Same-sex marriage

A debate analysis

Through analyzing this debate on the highly controversial issue of same-sex marriage, clear insights can be explored relating to the elements and strategies of argumentation.

Comm 333

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Persuasion and Argumentmentation

Comm 333

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**Executive Summary**

 In this case, we were asked to analyze a debate about the legalization of same-sex marriage, draw conclusions about each part of the argument, declare a winner for the debate and provide coaching for the losing side.

 Before analyzing the arguments made in this debate, we gathered significant background information about same-sex marriage in the United States. After gathering information about the debate topic, we analyzed the stock issues and audience of this debate issue.

 In analyzing the arguments within this debate, we drew several specific conclusions related to each side. Even Wolfson, the affirmative arguer, promoted the change of legalizing same-sex marriage. Within this argument he makes many motivational (pathos) claims. Several of his arguments include loaded language and do not use well-developed evidence. Maggie Gallagher, the negative arguer, favors maintaining (or possibly modifying) the status quo. She shifts the issue from a question of value to a question of definition, and draws attention to the implications of changing the social understanding of marriage. Her argument has a logical and natural order.

 After comparing and analyzing the arguments, it is clear the negative side won this argument. Wolfson did not establish need or meet the burden of proof, both of which are required for success in his argument. We made several recommendations for the affirmative argument, mostly related to the addition of evidence to enhance the credibility and logical appeal of his argument.

 In analyzing this debate, we understood the importance of wisely using persuasive warrants: substantive, authoritative and motivational. Providing adequate evidence and following a natural order of ideas are vital to successful arguments.

**Background**

In 1996, President Bill Clinton signed the Defense of Marriage Act (DOMA) into law. DOMA defines marriage as a legal union between one man and one woman. This act defines marriage for the purpose of federal laws and gives states the authority to make their own rulings about same-sex marriage. There are also 37 states with DOMA legislation, and several additional states have constitutional amendments defining marriage as between one man and one woman.

Currently, six states and the District of Columbia allow same-sex marriages. However, the same-sex marriages performed in these states cannot transfer to other states.  There are other states that allow civil unions. These states include Hawaii, Illinois and New Jersey. Civil unions give same-sex couples similar rights and privileges as married heterosexual couples. However, these rights are often bound to the state the civil union was performed in, with the exceptions of Rhode Island, New York and Pennsylvania, which acknowledge same-sex marriages and civil unions from other states.

 The first state to allow same-sex marriage was Massachusetts. In November 2003, the Massachusetts Supreme Court ruled barring same-sex couples from marriage was unconstitutional.  The state senate then asked for a judiciary ruling on the legality of allowing civil unions but banning traditional marriage.

The court responded, “Segregating same-sex unions from opposite-sex unions cannot possibly be held rationally to advance or preserve…stable adult relationships for the good of the individual or the community, especially its children.”

In May 2004, Massachusetts began allowing same-sex couples to marry.

 Although civil unions give same-sex couples some benefits, such as hospital visitation, they do not provide federal benefits. These benefits include joint federal tax returns and immigration sponsorship. Including state benefits records, there are many benefits provided by marriage. The lack of equal benefits for same-sex couples is one of the main arguments in support of same-sex marriage. Some of the state-level benefits of marriage include family health coverage, child custody, medical/bereavement leave, income/estate tax benefits, medical decisions for an incapacitated partner and leaves of absence to care for an ill partner.

 Those against same-sex marriage often are supportive of civil unions or domestic partnerships. They prefer to have separate institutions for heterosexuals and homosexuals. They often feel the traditional definition of marriage is a union between one man and one woman. They also feel the purpose of marriage is to create and raise a family. Obviously, same-sex couples cannot naturally produce children. Also, some against same-sex marriage suggest allowing it to exist would decay or weaken the family structure in America. The traditional American family structure has already changed immensely; the argument is same-sex marriage would only change it even more and for the worse.

**Stock Issues and Audience Analysis**

 In a debate or argument, it is necessary to identify the stock issues of need, remedy and disadvantages (*See figure 1*). In this case, we identified need as relating to the equality of rights afforded to heterosexual and same-sex couples. This relates specifically to the couples’ rights related to financial and taxing benefits, and also rights related to adoption and child-rearing. An affirmative argument would need to illustrate the need, while the negative argument would endeavor to prove that the need is not significant or not yet proven.

 Further, Wolfson must convince the audience that the proposed remedy, the legalization of same-sex marriage, is the only acceptable solution to the need. Wolfson must also demonstrate how other proposed remedies, such as civil unions, do not meet the need presented.

 The third stock issue relates to the disadvantages incurred by a proposed remedy. Disadvantages of this remedy might include changing the social understanding of marriage, federal financial costs and the difficulties of regulating marriage once it is redefined. Gallagher is responsible for proving the disadvantages outweigh the remedies.

 Another important tool in analyzing a debate is the audience analysis (*See figure 2).* In defining the audience as the American public, we faced a challenge to determine the segmentation of the audience. We believed the attribute of age was one of the most decisive factors related to opinions on same-sex marriage. For this reason, we chose to segment the audience by generation: Millennials, Generation X, Baby Boomers and the Silent Generation.

 We chose to reflect on the demographics of these groups, the belief and values, the types of warrants they find persuasive and their concerns with the proposed changes. We found the younger generations were considerably more likely to favor the legalization of same-sex marriage (based on a Pew Research study). We also found the older generations were more likely to be concerned with the social and economic impact of change. In addition, we found that this was likely a motivational, or value-based, issue for all of these generations. This is a sensitive finding, however, as we understand that the issue of same-sex marriage is a divisive one—a motivational approach might highly appeal to the supporting segment of this audience, while alienating the rest of the audience.

