

Lesson 4: Grades 8 & Up

Winning the Right to Marry: Historic Parallels

Overview

In this lesson, students explore marriage bans for same-sex couples within the context of earlier prohibitions, and use these historical parallels to determine the fairness of current restrictions. Students listen to the story of an individual who was personally affected by marriage restrictions and fought to change the law in his state. They then analyze existing state and federal laws concerning same-sex marriage, and consider whether or not these laws are in need of change.

[NOTE: This lesson explores LGBT issues in an open and direct way. Given the absence of this topic in the curriculum and the disproportionate rates of anti-LGBT bullying and harassment, it is important to educate students about these issues. When discussing any new or sensitive topic, however, there is the potential for some students to react in stereotypical or disrespectful ways. It is therefore imperative that educators carefully review the lesson, assess students' maturity and readiness to engage in the lesson prior to implementation, and establish clear parameters with students that will ensure safe and constructive dialogue. See "[Establishing a Safe Learning Environment](#)" and "[Creating an Anti-Bias Learning Environment](#)" for guidelines on building safe forums for discussing sensitive issues. With regard to this particular lesson, see also [Discussing Marriage of Same-Sex Couples with Students](#).]

Objectives

- Students will explore past injustices within the institution of marriage.
- Students will identify marriage attributes that can be used in considering past and present challenges to marriage law.
- Students will reflect on the personal testimony of an individual involved in the movement for marriage rights.
- Students will increase their knowledge about existing state and federal marriage laws.
- Students will consider the fairness or unfairness of current marriage laws and begin to develop a personal stance on the issue.

Time

75–90 mins. or 2 class periods

Requirements

Handouts and Resources:

- (Optional) [To Be Equal: The Journey of David Wilson](#) (one per student)
- [Winning the Freedom to Marry: Progress in the States](#) (one per small group)
- [State Constitutional Provisions](#) (one per small group)

Other Material:

- Unheard Voices [audio interviews and transcripts](#) and [interview backgrounders](#)
- Chart paper, markers, masking tape
- Computer, speakers

Advanced Preparation

- Reproduce handouts as directed above.
- Prepare the statements in Part I #1 and #2.
- Prepare to play [interview](#) (see Part II #1).
- Print out copies of your state's marriage law (see Part II #4).

Key Words

Attribute
Civil marriage
Civil union
Constitutional/
unconstitutional
Discrimination
Domestic partnership
Interracial
Invalidate
LGBT (lesbian, gay,
bisexual and
transgender)
Mandate
Plaintiff
Refuge
Sexual orientation
Void

Techniques and Skills

analyzing primary documents, analyzing oral histories, brainstorming, connecting past to present, cooperative group work, critical thinking, debate, forming opinions, historical understanding, large and small group discussion, reading skills, writing skills

Procedures

Part I: Defining the Attributes of Marriage (30 minutes)

1. Post the following statements:

- *“All [such] marriages shall be absolutely void without any decree of divorce or other legal process.”*
- *Such marriages are “unnatural.”*
- *“Almighty God...did not intend for [such people] to mix.”*

Inform the students that the statements come from various rulings by judges on cases involving marriage. Ask them to venture some guesses as to which group of people the statements refer.

2. After some speculation, inform students that the statements reflect decisions about interracial marriage that were prevalent until relatively recent times. Share the full text of the above quotes with students:

- *“All marriages between a white person and a colored person shall be absolutely void without any decree of divorce or other legal process.”* (Va. Code Ann. 20-57, 1960)
- *Racial intermarriage is “unnatural,” and would lead to children who are “generally sickly, and effeminate...and inferior in physical development and strength.”* (*Scott v. Georgia*, 39 Ga. 321, 323, 1869)
- *Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix.”* (*Loving*, 388 U.S. at 3, 1958)

3. Allow some time for students to react to these statements. Point out that at one time 40 states forbade the marriage of a white person to a person of color and it was not until 1948 that California became the first state to declare unconstitutional a ban on interracial marriage. Add that in the landmark 1967 case, *Loving v. Virginia*, the U.S. Supreme Court finally struck down the remaining interracial marriage laws across the country and declared that the freedom to marry is a “basic civil right.”

