines that have been introduced in some states and are being investigated in others to enhance sagging lottery revenues.

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#### Proposal 04-02

On November 2, 2004, Michigan voters will be asked to approve the following amendment that would add Article I, Section 25, to the State Constitution:

To secure and preserve the benefits of marriage for our society and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose.

The initiative is part of a national trend of attempts at strengthening same-sex marriage prohibitions by amending state constitutions. In the November 2004 election, Michigan will be one of 11 states where the electorate will be asked to amend the state constitution to prohibit same-sex marriages.<sup>1</sup> Michigan is among 39 states that prohibit same-sex marriages by constitution or statute.

If made part of Michigan’s Constitution, the initiative may be rescinded in only three ways: state constitutional amendment by referendum, state constitutional amendment by initiative, or federal judicial determination that it violates the U. S. Constitution.

Long-term legal implications of passage are open to interpretation and range from simply strengthening existing state law that prohibits same-sex marriages, to reversing the legality of domestic partner benefits, same-sex or otherwise, offered by public and private employers. The difference in interpretation is attributable to the clause “or similar union for any purpose,” which opponents of the measure characterize as opening the door to rescision of same-sex benefits currently offered by several state universities and local units of government. Further, opponents speculate that the clause could lead to an erosion of same-sex benefits offered by the significant number of private employers in Michigan, particularly those that pursue state contracts. Proponents maintain that the clause intends only to add emphasis to the proposal, and is not intended to reverse existing policies.

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## Proposal 04-01 (continued from page 1)

The proposal also would require voter approval of city or township ballot questions before new gambling establishments can begin operations within a

In 1933, as the state attempted to deal with the financial impact of the Great Depression, a law was enacted to provide for the regulation of horse race meetings, license of conduct for racing meets, and imposition of a tax on the pari-mutuel wagering associated with the races. Pari-mutuel wagering is a betting system in which all bets of a particular type are placed together in a pool, taxes and a house take are removed, and payoff odds are calculated by sharing the pool among all placed bets. Michigan has 7 horse race tracks with opportunities for pari-mutuel wagering on live and simulcast races. Today, 40 states authorize pari-mutuel wagering, with some states authorizing wagering on dog races and jai alai.

Other than casino gaming in Las Vegas, pari-mutuel wagering was the only state-sanctioned gambling authorized in the United States until the 1960s. In 1963, New Hampshire became the first state to authorize a state lottery. Several states followed, and in 1972, under pressure to balance the state budget and in view of the revenues garnered in other states, a ballot question proposed to amend the Michigan Constitution to authorize a state lottery. Upon approval, a lottery game was introduced, followed shortly thereafter by the introduction of instant games. Over the years, the Michigan Bureau of State Lottery has operated Daily 3 and Daily 4 games, instant games, Lotto and multi-state Lotto games, Keno and Club Keno games, and television game shows. Presently, Lottery tickets are sold in over

municipal unit. In Michigan, village residents remain township residents, so no provisions are necessary for voting on such a question in a village.

The proposal would not affect any current or future Indian tribal casinos or

the three casinos currently operating in the City of Detroit. Tribal casinos operate under compacts with the state government. The Detroit casinos operate under a petition-initiated law approved in a statewide vote.

## History

7,000 locations and another 700 locations sell only instant games. Club games are played in over 1,500 bars and restaurants. Michigan is one of 40 states currently with lotteries operated within their borders. Oklahoma will be voting on the question of authorizing a state lottery at the November election.

Also in 1972, Michigan authorized wagering on bingo games and millionaire parties as fundraising activities for charitable causes.

Casino gambling was introduced to Michigan in 1984, when the first Indian tribal casino opened. In 1988, the United States Congress enacted the Indian Gaming Regulatory Act that authorized Indian tribes to operate casinos under certain terms and conditions. The states' role in authorizing Indian tribal casinos is generally limited to negotiating compact agreements that regulate the conditions under which the casinos operate. Michigan, with 11 tribes operating 17 casinos, is one of 28 states with Indian tribal casinos operating within their borders.

Commercial casino gambling was authorized in Michigan in 1996, when a petition-initiated statute was enacted by a statewide vote to authorize three casinos within the City of Detroit. Detroit's casinos were intended to provide tax revenues to fund the state's schools, to support

the City of Detroit finances, and to provide viable alternatives to Casino Windsor, which had begun operations in Windsor, Canada, in 1984. The first of the three Detroit casinos began operations in 1999, with the other two beginning operations shortly thereafter. Michigan is one of 11 states that authorize commercial casino operations.

