



*Arthur H. Hemen*

## Conservatives Split Over Marriage Amendment

Wednesday, January 14, 2004

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### FOX NEWS

WASHINGTON — With a tough campaign season ahead and division among Republican lawmakers over strategy, many are questioning whether a **constitutional amendment** ([search](#)) defining marriage has a chance of passing the U.S. Congress this legislative session.

Despite polls showing a majority of Americans oppose granting legal rights to same-sex unions and **gay marriages** ([search](#)), skepticism — even among some social conservatives — remains whether an amendment could get the necessary two-thirds support in both the House and Senate to pass this year.

"It seems really evident to me that in an election year, there is no conceivable way that [a constitutional amendment] could get a two-thirds vote in either chamber," said Michael Schwartz, vice president of government relations for **Concerned Women of America** ([search](#)), which has launched a staunch campaign against gay marriage and civil union laws.

"On the one hand, the far right has issued a threat saying that they want this to be the big issue in the upcoming election," said Cheryl Jacques, executive director of the **Human Rights Campaign** ([search](#)), the largest U.S. gay rights group. "But if the Republicans were really united and ready for this to be the major '04 issue, it would be clear by now."

Schwartz said that moderate members on either side of the aisle who could be convinced to support an amendment might be disinclined to cast such a controversial vote before the November election.

But conservative groups in favor of the amendment warn against underestimating the intensity of their lobby on Capitol Hill, and suggest voters will be taking their beliefs with them to the voting booth in the 2004 elections.

"I don't believe that we will not be able to pass a constitutional amendment this year," said Louisiana state Rep. Tony Perkins, president of the **Family Research Council** ([search](#)).

"I am really positive," he said, adding, "a lot of this depends on the administration and the president, and how willing he is to get behind and support an amendment."

President Bush said in December that he would support an amendment to the Constitution defining marriage as a union between one man and one woman if necessary. But the president suggested that he is not yet ready to stage a formal White House campaign behind such an amendment.

Bush is joined by House leaders and other members of Congress who have indicated they would support an amendment only if necessary. Sources on Capitol Hill say these Republicans want to see if the federal **Defense of Marriage Act** ([search](#)), signed into law by President Clinton in 1996, will stand up to court challenge, before pursuing an amendment.

DOMA says that no state can be forced to pass same-sex marriage or civil union laws nor can they be compelled to recognize such unions sanctioned by other states.

"[House Speaker Dennis] Hastert has said he would probably support an amendment, and that it would be a long, hard fight. But I think he would like to see [DOMA] litigated in the courts first," said Hastert spokesman Jonathan Feehery.

Rep. Marilyn Musgrave, R-Colo., chief sponsor of the amendment in the House, has earned the support of 100 bipartisan co-sponsors.

The Senate amendment proposal, introduced by Sens. Wayne Allard, R-Colo., Jeff Sessions, R-Ala., and Sam Brownback, R-Kan., has the support of Majority Leader Bill Frist, but Senate GOP sources say that senators will be discussing their options, as well as alternative amendment language, when they return next week for the new session.

Both amendment proposals define marriage as a union between a man and a woman and seek the same provisions as DOMA. Neither proposal, however, precludes states from passing such rights and protections to gay couples.

"We are making sure that all of the benefits and everything that is conferred upon married couples is decided by the state," said Guy Short, chief of staff for Musgrave.

Short pointed to the strong momentum behind passing an amendment this session, and said supporters believe this is the only remedy to a gay and lesbian movement that has chosen to pursue marriage and civil union rights through the courts rather than through decisions by state legislatures.

Court rulings in Vermont led to the first civil union laws in the United States in 2000. The Massachusetts Supreme Judicial Court ruled in November that the state Legislature must legalize gay marriage in that state by May.

If passed by Congress, any constitutional amendment would have to be ratified by three-fourths of the states in the union to be made official. Thirty-eight state legislatures have already passed their own DOMA laws. Supporters of a constitutional amendment say this indicates a willingness on behalf of states to ratify a marriage amendment.

Other conservatives, like House Judiciary Committee Chairman F. James Sensenbrenner, R-Wis., said the number of state DOMA laws is reason enough to let the issue rest for now.

Schwartz is urging Republicans to support a bill ensuring that the federal courts would not have the authority to undercut the state or federal DOMA laws, and wait until an off-election year to pursue a constitutional change if necessary.

Rep. John N. Hostettler, R-Ind., has introduced the **Marriage Protection Act** ([search](#)), which would take DOMA out of the jurisdiction of certain federal courts.

"It doesn't mean that progress on the issue would have to die," said Schwartz. "It would take the emergency element out of this altogether and give us time to get support for the amendment."

Other conservatives are uncomfortable with amending the Constitution, period.

"I don't believe that the framers saw the constitutional process as being the check and balance over a run-away court system," said Richard Lessner, executive director of the **American Conservative Union** ([search](#)).

Meanwhile, Democratic leadership sources acknowledge that an amendment might have its share of support from more conservative-leaning Democrats. But ranking members in both chambers say they are opposed to opening up the constitutional process, and don't think that a constitutional amendment has a shot of passing this session.



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