Can online marriages tame the culture wars?

by Lilly Fowler
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(RNS) When Marine Sgt. Michael Ferschke met a young Japanese woman named Hotaru in Japan, it wasn’t long before he was calling his family back in Tennessee to confess he was in love.

About a year later, Ferschke was deployed to Iraq; two weeks after that, Hotaru discovered she was pregnant.

The two needed to find a way to get married, despite being thousands of miles apart. So the couple had a proxy marriage, a wedding for those who can’t be in the same place at the same time. The couple simply filled out paperwork, though specific requirements for proxy marriages vary by state and by country.

Ferschke, 22, was killed in Iraq in 2008 without ever seeing his wife again. The couple's unorthodox marriage has led to immigration headaches for his widow; their son, Michael Ferschke III, is nearly a year old.

Still, law professors Adam Candeub and Mae Kuykendall are arguing that what worked for the Ferschkes and other couples should be able to work for anyone, gay or straight.

The two Michigan State University professors argue that no couple should have to be physically present to be married and that any two adults should have the freedom to take advantage of another state's marriage laws, whether or not the pair resides in that state.

How exactly? With the help of the Internet, in what Candeub and Kuykendall are dubbing "e-marriage."

"Building on deeply rooted but overlooked precedent in both ancient and modern law concerning marriage by proxy, telephone, and mail, we propose ‘e-marriage,’” Candeub and Kuykendall write in their proposal, "E-Marriage: Breaking the Marriage Monopoly" for the Social Science Research Network.

Candeub and Kuykendall contend that "e-marriage" could help extricate states from the controversy surrounding same-sex marriage.

With "e-marriage," an Alabama gay couple, for example, could easily take advantage of Vermont's same-sex marriage laws though Alabama itself wouldn't necessarily recognize that marriage.

"Every type of e-marriage will not be enforceable everywhere,” Candeub and Kuykendall write. "We argue, however, that marriage satisfies a unique human need for socially sanctioned commitment, which a simple contract cannot satisfy ... E-marriage can more efficiently distribute the ‘status good’ of marriage, even if it cannot provide a legally enforceable relationship in every state."

In other words, even though an "e-marriage" might not carry all the legal rights and responsibilities of state marriage, there's value in the marriage nonetheless. "Having a legal commitment, we argue, is in of itself an important event," Kuykendall said in an interview.

This kind of convenience and flexibility, coupled with certain safeguards to prevent identity fraud, makes "e-marriage" appealing and uncontroversial, the two professors argue.

In addition, they say, states could turn "e-marriage" into a money-making enterprise, charging several thousand dollars per couple, though some worry that online marriages may hurt the kind of lucrative marriage tourism that has cropped up in the five states that allow gay marriage, which has attracted gay and lesbian couples from all over the country.

David Meyer, a Michigan State law student who hosted a campus discussion on the idea with Candeub, thinks "e-marriage" is a good idea but has its limits. Same-sex couples would be barred from filing joint federal tax returns, for example, because the 1996 Defense of Marriage Act defines marriage as the union of one man and one woman at the federal level.

"E-marriage only serves to make the marriage process a little easier and allow those couples who are truly committed to each other to share in the bonds of matrimony, and to share their lives together," Meyer said.
But Peter Sprigg of the Family Research Council, a Washington-based Christian organization dedicated to promoting the traditional family, says his organization would not support "e-marriage" because it's a further step in the erosion of traditional marriage.

"To me it was almost like they were equating a spouse with a Facebook friend," Sprigg said.

Sprigg worries that Internet marriage would make it too easy for couples to enter into, and possibly walk away from, marriage. "To strengthen marriage as an institution, we should be raising those barriers," he said.

Candeub and Kuykendall, however, see "e-marriage" as the next logical step in an Internet-savvy world that is dogged by debates over same-sex marriage. The two hope to attract significant interest from state lawmakers across the country by next fall.

"E-marriage' is not optimal but it could offer significant satisfaction and happiness nonetheless," they write. "In light of the culture wars, 'e-marriage' may be the best possible resolution."