

Findings

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Saying “I Don’t” to Marriage *Is North Carolina Turning It’s Back on Marriage?*

By Alysse ElHage



Marriage Matters. Although it may sound like the catchphrase of the pro-family movement, it is actually the title of a new ad campaign launched in July 2006 by three of the nation’s leading homosexual advocacy groups. The campaign includes a full-page ad that appeared in 50 newspapers across the nation—including the *Raleigh News and Observer*—and features five same-sex couples that have been together between 5 and 53 years.¹ Issued in the wake of six legal setbacks for same-sex “marriage” supporters during the month of July (in Nebraska, Georgia, Tennessee, New York, Connecticut and Massachusetts),² the ad emphasizes that homosexual activists are committed to continuing their efforts to redefine the institution of marriage. The ad states:

“From coast to coast, millions of people and hundreds of organizations are working to protect gay and lesbian families by ending their exclusion from marriage, with all its protections, responsibilities and human significance. This is happening in state legislatures, in the media, in the courts and around millions of kitchen tables. Along the way, there will be advances and setbacks, but we will not stop until every American family is treated fairly, with dignity and equality under the law.”³

As homosexual activists clearly recognize, marriage matters. A universal social institution, marriage binds a man and woman together in a complementary union that provides their children with a mother and a father, and creates the core social unit known as the family. What happens *in* a marriage impacts the economic, educational and social fabric

of society for better or for worse. So what happens *to* marriage matters a great deal. In response to efforts by homosexual activists to change this timeless institution, 19 states have amended their constitutions with a definition of marriage as only between one man and one woman.⁴ In every state where a marriage amendment has been on the ballot, the measures have passed with an average rate of 68 percent in favor.⁵ At least eight additional states will vote on marriage amendments this November.⁶ Unfortunately, North Carolina will not be among them, even though legislation that would give North Carolinians the opportunity to vote on a state marriage amendment was introduced as recently as the 2006 legislative session.

Marriage amendment legislation has languished in the General Assembly for three years in a row, making North Carolina the only state in the South where legislative efforts to put a marriage amendment on the ballot have consistently failed. To understand why, it is important to explore the history of the amendment in North Carolina, the main arguments against it, and why amending the state constitution is a necessary first step to preserving marriage for future generations.

Taking Marriage to the People

In their quest to redefine marriage, homosexual activists have had some success in the courts, but when the issue is taken directly to the people, it is a different story. The May 2003 ruling by Massachusetts’ Supreme Judicial Court, which legalized same-sex “marriage” in that state, brought the real threat of judicial activism to the attention of citizens and state leaders nationwide. Since then, 16 states have amended their constitutions to preserve the definition of marriage as the union of one man and one woman. Every measure has passed with considerable

majorities, even in states, such as Oregon, where homosexual activists expected an easy victory.⁷

In 2004 alone, voters in the following 13 states adopted marriage amendments with wide margins at the polls: Georgia (77 percent), Kentucky (75 percent), Arkansas (75 percent), Louisiana (78 percent), Mississippi (86 percent), Michigan (59 percent), Missouri (71 percent), Montana (66 percent), North Dakota (73 percent), Ohio (62 percent), Oklahoma (76 percent), Oregon (58 percent), and Utah (66 percent). In 2005, Kansas and Texas adopted marriage amendments, both with 75 percent margins of support, and more recently, Alabama citizens overwhelmingly approved a marriage amendment in June 2006, with 81 percent voting in favor.⁸

As of September 2006, a total of 19 states have language in their constitutions that reserves marriage to one man and one woman. Additionally, Hawaii adopted a constitutional amendment in 1998 that gives the state legislature “the power to reserve marriage to opposite-sex couples,” which it did that same year with a Marriage Protection Act.⁹ This November, three of North Carolina’s neighbors—South Carolina, Tennessee, and Virginia—will join at least five additional states to vote on marriage amendments, and similar initiatives are pending in several other states.¹⁰

History of Amendment

Efforts to preserve the definition of marriage through an amendment to the North Carolina Constitution began in May 2004, just a few days before Massachusetts began issuing marriage licenses to same-sex couples. On May 12, Senator Jim Forrester (R-Gaston) introduced SB 1057—Defense of Marriage in the N.C. Senate with 14 cosponsors.¹¹ A few days later, Representatives Tim Moore (R-Cleveland), Jim Crawford (D-Granville),

Michael Gorman (R-Craven) and Dewey Hill (D-Columbus) introduced an identical bill, HB 1606, in the N.C. House with 63 cosponsors.¹² Both bills had strong bipartisan support in the General Assembly, with many members deeply concerned about the threat of possible legal challenges to North Carolina's marriage laws.

