



THE TRUTH ABOUT PENDING MARRIAGE AMENDMENTS

Compiled by ADF Senior Legal Counsel Chris Stovall

Marriage between one man and one woman is the cornerstone institution in our society. A recent white paper from the Georgia Supreme Court Commission on Children, Marriage and Family Law summarizes it well:

[R]esearch indicates that when men and women fail to build lasting, healthy marriages, children suffer. In other words, marriage is akin to a natural child protection agency. By nurturing the institution of marriage, the State effectively funds nature's child protection agency.

The wealth of published data demonstrates that married mothers and fathers increase their children's physical and mental health, general life happiness, academic and intellectual performance, behavioral success at school, and substantially increase the likelihood of these children graduating from college and successfully entering adulthood. These children are also more likely to build successful family relationships themselves in adulthood. Children growing up with married mothers and fathers are far less likely to suffer from physical or sexual abuse, abuse drugs or alcohol, get involved in criminal or violent behavior, or engage in early sexual activity and premarital child-bearing.

After years of scholarly debate, one nonpartisan child-research organization, Child Trends, reflects, "the family structure that helps children the most is a family headed by two biological parents in a low-conflict marriage." Research clearly indicates that family structure matters for children. "Children in single-parent families, children born to unmarried mothers, and children in stepfamilies or cohabiting relationships face higher risk of poor outcomes . . . There is thus value for children in promoting strong, stable marriages between biological parents."¹

Political special interests shouldn't trump what's clearly in the best interests of families and children, yet marriage itself is under assault by special interest activists. The push to redefine marriage is part of a larger movement to blur our culture's inherent grasp of differences in males and females (by promoting "gender fluidity"), and to obliterate all public policies promoting and preferring marriage as the ideal (such preference being frowned upon as "conjugalism"). More than a thousand advocates of homosexual behavior and opponents of marriage have endorsed a manifesto on these points on the Internet at www.BeyondMarriage.org.

¹Georgia Supreme Court's Commission on Children, Marriage and Family Law, White Paper at 2-3 (2006), available at <http://www.gasupreme.us/pdf/whitepaper.pdf> (link last viewed on October 19, 2006).

These special interest activists who seek to subvert the institution of marriage know that their avenues for attack are greatly limited in states whose constitutions define and protect marriage, placing it beyond judicial redefinition. These activists know that citizens of 20 states in recent years have voted overwhelmingly to protect marriage by amending their state constitutions, and eight more are set to do so this November. They know that they have lost at the ballot box every time marriage goes to the voters, who have affirmed marriage by an average of 71% in those 20 states.²

Knowing all this, same-sex “marriage” activists have changed strategy this election season. They are engaging in a highly-organized and well-funded campaign of deception to confuse the public, particularly in three states where the anti-marriage forces think they have an outside chance of defeating constitutional-grade marriage protection – Arizona, Wisconsin and Virginia. The people should not be fooled. Here is the truth to combat the lies marriage opponents hope will confuse voters into failing to protect marriage.

Lie #1: These amendments ban the government from providing benefits.

Truth: These amendments only prohibit domestic partners from receiving benefits if public entities are too stingy (or too worried about making a politically-correct “statement”) to provide benefits equally to adult dependents who are not the sex partners of their unmarried employees. Amendments that prohibit legal statuses similar to marriage restrict the *basis* on which the government can grant benefits, but unmarried people can still receive benefits on a *different basis*. These amendments require the government to provide any such adult dependent benefits on a fairer, more neutral basis, if it chooses to provide them to unmarried employees at all. They direct public entities to stop favoring one very vocal special interest group over others whose needs for dependent benefits are at least as compelling, such as unmarried people caring for disabled adult siblings or elderly parents. Instead of weakening the institution of marriage by allowing a legal status that treats cohabitating sexual partners like the spouses of married persons, under these amendments, the state and municipalities can allow someone entitled to a benefit (say, an employee with health insurance) to extend that benefit to any financially interdependent adult living in the same household.

Marriage opponents attempt to “prove” this lie by noting that Alliance Defense Fund and like-minded groups have filed lawsuits to stop government benefits from being awarded *on the basis of domestic partnership status*, where these amendments have passed. To reiterate, ADF does not oppose granting benefits to unmarried people, so long as they are granted in a manner that does not endorse sexual conduct outside of marriage

²See <http://www.domawatch.com/about/amendmentsummary.html>.

and so long as the definition of marriage is not undermined.³ The point is that “marriage protection amendments” do not truly protect marriage if they leave open the potential for domestic partnership and civil union statutes. The creation and expansion of such marriage-mimicking legal statuses inevitably lead to legal claims that marriage can no longer rationally be denied to same-sex couples. In other words, domestic partnership and civil union laws provide a statutory “trojan horse” to conquer marriage.⁴

Lie #2: These amendments will impact benefits for employees who work for private companies, and would ban other private legal agreements between people who decide to assign legal, medical and financial decision-making responsibilities to anyone of their choosing.

Truth: There is no impact on benefits for employees who work for private employers, and no impact on other private legal agreements. Marriage protection amendments prohibit *state and local governments* from creating or recognizing a legal status similar to marriage for unmarried couples. They do not regulate private employers, private contracts, or private behavior.

