



## **Indiana Marriage Amendment (SJR15, HJR7 and HJR 8) Frequently Asked Questions**

**“Only a marriage between one (1) man and one (1) woman shall be valid or recognized as a marriage in Indiana. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized.”**

### **1. Why do we need a constitutional amendment when we have a state law that keeps marriage between one man and one woman?**

The May 2008 California Supreme Court decision to strike down that state’s citizen-passed law to keep marriage between one man and one woman should send a very strong message to states that have not bolstered their constitutions to withstand such judicial activism. At that time, 61% of CA voters, over 4 million people, directed a law that marriage be between one man and one woman. The court overturned that – and it tried to keep the constitutional ballot initiative off of the November 2008 ballot, as well, to no avail. The citizens of CA again spoke to the courts as to their will for traditional marriage.

Clearly, a law alone is not sufficient to protect against judicial intrusion, which is why the citizens of 30 states have now have protected marriage in their constitutions. Indiana must be next.

Indiana’s statutory Defense of Marriage Act (“DOMA”) says, “(a) Only a female may marry a male. Only a male may marry a female. (b) A marriage between persons of the same gender is void in Indiana even if the marriage is lawful in the place where it is solemnized.” Indiana Code §31-11-1-1 (subsection (a) was enacted in 1986; subsection (b) was enacted in 1997). If Indiana wants to ensure the continuing health and viability of the policies that are embedded in its marriage statutes, the People of Indiana will need to amend their constitution. The statute alone is not safe, and it is not sufficient.

A constitutional challenge to subsection (a) of Indiana's DOMA was defeated in *Morrison v. Sadler*, 821 N.E.2d 15 (Ind. App. 2005), but *Morrison v. Sadler* was *not* decided by the State's highest court. The litigants in that case, and others who believe that same-sex marriage is a legally enforceable right, have not given up; they are simply waiting for their next opportunity. The Indiana Civil Liberties Union (ICLU) represented the plaintiffs in *Morrison v. Sadler*. They argued that Indiana's DOMA violates three separate sections of the Indiana Constitution, Article 1, §23; Article 1, §1; and Article 1§12. The plaintiffs lost in *Morrison v. Sadler*, but the ICLU hasn't changed its mind about marriage. It still believes that the state cannot constitutionally limit civil marriage to unions of opposite-sex couples.

*Morrison v. Sadler* was a victory for marriage and for democratic decision-making. That decision is tentative, however. Lower courts in Vermont, Massachusetts, and New Jersey all upheld the lawfulness of man-woman marriage, but when the cases were appealed to courts of last resort, the lower courts were reversed. Victories at the appellate courts were temporary; they turned into defeats at the supreme courts. It is naïve to suppose that constitutional challenges to Indiana's DOMA have ended. Indiana is only between rounds.

## **2. Will the new language affect domestic violence laws?**

No. The new language was patterned after Kentucky and Wisconsin, and similar to several other states, where there has been no affect on domestic violence laws.

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. 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.

Indiana Code 35-42-2-1.3(a) says that domestic battery is committed by a person who (1) is or was a spouse of the person; (2) is or was living as if a spouse of the other person as provided in subsection (c); or (3) has a child in common with the other person. Subsection (c) says "In considering whether a person is or was living as a spouse of another individual in subsection (a)(2), the court shall review the following: (1) the duration of the relationship; (2) the frequency of contact; (3) the financial interdependence; (4) whether the two individuals are raising children together; (5) whether the two individuals have engaged in tasks directed toward maintaining a common household; and (6) other factors the court considers relevant.

We have no desire to intentionally or unintentionally expose Indiana's citizens to a lack of protection against domestic violence. Although opponents of Marriage Amendments in Wisconsin and Kentucky cried wolf on domestic violence protections being removed, this has not occurred.

**3. Will the new language take away benefits for homosexual couples that already get health care benefits at private corporations and public universities?**

No, this has been tested and found by the Wisconsin Attorney General to not prevent public or private entities from providing health care benefits. In Kentucky and Wisconsin, private corporations and public universities are still providing health care benefits if they deem it appropriate. The Indiana Family Institute does not support this practice, but Indiana's Marriage Amendment will not take away this option.

The Wisconsin Attorney General's opinion on this matter is particularly instructive:

"In addition, the Attorney General of Kentucky has taken the position that Ky. Const. § 233A, which is identical to Wis. Const. art. XIII, § 13, does not prohibit employers from providing domestic partner benefits. See *Wood v. Commonwealth*, No. Civ.A. 04-CI-01537, 2005 WL 1258921 at \*3 (Ky. Cir. Ct. May 26, 2005).

If Wisconsin wanted to invalidate domestic partnerships in its constitution, it could easily have done so by copying the language of Neb. Const. art. I, § 29, which expressly nullifies not only same-sex marriages but also civil unions and domestic partnerships, instead of copying the "substantially similar" language of Ky. Const. § 233A.