Amendment Details: The Defense of Marriage Amendment would add a new section to Article 14 of the North Carolina Constitution that reads:

“Marriage is the union of one man and one woman at one time. This is the only marriage that shall be recognized as valid in this State. The uniting of two persons of the same sex or the uniting of more than two persons of any sex in a marriage, civil union, domestic partnership, or other similar relationship within or outside of this State shall not be valid or recognized in this State. This Constitution shall not be construed to require that marital status or the rights, privileges, benefits, or other legal incidents of marriage be conferred upon unmarried individuals or groups.”¹³

Amending the North Carolina Constitution requires that the legislation pass both chambers of the General Assembly with a three-fifths margin of support and then be approved by a simple majority of voters in a statewide vote.¹⁴

In addition to defining marriage in North Carolina as only between one man and one woman, the amendment's wording is written to protect the state from legal challenges from within and outside the state (such as challenges brought by homosexual couples who legally “marry” in another state). It also prohibits bigamy, polygamy, domestic partnerships and civil unions in North Carolina. Furthermore, the measure specifies that the North Carolina Constitution does not require the State to recognize same-sex “marriages” or other “substitute” forms of marriage as legal and valid, or to bestow the rights and privileges of marriage upon such relationships.¹⁵

Although the votes to pass the legislation existed in the House and Senate, both SB 1057 and HB 1606 remained stalled in committee throughout the 2004 “Short” Session. In July 2004, Sen. Forrester attempted to get his bill out of the Judiciary 1 Committee and onto the Senate floor, using a Senate rule (47-B) that allows a bill that has remained inactive in a committee to be discharged onto the floor for an immediate vote, if 30 signatures are obtained on a petition. However, the

discharge attempt failed because only 28 members signed the petition.¹⁶ In January of 2005 the Senate adopted new rules, which increased the signature requirement for a discharge petition from three-fifths (30 signatures) to two-thirds (34 signatures) of the Senate.

Pro-marriage legislators tried again in 2005. Sen. Forrester, along with Senator Fred Smith (R-Johnston), introduced Defense of Marriage Amendment legislation in the Senate, as did Representatives Moore, Hill, Crawford and Jeff Barnhart (R-Cabarrus) in the House.¹⁷ Once again, the bills were referred to committee, where they languished for the remainder of the 2005 session.

In May 2005, the North Carolina Family Policy Council, along with several other conservative organizations in the state, hosted a “Marriage Under Fire” rally at the State Capital, hoping to compel the legislative leadership to bring the bills up for consideration and give North Carolinians the chance to vote on a state marriage amendment. About 600 citizens attended the event. However, despite strong support from the public, the legislation was never considered and died in committee for the second year in a row.

The third and most recent unsuccessful attempt to preserve the definition of marriage in North Carolina through a constitutional amendment occurred in 2006. Defense of Marriage legislation was once again introduced in both legislative chambers with bi-partisan support. In the House, Representatives Moore, Hill, Crawford and Bonner Stiller (R-Brunswick) introduced HB 2438 with 53 co-sponsors, and Sen. Forrester introduced SB 1228 in the Senate with 19 cosponsors. But just as in 2004 and 2005, neither bill was brought up for a vote in committee.¹⁸

Public Support

The General Assembly's failure to consider the Defense of Marriage Amendment for the past three years cannot be blamed on a lack of popular support. Statewide polls have consistently found that a majority of North Carolinians oppose same-sex “marriage” and support a marriage amendment. For example, a 2004 poll conducted for *The News and Observer*, WRAL-TV, and WUNC-Radio, found that 56 percent of North Carolinians said they favored a state marriage amendment, compared to 38 percent who disapproved, and six percent who were not sure. In another survey question, 51 percent opposed allowing same-sex couples to marry, compared to 37 percent who favored same-sex mar-

riage, and 12 percent who were not sure.¹⁹ In a more recent poll conducted by the Civitas Institute in July 2006, 86 percent of the survey participants agreed that marriage should be defined as between one man and one woman, while only eight percent were opposed. The poll included 800 North Carolinians who voted in the 2002 and 2004 general elections.²⁰