 Through the use of the NRD model and the audience analysis, we were able to thoroughly analyze the arguments made on each side of this debate.

**Debate Analysis and Insights**

After identifying the main issues and audience of this topic, we analyzed the arguments made by Wolfson and Gallagher. We will now provide an overview of each argument, outline some of the claims made by each side (the strongest, adequate and weakest arguments) and offer insights relating to each argument.

**Affirmative argument**

In the affirmative arguments, Wolfson starts with an authoritative warrant from some notable public figures, including Clinton who signed DOMA into law. He discusses at length the inequality of not allowing marriage rights for same-sex couples, and ends with an argument that same-sex marriage will not harm anyone (religion, families or communities).

Overall, Wolfson chose a highly motivational (or pathos) approach, focusing on the emotionality of the audience, rather than maximizing on the logos strengths of this argument. Because of the highly motivational nature, there is a distinct lack of evidence in his argument. He provides strong worded claims, but with little evidence to support them. In addition, the order is awkward in this argument, which violates Weston’s second rule (Weston, 3). The content and order is not inherently wrong; however, the weaker arguments are listed in his beginning statements and developed at length, while he does not develop the stronger arguments at the end.  Wolfson does state that the need is equality among all couples seeking matrimony, and he vaguely begins discussing why, but he never substantiates with proof, and thus never established need.

**Wolfson’s Strongest Argument**: “Americans are seeing that there is no good reason to continue excluding committed couples from marriage.”

This argument is particularly strong because it offers two clear examples of firm evidence―it is a strong ethos argument.

According to a judge hearing a case in California, “moral disapproval alone is not a proper basis for discrimination.”

Wolfson follows up with another example of evidence from a lawyer, who is arguing to maintain the status quo (same-sex marriage not being legal). When the lawyer was asked by a judge, why the status quo should be maintained, the lawyer responded with absence of argument, stating, “I don’t know.” This is an illustration of reluctant evidence, evidence given by a source that is not trying, or may even be in a position of unwillingness, to cooperate. To have a lawyer whose job is to represent the negative side give such a strong statement of uncertainty is very supportive of the affirmative side. (*See figure 3 for Toulmin model of this argument*)

**Wolfson’s Adequate Argument**: “Denial of marriage is one of the harshest inequalities inflicted on lesbian and gay families—discrimination enacted by our own government.”

This is full of loaded language, not reinforced by evidence. Wolfson talks about how families and children are negatively affected by the fact that same-sex couples are not allowed to be married, but he, again, does not follow up with evidence. Since no evidence was offered, this claim would likely not appeal to a broader audience than those who already support the legalization of same-sex marriage. This continues to exemplify how he focuses too much on motivational claims and misses opportunities to present great evidence and support. With proper evidence, this claim might have been persuasive, but with the emotion and loaded language, it only serves as distracting.

**Wolfson’s Weakest Argument**: “Every reputable national child-welfare and public health professional association in the country has come out in support of the freedom to marry.”

Wolfson clearly overgeneralizes in this claim. He offers just one example, but claims that every organization shares the belief of his one source. He also uses the word reputable, which is a subjective word. Without clearly defining the meaning of reputable, it is not evident to the audience what he means.  In further research, many organizations were found to support Wolfson’s claim, but he only listed one, which we recognize as a violation of Weston’s seventh and eleventh rules (Weston, 10; 16) (*See figure 4*)

**Negative argument**

Gallagher is representing the negative side, the side in favor of maintaining the status quo. She turns to the question of defining marriage. She separates the issue from the people and focuses on the institution of marriage. She discusses how changing the legal definition will change the social understanding of marriage, and how the new definition of marriage may not be compatible with the purpose of marriage, which she argues is procreation. She continuously focuses on shifting the argument from pathos (emotion) to logos (logic).

**Gallagher’s Strongest Argument**: “The majority of judges and public votes have continued to reject same-sex marriage.”

In this claim, she cites the European Court of Human Rights and public votes in two progressive states, California and Maine. What makes the citation of these places so strong is they are accepted by the majority, in some possible unlikely (more progressive) areas. By showing these progressive places have ruled against accepting same-sex marriage she has shown evidence that the general population’s voice is against the affirmative’s claims and for the negative. (*See figure 5*)

**Gallagher’s Adequate Argument**: “This is a question of definition.”

A very important part of Gallagher’s argument is the shift from a question of value to a question of definition regarding marriage. Gallagher goes on to give an analogy of what would happen if suddenly the definition of cat was changed to accept dogs. She poses the dilemma that there would be social confusion on what was what. She also states that it is not about discriminating against same-sex marriage, but being clear on the definition of what marriage is.  This is where Gallagher makes notice of counter arguments and quickly addresses them. She recognizes there is a need for same-sex couples to have certain benefits given to married couples, but she states it should be done separately and kept separately, since it is a completely different issue. Essentially she is stating it is not right to ask heterosexual couples to change their matrimonial definition to be inclusive to same-sex couples, but rather same-sex couples need to create their own type of matrimony, such as civil unions. This claim will later drive Gallagher’s overall argument that “it is not discrimination to treat different things differently.” Here she begins to make the argument that because of the current legal definition and social understanding of marriage, heterosexual marriages are different than same-sex marriages, and do not need to be treated equally. This is a very intriguing argument that begins because of this question of definition.

**Gallagher’s Weakest Argument**: “Marriage is traditionally an institution between man and woman.”

This is true; as defined over the general history of our country and the world. In addition, Gallagher provides a claim that the purpose of marriage is procreation, and to provide a safe environment for rearing children. Her evidence is men and women in union naturally produce children. However, there is a major weakness in this argument: it indicates that a long-standing belief in something ensures correctness, which opens the claim to many counterexamples. Much discrimination that was once accepted by society is currently considered unacceptable: slavery, sexism, and adolescent marriages are just a few. Because of the potential for strong counterexamples, we consider this a weak argument. (*See figure 6*)

**Judgment: And the winner is…**

After careful consideration, we rule in favor of Gallagher, the negative argument.

