

The Proliferation of State Marriage Amendments:
Efforts to Protect Conjugal Marriage, Efforts to Legalize Same-Sex Unions

Professor L. Lynn Hogue of Georgia State University Law School, Professor Robert A. Destro of The Catholic University of America Columbus School of Law, and Professor Lynn D. Wardle of Brigham Young University J. Reuben Clark Law School Marriage and Family Law Research Grant, are co-hosting an academic conference on state marriage amendments that will convene at Georgia State University Law School in Atlanta, Georgia, on Saturday, April 16, 2005.

Between 1998 and 2003, four states passed “state marriage amendments” to protect the institution of conjugal marriage against claims for same-sex marriage (and in some cases against marriage-equivalent same-sex unions). In 2004, in response to the Goodridge decision of the Massachusetts Supreme Court legalizing same-sex marriage, 13 additional states passed “state marriage amendments.” During those campaigns to pass state marriage amendments a variety of legal claims in opposition to the amendments were asserted some of which are likely to be manifest in litigation challenges to the validity of those amendments. (In at least four states legal challenges to the state marriage amendments have been filed in court.) At present, three state marriage amendments are in mid-process – require dual legislative approval, and have received approval once – before being submitted to the voters for ratification. Additionally, in a dozen other states marriage amendments have been pre-filed or introduced in the state legislature, and the proposal of state marriage amendments by petition or initiative processes is being discussed in still other states.

Presenters at this conference will consider carefully these various state marriage amendments. We hope to accurately describe and evaluate the respective texts of those amendments, the processes through which they were adopted, the intention of those who proposed them, and the meaning of the words as commonly understood at the time they were adopted. We will discuss policy arguments favoring and opposing adoption of state marriage amendments. We will discuss the legal challenges that have been or might be asserted to such amendments. Additionally, we will consider the impact of such amendments in accomplishing their purposes– protecting the institution of conjugal marriage and (in some cases) preventing the formation of marriage- equivalent same-sex unions.