

**JOINT RESOLUTION ON MARRIAGE**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: LaVar Christensen**

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**LONG TITLE**

**General Description:**

This joint resolution of the Legislature proposes to amend the Utah Constitution to add a provision relating to marriage.

**Highlighted Provisions:**

This resolution proposes to amend the Utah Constitution to:

- ▶ define marriage as only the union of a man and a woman; and
- ▶ provide that no other domestic ~~§ [status or] §~~ union ~~§ [is valid or recognized or] §~~ may

be

~~§ [authorized, sanctioned, or] §~~ given equivalent legal effect.

**Special Clauses:**

This resolution directs the lieutenant governor to submit this proposal to voters.

This resolution provides an effective date.

**Utah Constitution Sections Affected:**

ENACTS:

**ARTICLE I, SECTION 29**

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*Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:*

Section 1. It is proposed to enact Utah Constitution Article I, Section 29, to read:

**Article I, Section 29. [Marriage.]**

(1) Marriage consists only of the legal union between a man and a woman.

(2) No other domestic ~~§ [status or] §~~ union, however denominated, ~~§ [between persons is valid] §~~



28 § ~~or~~ **MAY BE** § recognized § **AS A MARRIAGE** § or § ~~may be authorized, sanctioned, or~~ § given  
 28a the same or substantially equivalent  
 29 legal effect § ~~as a marriage~~ § .

30 Section 2. **Submittal to voters.**

31 The lieutenant governor is directed to submit this proposed amendment to the voters of  
 32 the state at the next regular general election in the manner provided by law.

33 Section 3. **Effective date.**

34 If the amendment proposed by this joint resolution is approved by a majority of those  
 35 voting on it at the next regular general election, the amendment shall take effect on January 1,  
 36 2005.

### Legislative Review Note

as of 2-4-04 10:12 AM

In *Zablocki v. Redhail*, 434 U.S. 374 (1978), the United States Supreme Court concluded that the right to marry "is of fundamental importance," requiring "critical examination" of the state's interest in creating a classification that interferes with that right. The Court has not specifically decided whether a state's interest is sufficiently compelling to justify restricting the right to marry to a man and a woman. Other cases could be argued by analogy to suggest that restricting the right to marry to a man and a woman violates federal due process or equal protection provisions.

If the amendment to the Utah Constitution proposed by this joint resolution is approved by voters and becomes part of the Utah Constitution, it may be susceptible to challenge under federal due process or equal protection grounds. Relevant case law is inconclusive, and how a court would ultimately decide the constitutionality of the provision under the United States Constitution in the context of a specific lawsuit is difficult to predict.

**Office of Legislative Research and General Counsel**

**State Impact**

It is estimated that publication and distribution costs to put this resolution on the ballot would be \$11,500 from the General Fund. This resolution has a Legislative Review Note attached. If the voters pass a constitutional amendment enacting provisions of this resolution and a legal challenge is brought against its provisions it is possible the state will incur legal expenses.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$11,500	\$0	\$0	\$0
<b>TOTAL</b>	<b>\$11,500</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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**Individual and Business Impact**

No fiscal impact.

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