

The Case Against Virginia's 2026 Marriage Constitutional Amendment

Purpose: A structured presentation of the principal constitutional, legal, and ballot-clarity arguments an opponent of the proposed amendment could make. The focus is not opposition to interracial marriage or a claim that same-sex marriage is currently illegal, but whether Virginia should adopt this particular new constitutional language.

The Question Before Virginia Voters

Virginia voters will be asked whether the Constitution of Virginia should be amended to (i) remove the ban on same-sex marriage; (ii) affirm that two adults may marry regardless of sex, gender, or race; and (iii) require all legally valid marriages to be treated equally under the law.

The strongest opposition case is broader than concern about the word **race**. It asks whether voters are being presented with what sounds primarily like removal of obsolete language when the amendment also creates a new affirmative constitutional marriage provision, elevates existing statutory protections to constitutional status, and introduces language whose future meaning will be developed by courts.

1. The Amendment Does More Than Remove an Obsolete Same-Sex-Marriage Provision

Virginia's Constitution currently contains language limiting recognized marriage to a union between one man and one woman. That provision is unenforceable under current federal constitutional law.

But the amendment does not simply delete the obsolete provision. It replaces it with affirmative constitutional language protecting lawful marriage regardless of sex, gender, or race and requiring equal treatment of legally valid marriages.

A voter can favor removing unenforceable language while still wanting to scrutinize the language that will replace it.

2. The Ballot's 'Remove the Ban' Language Describes Only Part of the Legal Change

The phrase **remove the ban on same-sex marriage** can sound like constitutional housekeeping. Yet approval also adopts a new constitutional rule.

An opponent can argue that voters should distinguish between repealing an obsolete provision and affirmatively constitutionalizing a new marriage-rights framework. Those are related, but legally different, decisions.

3. Same-Sex and Interracial Marriages Are Already Lawful in Virginia

Same-sex marriage is currently lawful under federal constitutional precedent, and Virginia statutory law already protects lawful marriages regardless of sex, gender, or race.

Therefore, the ballot is not asking voters whether those marriages should suddenly become legal. The more precise question is whether existing protections should be elevated into Virginia's Constitution using this particular language.

4. Virginia Already Protects These Marriages by Statute

Virginia law already prohibits marriage-license officials from denying a license to two people seeking a lawful marriage because of their sex, gender, or race, and requires recognition of such lawful marriages.

An opponent can therefore argue that constitutionalization is unnecessary: the policy is already established in Virginia law, while statutory law retains greater flexibility for future elected legislatures.

5. Constitutionalizing the Policy Changes Who Has the Final Word

Once a protection is placed in the Constitution, future legislation affecting marriage must comply with the constitutional provision. Ordinary statutes cannot override it.

Disputes over the scope of the protection will ultimately be decided by courts. Someone who prefers major social-policy questions to remain more responsive to the democratic legislative process can oppose constitutionalization even while supporting the marriages currently protected.

6. The Amendment Introduces New 'Vital Personal Right' Language

The underlying constitutional text declares marriage to be one of the **vital personal rights essential to the orderly pursuit of happiness**.

That wording is broader than merely deleting the existing same-sex-marriage provision, and it is not apparent from the short ballot question.

An opponent need not predict a particular court ruling to ask what future constitutional significance judges may attach to the phrase **vital personal right**.

7. Future Judicial Interpretation Cannot Be Known in Advance

Constitutional provisions acquire meaning through judicial interpretation over time. Terms describing protected rights may become relevant in cases that legislators and voters did not anticipate when the amendment was adopted.

The responsible opposition argument is not that a specific unwanted result will necessarily follow. It is that voters should be cautious before permanently adopting broad rights language whose full future application cannot be known.

8. 'Sex, Gender, or Race' Constitutionalizes Categories for Future Interpretation

The amendment expressly uses the categories **sex, gender, or race**. Their application will be governed by constitutional rather than merely statutory interpretation.

In particular, an opponent can ask how courts will define and apply terms such as **gender** decades from now. The issue is not a prediction about the outcome, but recognition that constitutional terminology can develop through future case law.

9. The Word 'Race' Can Create a Ballot-Clarity Concern

Virginia does not currently prohibit interracial marriage. Interracial marriage has long been protected under federal constitutional law, and Virginia statute expressly protects marriage regardless of race.

Yet the ballot places **race** alongside sex and gender immediately after referring to removal of Virginia's same-sex-marriage ban. A voter unfamiliar with current law could misunderstand the legal status of interracial marriage.

The stronger objection is therefore not that race should never receive constitutional protection. It is that voters should clearly understand that adding race would create an additional state constitutional safeguard rather than repeal a currently enforceable interracial-marriage prohibition.

10. Virginia's History Explains Race - But Does Not Eliminate the Clarity Question

Virginia historically prohibited interracial marriage, and the Commonwealth's law produced the landmark 1967 Supreme Court case *Loving v. Virginia*. Supporters therefore have a substantial historical reason for wanting an explicit state constitutional guarantee.

An opponent can acknowledge that history while still arguing that a ballot question should make clear the difference between historical prohibitions, current law, and the new constitutional protection being proposed.

