



**THE “MARRIAGE AMENDMENT” TO THE  
NORTH CAROLINA CONSTITUTION**

# N.C. Marriage Amendment

“Marriage between one man and one woman is the only domestic legal union that shall be valid or recognized in this State. This section does not prohibit a private party from entering into contracts with another private party; nor does this section prohibit courts from adjudicating the rights of private parties pursuant to such contracts.”

“Marriage between one man and one woman is the only domestic legal union that shall be valid or recognized in this State. . . .”

**N.C. Gen. Stat. § 51-1.  
Requisites of marriage;  
solemnization**

- A valid and sufficient marriage is created by the consent of a male and female person who may lawfully marry, presently to take each other...

**N.C. Gen. Stat. § 51-1.2.  
Marriages between persons of  
the same gender not valid**

- Marriages, whether created by common law, contracted, or performed outside of North Carolina, between individuals of the same gender are not valid in North Carolina....

# **AMENDMENT TYPE I: BAN ONLY ON SAME-SEX MARRIAGE**

California's Proposition 8 (2008)

“Only *marriage* between a man and a woman is valid or recognized in California.”

# AMENDMENT TYPE II: BAN ON SAME-SEX MARRIAGE AND SIMILAR STATUSES

Alabama Const. Art. I, Sec. 36.03(g)

*“A union replicating marriage of or between persons of the same sex . . . shall be considered and treated in all respects as having no legal force or effect . . . and shall not be recognized by this state as a marriage or other union replicating marriage.”*

**AMENDMENT TYPE III:**  
**BAN EXTENDS TO GIVING *UNMARRIED***  
***COUPLES* MORE LIMITED RIGHTS**

**PROPOSED N.C. AMENDMENT**

“Marriage between one man and one woman is the only domestic legal union that shall be valid or recognized in this State. . . .”

# RIGHTS THAT WOULD BE AFFECTED

- Bar NC from passing same-sex marriage.
- Bar NC from passing civil unions.
- Invalidate existing domestic partnership benefits by municipalities.
- Bar NC from passing limited status for unmarried couples like domestic partnerships.

# RIGHTS THAT COULD BE AFFECTED:

- Domestic violence protections for unmarried couples.
- Child custody rights of domestic partners that further the best interests of the child.
- Could prevent state from passing in the future:
  - Right to family hospital visitation privileges.
  - Right to make medical decisions if partner is incapacitated.
  - Right for domestic partners to make funeral and burial arrangements for one another.
  - Right to inherit from one another if they die without a will.
  - Right to be named guardian or conservator if one partner becomes incapacitated.

# DOMA Section 3. Definition of marriage

“In determining the meaning of any Act of Congress, . . . the word 'marriage' means only a legal union between one man and one woman as husband and wife . . . .”

# State v. McKinley, 2006 Ohio LEXIS 2379 (Ohio App. 2006)

- The state's including cohabiting unmarried couples within its domestic violence protections violated the amendment's prohibition on "recognizing" "a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage."
- *Overruled*, 872 N.E.2d 1212 (2007).

# National Pride at Work v. Governor of Michigan, 481 Mich. 56, 748 N.W.2d 524 (2008).

- “The pertinent question is . . . whether the public employers are recognizing a domestic partnership as a union similar to a marriage. . . .”
- “[U]nder the domestic-partnership policies at issue here, legal consequences arise from that relationship in the form of health-insurance benefits. Therefore, a domestic partnership is most certainly a union.”
- “[T]he pertinent question for purposes of the marriage amendment is not whether these relationships give rise to identical, or even similar, legal rights and responsibilities, but whether these relationships are similar in nature in the context of the marriage amendment . . . , i.e., for the purpose of a constitutional provision that prohibits the recognition of unions similar to marriage ‘for any purpose.’ If they are, then there can be no legal cognizance given to the similar relationship.”