Therefore, it can reasonably be inferred from the language of Wis. Const. art. XIII, § 13, which invalidates only a legal status other than marriage that closely corresponds to marriage, that neither the Legislature nor the people intended to invalidate domestic partnerships when they adopted this provision."

Additionally, in the state of Indiana, contracts, wills, advance medical directives, shared equity agreements, etc. are all rights that do not arise from marriage. They are currently available to the unmarried and will continue to be because the amendment does not affect the rights of private parties to enter into a contract. The law concerning contracts is well settled in Indiana. An offer, acceptance, plus consideration make up the basis for a contract. *Zimmerman v. McColley*, 826 N.E.2d 71 (Ind.App 2005). The right to contract is not based on marriage. Indiana Code 29-1-5-1 states the requirements for making a will: any person of sound mind age 18 or older may make a will. The right to make a will is not based on marriage. Indiana Code 30-5-4-1 lists the conditions for creating a valid power of attorney.

None of these conditions relate to marital status in any way.

**4. Will the new language prevent the legislature from granting homosexual couples additional benefits?**

No, the Indiana General Assembly could still pass legislation to create benefits for same sex couples. It just couldn't pass anything that would be called "marriage" or anything that is identical or substantially similar to marriage.

**5. In this economy will this discourage companies from bringing jobs to Indiana; workforce?**

No, 30 other states have Marriage Amendments, representing 64 percent of the U.S. population. Another 20 percent have Defense of Marriage Acts (DOMA), including Indiana. Economic development is not only taking place within the remaining 16 percent of the population.

Wellpoint, Cummins and Eli Lilly and Company were companies that opposed the previous Marriage Amendment language. They all voiced concern that defining marriage between a man and a woman would create an image of intolerance in Indiana and hurt their ability to recruit employees.

According to Wellpoint's website they have locations in 14 different states. 9 of these states have Marriage Amendments. An additional 3, including Indiana, have a Defense of Marriage Act (DOMA) that defines marriage as between a man and a woman currently within state law. Only 2 have no protections for marriage.

Cummins and Eli Lilly and Company each have employees in all 50 states. 40 of those states have some form of marriage protection (Constitutional amendment or DOMA). If state's defining marriage as between a man and a woman is such a problem for these companies, why do they focus so much of their business in those states?

A substantiated economic case cannot be made against the Indiana Marriage Amendment. Indiana's image as a solid place to live, work and raise a family will only be enhanced by protecting and supporting the institution of marriage through the Marriage Amendment.

**6. Why do this in a tough economy? This session the Indiana General Assembly has a biennial budget to craft, tax issues to consider, etc. Why deal with this?**

This is a difficult legislative session with tax and budget issues that are critical to every citizen in this state. But as we prepare to tackle the looming budget difficulties, we must also consider other important issues that affect our children, families and the overall moral character of our state. We will not just look at one bill this session on the budget – we'll have bills on education, health care, gaming, and other issues. The constitutional amendment to protect marriage is another important bill to protect the traditional family and our long-held Hoosier values --- in the long run, these will ultimately be just as impactful as fiscal issues on the overall health of our state.

**7. Shouldn't government stay out of defining marriage?**

Actually, government is already there. The law currently defines who is eligible to receive a marriage license. If the legislature abandons their responsibility to give the courts constitutional clarity on marriage, it would leave Indiana vulnerable to activist judges who wish to redefine marriage as judges in other states have done. Defining marriage is not a judicial role. The legislature must not abandon its responsibility.

Changing the definition of marriage to include same-sex couples forces all of us to radically change our understanding of family. This is not merely about tolerance; it is about forcing everyone to accept homosexual relationships as equal to marriage. Children will be taught that same-sex marriage is the equivalent of traditional marriage and that traditional gender roles are merely an option in family structures. Research shows that children do best in mother-father households. Same-sex marriage intentionally denies children either a mother or a father.

Regardless of the modern media and cultural messages today, we know that most Hoosiers believe that there are values, expressed in laws, and there are FUNDAMENTAL values expressed in the Constitution.

We also know that if Hoosiers could vote, just like the majority of citizens in 30 states, they'd agree with the rest of the country that one man/one woman is a FUNDAMENTAL value and would want their constitution to protect it.

**8. How is this different from the previously attempted language of the Marriage Amendment in SJR 7? Why did you re-write it?**

Indiana's previous attempt, SJR 7, was defeated by House Democrats in 2008, starting the entire laborious process of amending Indiana's constitution over. Back in 2004, the language in SJR 7 was the best model we found at that time, and it also mirrored the draft legislation at the federal level. Yet, no state enacted that exact language.

Representatives Turner and Cheatham spent last summer looking at all 50 states and found a model that has been used in other states, has been tested and proven in its ability to protect marriage and simultaneously avoid adversely affecting domestic violence protections, health care benefits, hospital visitation, etc.