Legislation to authorize racinos, short for racetrack-based casinos, has been approved in both houses of the Michigan Legislature and currently awaits action in Conference Committee. Usually racinos offer slot machines, but some states have authorized other games as well. Michigan's horserace track operators have expressed an interest in expanding their operations to include racinos and other interests have applied for track licenses based on speculation that the legislation authorizing racinos will be enacted. Should the authorizing legislation be enacted and if Proposal 04-01 is approved by the electors, it would be necessary to subject the racino legislation to a statewide vote and

**Table 1**  
**Michigan State and Local Revenues**  
**from Gambling, FY2003**  
(millions of dollars)

State Casino Gaming Tax	\$ 90.8
Horserace Wagering Tax	11.8
Lottery (Net to School Aid Fund)	586.0
Local Casino Gaming Tax	<u>111.3</u>
Total	\$800.0

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local votes in the municipalities hosting racetracks that would have racinos. With the recent enactment of legislation in Pennsylvania to authorize up to 61,000 slot machines in racetracks and card rooms, 10 states now authorize

racinos or casinos with limited gaming opportunities. Other states are considering racinos, with electors in California and Illinois voting on ballot questions to authorize racinos in November.

In Fiscal Year 2003, the State of Michigan received 2.9 percent of its own source revenue from gambling. The City of Detroit received 16.5 percent of its own source revenue from the local tax on casinos (See **Table 1**).

### Analysis

More so than in many other states, gambling providers in Michigan primarily draw upon local state residents as their customers. Las Vegas has long served as a destination, with visitors traveling from all over the world for the gambling and entertainment opportunities offered. Atlantic City experienced success by offering gambling close to the major population centers of New York, Philadelphia, and Baltimore. Likewise, casinos in Louisiana, Mississippi, and many of the other states with casinos have been able to draw customers from other states or capitalize on the tourism activity already in place.

Gambling providers in Michigan have had different experiences. Lottery sales are largely made to Michigan residents. Some residents of other states might come to Michigan when the size of the pot grows sufficiently large, but those occasions are the exception rather than the rule. Horserace related pari-mutuel wagering opportunities are available in most states, including all of Michigan's surrounding states, so few residents of other states travel to Michigan to visit those establishments. Club Keno players are, by definition, patrons of neighborhood bars and restaurants. The Indian tribal casinos are not marketed much outside of Michigan. According to a July 28, 2004 article in *The Detroit News*, MGM Grand draws only about 15 percent of its patrons from outside of Michigan. Another 65 percent of the casino's patrons are from outside of Detroit, but within Michigan.

#### Mandated Referenda

This proposal offers two avenues to the ballot that are not currently available to those opposed to the expansion of gambling. The Michigan Constitution reserves to the people the power to approve or reject laws enacted by the legislature, the referendum. Many city charters also reserve the right of referendum to city residents. When the right of referendum is invoked, the enacted law is suspended until the people have an opportunity to approve or reject it at the polls. Proposal 04-01 would extend the right of referendum to actions of the Bureau of State Lottery that otherwise do not require legislative action. It is likely that any efforts to authorize a new casino in a city other than Detroit would involve a local effort to levy a local gaming tax. Provisions of the "Headlee Amendment" in the state Constitution require a vote of the electors of that local government to authorize new local taxes or to increase tax rate increases above those previously authorized. However, not all expansions of gambling would involve a new casino or new taxes, and the proposed amendment would require a local vote in those instances as well.

Michigan mandates ballot questions for few subject matters. Ballot questions must be submitted to the electorate on such issues as constitutional amendments and home rule charter amendments, the issuance of bonded indebtedness, the authorization of new local taxes not authorized in 1978, and tax rate increases above the rates authorized in 1978. The rate of the Sales Tax may

not be increased without a statewide constitutional amendment. Proposal 04-01 would thus elevate the authorization of enhanced gambling opportunities to this select company.

#### Restrictions on Competition

Historically, certain private firms – water and electricity or bridges and ferries, for example – have received protection by the State from competition on the grounds that they were public utilities. Gambling has received somewhat similar treatment. The limitations on gambling already accomplished through restrictions on the number of commercial casinos and licensing of horse racetracks would be augmented by the adoption of Proposal 04-01 in a way unprecedented for other private firms.

