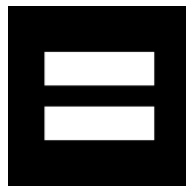


Truth or Consequences: The Effects of Constitutional Amendments On Marriage in Ohio, Michigan, Missouri and Utah

A Report by the Human Rights Campaign
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In 2004, voters in 13 states were asked to ratify state constitutional amendments that purportedly prohibit marriage for same-sex couples. The language in many of these amendments is complicated and convoluted, prohibiting not just marriage but, for example, "...legal status identical or substantially similar to that of marriage" (Kentucky); "...other domestic union, however denominated" (North Dakota); and "legal status...which are identical or substantially similar to marital status" (Arkansas).

Proponents of these measures, at both the state and federal level, purposely introduced and advocated for broad and undefined language. In the 17 states that have amended their constitutions, 11 include language that goes beyond defining marriage. Additionally, the 2005 Marriage Protection Act (MPA), which would amend the U.S. Constitution, includes the phrase "legal incidents of marriage." By employing vague and undefined language, these amendments give judges, lawyers and others wide discretion to interpret their meaning. Even language that defines marriage as between one woman and one man could be interpreted to prohibit basic benefits and protections to all families—gay and straight.

This report examines four states where governmental entities and/or individuals have interpreted their constitutional amendments to deny much more than marriage to same-sex couples. In three of these states - Ohio, Michigan and Utah, the language of the amendments is broad. These prohibit legal recognition of relationships that "...intend to approximate the design, qualities, significance or effect of marriage" [Ohio], constitute a "similar union" [Michigan] and "domestic status or union" [Utah]. These terms are not defined and are open to various and sometimes conflicting interpretations. The language of the Missouri amendment is a one sentence definition of but it has been interpreted by a college president as intimating that the "spirit" of the amendment precludes him from providing domestic partner benefits to the college's employees.

With very little time to study the issue and in the midst of one of the most contentious Presidential campaigns in history, was it possible for voters to have the complete picture of what these amendments actually do? Did they intend, for example, to ban all unmarried couples — gay and straight — from enjoying the most basic protections of family life, such as access to health insurance, protection from physical abuse and the right to have custody agreements upheld?

Whatever voters may have thought about these amendments, the consequences of these amendments and their damaging effects on *all unmarried couples* are becoming very clear. This report highlights four states where these consequences are already being felt. The full impact of these amendments in all the states that have adopted them will take some time to unfold. It is clear that the vague and ill-defined language of these amendments will keep litigators busy for years as courts are forced to interpret what they mean.

A Snapshot of the Consequences

In the past five months, the constitutional amendments on marriage ratified in 2004 have been used by attorneys, lawmakers and public employers in Ohio, Michigan, Missouri and Utah as justification to:

- Deny domestic partner benefits, such as health insurance, to same-sex couples and all unmarried couples.
- Argue that domestic violence laws do not apply to opposite-sex unmarried couples.
- Attempt to revoke a custody agreement between a same-sex couple..

These examples suggest that the amendments could be used to restrict benefits and protections to all unmarried couples across an even wider range of areas of family life, including property ownership, pension benefits, adoption and hospital visitation. The 2000 Census illustrates that there are millions of unmarried couples in the U.S whose lives can be negatively affected by these amendments.

Unmarried Couples in Ohio, Missouri, Michigan and Utah

State	Same-Sex Couples	Opposite-Sex Unmarried Couples	Total Unmarried Couples
Michigan	15,368	186,852	202,220
Ohio	18,937	210,152	229,089
Missouri	9428	101,582	111,010
Utah	3,370	20,734	24,104

Source: Census 2000: "Married-Couple and Unmarried-Partner Households for the United States, Regions, States and for Puerto Rico: 2000."

Consequences In Four States

What follows is a summary of developments in Ohio, Michigan, Missouri and Utah, where denial or restriction of benefits and protections on the basis of the marriage amendments have been reported since the rush to pass these amendments in 2004.

Ohio

Denial of domestic partner benefits.

- The University of Toledo, which has 2,640 employees, announced that it could no longer consider granting domestic partner benefits for unmarried couples because of the constitutional amendment passed in that state. These benefits had been on the agenda for contract negotiations but the board dropped it from consideration after the amendment passed.

Five other state universities currently offer domestic partner benefits in Ohio: Cleveland State, Miami University, Ohio State University, Ohio University and Youngstown State.

Denial of domestic violence protections

- After Frederick Burk, a 42-year-old from Columbus, was charged with assaulting his girlfriend, his lawyer asked the court to throw out the domestic violence felony charge against him on the grounds that the constitutional marriage amendment granted no such

protections to unmarried couples. In March 2005, Cuyahoga County Common Pleas Judge Stuart Friedman agreed and reduced the charge to a misdemeanor assault. The judge wrote: “By mandating that the state deny any legal recognition ‘that intends to approximate the design, significance or effect of marriage’ to relationships between unmarried individuals, the Ohio Constitution now appears to threaten the limited protections previously available to them by law.”

