

# GAY MARRIAGE AND STATE CONSTITUTIONAL PROVISIONS

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## Are Some State Constitutional Marriage Bans More Restrictive Than Others?

- At the time this paper was written, no study had found, or been undertaken to find, an answer to this question.
- Traditional literature on direct democracy institutions would suggest, states which operate under direct democracy institutions that have constitutional marriage bans would be more restrictive than non-direct democracy institution states.
- There is also evidence to suggest that policies grounded in morals are more also restrictive of minority rights.

## Data & Methods

- At the time this paper was written there were thirty-one states with constitutional marriage bans in the United States.
- A content analysis was employed to compare the constitutional marriage bans.

## Results

- States in the Southern region of the U.S. have more restrictive constitutional marriage bans than other states.
- There were more moralistic constitutional marriage bans in the South, which can account for the restrictiveness.
- Surprisingly, the majority of Southern states operate under non-direct democracy institutions, which are supposed to be less restrictive of minority rights

## The Democratic Institutions of States with Constitutional Marriage Bans

CENSUS REGION	DIRECT DEMOCRACY	INDIRECT DEMOCRACY
Northeast	(0)	(0)
Midwest	MI, OH, MO, NE, ND, SD (6)	WI, KS (2)
South	FL, MS, AR, OK (4)	GA, NC, SC, VA, AL, KY, TN, LA, TX (9)
West	AZ, CO, ID, MT, UT, NV, AK, OR (8)	HI (1)

## States which Constitutionally Prohibit All Persons From Entering into Domestic Contracts Similar to Marriage, Regardless of Sexual Orientation

CENSUS REGION	PROHIBIT	ALLOW
Northeast	(0)	(0)
Midwest	OH*, MI*, WI, KS, ND*, SD* (0)	NE*, MO* (0)
South	TX, AR*, LA, FL*, NC, VA, KY (8)	OK*, MS*, AL, GA, TN (5)
West	UT*, NV*, ID*, MT*, OR* (5)	AZ*, CO*, AK*, HI (4)

\* Indicates Direct Democracy Institution

## States with Moralistic Constitutional Marriage Bans

CENSUS REGION	MORALISTIC BAN	NON-MORALISTIC
Northeast	(0)	(0)
Midwest	ND*, MI*, OH* (3)	SD*, NE*, KS, MO*, WI (5)
South	TX, OK*, LA, AR*, TN, AL, GA, FL*, SC, NC, VA (11)	KY, MS* (2)
West	ID*, UT*, CO*, AZ* (4)	AK*, OR*, NV*, MT*, HI (5)

\* Indicates Direct Democracy Institution

## States which Constitutionally Limit their Political Subdivisions in Regards to Marriage

CENSUS REGION	LIMIT	DO NOT LIMIT
Northeast	(0)	(0)
Midwest	OH* (1)	MI*, WI, MO*, KS, NE*, ND*, SD*
South	TX, OK*, AR*, LA, GA, SC, VA (7)	MS*, AL, FL*, NC, TN, KY (6)
West	HI (1)	AZ*, CO*, UT*, NV*, ID*, OR*, MT*, AK* (8)

\* Indicates Direct Democracy Institution

## States which Prohibit All SSM Contracts Enacted in Other States

CENSUS REGION	PROHIBIT	RECOGNIZE
Northeast	(0)	(0)
Midwest	OH*, WI, MO*, NE*	ND*, SD*, KS, MI*
South	TX, OK*, AR*, LA, MS*, AL, GA, FL*, SC, NC, VA, TN, KY (13)	(0)
West	AZ*, CO*, NV*, ID*, OR*, AK* (6)	MT*, UT*, HI (3)

\*Indicates Direct Democracy Institution