A case might be made that conditioning expanded gambling on voter approval may be justified by the negative social ramifications of compulsive gambling. Responding to a Congressional charge to provide more information, the National Gambling Impact Study Commission (NGISC) issued a report on the social and economic impacts of gambling.<sup>1</sup> Among the findings reported in the NGISC study was that the prevalence of pathological and problem gambling doubles when a casino is available within 50 miles. However, gambling opportunities exist outside the purview of Michigan state and local government that the proposed constitution amendment would do nothing to limit. Gamblers do not have to travel far from Michigan – Indiana, Illinois, Wisconsin, Pennsylvania, New York, Canada –

to find gambling opportunities. People may engage in friendly wagers for their own entertainment. The Internet has spawned tens of thousands of websites where gamblers can try their luck from the comfort of their own homes.

### Ballot Questions in Other States

A review of statutes authorizing gambling found at least 13 states with requirements for statewide votes, local votes, or both. Most vote requirements in other states call only for a local vote in the community that will host the gambling facility. Some states without vote requirements have sought voter approval through initiative or referendum provisions.

In South Dakota, the ballot question must appear in all counties within 15 miles of a proposed gambling facility. Such a measure reflects the area from which a track expects to draw customers, while the proposed Michigan measure and most provisions in other states reflect only the local unit in which the facility will be located.

Shortly after Louisiana adopted a constitutional amendment similar to Proposal 04-01, a statewide election gave every parish an opportunity to keep or reject most existing forms of gambling. At that time, video poker was operating in all parishes. The land-based casino was limited by statute and contract to Orleans Parish and riverboat licenses were limited to 15 and to certain parishes. Orleans Parish approved retaining the casino and all of the parishes with riverboat operations voted to keep them. On the other hand, 33 of the 64 parishes voted out video poker.

At the same time Michigan voters are deciding whether to amend the Constitution to require votes on future expansions of gambling, questions on the expansion of gambling will appear on the ballot in several states – most of

which appear due to petition-initiated efforts rather than voting requirements. Washington and Ohio electors will vote on authorization of video lottery terminals. California electors will vote to authorize 30,000 slot machines at five racetracks and 11 card clubs. Another California measure and an Oklahoma question would seek voter approval of expanding the operations of Indian tribal casinos. Nebraska electors will vote on authorization of casinos and slot machines at restaurants, bars, and racetracks. Oklahoma electors also will vote on authorization of a state lottery.

### Effect on the Lottery

The proposed amendment will have no immediate impact on Lottery games, but may burden the Bureau of State Lottery in efforts to capitalize on technological developments in the future. The state relies primarily on convenience stores, restaurants, and bars to serve as retail outlets for lottery tickets. That role is troublesome for some of these retailers, as time spent selling Lottery, instant game, or Club Keno tickets is time that cannot be spent on their core business.

While the provisions in the proposed amendment were apparently aimed at the video lottery terminals (VLTs), video poker, and other electronic games that rival slot machines for gamblers interest, they also may apply to self-serve Lottery terminals. Lotteries in other states have introduced VLTs and other electronic games to appeal to new customers due to their fast-paced action and instant pay off. Self-serve Lottery terminals are player operated electronic devices that sell lottery tickets just like those which currently can be purchased from a store clerk. In this way, they resemble automatic teller machines, vending machines that sell snacks and beverages, or self-checkout lanes that have been introduced to some stores. Self-serve Lottery terminals are already in

place in Texas and California.

Proponents and opponents agree that the State could introduce self-serve Lottery terminals to sell tickets for the games currently offered. Disagreement arises over what constitutes a “new state Lottery game.” Proponents of Proposal 04-01 argue that the State Lottery currently offers instant games (such as scratch-off tickets), online games (such as Daily 3 or Mega Millions games), and Club games (such as Club Keno). In their view, variations on these themes – such as the name of the scratch-off game or the number of digits drawn in the daily games – do not constitute new games, and thus would not require a vote. Opponents have taken a more literal reading of the proposal and worry that the courts would interpret a “new state Lottery game” to be anything not currently offered.