Ohio’s constitutional amendment states:

Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions. This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage.

Michigan

Denial of domestic partner benefits

- Michigan Gov. Jennifer Granholm stripped domestic partner benefits for same-sex couples for state workers under new union contracts in December 2004, citing passage of the constitutional marriage amendment. There are 30,000 employees covered by union contracts in Michigan.
- In March 2005, the state attorney general issued an opinion stating that local jurisdictions and governmental entities, such as school boards, are prohibited from offering domestic partner benefits to their employees.
 - This opinion could affect the domestic partner benefits that are currently provided to public employees in Ann Arbor and Kalamazoo and the counties of Ingham and Washtenaw. They are also offered to employees of the Ann Arbor School District, the Huron Valley School District, Albion College, Central Michigan University, Eastern Michigan University, Kalamazoo College, Lansing Community College, Michigan State University, Northern Michigan University, Oakland University, University of Michigan System and Wayne State University.
- In addition, a Right-Wing law group, the Thomas More Law Center, and 17 taxpayers filed a lawsuit against Ann Arbor Public Schools, asking the Michigan Court of Appeals to stop the school district from providing domestic partner benefits to same-sex couples, citing the constitutional amendment as a rationale for its demand. The district has about 3,000 employees.

Michigan’s constitutional amendment states:

To secure and preserve the benefits of marriage for our society and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose.

Missouri

Denial of domestic partner benefits

- Despite the faculty of Columbia College having approved a proposal to offer domestic partner benefits to any eligible employees among its staff of 1,000, the president of the college decided to kill the proposal after the constitutional amendment was passed, citing questions about whether providing domestic partner benefits would violate the spirit of the law.

Missouri's constitutional amendment states:

That to be valid and recognized in this state, a marriage shall exist only between a man and a woman.

Utah

Denial of domestic partner benefits

- At the request of a faculty committee, Utah State University was considering a proposal to offer domestic partner benefits to same-sex couples. But the proposal was killed after the university's attorney noted that it might violate the recently ratified constitutional amendment. The decision affects employees at 10 educational institutions: College of Eastern Utah, Dixie State College of Utah, Salt Lake Community College, Snow College, Southern Utah University, the University of Utah, the Utah College of Applied Technology, Utah State University, Utah Valley State College and Weber State University.

Denial of domestic violence protections

- After a man was charged with violating a court order that required him to stay away from his former girlfriend and the home they shared, his lawyer filed a motion in November 2004 saying that it was unconstitutional to uphold such protective orders for unmarried couples. The attorney cited passage of the constitutional amendment as grounds for denying such protection to unmarried couples.

Utah's constitutional amendment states:

(1) Marriage consists only of the legal union between a man and a woman. (2) No other domestic status or union, however denominated, between persons is valid or recognized or may be authorized, sanctioned or given the same or substantially equivalent legal effect as a marriage.

What Comes Next?

The proponents of these amendments did not appear on the scene just last year. Those advocating most vociferously for the passage of these amendments like the Community Values Coalition in Ohio and the American Family Association in Michigan have had a long standing anti-gay agenda. These ballot campaigns are the latest in a long series of legal, political and ballot efforts to attack the gay and lesbian community and stop or roll back laws and policies that treat gay and lesbian people equally and fairly.

Seen in that context, there is every reason to think that similar organizations in other states will try to use their constitutional amendments to strip away even the most basic protections that all unmarried couples— gay and straight — now enjoy. In just five months the damage in four states is becoming clear. As the language of these amendments is examined more closely in other states and as courts are faced with interpreting the language, the harm being to real people and to real families in Ohio, Michigan, Missouri and Utah could be just the tip of the iceberg.

Constitutional Amendments: The Landscape

The 17 states that currently have constitutional amendments defining marriage as between a man and woman only are: Alaska, Arkansas, Georgia, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon and Utah.¹

Meanwhile, legislators in an additional 23 states have introduced constitutional amendments in the 2005 legislative sessions. In 2004, 15 states defeated their amendments in the legislature. Some of them will do so again. Others will pass them on to the voters for ratification. The language of each amendment will need to be carefully analyzed to measure its potential impact, not just on same-sex couples, but on all unmarried couples. So far, the evidence is ominous. Perhaps knowing the full potential effects of these amendments will give lawmakers and voters reason to pause and consider more carefully what their vote will actually mean to their friends, family and neighbors— gay and straight.

¹ Hawaii is often mistaken as having a constitutional amendment prohibiting marriage for same-sex couples. In fact, the state's constitution was amended in 1998 to read: "The Legislature shall have the power to reserve marriage to opposite-sex couples." It was the Hawaii Legislature that passed a law prohibiting marriage for same-sex couples.

Proposed State Constitutional Amendments Limiting Marriage And/Or Other Forms of Relationship Recognition in 2005

As of April 18, 2005