In addition to support from the general public, at least three county commissions in North Carolina have passed resolutions endorsing the state marriage amendment in an effort to urge the General Assembly to consider the issue. Commissioners in Mecklenburg and Lincoln Counties endorsed a ban on same-sex marriage in 2004, and the Beaufort County Commission passed a similar resolution in 2005.²¹

What's Stalling the Amendment?

Although the Defense of Marriage Amendment has widespread public support and enough votes to pass the General Assembly, the legislation has died in committee every year it has been introduced since 2004. So why isn't the marriage amendment moving forward in North Carolina? The reasons for the measure's inaction are varied, and include concerns about the amendment's political impact and the argument by some members that amending the constitution is unnecessary because of North Carolina's existing marriage laws. Before discussing those issues, it is helpful to look briefly at how the legislative process works in the North Carolina General Assembly—including who is responsible for deciding when or if a bill is considered.

Legislative Process. When a bill is introduced in the House or Senate, it is immediately referred to a legislative committee, where it must be debated and voted upon by committee members before it can make it to the chamber floor for a vote. If the legislation is not considered in committee, then it simply dies at the end of a session.

The committee chairperson is responsible for deciding which bills will be considered in his or her committee each session. The Speaker of the House and President Pro Tempore of the Senate are also responsible for what bills are considered because they appoint the committees and decide who will chair them. Most of the time, when the House or Senate leadership wants a particular bill to be brought up for consideration, the committee chair will make it happen. For three years in a row, there has been no action on the state marriage amendment legislation in either chamber because the committee chairs

have refused to bring the legislation up for consideration, and the leaders of the House and Senate apparently have decided that a marriage amendment is unnecessary.

Political Fallout. The political ramifications of putting a state marriage amendment question on the ballot during an election year have played a role in keeping the Defense of Marriage legislation from moving forward in the General Assembly. Because the same-sex “marriage” issue is controversial, some legislators feared that the proposed constitutional amendment might negatively impact their own chances of reelection. This was especially true during the Fall 2004 general elections. Ian Palmquist, the executive director of the homosexual advocacy group, Equality NC, said that efforts to pass marriage amendment legislation in 2004 were “more about trying to turn out the far-right base of the Republican Party in the elections this fall than to try to address any real issue.”²²

As it turned out, the 2004 general election did favor Republican candidates nationwide, especially in states where marriage amendments were on the ballot. In response to concerns about the measure’s political impact, the 2005 marriage amendment legislation did not propose a general election date for the vote. Instead, SB 8 proposed to hold the vote on the date of the primary election in May 2006, and HB 55 scheduled the vote to take place in conjunction with municipal elections in the fall of 2005.²³ Nonetheless, House and Senate leaders still did not allow the 2005 legislation to be considered.

The lesson from the 2004 elections is not that marriage amendments help one political party over another, but that marriage is a winning issue for candidates who are willing to publicly support its preservation. Consider the results of a 2006 poll of North Carolinians who voted in the 2002 and 2004 elections. The poll by the Civitas Institute asked participants whether a legislative candidate’s support of a position would make them more or less likely to vote for that candidate. If a state legislative candidate supported the definition of marriage as being the union between one man and one woman, 78 percent said they would be more likely to vote for that candidate, compared to 14 percent who said they would be less likely to vote for that candidate.²⁴

Existing Marriage Laws. Another reason the Defense of Marriage Amendment has stalled in the General Assembly is that some members have argued that an amendment is unnecessary, since North

Carolina law currently reserves marriage to opposite sex couples. “North Carolina already has a law that defines marriage as between a man and a woman,” Senator Mark Basnight (D-Dare), President Pro Tempore of the Senate, told the *Wilmington Morning Star* in June 2004. “The situation here in North Carolina is not the same as Massachusetts. An amendment is not needed.”²⁵

