

INITIATIVE FINANCIAL INFORMATION STATEMENT
Florida Marriage Protection Amendment

SUMMARY OF INITIATIVE FINANCIAL INFORMATION STATEMENT

Florida law currently prohibits marriages between persons of the same sex and defines “marriage” as the legal union between one man and one woman. The proposed amendment would place into the Florida Constitution language that defines “marriage” as the legal union of one man and one woman. The amendment would further prohibit the State from recognizing any other legal union that is treated as marriage or is the equivalent of such a relationship.

Based on the information provided through public workshops and information collected through staff research, the Financial Impact Estimating Conference principals expect that the proposed amendment will have the following financial effects:

- If domestic partnership registries are deemed substantially equivalent to marriage, their termination could place registrants at risk of losing specified rights and benefits, such as those related to health insurance. The fiscal impact is indeterminate.
- A loss of revenue may occur if domestic partnership registries are terminated. There would be a reduction in local revenue resulting from the elimination of registration fees associated with the registries. The fiscal impact is expected to be minor.
- Revenue from the issuance of marriage licenses may increase. If the amendment has the effect of encouraging marriages (between one man and one woman) that were previously common law marriages, there may be a minor increase in the revenues from marriage licensing fees. The fiscal impact is expected to be minor.
- Revenue from the domestic violence surcharge may be affected. By invalidating any union or “substantial equivalent thereof,” this amendment could be raised as a defense in domestic violence cases, resulting in fewer domestic violence convictions, causing a decrease in revenues for the Domestic Violence Program. The fiscal impact is indeterminate, but probably minor.
- Costs of litigation may increase. Although the current statutes have been litigated and upheld, the initiative contains language different from the statutes, which could lead to increased litigation involving both public sector and private sector entities and individuals. The fiscal impact is indeterminate.
- There may be varied effects on the costs of public services and benefits. Depending on actions taken by the Legislature, the courts, and Florida businesses, financial obligations between individuals are expected to change in complex ways that will probably result in increased costs of providing public services and benefits in some cases and reduced costs in others. The fiscal impact is indeterminate.
- Some local governments that currently extend health insurance and other benefits to domestic partners may be impacted by this amendment. The net fiscal impact is indeterminate.

FINANCIAL IMPACT STATEMENT

The direct financial impact this amendment will have on state and local government revenues and expenditures cannot be determined, but is expected to be minor.

I. SUBSTANTIVE ANALYSIS

A. Proposed Amendment

Ballot Title:

Florida Marriage Protection Amendment

Ballot Summary:

This amendment protects marriage as the legal union of only one man and one woman as husband and wife and provides that no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.

1) Statement and Purpose:

The purpose of this amendment is to create within the constitution the definition of marriage as the union of one man and one woman as husband and wife, and to prohibit any other legal union that is treated as marriage or the substantial equivalent thereof from being valid or recognized as marriage.

2) Amendment of Florida Constitution:

Art. I, Fla. Const., am amended by inserting a new section following the end of Section 26 to read:

Section 27. Florida Marriage Protection Amendment.

Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.

3) Effective Date and Severability:

This amendment will be effective on the date it is approved by the electorate. If any portion of this measure is held invalid for any reason, the remaining portion of this measure, to the fullest extent possible, will be severed from the void portion and given the fullest possible force and application.

B. Effect of Proposed Amendment

According to the initiative sponsor's website, Florida4Marriage.org, the proposed constitutional amendment would define and preserve marriage as the union of one man and one woman, and prohibit any other legal union that is treated as marriage, or the substantial equivalent thereof, from being valid or recognized. The sponsor states that the amendment

would not prohibit the state or local governments from passing laws concerning the rights of unmarried persons, so long as those relationships are not treated as marriage, and states that the amendment would not affect benefits offered or contracted in the private sector. (Florida4Marriage.org, <http://www.florida4marriage.org>, September 14, 2005) According to the initiative sponsor, the domestic partnership registries and domestic violence laws will not be affected by the amendment.

Opponents of the proposed amendment, the American Civil Liberties Union of Florida, argue that the effects of the amendment could spread far beyond banning same-sex marriage as a result of the vagueness of the “substantial equivalent” language. The ACLU provides the opinion, “...the amendment could provide a legal basis to challenge domestic partner benefits--affecting not only gays and lesbians, but also unmarried heterosexual couples and children” (ACLU, Report on Implications of Florida’s Proposed Marriage Ban, April 6, 2005). Based upon similar amendments in other states, the ACLU speculates that this proposed amendment may mean the termination of health and other benefits to public employees in nontraditional relationships in Florida.

Background

Florida4Marriage.org is the official sponsor of this proposed constitutional amendment. Florida4Marriage.org is a registered political committee whose pronounced main focus is protecting and preserving the union of marriage as one that consists solely of one man and one woman as husband and wife.