This decision is based on the fact that Wolfson, who represented the affirmative side, failed to meet the burden of proof. While he made some very strong claims, he failed to establish a need with appropriate evidence.

Wolfson made some bold statements regarding how the denial of marriage has such a harsh impact on children during tough economic times, but failed to provide evidence. This leaves the audience wondering how families and individuals experience the disadvantage he asserts. Having the burden of proof, the affirmative argument simply stating that there is a need was not enough. There needs to be evidence to persuade the audience to agree with the need any remedy. Since need was not established in this argument, the burden of proof was not met, and so the negative side won this argument.

**Coaching**

Wolfson could have improved his argument in many different ways. He should have specifically compared civil unions to marriage. He began his argument by stating that marriage matters. However, he never went into any detail about this statement and offered almost no evidence. Although this is an excellent claim, he offered no solid evidence to support his stance. He could have said marriage is federally recognized while civil unions are only upheld in individual states. Because of this, civil union partners have limited mobility and may have to choose between a promising career option or staying in the state where their marriage is lawful. Also, civil unions do not offer federal benefits such as filing joint tax returns. Adding even these two pieces of evidence would have strengthened his argument considerably.

 Moreover, Wolfson could have demonstrated the inequalities faced by same-sex couples. Wolfson states the denial of marriage is a harsh inequality inflicted upon gay and lesbian couples, but never provides evidence to support the claim. The claim is very strong and could have possibly been his strongest argument. To support this claim, Wolfson could have again referred to the denial of benefits. Marriage provides more than 1,000 benefits to heterosexual couples—most of these benefits offer financial advantages. Just providing this small bit of evidence would have supported his next claim, “The denial of marriage hurts families struggling through tough economic times.”

 Wolfson could have used additional evidence to support his inequality claim. He could have compared same-sex marriage to interracial marriage, which was also illegal in the United States until the 1967 Supreme Court case of Loving vs. Virginia. He also could have brought up additional arguments related to constitutional law. For example, many proponents of same-sex marriage argue denying same-sex couples the right to marry breaks the equal protection clause of the 14th Amendment, which states, “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Additionally, some say not allowing same-sex marriage denies homosexuals due process. Making these law-based arguments would have supported his inequality claim and might have caused him to meet his burden of proof, making him the victor over the negative side.

 Furthermore, Wolfson could have challenged the social context of marriage. The bulk of the negative argument relied on the actual definition of marriage. In Gallagher’s argument for the negative side, she argued that marriage has its own place in society because of long standing traditions and customs. However, Wolfson could have challenged this claim by simply stating marriage has evolved over time. For example, words have been changed in traditional marriage vows. The traditional marriage vow used to compel a woman to “obey” her husband. Also, it is now far easier to obtain a divorce than it was in the past. Marriage has changed significantly over the past 100 years.

 Another way Wolfson could have refuted this idea is by arguing against tradition. Other traditions and social customs have changed since the founding of the United States. For example, slavery was once a tradition in the U.S. Since the abolishment of slavery, most people would agree it was not a good part of history. However, it was still a long-standing tradition. He could have compared this situation to same-sex marriage. Just because marriage has traditionally been a union between one man and one woman does not mean it is necessarily the only context of marriage.

 In addition to adding these pieces of evidence to his claims, Wolfson could have altered some of his other claims. One of his claims with the most evidence was that many people who were once against same-sex marriage have changed their views and now believe it should be legal. He relied heavily upon the testimony of former president Clinton. This is an appropriate choice because Clinton signed DOMA into law. Even though he signed this legislation, he now regrets his actions and supports same-sex marriage. This is a form of reluctant testimony because he is speaking against his own actions. However, the use of Clinton may not appeal to our audience. Although our group knows he signed DOMA, some members of our audience may not. In fact, they will probably remember the Monica Lewinsky scandal and question whether Clinton should ever give advice regarding moral and family values.

 The final pieces of coaching for Wolfson concern some of his language choices. One of his claims was, “Every reputable child welfare organization supports same-sex marriage.” After making this claim, Wolfson only offered one example. First, Wolfson should have considered taking out “every” as it does not leave room for any counterexamples, as discussed in the seventh and eleventh rules of Weston’s rulebook. Second, Wolfson should have listed more than one example. There are at least seven child welfare organizations that support same-sex marriage. He would have strengthened this claim by restating it as, “Many child welfare organizations support same-sex marriage.” After making the modified claim, he could have listed more examples as evidence to support the claim.

Although Wolfson’s inequality claim was strong, he failed to support it with adequate evidence. He also loaded his claim with emotional language. His stated claim referred to “harsh” inequalities and he also stated that “no one is hurt” by same-sex marriages. His claim would have been better if he omitted the word “harsh.” He could have ended his argument with the idea that few disadvantages result from allowing same-sex couples to marry. This would have created a natural conclusion without excluding counterexamples.

 If Wolfson would have supported his claims with more evidence and refrained from using constrictive and loaded language, his argument would have been stronger. Using evidence and examples would have helped him meet the burden of proof and win the argument.

**Continuous Improvement**

After presenting our case to the class, Professor Clampitt provided our group with a few useful suggestions on how to strengthen our overall analysis and presentation.  His first suggestion dealt with our explanation of one of the affirmative arguments.  The argument’s focus was centered on the idea that there is “no good reason” to deny same-sex couples the right to marry. Wolfson, the spokesperson for the affirmative, makes this claim and uses a judicial quote as his evidence.  This type of authoritative evidence would typically be successful, but was not enough in this case.  Since the affirmative side has the burden of proof, it is Wolfson’s job to prove beyond a reasonable doubt that same-sex marriage should be permitted.  It is not enough for the affirmative to simply state that there is “no good reason.” His job is to prove there is a good reason. Clampitt believed this was one of the most critical weaknesses of the affirmative side that our group could have further exposed.

