



PASSAGE OF THE FEDERAL MARRIAGE AMENDMENT WILL HARM VICTIMS OF DOMESTIC VIOLENCE

1522 K St., NW Suite 550 Washington, DC 20005 t: 202-326-0040 f: 202-589-0511 www.legalmomentum.org

True or False? The Federal Marriage Amendment (“FMA”) will only affect same-sex couples who want to get married.

- *False! In fact, passing the FMA could seriously harm domestic violence victims and others.*
- Ohio passed a marriage amendment in 2004. Its language is similar to the FMA and it was passed for the same reason – to prohibit same sex marriage.
- But trial courts all over Ohio, as well as two appellate courts, have held that because of Ohio’s Marriage Amendment, the state domestic violence law is unconstitutional as applied to some unmarried domestic violence victims.ⁱ
- This means that batterers have been able to walk free and that victims of domestic violence are living in fear.

Could the Federal Marriage Amendment impact whether victims of domestic violence are protected or not?

- *Yes. Congress and many states have recognized that domestic violence victims deserve protection whether or not they are married to their abusers and have made sure that domestic violence laws cover unmarried victims -- but those protections may conflict with the FMA’s prohibitions.*
- For example, Ohio’s domestic violence law protects victims in the instance where though unmarried, they are cohabiting – characterized in the statute as “living as spouses” -- with their abuser. But the Ohio Marriage Amendment makes it unconstitutional to create a legal status that “simulates marriage.”
- Although the Ohio Marriage Amendment was probably intended only to affect same sex couples, courts in Ohio have found that the domestic violence law’s protections for victims who are cohabiting with their abusers are unconstitutional.
- Because the language of the FMA and the Violence Against Women Act (“VAWA”) overlap in ways similar to the Ohio situation, the same set of unintended consequences are likely to imperil the safety of thousands of victims of intimate partner violence if the FMA is enacted.

Is this only a problem in Ohio?

- *Unfortunately not.* Marriage amendments have passed in many states and are being considered in others. Although Ohio’s is the first to be litigated extensively, it is just a harbinger of problems to come. Already, similar concerns have been raised in Utah and Virginia.
- As described above, the bipartisan Violence Against Women Act – reauthorized by unanimous consent in both Houses less than six months ago – includes language similar to that which Ohio courts have struck down.
- Congress clearly did not intend to treat victims of domestic violence differently on the basis of their marital status. However, if passed, the FMA could have the same effect as the Ohio Marriage Amendment. It could undo much of the progress that Congress and state legislatures have made in giving prosecutors the tools needed to hold batterers fully accountable.

Would a conflict between a marriage amendment and domestic violence laws mean that some batterers get out of jail free?

- *Yes – in Ohio, it already has.*
- Dallas McKinley was convicted of a felony because he had hit, pushed, and thrown things at his girlfriend while he was on a drinking binge – but he got the conviction overturned because they weren’t married.ⁱⁱ

- Donald Steineman was originally convicted of two felony counts after abusing his live-in girlfriend and three year-old adopted son. The court could ultimately uphold his conviction for abusing his son but had to overturn the conviction for abusing his girlfriend.ⁱⁱⁱ
- David McIntosh had been sentenced to a year in prison after violating a protective order and beating his girlfriend; he successfully got the conviction and sentence overturned.^{iv}
- Batterers can still be charged with other crimes, such as assault. But in many cases, rather than being convicted of a felony under the domestic violence law – and being sent to jail – they will just be convicted of a misdemeanor. Thus, they get away with only a slap on the wrist.

But unmarried domestic violence victims would still be able to enforce protective orders, right?

- *Not necessarily.*
- In Ohio, some courts have held that convicting an abuser for violating a civil protective order is also unconstitutional.^v
- In Virginia, where a similar amendment has been proposed, domestic violence programs are already trying to come up with ways to get more victims into shelters because they won't have the same access to protective orders as they do now. This means more money spent on sheltering victims while their abusers are allowed to stay in their homes.^{vi}

Won't courts just figure out that marriage amendments were not intended to repeal domestic violence laws and not apply the amendments to domestic violence cases?

- *Courts will not be able to make that kind of choice.*
- A constitution, whether federal or state, is supreme law. If a court thinks that there is a conflict, the Constitution controls and the court will limit the reach of statutes accordingly.^{vii}
- The FMA could well create a conflict between VAWA, local domestic violence laws, and the Constitution. Since the FMA would amend the Constitution, it would trump statutory protections, potentially undoing all the work that Congress and the states have done to protect domestic violence victims.

Can't state legislatures and Congress just pass a law to fix the Amendment?

- *No, Congress and the state legislatures cannot fix a Constitutional amendment by themselves.*
- Constitutional provisions are not like statutes – they cannot be addressed by legislatures acting alone. Instead, a legislature must follow extensive rules. In some states, they must put an amendment on the ballot several times over several years. For a federal constitutional amendment, it must pass Congress by a 2/3 vote and then be submitted to the states where it must pass by a 3/4 vote.
- Enshrining discrimination in the Constitution is not only wrong, it is incredibly difficult to fix. The FMA would be the first time that the United States Congress has amended the Constitution in order to discriminate against specific individuals, flying in the face of the United States' tradition of amending the Constitution to increase equality.
- Whatever position one takes on same sex marriage, the Ohio story shows the very real danger that comes from using constitutional amendments to limit rights.

Every new marriage amendment may put more domestic violence victims at risk. In Ohio, the marriage amendment has already let batterers out of jail. In other states, the same arguments are being used. Passing the Federal Marriage Amendment would multiply exponentially the number of domestic violence survivors whose rights and safety are jeopardized.

For further information, please contact Legal Momentum's Government Relations Office at 202.326-0040.

ⁱ *State v. Adams*, 2005 Ohio 6333 (Ohio App. 5 Dist. 2005) (holding that the domestic violence law was not unconstitutional despite the Ohio Marriage Amendment, upholding Adams' conviction for domestic violence); *State v. Ward*, --- N.E.2d ---, 2006 WL 758540 (Ohio App. 2 Dist. March 24, 2006) (holding that the domestic violence law is unconstitutional as applied to unmarried domestic violence victims because of the Ohio Marriage Amendment, overturning Ward's felony domestic violence conviction).

ⁱⁱ *State v. McKinley*, 2006 WL 1381635, at *4 (Ohio App. 3 Dist. May 22, 2006) (holding that the state's domestic violence law is "unconstitutional as it applies to one man and one woman who cohabit and have not parented children together," reversing McKinley's conviction for domestic violence). See also Greg Sowinski, *3rd District strikes down domestic violence law for unmarried couples*, Lima News (OH), May 24, 2006, available at <http://www.limaohio.com/story.php?IDnum=26000>.

ⁱⁱⁱ *State v. Steineman*, 2006 WL 925166 (Ohio App. 2 Dist. April 7, 2006).

^{iv} *State v. McIntosh*, 2006 WL 925179 (Ohio App. 2 Dist. April 7, 2006).

^v *State v. McIntosh*, 2006 WL 925179 (Ohio App. 2 Dist. April 7, 2006).

^{vi} Stacy Ruble, *How the amendment will hurt domestic violence victims*, Daily Press (VA), May 28, 2006.

^{vii} *State v. Ward*, 2006 WL 758540, at *2. See, e.g., *Marbury v. Madison*, 5 U.S. (1 Cranch.) 137 (1803) ("a law repugnant to the constitution is void").