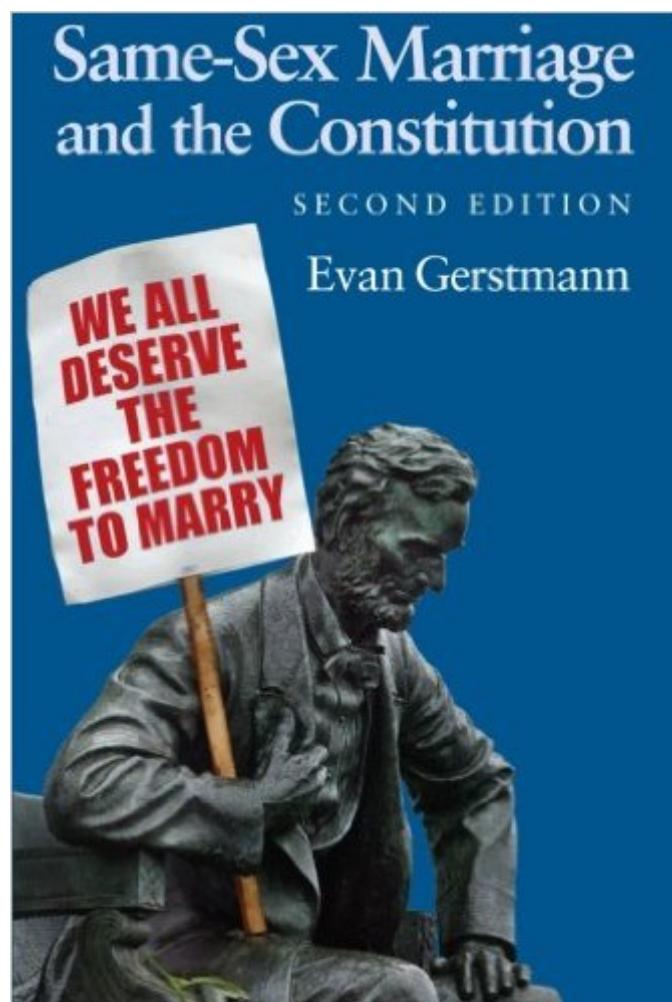


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# Same-Sex Marriage And The Constitution



## **Synopsis**

The revised and expanded second edition of Same-Sex Marriage and the Constitution makes the case that the Constitution has long protected the right to marry, and that this protection includes the right to marry a person of the same gender. No other book makes this argument. This book addresses other issues, such as why same-sex marriage is completely different, both practically and constitutionally, from polygamy and incest, and it debunks the myth that pro-same-sex marriage decisions have created a backlash against either gays and lesbians or the Democratic Party.

## **Book Information**

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## **Customer Reviews**

Want to read a really good book setting out the case for the Constitutionality of same-sex marriage? This is it. There are lots of books out there making the argument that recognition of same-sex marriage is a good idea. This is one of very few devoted solely to the case that the Constitution requires such recognition. And it's very well-reasoned. This book was being prepared for publication as Lawrence v. Texas was decided, so you might think it would be outdated. But it isn't; that decision reinforces Gerstmann's analysis almost point by point. I say 'almost' because Lawrence was decided under the Due Process Clause, whereas Gerstmann thinks that fundamental rights are better regarded as founded in the Equal Protection Clause. (I disagree with him there, by the way, and I also wonder why he doesn't consider the Privileges and Immunities Clause. On the other hand, he gets extra credit for favorably considering the Ninth Amendment.) But in the end it doesn't matter, because Gerstmann's argument is firmly grounded in the fact that the Supreme Court has long recognized the right to marry as a fundamental right. (Where that right is

'located' in the Constitution is a separate and subsidiary question.) This fundamental-right approach yields, on Gerstmann's view (and mine), a much more tenable analysis than the more common equal-protection approach. (And of course *Lawrence* relied on a liberty-rights analysis in striking down state anti-'sodomy' laws -- which is why Gerstmann's analysis gets a fresh boost from that landmark decision.) There are lots of other analytical treats throughout. For example, Gerstmann devotes the better part of a chapter to an argument that *Loving v.*

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