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## Response to Amendment 3 Definition of Marriage “A Measured Pace”

### Where We Are

Couples of the same gender should not be excluded from the opportunity to obtain legal protections through marriage. Eventually, such discrimination will be deemed unconstitutional and a denial of equal protection of the laws. Unfortunately, that day is not yet here.

On November 2, two-thirds of Utahns who went to the polls voted for Amendment 3. As of January 1, 2005, our state constitution will include a narrow definition of marriage as only the legal union between a man and a woman. Significantly, the constitution will also prohibit the state from giving any other domestic union “the same or substantially equivalent legal effect” as is given to a marriage between a man and a woman.

### The Legal Fight Against Amendment 3

The ACLU of Utah’s opposition to Amendment 3 is necessarily part of a larger national effort to oppose similar state laws and constitutional amendments prohibiting marriage equality. Consequently, we must take a measured pace toward the long-term goal of fundamental fairness for same-sex couples and not rush forward with federal lawsuits that are not likely to prevail or that will hurt cases in other jurisdictions.

While exercising caution regarding facial legal challenges to Utah’s amendment, it is another matter entirely to scrutinize the application of Amendment 3 based upon the state’s interpretation of what is “substantially equivalent” to marriage. **The ACLU of Utah is interested in challenging the discriminatory treatment of same-sex couples based upon the state’s interpretation and application of Amendment 3.**

Legal documents that are created to protect a relationship, such as a will, power of attorney, or joint mortgage or lease, should not be affected by the passage of Amendment 3. If a legal document such as those listed above is not recognized, or if you or someone you know is denied the opportunity to create such a document, we want to hear about it. Please fill out the ACLU of Utah’s [online complaint form](#) so we can review your situation and contact you for further information.

### The Road Ahead

The passage of state amendments prohibiting marriage equality does nothing to stop the ACLU’s national efforts to achieve full legal recognition of same-sex couples. Currently, the ACLU and its coalition partners are litigating cases in New York, California, Oregon, Washington, Maryland, Alaska, Montana, New Jersey, Connecticut, Florida, and Indiana. A victory in any of these states will serve as a building block for marriage equality for all Americans down the road.

Ultimately, the U.S. Supreme Court will find that excluding same-sex couples from marriage protection is discriminatory; for now, the Court is more likely to arrive at that decision once a majority of state courts have come to that conclusion. We should remember that when the Court ruled in 1954 that racial segregation was unconstitutional and in 1967 that bans against interracial marriage were impermissible, only a few states still had laws requiring segregation or outlawing interracial marriage.

The fact is, while the opponents of marriage equality won some battles during the last election cycle, they know they are losing the war. Americans have traditionally moved away from discrimination. Same-sex couples will marry and become fully a part of the American landscape. The promise of equality in our constitution demands no less. And sooner or later, that promise will be kept.