

**Amendment 43
Marriage**

1 **Amendment 43 proposes a change to the Colorado Constitution that:**

- 2 ♦ defines marriage in Colorado as only a union between one man and one
3 woman.

4 **Summary and Analysis**

5 *Definitions of marriage affecting Coloradans.* Federal statutes define marriage
6 as a legal union between one man and one woman for purposes of all federal laws relating
7 to marital status. Colorado statutes define marriage as a legal union between one man and
8 one woman for purposes of the state's laws relating to marital status.

9 For a marriage to be valid under Colorado statutes, it must be: (1) between a man
10 and a woman; and (2) licensed, solemnized, and registered according to established
11 procedures. In addition, Colorado recognizes common law marriage between a man and
12 a woman who live together and hold themselves out publicly as husband and wife.
13 Common law marriages are treated exactly the same as licensed marriages.

14 *Legal effects of marriage in Colorado.* The marriage relationship in Colorado
15 provides spouses with a number of legal rights, responsibilities, and benefits, including:

- 16 • collecting benefits such as pensions, life insurance, and workers' compensation
17 without being designated as a beneficiary;
18 • jointly incurring and being held liable for debts;
19 • making medical treatment decisions for each other;
20 • protection from discrimination based on marital status in areas such as
21 employment and housing;
22 • filing income taxes jointly; and
23 • ending a marriage and distributing property through a legal process.

24 **Arguments For**

25 1) The public has an interest in preserving the commonly accepted definition of
26 marriage. Marriage as an institution has historically consisted of one man and one woman
27 and, as such, provides the optimal environment for creating, nurturing, and protecting
28 children and preserving families.

1 2) A constitutional amendment is necessary to avoid court rulings that expand
2 marriage beyond one man and one woman in Colorado. In Massachusetts, a statutory
3 definition was not sufficient to prevent a court from requiring the state to recognize
4 same-sex marriages. Any change to the definition of marriage should be determined by the
5 voters, not judges.

6 **Arguments Against**

7 1) Language that limits marriage to opposite-sex couples does not belong in
8 Colorado's Bill of Rights, which generally guarantees individual rights. Amendment 43
9 may be unconstitutional because it denies same-sex couples and their children the legal
10 benefits and protections that are available to married couples and their children.

11 2) Adding the proposed language to the constitution is unnecessary because there
12 is already a statutory ban in Colorado on any marriage that does not consist of one man and
13 one woman. Additionally, federal statutes define marriage as between one man and one
14 woman for purposes of federal laws.

15 **Estimate of Fiscal Impact**

16 Amendment 43 is not expected to affect state and local revenues or spending.
17 Costs that may result from potential legal challenges to the amendment cannot be
18 estimated.

Coloradans For Fairness

2005-2006 #83 Marriage (Amendment 43)

1 **Amendment 43 proposes a change to the Colorado Constitution that:**

- 2 ♦ ~~defines marriage in Colorado as only a union between one man and one~~
3 ~~woman.~~ LIMITS MARRIAGES THAT ARE VALID OR RECOGNIZED IN COLORADO TO
4 THOSE THAT CONSIST OF THE UNION OF ONE MAN AND ONE WOMAN.

5 **Summary and Analysis**

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8 to marital status. Colorado statutes define marriage as a legal union between one man and
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22 employment and housing;
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25 through a legal process.

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27 1) The public has an interest in preserving the commonly accepted definition of
28 marriage. Marriage as an institution has historically consisted of one man and one woman
29 and, as such, provides the optimal environment for creating, nurturing, and protecting
30 children and the family unit.

Coloradans For Fairness

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COLORADANS FOR FAIRNESS COMMENTS ON FINAL DRAFT OF AMENDMENT 43

From: Pat Steadman
Sent: Friday, August 04, 2006 3:36 PM
To: Jodi Berger (jberger@co-fairequal.org)
Subject: #83 final comments

MEMORANDUM

To: Legislative Council Staff
From: Sean Duffy, Coloradans for Fairness & Equality Action Fund
Pat Steadman, Equal Rights Colorado
Date: August 4, 2006
Re: Comments on Final Draft Ballot Analysis for Proposed Initiative 2005-06 #83

Please accept the following comments on the final draft of the Ballot Analysis for proposed initiative 2005-06 #83. While we appreciate the opportunity to have participated in the drafting of this analysis, we are disappointed that the document continues to portray the substance of initiative #83 as a definition.