Clampitt also suggested it would have been useful for our group to explain the reasoning behind the breakdown of our audience analysis.  He agreed with our decision to break up the American public by generations instead of by gender or geographic location, but said that it is very important to explain why we chose a certain audience breakdown over another.  Our group found that splitting up our audience on generational lines was the cleanest and most accurate way to analyze them, in terms of this motivational topic.  By doing the audience analysis in this fashion, it was easier to collect numerical data on information such as approval ratings for same-sex marriage, education levels, religious affiliations, etc.  After we had discovered the differences between the generations we were then able to make our own assumptions on what types of values and beliefs were important to individuals born in different time periods. Also, we had to make educated assumptions on which types of persuasive warrants would be most successful within each group.  Explaining the reasoning behind our choices to our classroom audience would have strengthened the analysis portion even further.

A few small suggestions were made in reference to a final grading for each side, the language we used throughout the presentation and a sense of flair.  Deaf to Sirens had formally declared a winner but did not provide a numerical rating for each side.  We came to the agreement that based on our analysis we would have given the affirmative side a rating of 5 out of 10 and the negative side a rating of 8.  These ratings were chosen because neither the affirmative nor negative had a perfect argument, but in the end the affirmative had the burden of proof which he did not live up to.

In our course, we were taught about the differences between logos, ethos and pathos, and the warrants associated with them; substantive, authoritative and motivational.  Professor Clampitt suggested that even though our group was using these terms, we had to be careful and make sure our audience was following our terminology.  For example, we would use the term “motivational warrant,” but maybe not everyone knew that these warrants were associated with pathos and had to do with individual’s beliefs and values.

The content of our presentation was very insightful and thorough, but we were missing that little bit of flair and sexiness that could have made our presentation more exciting for the audience.  We could have possibly provided a few visually stimulating photos in the PowerPoint or even something as small as a drum roll leading up to our declaration of the winner. Clampitt simply wanted to see us having fun with the case and showing that enthusiasm to the audience.

Our fellow classmates were also given the chance to provide our group with valuable feedback via the infamous green sheets.  Overall, the comments were quite consistent throughout the classroom.  The audience indicated our presentation was well organized, thoroughly researched and that our speakers spoke with credibility.  A few suggestions for continuous improvements included explanation of our strategy, implications of our analysis and ideas and being sensitive to the amount of text on the slides.  Some students indicated that the presentation was very strong, but that adding further explanation about why we chose the negative side to win would have made it stronger.  Finally, a few slides contained too much content and seemed to be distracting to some students.  This is a common suggestion and one that can be easily corrected.

**So what?**

Dissecting the argument surrounding same-sex marriage caused our group to form conclusions about constructing an argument. It may be advantageous to shift highly divisive motivational claims into logos or ethos claims. This is something Gallagher did quite well.

She openly said, “This is not about how we feel about gay people.” She constructs her arguments based on logic and definitions. Conversely, the affirmative arguer draws his claims from motivational sources. Since the opinion regarding same-sex marriage is evenly divided in our audience analysis, motivational claims will only appeal to half the audience. Moving away from motivational claims will help an arguer appeal to a larger portion of the audience. It is difficult to change a person’s motivational ideas, so it is better to appeal to logic.

  In addition, we clearly saw the importance of drawing on the strongest evidence to support the claims made in an argument. In the affirmative case, Wolfson made excellent claims but failed to support most of them with evidence. Although a large amount of evidence exists to support his claims, he failed to use it. In some cases, he relied upon poor examples to support his claims. For example, he uses people like Clinton to support his claim of shifting support for same-sex marriage. However, an example like Clinton will not appeal to most members of the audience. It is important to support an argument with strong evidence and examples that appeal to the most audience members.

 Finally, following a natural order is imperative to a successful argument. Gallagher constructed an argument that flowed seamlessly from one point to another. However, Wolfson moved from one argument to another with almost no logic or planning. He also abruptly jumped back to previous points while making a completely different claim. It is better to organize an argument in a natural and logical order. This allows the audience members to clearly follow the argument. Mixing evidence for one claim with a completely different claim will only confuse audience members. This can cause an arguer to lose the argument.

 The debate we were assigned showed two different ways to compose an argument. In our case, the negative side used the basic rules outlined above to form an excellent argument. We only discovered these rules after thorough discussion and analysis. These rules will help our group members think critically not only about divisive debates such as same-sex marriage but also in everyday decision making.

**Summary**

The institution of marriage holds a very significant meaning for many people, regardless of sexual orientation.  It is by nature a highly motivational issue, so in order to succeed in an argument one must tap into the audience’s values and beliefs.  In this case, Wolfson, on the affirmative side, failed to properly analyze the audience.  His argument relied on emotionally loaded language and strictly motivational claims.  The need for reform was never established and ultimately the burden of proof was not met.

Gallagher, on the negative side of the argument, was successful by taking a logical approach to a motivational issue.  By directing the focus of her argument to a question of definition rather than one of value, Gallagher was able to appeal to a larger audience.

Ultimately, Wolfson held the burden of convincing Deaf to Sirens that there is a need to legalize same-sex marriage, that his remedy is the appropriate one, and finally that there are no significant disadvantages to his proposal.  He did not achieve all three objectives, and therefore lost this debate.  We hope that with our expert coaching Wolfson will become more receiver-centric and modify his strategies in the future.

