

Dear Wisconsin Representatives and Senators:

As attorneys who offer estate planning services to your constituency, we implore you to oppose Wisconsin's proposed constitutional amendment prohibiting any status "substantially similar" to marriage. The right to make estate and disability planning decisions contractually belongs to the individual and is threatened by this proposal. The Constitution of the State of Wisconsin exists to protect the minority from the domination of the majority and no portion of it should limit any individual's or group's rights.

Estate planning for same-gender couples is already challenging because the legal protections given to couples upon marriage are not automatically available to same-gender couples. Married couples in Wisconsin are automatically afforded numerous rights. A spouse is the first in line to inherit if his or her spouse dies intestate (without a will or will substitute) in Wisconsin. Financial transfers between spouses are not taxable transactions. A spouse is eligible for the great safety net of Social Security benefits should his or her spouse retire, become disabled or die. This safety net does not apply to same-gender couples, and many of these rights cannot be obtained by them even through estate planning.

As attorneys, we do the best we can to approximate much of the safety net given to married couples, but now that safety net is jeopardized by this proposed amendment prohibiting a status "substantially similar" to marriage. Both vague and overly broad, this amendment language will undoubtedly fuel a host of legal challenges to powers of attorney, trusts and wills already put in place by loving, concerned, responsible same-gender couples. Relatives of an incapacitated gay or lesbian person could use the amendment to challenge a court's enforcement of these documents, claiming the documents attempt to "create a legal status substantially similar to marriage."

Similarly, physicians and financial institutions oftentimes turn to the spouse to make health care and financial decisions for his or her incapacitated spouse, even in the absence of a power of attorney document. Even if there is such a document in place for a same-gender couple, we as estate planning attorneys are aware that it will be held to the highest level of scrutiny by those institutions and family members who want desperately to find an excuse to hold it invalid. The proposed amendment will make it even more likely that legal documents will be ignored, and the last wishes of people in long-term, loving relationships will be denied. Such decisions could literally force innocent, grieving individuals from homes they have shared with their partners for many years.

In sum, this proposed amendment threatens to take from same-gender couples not only the few legal tools they have to protect their families, but *basic* rights currently enjoyed by all competent adults in the State of Wisconsin. To amend the Wisconsin constitution in such a way is to go against the very founding principles of our country, "We hold these truths to be self-evident: that all men are created equal."

We urge you to oppose this proposed constitutional amendment. In doing so, you will lead our State, and America, into a new age of enlightenment and understanding.

Sincerely,

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