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# UTAH VOTER INFORMATION PAMPHLET

## General Election November 2, 2004

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(HJR 25)

# CONSTITUTIONAL AMENDMENT NUMBER

# 3

## Joint Resolution on Marriage

Shall the Utah Constitution be amended to provide that:

- (1) marriage consists only of the legal union between a man and a woman; and  
 (2) no other domestic union may be recognized as a marriage or given the same or substantially equal legal effect?

### IMPARTIAL ANALYSIS

Constitutional Amendment Number 3 amends the Utah Constitution to add two provisions related to marriage. First, the Amendment states that marriage consists only of the legal union between a man and a woman. Second, it states that no other domestic union may be recognized as a marriage or given the same or substantially equal legal effect.

#### Present Utah Constitution

The only provision presently in the Utah Constitution relating to marriage is a provision that prohibits polygamous or plural marriages.

#### Present Utah statute

Utah statute presently provides that the state's policy is to recognize as marriage only the legal union of a man and a woman. Utah statute also provides that marriage between persons of the same sex is prohibited and void, and that the state will not give legal effect to any law creating any legal status, rights, benefits, or duties that are substantially the same as those provided under Utah law to a man and a woman because they are married.

There are presently two ways for a man and a woman to enter into a valid marriage. One is by having the marriage solemnized by a person authorized to perform a marriage. The other is by obtaining a court or administrative order establishing that a man and a woman have lived together, have held themselves out as being husband and wife, and have met other legal requirements. This second method is referred to as a common law marriage.

#### Constitutional Amendment Number 3 under the Utah and U.S. Constitutions

Similar to Utah statute, Constitutional Amendment Number 3 states that marriage consists only of the legal union between a man and a woman. The Amendment also prohibits any other domestic union, regardless of what it is called or where it is entered into, from being recognized as a marriage or given the same or substantially equal legal effect.

Other states have statutes that, similar to

Utah's, recognize marriage as a union between a man and a woman. In some of those states, lawsuits have been brought challenging whether the statutory provision denies other couples their equal protection or similar rights under the state constitution. In at least one of those states, the state court has determined that the statute does not violate the state's constitution. In other states, however, the courts have determined that the state statute violates or may violate the state constitution. None of those states' constitutions contained a provision relating to marriage similar to Constitutional Amendment Number 3.

Constitutional Amendment Number 3 avoids a result in Utah similar to that of other states where state statute has been determined to be in conflict with the state constitution. The Amendment raises to constitutional status principles relating to marriage that are now expressed only in statute. Because the Amendment places those principles in the Utah Constitution, any potential conflict between the Utah Constitution and the statutory provision expressing the same principle is eliminated.

Although Constitutional Amendment Number 3 resolves any potential conflict between the similar statutory provisions and the Utah Constitution, it does not eliminate potential conflict with the United States Constitution. One potential conflict is with the Equal Protection Clause. The United States Supreme Court has stated that the right to marry "is of fundamental importance," requiring "critical examination" of the state's interest in creating a classification that interferes with that right. Because the Amendment, like its statutory counterpart, creates a classification of persons to whom the right to marry is not available, that classification may be subject to challenge under the Equal Protection Clause of the United States Constitution. To date, however, there appear to be no decided court cases involving a challenge to a provision similar to Constitutional Amendment Number 3 based on federal equal protection grounds. In

YES  
 NO

Senate: 20-7-2  
 House: 58-14-3

## IMPARTIAL ANALYSIS (continued)

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addition to a possible challenge based on federal equal protection, a challenge based on other federal constitutional provisions is possible. The likelihood that a court would conclude that the Amendment or the similar statutory provisions violate equal protection or other provisions of the U.S. Constitution is unknown.

### **Effects of Constitutional Amendment Number 3**

Constitutional Amendment Number 3 does three things. First, it defines what a marriage is: only a legal union between a man and a woman. Second, it prevents any other domestic union from being recognized as a marriage, regardless of what the domestic union is called or where it was entered into.

Third, the Amendment prohibits any other domestic union from being given the same or substantially equal legal effect as is given to a marriage between a man and a woman. Presently when a man and a woman marry, they receive certain rights, benefits, and obligations provided in the law. A married man and woman receive those rights, benefits, and obligations automatically, by operation of law and solely by virtue of being married. The Amendment prohibits a domestic union from being given those same or similar rights, benefits, and obligations. The scope of that prohibition may be more precisely defined by Utah courts as they interpret the provision in the context of lawsuits that may arise.