**References**

Feingold, Stanley and George McKenna. *Taking Sides: Clashing Views on Political Issues.* New York: McGraw Hill, 2006.

 “Gay Marriage Timeline.” Pew Forum on Religion and Public Life. 1 April 2008. Accessed 6 February 2011 via <http://pewforum.org/Gay-Marriage-and-Homosexuality/Gay-Marriage-Timeline.aspx>.

Head, Tom. “Four Reasons to Support Same-Sex Marriage.” *About.com*. 1 June 2006. Accessed 18 February 2011 via <http://civilliberty.about.com/od/gendersexuality/a/marriageamend.htm>.

“Perry, et al. v. Schwartzenegger, et al.” 10 U.S. 16696 U.S. Court of Appeals, Ninth District Court. 2010. Accessed via <http://www.ca9.uscourts.gov/datastore/general/2010/10/27/amicus39.pdf>.

#  “Same-Sex Marriage, Civil Unions and Domestic Partnerships.” National Conference of State Legislations. Accessed 12 February 2001 via <<http://www.ncsl.org/default.aspx?tabid=16430>>.

“Support for Same-sex Marriage Edges Upward.” Pew *Forum on Religion and Public Life*. 6 October 2010. Accessed 16 February 2011 via <http://pewforum.org/Gay-Marriage-and-Homosexuality/Support-For-Same-Sex-Marriage-Edges-Upward.aspx>.

“What is a Civil Union.” FactCheck.org. 9 August 2007. Accessed 7 February 2011 via <http://www.factcheck.org/what\_is\_a\_civil\_union.html>.

Weston, Anthony. A Rulebook for Arguments, Fourth Edition. Indianapolis: Hackett Publishing Company, Inc, 2009.

**Appendices**

**NRD Model**

|  |  |  |  |
| --- | --- | --- | --- |
| **Need** | **Remedy** | **Disadvantages** | **devil** |
| -To end inequality-To equalize legal benefits -To equalize child-rearing rights/benefits | -Legalizing same-sex marriage | -Changing the social definition -Federal costs to change the law -Regulating marriage (once redefined) | -The legal definition of marriage  |

**Figure 1:**

**Audience Analysis**

**Figure 2:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Audience Groups** | **Demographics (education, gender, etc.)** | **Beliefs and Values** | **Types of persuasive arguments** | **Audiences concern** **with a change** |
| Millennials (born after 1980) | -53% in favor of legalizing same-sex marriage-Highest rate of higher education (corresponds to greater approval rating) | -Acceptance-Mobility-74% affiliated with a religion | -Authoritative-Motivational | -Moral cognitive dissonance |
| Gen X(1965-1980) | -48% in favor of legalizing same-sex marriage-Most have some higher education | -Freedom-Mobility-80% affiliated with a religion | -Substantive-Motivational | -Moral cognitive dissonance-Family structure changing |
| Baby Boomers (1946-1964) | -38% in favor of legalizing same-sex marriage-Some level of higher education for about half of the population | -Tradition-Hard work-May be open to change-87% affiliated with a religion | -Substantive-Motivational | -Moral cognitive dissonance-Family structure changing-Will it cost me money (taxes)? |
| Silent Generation(1928-1945) | -29% in favor of legalizing same-sex marriage-Least percent of the population received higher education | -Tradition-Hard work-Commitment-92% affiliated with a religion | -Motivational | -Moral cognitive dissonance -Will it cost me money (taxes)? |

