

DRAFT EXPLANATION – Attorney General's Office 5/9/06

Proposed Constitutional Amendment
To Be Voted on at the November 7, 2006, Election

PROPOSED CONSTITUTIONAL AMENDMENT

Article I. Bill of Rights.
Section 15-A. Marriage.

BALLOT QUESTION

Shall Article I (the Bill of Rights) of the Constitution of Virginia be amended to state:

“That only a union between one man and one woman may be a marriage valid in or recognized by this Commonwealth and its political subdivisions.

This Commonwealth and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effects of marriage. Nor shall this Commonwealth or its political subdivisions create or recognize another union, partnership, or other legal status to which is assigned the rights, benefits, obligations, qualities, or effects of marriage.”?

FULL TEXT OF AMENDMENT

[Proposed new language is underlined. Existing language that is deleted is shown as stricken (stricken).]

Amend Article I of the Constitution of Virginia by adding a section numbered 15-A as follows:

ARTICLE I
BILL OF RIGHTS

Section 15-A. Marriage.

That only a union between one man and one woman may be a marriage valid in or recognized by this Commonwealth and its political subdivisions.

This Commonwealth and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effects of marriage. Nor shall this Commonwealth or its political subdivisions create or recognize another union, partnership, or other legal status to which is assigned the rights, benefits, obligations, qualities, or effects of marriage.

EXPLANATION

Present Law

The Constitution does not define marriage. Under current statutory law in Virginia, persons who marry must have a license and be married by a licensed minister, judge, or other person authorized by law to perform marriages. Present law prohibits marriages between certain individuals. For example, the law prohibits a marriage between a brother and sister, between a couple where one of the parties is married to someone else, and between couples of the same sex.

In 1975, the General Assembly enacted a statute (present Code of Virginia § 20-45.2) that states "A marriage between persons of the same sex is prohibited." In 1997, the General Assembly added a sentence to § 20-45.2 that states that:

Any marriage entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created by such marriage shall be void and unenforceable.

In 2004, the General Assembly passed a law to prohibit certain civil unions or other arrangements between persons of the same sex. That law (Code of Virginia § 20-45.3) states that:

A civil union, partnership contract or other arrangement between persons of the same sex purporting to bestow the privileges or obligations of marriage is prohibited. Any such civil union, partnership contract or other arrangement entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created thereby shall be void and unenforceable.

Thus, civil unions or other arrangements which purport "to bestow the privileges or obligations of marriage" are prohibited by statute.

Proposed Amendment

If approved by the voters, this proposed amendment will become part of the Constitution of Virginia. The proposed amendment adds a definition of marriage as the "union between one man and one woman" to the Constitution's Bill of Rights and prohibits Virginia and its counties, cities, and towns from creating or recognizing any legal status by any name which is comparable to marriage.

Marriage in the Commonwealth creates specific legal rights, benefits, and obligations for a man and a woman. There are other legal rights, benefits, and obligations which will continue to be available to unmarried persons, including the naming of an agent to make end-of-life decisions by an Advance Medical Directive (Code of Virginia § 54.1-2981), protections afforded under Domestic Violence laws (Code of Virginia § 18.2-57.2), ownership of real property as joint tenants with or without a right of survivorship (Code of Virginia § 55-20.1), or disposition of property by will (Code of Virginia § 64.1-46).

A "yes" vote on the proposed amendment will result in the addition of the proposed Section 15-A to Article I, the Bill of Rights. A "no" vote will mean that there will be no change made in Article I, the Bill of Rights.

Attorney General's Office
5/9/06
Explanation -- 474 words