Neither the text of initiative #83 nor the substantive impact of the measure supports the characterization of the initiative as merely adding a definition to our state constitution. The explanation of the initiative on page 1, line 2 is inaccurate when it states that the measure "defines marriage in Colorado..."

If the proponents of initiative #83 intended to draft a definition, they would have chosen to word their initiative quite differently. There are a multitude of examples for drafting definitions that can be found in both the Colorado Constitution and the Colorado Revised Statutes. See § 2-4-401, C.R.S. for a list of defined terms that apply to every statute. Each of the defined terms appears in quotation marks and a precise definition is given. See also Colorado Constitution, Article X, § 20 (2), where the TABOR amendment contains a list of defined terms. The same format is used.

In stark contrast to the accepted method of drafting statutory or constitutional definitions, proposed initiative #83 reads "Only the union of one man and one woman shall be valid or recognized as a marriage in this state." This is not a definition of the term "marriage," but rather it is a limitation on the type of marriages that will be valid or recognized in Colorado. The text of proposed initiative #83 makes no attempt to define the term marriage, and to present it as such in the opening section of the final draft of the Ballot Analysis is inaccurate, in contravention of § 1-40-124.5 (1)(c), C.R.S.

The intended impact of initiative #83 is to deny validity or recognition to marriages that are not between one man and one woman, whether such marriages are performed in Colorado or another jurisdiction. Because there are other states and foreign countries that license and recognize such marriages, initiative #83 will deny validity and recognition to such marriages, whether such determination would be made administratively or by a court of competent jurisdiction. By simply characterizing the initiative as definitional, this facet of the initiative is totally concealed.

Furthermore, this characterizing is inappropriate and prejudicial. On page 1, line 26, "Argument For # 1" asserts that the initiative preserves "the commonly accepted definition of marriage." The inaccurate characterization on page 1, line 2 unfairly reinforces the proponent's lead argument in favor of the initiative.

For the foregoing reasons, we would respectfully request that the language on page 1, lines 2-3 be changed to the following:

"limits marriages that are valid or recognized in Colorado to those that consist of the union of one man and one woman." This language is accurate, tracks the text of the initiative and does not prejudicially reinforce arguments made by one side of the debate.

Thank you for considering this requested change to accurately convey the content of the proposed initiative.

Third Draft as Mailed to Interested Parties

2005-2006 #83 Marriage (Amendment _)

1 **Amendment _ is a proposed amendment to the Colorado Constitution that:**

- 2 ◆ defines marriage in Colorado as only a union between one man and one
3 woman.

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15 **Estimate of Fiscal Impact**

16 Voter approval of the amendment will not affect state and local revenues or
17 spending. Costs that may result from potential legal challenges to the amendment cannot
18 be estimated.

AMENDMENT 43
MARRIAGE
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AMENDMENT 43
MARRIAGE
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**Amendment 43
Marriage**

1 **Ballot Title:** An amendment to the Colorado constitution, concerning marriage, and,
2 in connection therewith, specifying that only a union of one man and one woman shall
3 be valid or recognized as a marriage in Colorado.

4 **Text of Proposal:**

5 *Be it Enacted by the People of the State of Colorado:*

6 **SECTION 1.** Article II of the Colorado constitution is amended BY THE ADDITION
7 OF A NEW SECTION to read:

8 **Section 31. Marriages - valid or recognized.**

9 ONLY A UNION OF ONE MAN AND ONE WOMAN SHALL BE VALID OR RECOGNIZED AS A
10 MARRIAGE IN THIS STATE.

11 **SECTION 2. Effective date.**

12 This section shall take effect upon proclamation of the vote by the governor.