**Toulmin Models**

**Affirmative argument**

**“No good reason” claim: Figure 3**

**“Every reputable organization” claim: Figure 4**

**Negative arguments**

**“Public does not favor same-sex marriage” claim: Figure 5**

**“Man and woman” claim: Figure 6**

**Affirmative arguments inventory**

1. Marriage is an important part of American society and the right to marry should not be denied on the basis of sexual orientation.\*
	1. There is a universal power in the phrase “We’re married.”
	2. Marriage says “We are family” in a very universal way.
	3. Some legal benefits of marriage: family health coverage, child custody, medical/bereavement leave, joint tax returns, income/estate tax benefits, cannot assume pension or Social Security benefits in the event of the death of his/her partner, medical decisions for an incapacitated partner, petition to immigrate, leave of absence (12 weeks) for an ill partner or parent(s) of a partner, parenting responsibilities can be brought into question, purchase continued health coverage for a partner in the event of unemployment (NASW website)
2. Denial of marriage is one of the harshest inequalities inflicted on gay and lesbian families.\*
	1. Denial of marriage is a violation of freedom of religion (more evidence).
	2. Breaks the equal protection clause AND the due process clause of the United States Constitution.
3. 14th Amendment:  No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
	1. Denying same-sex couples the right to marry is no different than denying heterosexual couples of different races the right to marry. Interracial marriage has been fully legal in the United States since the 1967 decision in the Supreme Court case Loving v. Virginia.
4. Many opponents to same-sex marriage have changed their position over the last two decades.\*
	1. Bill Clinton, the president who signed the Defense of Marriage Act, decided to change his position after becoming acquainted with many same-sex couples and realizing “he was wrong.”
	2. Even many conservatives have come out in support of gay marriage, including Laura Bush, Cindy McCain, Arnold Schwarzenegger and Glenn Beck (not really, he went from saying it would lead to polygamy in May 2009 to saying in August 2010 “Well, it probably won’t kill anybody and it’s not really a threat to America.”)
	3. Similarly, public opinion of same-sex marriage had turned favorable in recent years. In November 2005, 66% of Canadians approved of gay marriage, vs. 49% in June 1996. [http://civilliberty.about.com/od/gendersexuality/a/marriageamend.htm](https://owac.uwgb.edu/owa/redir.aspx?C=664125262a4b46bb8b796b9bb08c47bb&URL=http%3a%2f%2fcivilliberty.about.com%2fod%2fgendersexuality%2fa%2fmarriageamend.htm)
5. There is no good reason to exclude committed couples from marriage.\*
	1. In the Proposition 8 trial in California, lead lawyer Charles Copper responded “I don’t know” when asked by Judge Vaughn Walker what harm there was in same-sex marriage.
	2. Judge Walker ruled “moral disapproval in an improper basis on which to deny rights to gay men and lesbians.”
	3. “If we allow same-sex marriage, then people will want to marry a chair, their cat, etc.” = this is a slippery slope argument without any logic or factual basis. Absolutely no proof this will happen.
6. Same-sex marriage does no harm to other members of society.\*
	1. I don’t know response
	2. Religion is not harmed – rites and celebration up to each individual religion
7. Every reputable organizations (particularly child-welfare and health organizations) have come out in support of same-sex marriage.\*
	1. American Academy of Pediatrics, National Association of Social Workers, American Psychoanalytic Association, American Anthropological Association,  American Sociological Association [http://www.ca9.uscourts.gov/datastore/general/2010/10/27/amicus39.pdf](https://owac.uwgb.edu/owa/redir.aspx?C=664125262a4b46bb8b796b9bb08c47bb&URL=http%3a%2f%2fwww.ca9.uscourts.gov%2fdatastore%2fgeneral%2f2010%2f10%2f27%2famicus39.pdf)
	2. Child Welfare League of America
8. Children are not harmed – in fact, same-sex marriage would help build stronger families.\*
	1. The “children need a mother and father” argument is flawed because many single parents (mothers and fathers) raise children.
	2. Preventing a same-sex couple with existing children is actually more harmful because it prevents them from making a loving commitment to each other.
	3. Provides a more stable environment for children of same-sex couples
9. Same-sex marriage could better the entire institution of marriage.
	1. Currently, divorce rates for heterosexual marriages are high. One argument against same-sex marriage is that it will undermine marriage. However, if gay couples in committed relationships were allowed to marry, it would improve marriage by providing more positive role models.
10. The banning of same-sex marriage serves no secular purpose.
	1. Similar to #4, but in regards to the role of religion in deciding secular matters.
	2. As far as government is concerned, marriage is a secular institution.
	3. Government has no place in deciding the “sanctity” of marriage or deciding that it is sent down by God.
	4. Religion-based arguments have no basis in government – making any religious arguments (ie, homosexuality is a sin) void.
	5. The government should allow same-sex marriage – it is up to individual religious groups to decide whether to allow same-sex marriages.
11. Marriage is the only acceptable alternative – civil unions and other arrangements are not the same as marriage.
	1. Allowing same-sex couples to enter a civil union is similar to “separate but equal” compromises made prior to the civil rights era.
12. Separate but equal was outlawed in the 1954 Supreme Court case Brown vs. Board of Education of Topeka, Kansas
	1. Civil unions only offer protections on a state level.
	2. Some domestic partnerships offer limited benefits to couples.
	3. Immigration sponsorship, joint tax returns and other federal benefits could not be applied to those in civil unions.
	4. The Constitution guarantees equality for all, and these two institutions are not equal.
13. The primary purpose of marriage is not procreation and child rearing.
	1. Allowing same-sex marriage will not cause the extinction of the human race – heterosexuals can still marry and reproduce.
	2. Marriage is about love and commitment, not procreation.
	3. Sterile men and women are allowed to marry – so why not homosexuals?
	4. One of the major problems faced by the world is overpopulation.
14. Marriage has changed over the years, as have other “traditional” institutions.
	1. Changing of words in traditional marriage vows – taking out obey, man and wife
	2. Freely allowing divorce
	3. Other traditional institutions have been abolished (like slavery) – society changes
	4. Same-sex marriage does not alter heterosexual marriages in any way.
15. Gay families who want children highly value family.
	1. Must spend large amounts of time and money to acquire a child.

**Negative arguments inventory**

1. Past precedent\*
	1. Past precedent from courts and public referendums has not favored the legalization of single-sex marriage in the U.S.
	2. Refutation: Past precedent is not always correct, over time judges’ ruling and public votes can change
2. Legally redefining marriage changes the definition of marriage\*
	1. This change threatens the understanding of marriage, because it redefine the union outside of the child-bearing and child-rearing context. Because single-sex marriage is different than heterosexual marriage and thus cannot be identified as “marriage.”
	2. Refutation: Child-bearing and child-rearing is no longer the center of marriage. Marriage itself has evolved in meaning independent of the single-sex marriage debate. The recognition of single-sex marriage would do little to disturb the current (perhaps un- of under-stated) new social understanding of the institution.
3. There is a viable solution to the needs of same-sex couples other than redefining marriage and marriage legislation\*
	1. There is a need (acknowledgement), but changing the definition of marriage to include single-sex couples is not the only way of meeting those needs. A different structure can be developed to fit those needs.
	2. Refutation: 1) There is no way all the legal needs for equity will be met but for a legal recognition of single-sex marriage as marriage. 2) Part of the need of same-sex couples is to have true equality, including the right to call their union marriage.
4. Tradition
	1. Standing cultural tradition has recognized marriage only between heterosexual couples.
	2. Refutation: This generalized “tradition” as identical for all American peoples (Jeremy’s argument)
5. Moral value (rightness or wrongness)
	1. Same-sex marriage and same-sex relationships are wrong.
	2. Refutation: No, they’re not. Says who?
6. Civil unions/Domestic partnerships meet the current needs
	1. Civil unions offer partnership rights to same-sex couples, which meet the legal need of same-sex couples (and, thus, there is no need to recognize marriage between same-sex couples).
	2. Refutation: Civil unions are not equal to marriage in the rights allocated, especially federally. In fact, until the repeal of DOMA, same-sex couples in any type of union will not have the opportunity for or access to the same level of rights as heterosexual married couples.
7. Costs (of equal benefits for same-sex couples)
	1. This legal change would be a financial burden on the federal government and/or private organization to provide financial benefits and health benefits to same-sex couples.
	2. Refutation: The cost would likely change very little from the current situation, and many businesses have found in not only possible or quite manageable to offer equal benefits.

