

An Open Letter to the Members of the Minnesota Senate and House of Representatives

We, the undersigned members of the University of Minnesota Law School faculty, oppose a proposed constitutional amendment (S.F. 1308, H.F. 1613, and related proposals) ("the proposed amendment") that would amend the state constitution to provide, "Only a union of one man and one woman shall be valid or recognized as a marriage in Minnesota." State statutes already prohibit same-sex couples from marrying and already prohibit the state from recognizing same-sex marriages from other states and countries. The proposed amendment would prevent even a future state legislature from recognizing such marriages. We urge you to reject it.

The proposed amendment would set in constitutional cement the existing hardships on thousands of families, including children, that many in the legal profession serve. Attorneys practicing in such diverse areas as family law, estate planning, real estate, tax, and beyond represent people across Minnesota who confront complex legal challenges because they are currently unable to enter a legally-recognized relationship with a same-sex partner. At the same time, the proposed amendment does not help existing marriages.

The potential applications of an amendment and its collateral consequences in other areas of the law could be far-reaching. Frankly, the full implications of the proposed amendment are unknown. Accordingly, it will likely generate litigation over both its validity and its scope; in effect, the legislature is inviting significant and needless expense for the state and its citizens during a time of extraordinary economic difficulty.

In its 153 years of statehood, Minnesota has enacted many changes in the practice and law of marriage, and in family-related topics like divorce and adoption. Many of these changes have been controversial and have generated considerable debate in the state legislature and among the public. Minnesotans of good will may continue to debate the merits of legally recognizing same-sex couples through marriage or some other status. But in its entire history, Minnesota has never cut short the ordinary legislative process regarding marriage and family law by enshrining one particular view into its constitution. There is no compelling need to do so now.

It is an evasion to say that the proposed amendment should be placed on the ballot simply to allow a popular vote. State legislators have an obligation under Minnesota's constitutional amendment process to exercise independent judgment about whether a constitutional amendment is needed, advisable, and worth the expenditure of time and resources it would consume. State legislators have historically fulfilled that obligation. Very few proposed amendments ever reach the ballot. Far from being a worthwhile use of legislators' and the public's attention, the proposed amendment would be a wasteful and harmful diversion away from the state's immediate need to focus on many other pressing problems.

Respectfully,

Undersigned members of the faculty of the University of Minnesota Law School. Affiliation for identification only. The views expressed in this letter are those of the individual signers and not necessarily those of the Law School or the University of Minnesota.

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