4. Ask students if they think that racial sameness is a necessary or important attribute of a good marriage (most will likely reject this notion). Tell students that you would like them to come up with more appropriate attributes of marriage. Form small groups of 3–5 students, ask each to select a recorder and provide each with a sheet of chart paper and a marker. Instruct each group to brainstorm a list of marriage attributes—not legal standards, but qualities they think form the basis for a sound marriage (e.g., emotional compatibility, demonstration of love, commitment over time, economic interdependence, etc.). Allow 10 minutes for groups to work.

5. Reconvene the class and have groups post their lists. Together create a master class list that reflects the major attributes from all groups. If there is disagreement amongst students, try to reach some consensus and then display the class criteria.

Part II: Exploring Marriage of Same-Sex Couples (45–60 minutes)

1. Inform students that in recent years another group of Americans has turned to the courts in order to secure the freedom to marry—same-sex couples. Tell them that you are going to play an [interview](#) of someone who has been involved in that struggle. Provide the following introduction:

David Wilson and his partner, Rob Compton, were two of the plaintiffs in Goodridge v. Department of Public Health, the landmark case that awarded marriage equality to same-sex couples in Massachusetts. Ten years before the lawsuit, David Wilson was living with his first partner, Ronald Loso, outside of Boston, until November 29, 1994. Here, Wilson remembers that day.

2. After playing the interview, provide additional context by sharing information from the handout, [To Be Equal: The Journey of David Wilson](#), or providing a copy to students and reading it together as a class. Process David's story using the discussion questions found in the [backgrounder](#) that accompanies the [interview](#).
3. Point out that while David won the right to marry in Massachusetts, millions of gay Americans today are denied the right to marry in the states where they reside. Ask students if they know what the status of same-sex marriage is in their state and if they are aware of the federal government's policy on this issue.
4. Tell students that, in small groups, they will have the opportunity to discuss the current status of same-sex marriage and their opinions about existing laws. Divide the class into groups of 3–5 students and have each group select a recorder and a reporter. Provide each group with a sheet of chart paper, a marker and one copy of the following materials:
 - [State Constitutional Provisions](#)
 - [Winning the Freedom to Marry: Progress in the States](#)
 - Your state's law (if one exists) on same-sex marriage or partner recognition (see, for example, [www.freedomtomarry.org](#), [www.lambdalegal.org](#) or [www.hrc.org](#))
5. Instruct groups to collaboratively review the handouts and to also consider David Wilson's story and the class list of marriage attributes brainstormed earlier. Based on this information, have groups discuss their opinions on the Defense of Marriage Act and their state's law. Have groups record any changes that they would make to existing laws based on their conversation. Allow 20–30 minutes for groups to work.
6. Reconvene the class and have each group post its chart at the front of the room. Ask each reporter to share one or two highlights from their group's conversation. Engage students in a discussion using some of the following questions:
 - Do same-sex couples have the capacity to reflect the attributes on the class list?
 - Is there a justification for the definition of marriage as the union between one man and one woman?
 - Should government have the right to determine who can and cannot marry based on gender, sexual orientation, race, religion or any other factor?
 - Is it right for a state to invalidate marriages performed legally in other states?