The implication of the courts taking a literal interpretation of the wording is troublesome for the Lottery. Michigan, like all states with lotteries, routinely develops new games to attract and retain customers. A strict requirement for voter approval would create several hurdles for Lottery officials:

- The need for the Lottery to gain a legislative resolution to place any questions on the statewide ballot could introduce legislative micromanagement to their operations.
- Because general elections are held only once every two years, a potentially long time delay would impede the ability of the Lottery to react to changing markets.
- State law restricts the use of public resources to advertise in support or opposition to ballot questions. Lottery officials could not spend state funds to support their ballot question while any potential opposition could spend freely.

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- Finally, a strict interpretation would require hundreds of local votes any time new Lottery games are planned for sale through self-serve terminals. With over 7,000 outlets selling online games, more than 700 outlets selling only instant

games, and more than 1,500 restaurants and bars selling Club Keno tickets, the proposed introduction of a new Lottery game through self-serve terminals could necessitate ballot questions in every municipality in which new games would

be offered for sale through self-serve terminals.

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<sup>1</sup> National Gambling Impact Study Commission, <http://govinfo.library.unt.edu/ngisc/index.html>, June 18, 1999.

## Proposal 04-02

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### Background

The federal Defense of Marriage Act (DOMA) was enacted in response to a 1996 circuit court decision in Hawaii that struck down a law prohibiting same-sex marriages, citing a lack of a compelling state interest. Though an amendment to the Hawaii Constitution reinstated the prohibition in 1998, a legislative compromise settled the issue with a “reciprocal benefits” law, allowing certain rights and benefits to accord to same-sex partnerships registered under the law.

DOMA defines marriage as being exclusively between a man and woman. DOMA also allows states the freedom to not recognize same-sex marriages as sanctioned by other states, by carving out an exception to the Full Faith and Credit clause of the U.S. Constitution, Article IV, Section 1. An early exception to the clause allowed states to uphold laws against polygamy and misce-

genation, though bans against miscegenation were overturned by the U.S. Supreme Court in 1967.

In July 2004, the United States Senate did not produce a simple majority of votes in support of a constitutional amendment to prohibit same-sex marriages in the United States, which would have required approval from 2/3 of its members, plus ratification by 3/4 of state legislatures. The elevation of same-sex marriages to the national agenda followed the recent set of state court opinions that liberalized statutory or common law status of marriage to include same-sex marriages.

In May 2004, the Massachusetts Supreme Court struck down a statute prohibiting same-sex marriages on constitutional grounds, citing, among other things, a lack of a rational basis to deny marital rights and privileges to same-sex

couples. As a result, in May 2004, same-sex couples began to obtain marriage licenses, making Massachusetts the first and only state to provide full marital benefits to same-sex couples. The Massachusetts Legislature is now considering a constitutional amendment to prohibit same-sex marriages.

Currently, four states have statutes that permit same-sex couples to have a governmentally-sanctioned union and certain rights and benefits. The State of California passed a domestic partner law that offers marriage-like benefits to same-sex couples, effective January 1, 2005. **Table 2** (on page 6) lists the states and same-sex marriage rights and obligations offered. Employment-based domestic partner benefits are offered by 11 states, with Connecticut and Washington allowing such for same-sex couples only.<sup>2</sup>

### Marriage in Michigan: Legal Provisions

In 1996, Michigan revised the statutory definition of marriage to “a unique relationship between a man and a woman.” To underscore the point, the statute explicitly invalidates the matrimonial contractual obligations of individuals of the same sex.

#### Michigan’s Definition of Marriage

Michigan defines marriage as:

...inherently a unique relationship between a man and a woman. As a matter of public policy, this state has a special interest in encouraging, supporting, and protecting that unique relationship in order to promote, among other goals, the stability and welfare of society and its children. A marriage contracted between individuals of the same sex is invalid in this state.<sup>3</sup>

In separate sections of the statute, “...marriage is a civil contract between a man and a woman, to which the consent of parties capable in law of contracting is essential.”<sup>4</sup> Subsections of the statute further emphasize that: “A man shall not marry . . . another man.”<sup>5</sup> And: “A woman shall not marry . . . another woman.”<sup>6</sup>