### **Effective date**

If approved by voters, Constitutional Amendment Number 3 takes effect January 1, 2005.

### **Fiscal Impact**

Constitutional Amendment Number 3 has no fiscal impact on state or local government.

## ARGUMENTS

**Argument For:**

Vote Yes on this amendment to ensure that same sex marriage is not allowed in Utah and that the people of Utah retain the right under our constitution to decide how marriage is defined in this state.

Massachusetts recently turned its back on centuries of precedent and began issuing marriage licenses to same sex couples. Why did they do this? Because they were ordered to do so by four judges - barely a majority of its highest court - based on their "modern" interpretation of that state's constitution. Our own courts will likely now face such questions as (1) whether to follow Massachusetts in redefining the meaning of marriage and family and (2) whether to recognize same sex marriages performed in other states. Utah needs to amend our state constitution to specifically address and protect against these conditions.

This amendment will do three things. First, it ensures that no state court in Utah can ever make a ruling like the one in Massachusetts that overruled the people and redefined marriage against their will. Second, it prevents state courts from requiring that same sex marriages from other states be recognized in Utah. Third, it prevents the creation of marriage substitutes (like "civil unions" or "domestic partnerships") that sanction and give unmarried couples the same status as marriage under another name.

This amendment does not promote intolerance, hatred or bigotry. Earlier this year, the Federal Eleventh Circuit Court of Appeals upheld Florida's ban on homosexual adoptions. The Court unequivocally recognized government's strong interest in maintaining public morality, the justified preference for heterosexual marriage with its capacity to perpetuate the human race and the importance of raising children in that preferred relationship. This amendment preserves that same historic understanding of marriage and the ability of Utahns to govern themselves.

Social stability has always depended on strong marriages. Many families, of course, face difficult challenges, including divorce and the absence of a father or a mother. These challenges, however, are no reason to abandon the ideal relationship where men, women and children thrive best and that is an enduring natural marriage between a man and a woman.

Here in Utah, let us heed the warning of Lincoln and not allow others to "blow out the moral lights around us." The courts have long recognized that marriage and family law are domestic matters to be decided by state and not federal authority. Therefore, this matter will be decided by a majority of the voters in this election and that is as it should be. As Thomas Jefferson explained, "It is rare that the public sentiment decides immorally or unwisely."

We urge you to support this important measure for the good of our state and its families and children.

REPRESENTATIVE LAVAR CHRISTENSEN (ATTORNEY)  
SENATOR D. CHRIS BUTTARS

**Argument Against:**

Reasonable and compassionate Utahns, including those opposed to "gay marriage," should vote "No" on this constitutional amendment. Utahns of all faiths— single and married, straight and gay—need to take a closer look at this amendment and see that it goes far beyond defining marriage. It's really about making discrimination legal-- discrimination that hurts real people and takes basic rights away from real families.

Part 1 of the amendment is completely unnecessary

Part 1 defines marriage as "between a man and a woman." This definition has already been adopted three different places in Utah law. This language was first passed by the Legislature in 1977. In the last 25 years, we've never needed a constitutional amendment to stop gay marriage, and we don't need one now. Even those who worry about Utah being forced to accept gay marriages performed elsewhere acknowledge that an amendment to our constitution won't make any difference. Attorney General Mark Shurtleff has said, "This is going to be decided by the United States Supreme Court. It won't matter what state constitutions say."

Part 2 of the amendment is deeply hurtful

Part 2 prevents same-sex partners from being given any basic rights of "substantially equivalent legal effect" to those given married couples. This means that same-sex couples in committed, long-term relationships can never receive any of the more than 1,000 legal rights and protections provided to married couples. We're not just talking about tax benefits and inheritance rights. We're talking basic rights, such as the ability to visit one's partner in the hospital or make medical decisions in an emergency. The amendment would also deny same-sex couples health insurance benefits currently offered by many prominent Utah employers. Legal experts say that the vague language of Part 2 could even interfere with powers of attorney, wills, medical directives, property arrangements, and joint bank accounts used by same-sex couples. Polls show that more than 70% of Utahns have a family member or close friend who is gay. Denying our neighbors and our relatives basic rights, such as hospital visitation, is hurtful and discriminatory.

