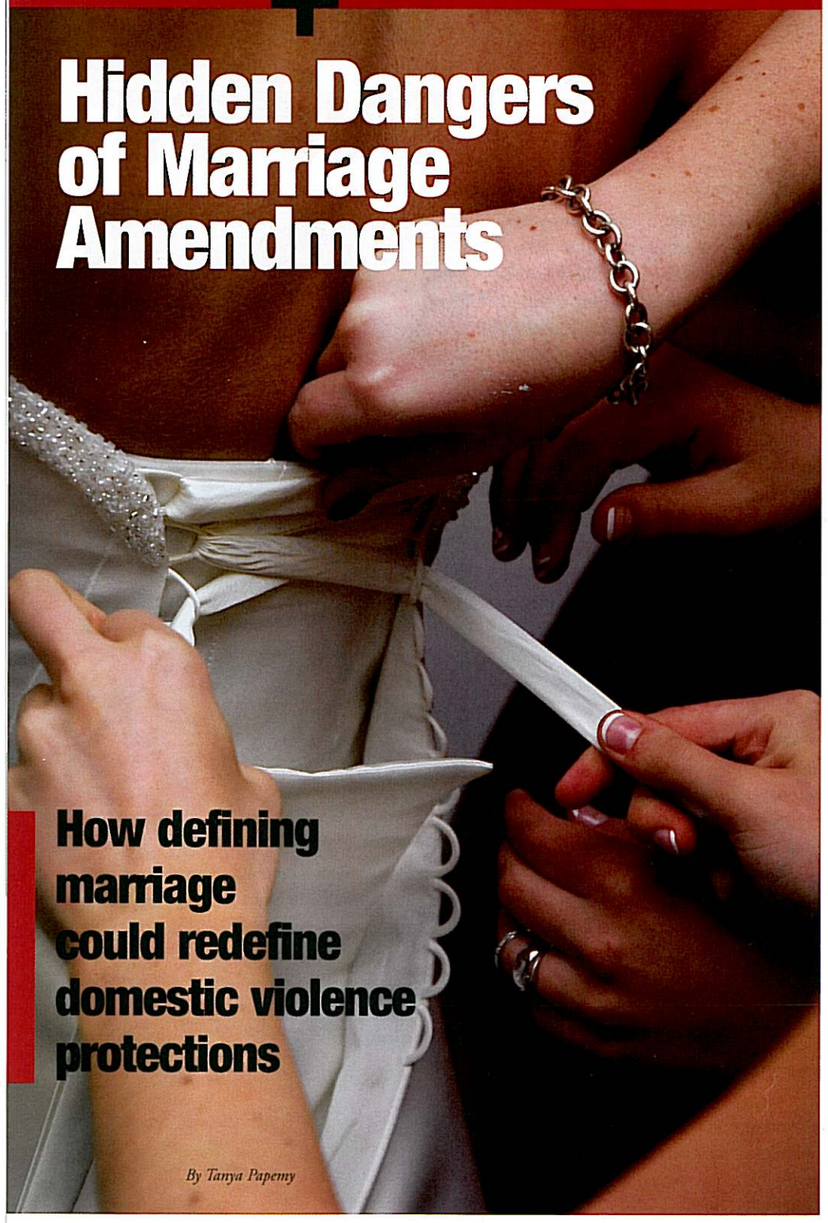
FEATURE FOCUS

Hidden Dangers of Marriage Amendments



How defining marriage could redefine domestic violence protections

By Tanya Papemy

In the recent 2006 midterm elections, eight states had "same-sex marriage bans" on their ballots. With the exception of Arizona, each state's constitutional amendments passed, some with very small margins. Because of some potentially devastating unintended consequences, however, these amendments may impact more than just gay marriage.

Opponents of same-sex marriage bans warn that these constitutional amendments may endanger the benefits and legal protections currently enjoyed by cohabiting heterosexual and homosexual couples, effecting the economic security and wellbeing of these households. This fear became a reality in the case of the Ohio marriage amendment, passed in 2004, which has led courts to question the constitutionality of state domestic violence laws. How is this possible, and could something similar happen in other states which vote to pass their own marriage amendments?

OHIO PROTECTIONS UNDERMINED

In 2004, Ohio voters amended the state constitution to reaffirm that marriage can only take place between one man and one woman and to protect against any so called "activist judges" ever legalizing same-sex marriage. The second sentence of Ohio's amendment, much like the wording of amendments passed in several other states, becomes more complicated. It states that no county can grant legal status to unmarried persons whose relationship intends to "approximate the design or effect of marriage."

Opponents have argued that the potential impacts of this broad language go far beyond just same-sex marriage, compromising the rights of heterosexual domestic violence survivors, as well. Here's how:

"Whether a woman is married to or co-habits with an abusive partner, she is entitled to have the state prosecute that abuser on her behalf and to receive a protective order against the batterer," says Lisalyn Jacobs of Legal Momentum. However, as Legal Momentum's website explains, Ohio's marriage amendment made it unconstitutional to create a legal status that "simulates marriage." Because legal status cannot be granted to a relationship that attempts to "approximate" marriage, no protections can be offered to those in "marriage-like" arrangements. This means that a woman who is living with but is not married to her abuser may not receive domestic violence protections.

This troublesome possibility became a reality in Ohio in 2004. According to an article in the *Washington Post*, Michael Carswell, accused of choking and throwing his girlfriend onto the floor, believed that the "domestic violence law under which he was charged conflicted with the constitutional amendment." His public defender argued that the case should be dismissed since Carswell was not married to the woman he allegedly abused.

This case, *State vs. Carswell*, has been brought before the Ohio Supreme Court and awaits a ruling. While nine local courts in Ohio found that the domestic violence statute was clearly constitutional, at the time of publication two appellate courts in Ohio confronted this contradiction and remain undecided, awaiting the Supreme Court verdict.

VIRGINIA PROTECTIONS THREATENED

Could the same thing happen in other states which pass similar constitutional amendments and where the state domestic violence law protects a victim living as a "family or household member?" Jacobs warns that unanticipated legal tangles and dangerous consequences can arise with these new marriage amendments in place, as the case has been in Ohio.

Like the Ohio marriage amendment, the new Virginia marriage amendment, passed in November 2006, does not allow for the state to "recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effects of marriage." Stacey Ruble of the Virginia Sexual Assault and Domestic Violence Action Alliance foresees legal conflict: "Some courts see a special class of victims being treated the same way as married victims."

Opponents of same-sex marriage bans warn that these constitutional amendments may strip legal protections from both heterosexual and homosexual couples.

Seeing what occurred in Ohio, Virginia's Attorney General, Bob McDonnell, assured that the marriage amendment would not impact unmarried domestic abuse victims. The *va4marriage* project, a coalition of supporters of the ban, agreed, saying that "regardless of what happens in Ohio, Virginia's domestic violence laws are safe." Alexandria Ruden of Cleveland's Legal Aid Society disagrees; she believes that "defense lawyers in other states may decide to mount the same case looking at Ohio."

As many as 60% of domestic violence victims are not married. Advocates will continue to ensure that states protect survivors even if the states pass amendments that potentially leave victims in legal limbo. While the Ohio Supreme Court may end up ruling in favor of the domestic violence laws, it is still important for supporters and opponents of the same-sex marriage bans to continue monitoring the legal process to ensure the health and safety of all American families.

THE VIRGINIA MARRIAGE AMENDMENT STATES...

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.