\*denotes an claim presented in the argument

**100 Facts**

1. Same-sex couples live in 99.3 percent of all counties nationwide
2. There are an estimated 3.1 million people living together in same-sex relationships in the United States
3. Fifteen percent of these same-sex couples live in rural settings.
4. One out of three lesbian couples is raising children. One out of five gay male couples is raising children.
5. Between 1 million and 9 million children are being raised by gay, lesbian and bisexual parents in the United States.
6. At least one same-sex couple is raising children in 96 percent of all counties nationwide.
7. The highest percentages of same-sex couples raising children live in the South.
8. Nearly one in four same-sex couples includes a partner 55 years old or older, and nearly one in five same-sex couples is composed of two people 55 or older.
9. More than one in 10 same-sex couples includes a partner 65 years old or older, and nearly one in 10 same-sex couples is composed of two people 65 or older.
10. The states with the highest numbers of same-sex senior couples are also the most popular for heterosexual senior couples: California, New York, and Florida.
11. There are over 1,100 federal benefits and protections of marriage.
12. The Defense of Marriage Act defines marriage as a legal union between one man and one woman for purposes of all federal laws, and provides that states need not recognize a marriage from another state if it is between persons of the same sex.
13. Unmarried Americans head more than 51 million households. - U.S. Census Bureau. “America’s Families and Living Arrangements: 2007.”
14. In 2005, unmarried households became the majority of all U.S. households. - U.S. Census Bureau. American Community Survey: 2005.
15. At least 9,390 employers in the U.S. offer domestic partner health benefits for their employees. Of these, 95% offer the benefits to both same-sex and different-sex partners. - Human Rights Campaign website. 2006. - Human Rights Campaign. “State of the Workplace: 2004.”
16. 39.7% of all births are to unmarried women. - National Center for Health Statistics. 2007.
17. Nearly 40% of opposite-sex, unmarried American households include children. - U.S. Census Bureau. “America’s Families and Living Arrangements: 2007.”
18. Vermont is the only state to offer civil unions.
19. 39 states have “defense of marriage” laws prohibiting the recognition of marriages between same sex partners.
20. Five states including Massachusetts, Connecticut, Iowa, New Hampshire, Vermont, as well as the District of Columbia issue marriage licenses to same-sex couples.
21. Same-sex couples are denied rights such as hospital visitation, Social Security benefits, immigration, health insurance, estate taxes, family leave, nursing homes, home protections, and pensions.
22. Numerous elected officials throughout the nation are openly homosexual.
23. San Francisco was the first city to issue same-sex marriage licenses in Feb of 2004. Decision made by Mayor Gavin Newsom who was sworn into office on Jan. 9, 2004. California later overturned the decision stating it was unconstitutional.
24. Defense of marriage act, 1996 law barring federal recognition of same-sex marriages.
25. Obama backed civil unions for gay people while opposing same-sex marriage.
26. At the core of the same-sex marriage debate is tension between civil equality and cultural endorsement of same-sex couples.
27. Law organization, GLAD, makes legal and public arguments in support of same-sex marriage using the civil quality frame (Gay & Lesbian Advocates & Defenders, n.d.)
28. American Family Association, a group organized in support of traditional family values, argues against same-sex marriage based on the belief that American culture should not endorse same-sex couples and gay and lesbian life- styles (American Family Association, n.d.)
29. Human Rights Campaign, a gay and lesbian advocacy organization, argues in support of same-sex marriage as a matter of civil equality *and* cultural endorsement of gay and lesbian people, families, and life- styles (Human Rights Campaign, n.d.).
30. In Massachusetts, a court ruled in July that parts of the Defense of Marriage Act (DOMA) - the federal statute that withholds the benefits of marriage from same-sex couples - violate the Equal Protection Clause of the Constitution.
31. ballot initiative Proposition 8???????
32. Judge Walker pointed out that Prop. 8 "enshrines in the California Constitution a gender restriction... that men and women fulfill different roles in civic life." But, he wrote (in language feminists cheered), "Gender no longer forms an essential part of marriage; marriage under law is a union of equals." Since that is the case, "same-sex and opposite-sex unions are . . . exactly the same."
33. Dahlia Lithwick, senior editor and legal analyst at Slate.com, finds Judge Walker's argument about gender roles to be particularly salient. "My strong sense is that all those distinctions [about gender] have fallen away. Indeed where once dads got custody because kids were their property, moms then got it because of the 'tender year's' doctrine. Those shifting presumptions themselves prove Walker's point: Gender classifications almost always swept too broadly, and their time is over,"
34. media tend to present LGBTs and gay rights issues in ways that don’t challenge hegemonic notions of gender and sexuality
35. Arragee and Roefs (2004) suggest that news stories should be viewed as ‘‘a forum for framing contests in which political actors compete by sponsoring their preferred definitions of issues’
36. TABLE 2 PG 660
37. As a secular institution, marriage offers practical benefits such as insurance, visitation rights, tax breaks and inheritance rights.
38. As a religious institution, marriage normally offers a commitment to a higher power.
39. Often, those against same-sex marriage have religious reasons.
40. Religious weeing ceremonies have changed certain formalities over the years, such as saying “husband and wife” rather than “man and wife” and omitting “obey” from traditional vows.
41. However, not all religious groups are against same-sex marriage. Terry Davis, pastor of First Presbyterian Church in Hartford, Connecticut has been presiding over ‘holy unions’ since 1992.
42. The United Church of Christ has also pledged to support same-sex marriage.
43. Supporters of same-sex marriage believe denial of same-sex marriage is a violation of religious freedom.
44. Supporters also believe denying same-sex marriage violates the equal protection clause of the Constitution.