Part 2 harms children and families

Worst of all, this amendment is certain to have unintended consequences that will hurt real Utah families. You may not approve of same-sex couples having children, but they do. These children didn't choose their circumstances, yet this amendment would deny them rights and protections that provide stability and security for all other Utah children.

Our constitution is no place for discrimination

Our constitution was written to limit government and guarantee rights—not take them away. Yet part 2 of this amendment prevents same-sex couples from ever being granted many basic rights. We would never dream of enacting legal discrimination based on age, race, or religion. Our

**ARGUMENTS (continued) AND COMPLETE TEXT CONSTITUTIONAL AMENDMENT NUMBER 3**

constitution is no place for discrimination. Utahns can show their reasonableness, compassion, and fairness by voting "No" on this amendment.

REPRESENTATIVE JACKIE BISKUPSKI  
DR. AND MRS. GARY WATTS  
TERRY KOGAN, PROFESSOR OF LAW

**Rebuttal To Argument Against:**

The Founders of our nation believed that the majority of Americans would always remain moral and choose wisely. Now, in 2004, a small percentage of the population wants to radically alter the established meaning of marriage in ways never before contemplated. What new enlightenment or sudden discovery do they offer? Only counterfeit logic and unfounded talk of discrimination.

Same sex couples have previously claimed a right of privacy. Now, they demand official public sanction (marriage) as if the laws of nature somehow no longer exist and there is no higher standard than individual sexual preference. The Supreme Court stated, at such times, "a page of history is worth a volume of logic."

The Declaration of Independence specifically recognizes the "Creator," "the Laws of Nature and of Nature's God," "the Supreme Judge of the World" and our "firm reliance on the protection of divine providence." President Kennedy reminded us that "the rights of man come not from the generosity of the state, but from the hand of God."

This amendment does not deny any existing rights under Utah Law. Despite the opponents' contentions, "sexual orientation" is not comparable to race, religion and ethnicity. If needed, their concerns can be separately addressed without sanctioning and giving blanket marriage status to same sex couples.

Our current marriage laws could be weakened in the future if we do not specifically amend our constitution to prevent that from happening. VOTE YES TO STRENGTHEN OUR CONSTITUTION IN DEFENSE OF MARRIAGE.

REPRESENTATIVE LAVAR CHRISTENSEN (ATTORNEY)  
SENATOR D. CHRIS BUTTARS  
REPRESENTATIVE MARGARET DAYTON

**Rebuttal To Argument For:**

This amendment goes far beyond just defining marriage. It singles out one specific group – people who are our relatives, neighbors, and co-workers – to deny them hundreds of rights and protections that other Utahns enjoy. In so doing, it undermines their well-being, their financial security, and the stability of their families. Good, fair-minded Utahns should see this amendment for what it is – a hurtful, discriminatory, and unnecessary addition to our Constitution – and vote "NO."

The amendment's sponsors say we "need" it to stop activist judges and our legislature from forcing "gay marriage" or "marriage substitutes" upon our state. But Utah's judges and legislators are the most conservative in the country. We already have three different laws defining marriage. Instead of worrying about something that simply won't happen, voters should consider the unintended and hurtful consequences hidden in the second part of this amendment.

We should not hurt real families and innocent children to make an extreme and unnecessary political point. The amendment's supporters ask you to vote for it "for the good of this state and its families and children." We ask you to consider in your heart.

REPRESENTATIVE JACKIE BISKUPSKI  
DR. AND MRS. GARY WATTS  
TERRY KOGAN, PROFESSOR OF LAW

**CONSTITUTIONAL AMENDMENT 3**

This joint resolution of the Legislature proposes to amend the Utah Constitution to add a provision relating to marriage.

**Utah Constitution Sections Affected:**

ENACTS:

**ARTICLE I, SECTION 29**

*Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:*

Section 1. It is proposed to enact Utah Constitution Article I, Section 29, to read:

**Article I, Section 29. [Marriage.]**

(1) Marriage consists only of the legal union between a man and a woman.

(2) No other domestic union, however denominated, may be recognized as a marriage or given the same or substantially equivalent legal effect.

**Section 2. Submittal to voters.**

The lieutenant governor is directed to submit this proposed amendment to the voters of the state at the next regular general election in the manner provided by law.

**Section 3. Effective date.**

If the amendment proposed by this joint resolution is approved by a majority of those voting on it at the next regular general election, the amendment shall take effect on January 1, 2005.