11. Federal Constitutional and Statutory Protections Already Exist

Interracial marriage is protected by *Loving v. Virginia*; same-sex marriage is protected under current Supreme Court precedent; and federal statutory protections also govern recognition of same-sex and interracial marriages.

An opponent can argue that these protections, together with Virginia statutory law, make an additional state constitutional provision unnecessary.

The strongest supporter response is that federal precedent can change and an independent Virginia constitutional guarantee would provide another layer of protection. The opposition question is whether that additional layer is necessary and whether this is the appropriate wording.

12. The Amendment Bundles Repeal and Replacement Into One Vote

A voter may support deleting Virginia's obsolete one-man/one-woman provision but prefer different replacement language. Another voter may support equal recognition of lawful marriages while questioning the new 'vital personal right' formulation.

The ballot does not permit separate votes. Repeal of the old provision and adoption of the new constitutional framework rise or fall together.

13. Constitutional Protections Are Much Harder to Change Than Statutes

Virginia's Constitution is intentionally difficult to amend. That protects fundamental principles from ordinary political shifts, but it also means language should be adopted cautiously.

If unforeseen legal questions arise from the new provision, the General Assembly cannot simply rewrite the Constitution through ordinary legislation.

14. 'Lawful Marriage' Is an Important Limitation - and Opposition Arguments Should Acknowledge It

The amendment protects **two adult persons seeking a lawful marriage**. That wording matters.

It would be inaccurate to claim that the amendment automatically legalizes every conceivable relationship, polygamy, incestuous marriage, or marriage involving minors. Existing requirements defining a lawful marriage remain relevant, subject to constitutional limitations.

A stronger opposition case stays focused on what the amendment actually says rather than speculative claims the text does not support.

15. The Central Question Is Constitutional Necessity, Not Whether Existing Marriages Should Be Invalidated

A voter can believe that lawful same-sex and interracial marriages should continue to be recognized and treated equally while still questioning whether the present statutory and federal protections should be converted into this particular permanent state constitutional guarantee.

That is the substantive opposition question: **Is this amendment necessary, and is this the appropriate constitutional language?**

Strongest Supporter Arguments - and the Counterarguments

“Virginia should remove an unconstitutional same-sex-marriage ban from its Constitution.”

Counterargument: There is a strong argument for removing obsolete and unenforceable language. But voters are not being asked merely to delete it; they must simultaneously approve new affirmative constitutional language. Supporting repeal does not necessarily require supporting every word of the replacement.

“Race is included because Virginia once prohibited interracial marriage.”

Counterargument: Virginia's history is undeniable and significant. But interracial marriage is already lawful and protected today. If the purpose is to add an independent state constitutional safeguard, voters should understand that distinction rather than infer that an existing interracial-marriage prohibition is being repealed.

“Loving and Obergefell could someday be overturned.”

Counterargument: Supreme Court precedent can change, and independent state constitutional protection can provide an additional safeguard. The counterargument is that Virginia also has statutory protections and that concern about future federal doctrine does not eliminate the need to scrutinize the exact state constitutional language being proposed.

“There is no harm in explicitly protecting interracial marriage.”

Counterargument: The opposition issue need not be the desirability of interracial marriage. The issue is whether the Constitution should be amended, whether the ballot clearly describes the change, and whether voters understand that race is being added as a constitutional safeguard rather than legalized for the first time.

“All lawful marriages should be treated equally.”

Counterargument: Virginia law already provides substantial protection for lawful marriages regardless of sex, gender, or race. The actual constitutional question is whether that policy should become a permanent constitutional command in this form.

“Putting these protections in the Constitution prevents future politicians from taking them away.”

Counterargument: That is precisely the purpose and strength of constitutionalization, but it is also why scrutiny is warranted. Constitutional provisions constrain future voters and legislatures as well as current ones and transfer disputes about their boundaries to courts.

Conclusion

The strongest case against this amendment is not an argument against interracial marriage and need not be an argument for invalidating marriages currently recognized in Virginia.

It is an argument about **constitutional necessity, breadth, voter clarity, and future judicial interpretation.**

Virginia's existing constitutional same-sex-marriage provision is unenforceable under current federal law and can reasonably be viewed as obsolete. But the ballot does not merely ask voters to delete it. The amendment replaces it with affirmative constitutional protections, declares marriage a vital personal right, constitutionalizes protections already found in Virginia law, and places future questions about the scope of those protections within constitutional adjudication.

The reference to race is therefore best understood as a secondary clarity issue. Virginia does not currently prohibit interracial marriage. A voter should understand that the amendment would add an independent state constitutional safeguard for something already lawful and protected, not repeal a current interracial-marriage ban.

A voter can support continued recognition and equal treatment of lawful marriages while still asking whether **this particular replacement language needs to be permanently placed in Virginia's Constitution.**

Note: This document presents an opposition analysis of the proposed amendment. It intentionally distinguishes arguments about constitutional structure and ballot clarity from opposition to interracial marriage or claims that same-sex marriage is presently unlawful. Readers should

consult the official Virginia ballot materials, final constitutional text, and current Virginia law for controlling language.