**[3 questions set direction for HJR 3](http://www.journalgazette.net/article/20140202/EDIT07/302029987/0/SEARCH)**   
Before the Indiana Senate decides to join the House in approving HJR 3, the marriage amendment, its members and their backers should ask themselves three questions.   
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Before the Indiana Senate decides to join the House in approving HJR 3, the marriage amendment, its members and their backers should ask themselves three questions.

**1.*Is it proper to put a question of basic rights up for a vote?***

Sheila Kennedy, professor of law and policy at IUPUI, suggests bringing that point home by asking amendment backers, “Who voted on your fundamental rights?” So ask yourselves. Which of the U.S. Constitution’s first 10 amendments – the Bill of Rights – would you put up for a vote?

**Freedom of speech?**

**Freedom of assembly?**

**Freedom from unreasonable search and seizure?**

**The right to bear arms?**

“The Bill of Rights is an anti-majoritarian document,” Kennedy says. It was written to protect minority opinions and groups from the tyranny of the majority. “It says there are certain things that government cannot do.”

**2.*Is it right to deny some Hoosier churches and congregations the freedom of religion?***

Many of our churches and congregations believe homosexuality is a sin and gay marriage an abomination. But many do not.

Isn’t codifying one church’s norm at the expense of another’s a violation of the First Amendment’s guarantee of religious freedom?

The authors of our Constitution may not have considered the merits of gay marriage, but they made sure that freedom of religion was guaranteed.

**3.*May the state legally deny rights to one group that are enjoyed by another group?***

Can we agree, first, that government must regulate civil marriage?

Says Elliot Bartky, associate professor of political science at IPFW, who is in favor of the amendment: “The state has a definite interest in the topic of marriage. The notion that marriage is not a concern to the state is not so.”

Kennedy, an ardent foe of the amendment, agrees. “Civil marriage is not the sanctified marriage that religious institutions address. That’s properly a matter for churches, synagogues, mosques.”

But, she explains, “the government recognizes partnerships for purposes of assigning rights and responsibilities.”

Clearly, such marriage-related matters as property rights, taxes, child support and inheritance are provinces of the state. But should the state decide who does and doesn’t get the civil privileges of marriage?

“The equal protection clause prohibits singling out groups for disparate treatment,” Kennedy points out.

And what about Indiana’s own constitution, Article 1, Section 23?

“The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.”

Won’t that be a problem? Maybe the legislature should first start working on an amendment to revoke that section,

Whether gay couples should be allowed to marry will ultimately be decided by the U.S. Supreme Court. It’s very likely that anti-gay marriage laws will be invalidated everywhere, state amendments or no state amendments.

Our state senators can lead Hoosiers into a costly, divisive and ultimately irrelevant battle over issues that many would argue are beyond the proper reach of government.

Or they can acknowledge that good people disagree, as Gov. Mike Pence put it recently, and that there are some places that government really shouldn’t go.