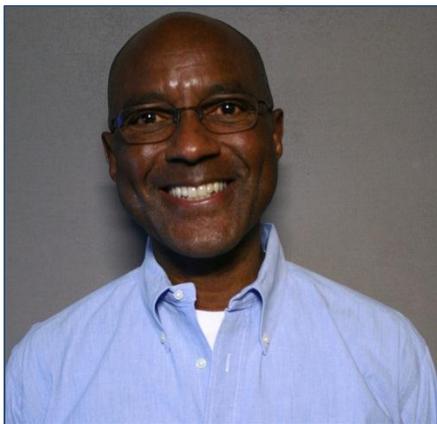
NOTE: Some students may suggest that there are religious justifications for opposing same-sex marriage. Without passing judgment on any student's religious beliefs, make sure to clarify the difference between civil and religious marriage for the purposes of this discussion. Share, for example, the following explanation from the New Hampshire Freedom to Marry Education Fund ([www.nhfreedomtomarry.org/comparison.html](#)): "There are two types of marriage—civil marriage and religious marriage. Couples may have one or both types of marriage: a civil marriage if they meet the government's requirements; and a religious marriage if they meet the requirements of their faith tradition. However, to receive the legal protections of marriage, a couple must have a civil marriage. The debate over the freedom to marry is about the right to enter into a state-created institution of civil marriage only. Even after civil marriage becomes available to gay and lesbian couples, no court decision or legislative enactment can change the basic tenets of a religious faith."

7. (Optional) For homework or as an in-class follow-up assignment, have students write an essay in which they discuss the quote below and why they agree or disagree with the author's point of view.

Surrounded as I am now by wonderful children and grandchildren, not a day goes by that I don't think of Richard and our love, our right to marry, and how much it meant to me to have that freedom to marry the person precious to me, even if others thought he was the 'wrong kind of person' for me to marry. I believe all Americans, no matter their race, no matter their sex, no matter their sexual orientation, should have that same freedom to marry. Government has no business imposing some people's religious beliefs over others. Especially if it denies people's civil rights.

—Mildred Loving, plaintiff in *Loving v. Virginia* (1967), the U.S. Supreme Court case that struck down interracial marriage bans

To Be Equal: The Journey of David Wilson



One evening, as he returned home from work, [David Wilson] found his partner lying on the ground in their driveway. He called his neighbors for help. They called 911, and when the police arrived they proceeded to arrest David assuming, that because he was black, he was breaking and entering and had assaulted the man on the ground.

“Before anything could go any further, my neighbors came to my defense and told them that we were a couple, and that they needed to find out what was going on with my partner.”

At that point, the police released him, but what would take place at the hospital still leaves David shaky-voiced.

“They wouldn’t give me any information because they did not recognize our relationship. They called my partner’s 75-year-old mother who lived in Vermont, and she gave them permission to tell me his condition. They told me that he had

suffered a massive heart attack and was dead on arrival.”

In that moment, David had to quickly come to terms with an unfortunate circumstance of being gay: there was no legal mandate acknowledging his right to medical information about his partner.

“I had never considered the problem with relationship rights until that moment. I had a lot to think about.”

[David] began reading about gay rights, and joined a group called Gay Fathers of Greater Boston. It was in this group that he met Rob Compton, a father of two who had recently relocated to Massachusetts. Rob had been fired from his job as a dentist in Michigan when he came out as a gay man. He came to Massachusetts seeking refuge under the non-discrimination law that prohibits sexual orientation discrimination in the areas of employment, housing, public accommodations, credit and services. David and Rob came together around their stories. They fell in love, and moved in together.

One morning Rob awoke in excruciating pain. David led him to the car and took him to the same hospital that denied him access to his previous partner’s information. “It was five minutes away from our home. It was the local hospital, and it’s a very good one... I just wanted to get Rob to the hospital,” he explained.

Once again David was led to a waiting area while his partner lay on the other side of the wall in the emergency room. It wasn’t déjà vu, it was the sheer reality of the situation: the hospital had to adhere to the law that protects a patient’s right to privacy.

“I tried to describe what had happened to me three years earlier, and the staff didn’t really care. To them, I had no relationship to this man and, unless I could prove that I was related in some way, they would not give me any information.”

Hours later, Rob walked into the waiting room area and sat down next to him. He told David he finally got it. In the emergency room, he was in so much pain he could not answer all of the questions he was asked. He needed David to be there – to hold his hand, comfort him and tell him it was going to be okay—but he wasn’t.