Defense of Marriage Act

Passed in 1996 by the United States Congress, the Defense of Marriage Act exercises power under the Full Faith and Credit Clause (Article IV, Sec. 1, U.S. Constitution) with a two-fold purpose. The first is to grant power to the States in deciding whether to recognize same-sex marriages within their jurisdiction. The second purpose is to define the terms “marriage” and “spouse” as applicable to federal law.

The federal Defense of Marriage Act (DOMA) provides:

No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

28 U.S.C. § 1738C.

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word “marriage” means only a legal union between one man and one woman as husband and wife, and the word “spouse” refers only to a person of the opposite sex who is a husband or a wife.

1 U.S.C. § 7.

Florida DOMA was adopted in 1997 and codified as s. 741.212, Florida Statutes. Currently, Florida law prohibits marriages between persons of the same sex (s. 741.212(1), Florida Statutes), and defines "marriage" as the legal union between one man and one woman and provides that the term "spouse" applies only to a member of such a union (s. 741.212(1), (3), Florida Statutes).

Common Law Marriages

Whether this initiative might have a fiscal impact based on affecting common law marriages between persons of the opposite sex in Florida is unclear.

See Smith v. Anderson, 821 So.2d 323 (Fla. 2d DCA 2002):

Florida does not recognize the validity of common-law marriages contracted in Florida after 1968. Anderson v. Anderson, 577 So. 2d 658, 660 (Fla. 1st DCA 1991) (citing § 741.211, Fla. Stat. (1969)). However, Florida does recognize common-law marriages that are entered into in states that do accept common-law marriages. *Id.* (citing Johnson v. Lincoln Square Props., Inc., 571 So. 2d 541 (Fla. 2d DCA 1990)). "The validity of a marriage is to be determined by the law of the jurisdiction where the marriage was entered into." *Id.*

Current Florida law (s. 741.212(3), Florida Statutes) states that marriage "means only a legal union between one man and one woman as husband and wife . . ." Florida law also sets out the requirements for the issuance of a marriage license (s. 741.04, Florida Statutes), authorizes certain persons to solemnize matrimony (s. 741.07, Florida Statutes), and requires recording of the marriage license and certificate (s. 741.09, Florida Statutes).

Under the language of the initiative, marriage must be a "legal union" and "no other legal union that is treated as marriage or the substantial equivalent thereof" is valid or recognized. A common law marriage (which would not be recognized if created in Florida) that is created in another state and that is currently recognized in Florida, might be challenged as failing to meet the test of being a "marriage or the substantial equivalent thereof" because no marriage license has been issued, no person has solemnized the matrimony, and no official record of a marriage exists.

If the proposed amendment has the effect of encouraging current common law marriage couples to marry as recognized under Florida law (s. 741.212(3), Florida Statutes), there may be an increase in revenues through marriage licensing fees.

"Substantial equivalent thereof"

Issues might be raised in various areas that will have a workload impact on the courts, especially in the probate area. While the proposed amendment is similar to s. 741.212, Florida Statutes, the two are not identical. As in the statutes, the proposed constitutional initiative uses the term "legal union" (which is undefined in Florida statutory and case law), but adds a new prohibition for unions that are "the substantial equivalent" of marriage. The amendment provides no definition for the phrase "substantial equivalent thereof," which lends to the ambiguity of the wording of the proposed amendment. Unlike current statutory law (s. 741.212(1), Florida Statutes, "relationships between persons of the same sex which are treated as marriages in any jurisdiction . . ."), the initiative does not speak to

relationships between persons of the same sex, but only to relationships between persons of the opposite sex. Thus the initiative leaves open the question whether someone might challenge a relationship (alleged to be "the substantial equivalent" of marriage) between persons of the opposite sex when that relationship has some or all of the benefits and obligations typically associated with marriage if that relationship has not been formalized as a marriage pursuant to the requirements of Florida Statutes.

However, it seems unlikely that two adults could enter into a contractual obligation or a series of obligations that would be "the substantial equivalent" of marriage. Such obligations seem unlikely to "create a legal relationship that, because of the interest of the state, gives rise to rights and obligations that survive the termination of the relationship." A panoply of statutory rights and obligations are exclusive to the traditional marriage relationship:

. . . Some of the rights that are exclusive to the marriage relationship include: the right to jointly adopt (Fla. Stat. § 63.042(2)(a)); equal rights in property acquired during the marriage (Fla. Stat. § 61.075); the right to hold property as tenants by the entireties (Fla. Stat. § 689.11); the right to rehabilitative or permanent alimony in a proceeding for the dissolution of marriage (Fla. Stat. §§ 61.071, 61.08); the right to an elective share in the estate of a deceased spouse (Fla. Stat. § 732.102); the right to enter into a gestational surrogacy agreement (Fla. Stat. § 742.15(1)); distribution rights in homestead property (Fla. Stat. § 732.401; Fla. Const. Art. 10, § 4(c)); legitimacy of children born out of wedlock upon the marriage of the parents (Fla. Stat. § 742.091); and, certain state and federal tax benefits.