Proposal 04-02, if passed, would alter

**Table 2**

**Same-Sex Couple Benefits by State**

<b>State</b>	<b>Same-Sex Couple Benefits</b>
California	Domestic Partnership Registry becomes effective January 1, 2005; will allow most of the same rights and obligations to registered same-sex couples as heterosexual marriages.
Hawaii	Reciprocal Beneficiaries Act provides some partnership benefits to registered same-sex couples, including hospital visitation rights, the ability to sue for wrongful death, and property and inheritance rights.
Massachusetts	Full marital benefits for legally married same-sex couples. Same-sex couple marriages in Massachusetts are illegal for out-of-state residents if same-sex marriages are illegal in their state of residence.
New Jersey	Domestic Partner Registry allows insurance coverage, medical decision-making and joint state tax returns. Does not allow alimony or automatic parenting rights.
Vermont	“Civil Union” statute provides joint tax filing, inheritance, family law rights (divorce, annulment, child custody and support, alimony, domestic violence protection, and others), family leave benefits, power of attorney, and lawsuit standing to same-sex couples.

Source: [www.nolo.com](http://www.nolo.com).

the definition of marriage in Michigan. The clause “or similar union for any purpose,” is not found in any of Michigan’s marriage statutes. Therefore, passage of Proposal 04-02 would not just elevate existing state law to the state constitution, but would augment the current definition of marriage with language that could arguably proscribe same-sex (or heterosexual) civil unions or domestic partnership benefits.

### Legal and Financial Benefits

According to the U.S. General Account-

ing Office, there are over 1,000 references in the U.S. Code to marital status.<sup>7</sup> Selectively, these include social security benefits, low income housing and food stamp programs, as well as veterans’ and military benefits, taxation implications, employment benefits, and immigration and naturalization status. Statutory protections for married couples are also numerous, including legal protections such as the right to not have to testify against one’s spouse, domestic violence statutes, custody and child support, and probate statutes, to name just a few. Michigan statutes contain over 400 references to marriage.

Absent the ability to obtain a legally sanctioned marriage, couples (same-sex or otherwise) can enjoy many of the economic benefits of marriage by private contract, with exceptions that include joint tax filing status, joint insurance policies, and loss of consortium tort benefits. Non-economic benefits offered by marriage that cannot be privately contracted include judicial protections and evidentiary immunity, immigration residency for partners from other countries, and joint adoption rights.

### Non-Traditional Marriage

Household arrangements similar to but not enjoying state-sanctioned marriage exist throughout the United States:

**Same-Sex Couples.** According to the United States Bureau of the Census, there are over 8,000 female and 7,200 male couples who identified themselves as cohabiting in Michigan, or approximately 0.7 percent of all Michigan households. It is likely that the actual number of such couples is

significantly higher, inasmuch as privacy issues regarding sexual orientation leads to underreporting of same-sex, couple-based households.

**Common Law Marriage.** Generally, common law marriage is legal recognition of a de facto marital relationship not previously sanctioned by the state. Common law marriage is recognized in only 15 states, not including Michigan (See **Table 3** on page

8). Upon recognition as a common law marriage, benefits, liabilities, and responsibilities accrue as if the marriage was sanctioned. Of the 15 states that recognize common law marriages, only one, Rhode Island, does not prohibit same-sex marriages by law. Historically, state recognition of common law marriage by the state is rooted in equity, when partners were unable to travel to or be visited by a state-sanctioned marriage official.

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## Glossary of Terms

Terms and phrases used herein that connote quasi-marital partnerships have various legal meanings. Some of the following definitions derive from the state laws that initiated the term or phrase.

**Civil Union** – State of Vermont statute defines “civil union” as a legal relationship that extends most state marriage benefits to same-sex couples upon registration.

**Common Law Marriage** – State recognition of a heretofore-unrecognized marriage-like relationship, which, upon recognition as a common law marriage, accords marital benefits and liabilities to the relationship parties.

**Domestic Partnership** – a person (not necessarily a spouse) that cohabits with and shares a long-term sexual relationship with another. Primarily used in the context of “domestic partnership benefits,” which are offered by some employers to unmarried employees and their partners.

**Reciprocal Benefits** – State of Hawaii statute defines “reciprocal benefits” as benefits flowing from a legal relationship that provides some partnership benefits to registered same-sex couples, including property and inheritance rights and hospital visitation rights.

## Issues

**Economic Impacts.** According to the American Family Association of Michigan, voter approval of the ballot question would ensure that taxpayers would not be liable for governmentally funded benefits to same-sex couples already accorded to heterosexual marriages, including social security death benefits. Conversely, the Triangle Foundation, a gay, lesbian, bisexual and transgender advocacy organization, asserts that marriage ceremonies and attendant receptions offer a net positive impact on the economy.