When Rob recovered, the couple moved into the city, seeking a more supportive environment for their relationship. They reached out to the Gay and Lesbian Advocates and Defenders group (GLAD). It was perfect timing, GLAD was spearheading a lawsuit against the state that would grant civil marriage rights to gay and lesbian couples and was seeking plaintiffs upon whom to rest the case. More than 100 same-sex couples were interviewed and screened; David and Rob were selected along with six other couples to testify. GLAD filed the suit in April of 2001, and on November 18, 2003, the Supreme Judicial Court of Massachusetts ruled to end the exclusion of same-sex couples from marriage in the state.

This historic case, known as *Goodridge v. Department of Public Health*, guarantees the legal framework of protections and obligations offered in civil marriages to gay and lesbian couples, and their children too. These protections include the joint filing of taxes, the ability to purchase joint policies of insurance, protection through workers compensation and wrongful death

actions, the ability to bequeath retirement benefits, economic protections to a surviving spouse and hundreds of other protections that cannot be secured without a marriage license.

David and Rob were among the first same-sex couples to be married on May 17, 2004.

Excerpted from Bridgit Brown, "To Be Equal: The Journey of David Wilson," in *Color Magazine*, www.colormagazineusa.com/index.php?option=com_content&view=article&id=222%3Ato-be-equal-&catid=53%3Afeature&Itemid=67. Reprinted with permission.

State Constitutional Provisions

More than 20 states have constitutional amendments limiting marriage to one man and one woman. These laws deny same-sex couples more than 1,000 legal rights enjoyed by married couples in the U.S., many of which cannot be privately arranged or contracted for. Below is a partial list of the benefits that come with legal marriage. Each category is followed by a fictional case study illustrating how same-sex couples are affected by the absence of marriage rights.

Health Care

Married couples enjoy health care benefits when they:

- take bereavement or sick leave to care for a partner or child
- visit a partner or child in the hospital and other public institutions
- obtain joint insurance policies for home, auto, and family health
- make medical decisions on a partner's behalf in the event of illness

Marta had been living with Sue for two years when she decided to tell her family that she is a lesbian. Her parents told Marta that they would never accept her "lifestyle" and cut off all contact. Several years later, Marta was left in a coma after a bad car accident. The hospital contacted Marta's parents—her legal next of kin—who made the decision to put Marta in a hospital close to their home and told Sue she could not visit. Sue protested, but was told that since she was not a legal spouse, she had no decision making power.

Life Planning

Married couples enjoy the benefits of life planning when they:

- inherit automatically in the absence of a will
- choose a final resting place for a deceased partner
- receive exemptions from property tax increases upon the death of a partner
- obtain wrongful death benefits for a surviving partner and children

Sean moved away from his hometown because his family was not accepting of his sexual orientation. He settled in Chicago and fell in love with Marc. Years later Sean developed a form of non-operable cancer. As Sean's health deteriorated, Marc took a leave of absence from his job to care for Sean. When Sean died a year later, his estranged family arranged for a funeral in their hometown and told Marc not to attend. Because Sean and Marc were not legally married, Marc had no rights to make burial decisions or to inherit Sean's property.

Government Benefits

Married couples enjoy government benefits when they:

- share Social Security and Medicare income and support
- file joint tax returns and get special marriage or family tax rates
- obtain veterans' discounts on medical care, education and housing loans
- apply for immigration and residency for partners from other countries

Michael and Rolando shared a home and a life together for three years after meeting in graduate school. After graduation, Rolando's student visa expired and he was notified that he must return to his native Peru. Michael attempted to sponsor his partner, but was denied because the two are not legally married. Rolando is currently facing deportation.

Family Recognition

Married couples benefit from family recognition when they:

- receive shared parenting, adoption, custody and visitation rights
- enter jointly into rental leases on a home or other property
- get legal protection in cases of domestic violence
- secure fair division of property, child custody and support in cases of divorce

Asha and Tracy lived together for over 15 years, sharing the responsibilities of maintaining their home and raising their son, Tim, now 10. After separating, they could not agree on a custody arrangement and a court battle ensued. Because Asha is the biological parent, the judge ruled that she would receive full custody of Tim and granted no visitation rights to Tracy, despite the fact that she co-raised Tim from birth and Tim's testimony that he loves both of his moms the same.