Lowe v. Broward County, 766 So.2d 1199 (Fla. 4th DCA 2000) (quoting the trial court).

The potential fiscal impact of these issues relates primarily to those costs associated with judicial workload and other costs of litigation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

Section 100.371, Florida Statutes, requires that the Financial Impact Estimating Conference "...complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenue or costs to state or local governments resulting from the proposed initiative."

As part of determining the fiscal impact of this proposed amendment, the Financial Impact Estimating Conference principals held three public meetings during September 2005.

A. FISCAL ANALYSIS

The fiscal impact summary for this proposed amendment is based on independent research; testimony before the FIEC public workshop; written statements from the proponents and opponents of the initiative; responses to a survey of state agencies and local governments regarding fiscal impacts; and discussions among the FIEC principals and other professional staff. Based on this information, the Financial Impact Estimating Conference principals expect that the proposed amendment will have the following financial effects on state and local government:

- **Terminating domestic partnership registries may result in additional costs or loss of revenue.** There are domestic partnership registries in Broward County, Key West, Miami Beach and West Palm Beach. Palm Beach County is in the process of adopting an ordinance to offer a registry. Each registry is designed to offer certain rights and benefits to registrants, and each registry charges a registration fee ranging from \$28 to \$50.
 - If the current registries are terminated because of this amendment, there might be a cost to the affected political subdivisions resulting from the loss of rights and benefits to registrants. For instance, in Broward County, county employees may elect health coverage and use of leave for a domestic partner's care. If this coverage is terminated, the uncovered cost of medical care may be passed on to the county's public hospitals as uncompensated care. The fiscal impact is indeterminate, but probably minor.
 - There would be a reduction in local revenue resulting from the elimination of registration fees associated with the registries. The fiscal impact is indeterminate, but probably minor.
- **Revenue from the issuance of marriage licenses may increase.** Florida law (s. 741.01(2), Florida Statutes) maintains that \$25 from each collected marriage license fee be deposited in the Domestic Violence Trust Fund to fund the Domestic Violence Program. An additional \$7.50 from that marriage licensing fee must go to the Displaced Homemaker Trust Fund (s. 741.01(3), Florida Statutes) for use by the Displaced Homemaker Program. The proposed amendment may have the effect of encouraging marriage between common law marriage couples, which would then lead to increased issuance of marriage licenses, thus generating additional revenues for both the Domestic Violence Trust Fund and the Displaced Homemaker Trust Fund. The fiscal impact is indeterminate, but probably minor.
- **Revenue from the domestic violence surcharge may be affected.** Current law (s. 938.08, Florida Statutes) provides that, for any domestic violence conviction as defined in s. 741.28, Florida Statutes, the court shall impose a surcharge of \$201, of which \$85 shall be deposited in the Domestic Violence Trust Fund. Florida law (s. 741.28, Florida Statutes) defines "family or household member," for the purpose of domestic violence determination, as "persons who are presently residing together as a family or who have resided together in the past as if a family..." By invalidating any union or "substantial equivalent thereof," this amendment could be raised as a defense in domestic violence cases, resulting in fewer domestic violence convictions. A reduction in domestic violence offenses would result in a corresponding decrease in total collections from the surcharge in domestic violence, causing a decrease in revenues for the Domestic Violence Program. The fiscal impact is indeterminate.
- **Costs of litigation may increase.** Although the current statutes have been litigated and upheld, the initiative contains language different from the statutes. Without predicting the exact nature of lawsuits that will be based on the initiative requirements, those requirements are expected to be the basis of lawsuits involving both public sector and private sector entities and individuals. The fiscal impact is indeterminate.

- **There may be varied effects on the costs of public services and benefits.** Depending on actions taken by the Legislature, the courts, and Florida businesses based on the initiative requirements, financial obligations between individuals are expected to change in complex ways that will probably result in increased costs of providing public services and benefits in some cases and reduced costs in others. The fiscal impact is indeterminate.
- **Cities and counties offering benefits to domestic partners may experience a decrease in certain costs and an increase in others.** There are six cities and two counties in Florida that currently extend benefits directly to, or in assistance of, domestic partners. The benefits are of two types: (1) health insurance benefits; and, (2) family sick and bereavement leave. The affected governments are Tampa, Wilton Manors, Miami Beach, West Palm Beach, Key West, Gainesville, Broward County and Monroe County. To the extent that these benefits are prohibited in the future, these local governments will experience a savings arising from reduced expenditures. However, expenditures made by the state and hospitals providing subsidized or free services to the indigent may increase. The net fiscal impact of this cost-shift is indeterminate.

B. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS:

1. Revenues:

Direct financial impact cannot be determined, but is expected to be minor. (See section A above.)

2. Expenditures:

Direct financial impact cannot be determined, but is expected to be minor. (See section A above.)