

QUESTIONS/RESPONSES TO MARRIAGE AMENDMENT

WHAT WOULD THE MARRIAGE AMENDMENT DO?

The Marriage Amendment would legally protect the institution of marriage as between one man and one woman. It would prevent courts or the General Assembly from defining marriage differently or legalizing marriage-like institutions such as civil unions or domestic partnerships.

WOULD THE MARRIAGE AMENDMENT ADVERSELY AFFECT BUSINESS IN NORTH CAROLINA?

There have been no credible studies on the economic effect of the Marriage Amendment in NC or elsewhere. Interestingly, nine out of the top 10 states with the American Legislative Exchange Council's highest economic outlook rankings in 2011 have marriage amendments and have not legalized same-sex "marriage," domestic partnerships, or civil unions. Nine of the 10 states with the poorest economic outlook have legalized one of these institutions. Claiming that marriage amendments have adversely affected a state's economy lacks evidence.

WOULD THE MARRIAGE AMENDMENT PROHIBIT PRIVATE EMPLOYERS FROM PROVIDING BENEFITS TO DOMESTIC PARTNERS?

Private employers would still be able to provide benefits to whomever they choose, including domestic partners. The Amendment, however, would protect employers from being forced by the government to provide these benefits if they choose not to do so.

RIGHTS OF GOVERNMENT EMPLOYEES TO OBTAIN DOMESTIC PARTNERSHIP BENEFITS?

Under current law, state employees cannot obtain domestic partnership benefits. The Amendment would have no effect on state employees. County and municipal governments may provide domestic partnership benefits, although most choose not to. The Marriage Amendment would prohibit county and municipal employees from receiving benefits as derived from a domestic partnership. This amendment, however, would not prohibit the General Assembly from enacting a law authorizing Designated Beneficiary Agreements, as was done in Colorado, which allows individuals to designate individuals to receive benefits from insurance, wills, trusts, etc.

WOULD THE MARRIAGE AMENDMENT AFFECT DOMESTIC VIOLENCE STATUTES?

In the two states with Marriage Amendments where state courts have addressed this issue, the Domestic Violence Statutes have been found constitutionally consistent with the state marriage amendment. In Ohio, the Supreme Court overturned appellate decisions that had found the statutes unconstitutional as applied to unmarried couples. In Kansas, an appellate court found the Domestic Violence statutes constitutionally consistent with the Kansas Marriage Amendment. There is no legal basis for arguing that the NC Domestic Violence statutes would be affected.

WOULD THE MARRIAGE AMENDMENT AFFECT CUSTODY OF CHILDREN?

NC law prohibits same-sex couples from adopting, but individuals (homosexual or heterosexual) may adopt. In making custody decisions, the court looks to the "best interest of the child." Custody can be awarded to unmarried non-biological partners based on "de facto parenting." North Carolina courts from the Supreme Court to district courts have looked and will look at the child's relationship to the "parent." The sexual orientation of the "parent" is not considered. The Marriage Amendment would not affect current NC custody law.

WOULD THE MARRIAGE AMENDMENT AFFECT MEDICAL POWERS OF ATTORNEY, WILLS, TRUSTS?

The Marriage Amendment would not interfere with an individual's right to transfer legal authority by Medical Powers of Attorney or property by wills or trusts. The relationship between the parties is inconsequential even if the documents are contested.

WOULD THE MARRIAGE AMENDMENT PREVENT SAME SEX COUPLES FROM VISITING ONE ANOTHER IN THE HOSPITAL?

NC law requires as part of the state licensing requirements that hospitals allow the patient to designate who will visit the patient. The designee does not need to be legally or biologically related to the patient. Furthermore, federal regulations, which went into effect earlier this year, require that hospitals and Critical Access Hospitals (CAHs) that receive federal funding from Medicare or Medicaid inform the patient that he can designate visitors, including domestic partners, and that the hospital cannot discriminate on the basis of sexual orientation or gender identification.