Assuming that the minute number of same-sex couple households is vastly underreported, and further assuming that all same-sex couples would take advantage of same-sex benefits if they were offered, it is doubtful that tangible differences in taxpayer-funded liabilities or overall economic impact could be illustrated.

**Legal Import.** According to the Coalition for a Fair Michigan, voter approval of the proposal would be the first time the Michigan Constitution would be amended to deny individual rights

rather than to expand or affirm them. While Article I of the State Constitution is titled “Declaration of Rights,” and primarily limits the power of government while according specific rights to individuals, there does exist at least one limitation on individual liberty, as found in Article I, Section 20 as amended in 1994. This section limits the rights of appeal for persons accused in criminal proceedings.

The Coalition for a Fair Michigan also asserts that passage would eliminate existing domestic partner benefits that are provided by state universities and some other government employers, which give health care and other benefits to the unmarried partners of employees. Whether this would come to pass is a question for judicial interpretation of the clause “or similar union for any purpose” if the proposed amendment is approved. The Coalition, as well as other opponents of the proposal, suggest that this clause could be interpreted as a basis for invalidating same-sex domestic benefits offered by public employers, including the University of

Michigan and Wayne State University, the Ann Arbor, Kalamazoo, and Port Huron school districts, and the City of Kalamazoo.

According to the American Family Association of Michigan, the clause is part of the ballot proposal solely to make the ballot language as strong as possible.

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<sup>1</sup> Arkansas, Georgia, Kentucky, Michigan, Mississippi, Montana, North Dakota, Ohio, Oklahoma, Oregon and Utah. Louisiana held a ballot issue vote on Sept. 18 that resulted in passage of the ban.

<sup>2</sup> California, Connecticut, District of Columbia, Hawaii, Iowa, Massachusetts, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington.

<sup>3</sup> MCL 551.1

<sup>4</sup> MCL 551.2

<sup>5</sup> MCL 551.3

<sup>6</sup> MCL 551.4

<sup>7</sup> Government Accounting Office, *Defense of Marriage Act*, GAO/OGC-97-16 (Washington, D.C.; January 31, 1997),

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**Table 3**

### Summary of Same Sex Marriage Policies in 50 States

#### State Law(s) Affecting Same-Sex Marriages

#### States Where Laws Apply

Defense of Marriage Act (DOMA) Adopted by State (all adopted in state law except those noted)	AL, AK <sup>1</sup> , AZ, AR, CO, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MI, MN, MS, MO, MT, NE <sup>1</sup> , NV <sup>1</sup> , NC, ND, OH, OK, PA, SC, SD, TN, TX, UT, VA, WA <sup>2</sup> , WV
Same-Sex Marriage Banned (or defined as between man and woman) by State Law or by State Courts	CA <sup>3</sup> , CT, MD, NH, NJ, VT, WI, WY
Same-Sex Couple Benefits Offered or Law Banning Same-Sex Marriage Overturned	CA <sup>3</sup> , HI, MA, NJ, VT, WA <sup>2</sup>
No State Policy	DC, NM, NY <sup>4</sup> , OR <sup>5</sup> , RI
Common Law Marriage Recognized	AL, CO, GA <sup>6</sup> , ID <sup>6</sup> , IA, KS, NE, NH <sup>7</sup> , OK <sup>6</sup> , OR, PA <sup>6</sup> , RI, SC, TX, UT, DC

<sup>1</sup> Alaska – DOMA adopted in state constitution and state law  
Nebraska and Nevada – DOMA adopted in state constitution

<sup>2</sup> Washington Superior Court judge ruled in September 2004 that state law banning same-sex marriage violates the State Constitution. Case is expected to be taken up by the Washington Supreme Court.

<sup>3</sup> California's Domestic Partner Registry becomes effective January 1, 2005; will allow most marital rights and obligations to registered same-sex couples.

<sup>4</sup> New York – Legislation pending

<sup>5</sup> Oregon – Constitutional ban question on November ballot

<sup>6</sup> Common law marriage recognized only if unions existed before: Georgia – January 1, 1997; Idaho – January 1, 1996; Oklahoma – October 1991; Pennsylvania – September 2003

<sup>7</sup> New Hampshire – common law marriage recognized for probate purposes only

Source: Stateline.org