As Milwaukee Journal-Sentinel columnist Patrick McIlheran notes, “[i]f we’re still worried that companies will have to cut off benefits for unmarried partners, we can ask whether that’s happened in any of the 19 states that already have such amendments.”⁵ The answer: “It hasn’t. Business groups, benefits experts, human resources consultants, even anti-amendment group[s] ... will tell you that no company has had to cut off benefits because of an amendment. And no one’s tried to make a company do so.”⁶

Indeed, Virginia’s Attorney General Robert F. McDonnell has debunked this fearmongering in an official advisory opinion on Virginia’s pending marriage amendment. The Attorney General notes that “insurance coverage provided by private companies to [their] employees and designated beneficiaries . . . is a private contractual matter between an insurer and the policyholder,” and is thus outside the scope of the marriage amendment.⁷ On the supposed threat to other private benefits and private agreements, the Attorney General concluded that “the passage of the Marriage

³See, e.g., ADF Alliance Alert, Headlines (“Related issue in Ohio”), December 9, 2005, available at <http://www.alliancealert.org/index.php?ID=582> (Glen Lavy, Sr. VP of the ADF Marriage Litigation Center, reiterating the position of ADF in this regard).

⁴See <http://www.alliancealert.org/2005/20050415.pdf>.

⁵Patrick McIlheran, *Experts and Other States Say Benefits Aren’t at Risk*, Milwaukee Journal-Sentinel, September 30, 2006, <http://www.jsonline.com/story/index.aspx?id=506614> (last viewed October 19, 2006).

⁶*Id.*

⁷Commonwealth of Virginia Office of the Attorney General, Official Advisory Opinion dated September 14, 2006, p. 9, available online at <http://www.vaag.com/OPINIONS/2006opns/06-003Newmanetal.pdf>.

Amendment will not affect current legal rights and obligations of unmarried persons involving contracts, wills, advance medical directives, shared equity agreements, [or] employer accident and sickness insurance policies.”⁸

Arrangements like these can currently and will continue to be easily accessible through legal documents already available to everyone. Such arrangements are regularly established between unmarried people who are not necessarily romantic partners. Continuing to permit such private agreements does not violate marriage amendments, because such agreements are not imitations of the legal status of marriage.

Lie #3: These amendments are not needed because there is already a state law banning same-sex “marriage.”

Truth: Anyone with a basic education in civics should know that constitutions trump statutes, and that a court can invalidate a statute if it decides that statute violates even a very general constitutional provision. State marriage statutes have been attacked by same-sex “marriage” activists all across the country, who file suit urging state courts to declare such statutes “unconstitutional.”

When opponents of marriage amendments say there’s “no need” for a constitutional amendment, they’re really hoping voters will not realize that only constitutional-grade marriage protection can prevent activist judges from discovering a “right” to same-sex “marriage” in the state constitution, and striking down the state’s marriage laws as unconstitutional.⁹ Not surprisingly, this is also why marriage opponents regularly attempt to keep marriage amendments off the ballot through legal strong-arm tactics, and attack them once they are passed.

Lie #4: These amendments will deprive unmarried people of protection from domestic

⁸Press Release, Commonwealth of Virginia Office of the Attorney General, Statement of Attorney General Bob McDonnell on Marriage Amendment Opinion (September 14, 2006), available online at http://www.vaag.com/PRESS_RELEASES/NewsArchive/091406_Marriage.html. See also Official Advisory Opinion dated September 14, 2006, p. 5.

⁹See, e.g., Patrick McIlheran, *Check Here to Opt Out of Another Social Revolution*, Milwaukee Journal-Sentinel, September 23, 2006, available online at <http://www.jsonline.com/story/index.aspx?id=502365> (last viewed October 19, 2006) (“It’s true: Wisconsin now says a marriage is a husband and a wife. Massachusetts’ law was more definite. It said marriage was a man and a woman, which covers our obvious failure to specify that a husband must be male. Yet Massachusetts’ Supreme Court ruled 4-3 that marriage needed to be redefined anyhow, law be damned. The amendment’s foes are banking that people who want things to stay as they are can be persuaded to stand pat.”); Robert Robb, *Prop. 107: Yes? No? What?*, Arizona Republic, Oct. 13, 2006, available online at <http://www.azcentral.com/news/opinions/columns/articles/1013robb13.html#> (last viewed October 19, 2006) (“The equal-protection clause of Arizona’s Constitution is not materially different than the equal-protection clause of the Massachusetts Constitution that was used to invalidate a statutory ban on gay marriage. It is sensible for Arizona defenders of traditional marriage not to be willing to rely on the self-restraint of the Arizona Supreme Court.”).

violence laws.

Truth: State domestic violence laws virtually always protect any person living in the household from violent acts by another person living or formerly living in the household, whether related by blood, marriage or neither.¹⁰ Since a spouse is only one of many potential categories of victims and perpetrators under such laws, “domestic violence” does not assume or imply a marriage-like relationship between the parties to the crime. Accordingly, extending such protections to unmarried cohabitants does not equate those relationships to marriage, and does not violate a marriage protection amendment.

Nonetheless, opponents of marriage protection amendments have seized upon poorly-reasoned decisions from two Ohio mid-level appellate courts as “proof” that pending marriage amendments can undermine domestic violence protection for unmarried cohabitants. The activists pushing this deception on the public conveniently fail to mention several problems with the argument, but Virginia Attorney General Robert McDonnell has catalogued them in response to this claim. Eight of the ten Ohio appellate courts to address this argument have *rejected* it, the two rulings accepting it seized on a quirk in the Ohio domestic violence statute, and at least one of the two rulings accepting it is under review by the Ohio Supreme Court.¹¹

¹⁰See, e.g., Ariz. Rev. Stat. Ann. § 13-3601(A) (domestic violence, definition); Va. Code Ann. §§ 18.2-57.2 (assault and battery against a “family or household member”) and 16.1-228 (definition of “family or household member”); Wis. Stat. § 813.12(1) (domestic abuse restraining orders and injunctions).

¹¹Official Advisory Opinion dated September 14, 2006, p. 12 n. 58 (lengthy footnote collecting and discussing all of the Ohio decisions considering whether the Ohio Marriage Amendment invalidated domestic violence protections for unmarried cohabitants, and distinguishing Virginia law).