45. Most of the major religions in the United States consider homosexuality a sin.
46. The main focus of the debate is whether marriage is a civil right or a question of morality.
47. Although Massachusetts legalized same-sex marriage in 2004, those marriages are not recognized by most other states or the federal government.
48. Some corporations and local governments have extended domestic partnership rights to employees.
49. Marriage in the United States has both religious and secular components.
50. In order to receive some of the benefits married couples receive, same-sex couples must piece together a host of protections with the help of a lawyer.
51. Some against same-sex marriage support domestic partnerships as long as the partnerships are not actually called a marriage.
52. Another argument against same-sex marriage is that it would decay the family system.
53. Another argument is that children need both a father and a mother figure, and that parenting by same-sex couples is not the same.
54. Children need biological parents in order to develop into a functioning adult.
55. Another argument is that same-sex marriage could cause fidelity within marriages to decrease.
56. Same-sex marriage ruins the “purpose” of marriage-to procreate.
57. Marriage: (many definitions) the legal or religious ceremony that formalizes the decision of two people to live as a married couple.
58. Defense of Marriage Act (DOMA): federal law of United States passed on September 21st 1996.
59. Federal law sees marriage as between a man and a woman, and DOMA says that no other states needs to recognize a “gay marriage” that is considered marriage in another state.
60. DOMA prevents federal governments from recognizing validity of same sex marriages.
61. Massachusetts, Connecticut, Iowa, New Hampshire, Vermont, and Washington D.C. allow legal same-sex marriages.
62. Certain states may recognize same-sex marriages, but do not perform them.
63. Domestic partnerships are permitted in 11 states.
64. A domestic partnership is a legal or personal relationship between two individuals who live together and share a common domestic life but are neither joined by marriage nor a civil union.
65. The rights given to those in civil unions and those in domestic partnerships vary depending on the state.
66. Typically, civil unions that are granted have more legal rights than domestic partnerships.
67. The legal rights of gay couples have gotten much stronger in the past two decades then previously.
68. Socially, homosexuality has become much more accepted, but still fighting for rights.
69. Arguments for those against gay marriage are strongly religious-especially for Catholics.
70. Arguments for same-sex marriage rights are typically on the grounds of human rights.
71. The rights given in domestic partnerships and civil unions are not able to travel with the people between states. (ex. If they move)
72. Marriage rights stay with the person no matter where they relocate.
73. Domestic partnerships can be shared between couples of opposite-sex as well, not just homosexuals.
74. Issues/rights that gay couples are concerned with that come with the legal recognition of marriage are taxes, benefits, visitations, status of next of kin.
75. Bible has no mention of priest being present at first marriages/it was household matter, not religious matter.
76. Marriages began as issues of property, daughter given away as property between father and husband.
77. Marriages were not church involved until the 19th century.
78. Same-sex marriage is forbidden in Wisconsin.
79. Some same-sex rights under domestic partnership are granted in Wisconsin such as inheritance of partners estate, hospital visitations, and access of medical leave to take care of partner.
80. Wisconsin does not recognize out of state civil unions.
81. It seems it has to be both. Marriage is a social institution with legal associations in the United States.
82. There are 1,138 federal laws that relate to marriage in the U.S.
83. Most of those laws relate to benefits, such as
	1. social security benefits
	2. medical benefits
	3. next-of-kin status (and decision making status)
	4. foster parenting and adoption rights
84. The Defense of Marriage Act (DOMA) was signed by President Clinton in 1996
85. This Act prevents federal benefit dispersment to same-sex couples
	1. This ultimately creates a problem in the later discussions of other entities like domestic partnerships and civil unions.
86. Domestic partnerships are formal or informal acknowledgements of a couple (that may be a homosexual or heterosexual couple)
87. Domestic partnerships inherently have little or no legal marriage rights (some are legislated by states)
88. 11 states have domestic partnerships permitted by legislation
89. Civil unions are similar to domestic partnerships, but have general been associated with stronger rights.
90. Civil unions are popular among political viewpoints (ie: “I don’t support same-sex marriage, but I do support civil unions.)
91. But, civil unions still leave some unresolved issues:
	1. While it grants certain state rights, it can’t override DOMA, and therefore can’t grant federal rights that parallel the rights of a married couple
	2. Civil unions are not recognized in every state, and so a civil union in one state may not be recognized by another state. (it’s not mobile)
	3. “Marriage” is a tough word. Some same-sex marriage proponents don’t want a “civil union,” they want the word marriage to include the single-sex type of union. Those opposed to the terminology do so with equal vehemence.
92. Courts, legislatures and public referendum votes have yielded a variety of answers and/or opinions about same-sex marriage.
93. It seems that the same-sex marriage debate really heated up in the late 1990s and clearly still continues today.
94. The same year, there was a constitutional convention looking to amend the state constitution to describe marriage as “between one man and one woman.” But that failed to pass.
95. 3 state recognize same-sex marriage performed in other states
96. 3 states allow domestic partnerships with nearly-all state marriage rights
97. 3 state allow domestic partnerships with some state marriage rights
98. 39 states legislatively define marriage as between one man and one woman
99. 30 of those states make that legislative definition in the state constitution
100. 37 states have defensive statutory Defense Of Marriage Acts
101. 10 states are without a law that prohibits same-sex marriage