House Democratic Leader Joe Hackney (D-Orange), who chairs the House Judiciary Committee—where the Defense of Marriage Amendment bill sat throughout the 2005 session—told the *Wilmington Morning Star*, “Most people don’t consider it [same-sex marriage] a pressing problem.”²⁶

There is no question that marriage is defined in unequivocal terms under North Carolina law. N.C. General Statute 51-1 states: “A valid and sufficient marriage is created by the consent of a male and female person who may lawfully marry...”²⁷

In addition, North Carolina is one of 41 states with a Defense of Marriage Act (or DOMA), which is a law that invalidates same-sex “marriages” that are performed in other states. In 1996, Congress passed the federal DOMA, defining marriage for federal purposes as the union of one man and one woman, and giving the states the power to not recognize the same-sex “marriages” of other states.²⁸ During the mid-1990s, 38 states, including North Carolina, enacted their own DOMAs. North Carolina’s law states: “Marriages, whether created by common law, contracted or performed outside of North Carolina, between individuals of the same gender are not valid in North Carolina.”²⁹

A Crucial Defense

So why is it necessary to amend the North Carolina Constitution when we already have laws that clearly define and protect marriage? Although North Carolina’s marriage laws are strong, they are not immune to legal challenges and revision by the courts. All it would take is one ruling by an activist judge to overturn North Carolina’s existing marriage statutes and legalize same-sex “marriage” here.

According to the Alliance Defense Fund, homosexual activists and their allies have filed approximately 68 lawsuits involving the redefinition of marriage since the early 1970s. Of the cases that have been decided so far, at least “seven courts have ruled that there is a right to same-sex ‘marriage.’”³⁰ These decisions include the following examples, some of which have been overturned by constitutional amendments or higher court rulings:

- In 1996, a Hawaii trial court ruled that the state’s marriage laws violated the state constitution (this ruling was overturned in 1998 with a state constitutional amendment).³¹
- In 1998, a superior court judge in Alaska ruled that Alaska’s marriage law violated the state constitution (this ruling was also overturned with the passage of a constitutional amendment in 1998).³²
- In 2003, the Massachusetts Supreme Judicial Court ruled 4 to 3 that denying homosexual couples the right to marry violated the state constitution and gave the state legislature 180 days to essentially rewrite the state’s marriage laws to satisfy their ruling. In May 2004, the state began issuing marriage licenses to same-sex couples, becoming the first state in the nation to legalize same-sex “marriage.”³³
- In 2004, Superior Court judges in King County and Thurston County, Washington struck down the state’s 1998 DOMA law. On July 26, 2006, the Washington Supreme Court narrowly overturned this decision in a 5 to 4 vote, and upheld the state DOMA law as constitutional.³⁴

Challenges in North Carolina

In 2004, North Carolina was one of several states to face a legal challenge to its marriage laws as a result of the legalization of same-sex “marriage” in Massachusetts. The case, *Mullinax v. Covington*, involved a homosexual couple from Durham, who requested a marriage license from the County Register of Deeds in March 2004. When their request was denied, they filed suit in District Court in an attempt to force the county to grant their request for a marriage license. Although the lawsuit was dismissed, the men stated their intention to file a similar lawsuit in Superior Court. In addition to this lawsuit, there have been several attempts to challenge North Carolina’s marriage laws, including the following:

- In March 2004, two homosexual couples in Asheville approached the Buncombe County Register of Deeds and asked to be married.
- On May 5, 2004, a homosexual couple in Charlotte applied for and was denied a marriage license from Mecklenburg County.
- On March 7, 2005, the Chapel Hill Town Council approved a legislative agenda supporting the elimination of the state DOMA law, opposing the state marriage amendment, and requesting that “sexual orientation” be added to the list of protected classifications in the state’s hate crime law.³⁵

It is not a matter of if North Carolina's marriage laws will be further challenged, but when. Without a state constitutional amendment that preserves the definition of marriage as only the union of one man and one woman, North Carolina's marriage laws are one bad judicial decision away from redefinition by the state courts.

Marriage Amendments are Critical

State marriage amendments represent the next step in the larger battle to preserve the institution of marriage throughout the United States. Most urgently, they provide a strong defense against legal challenges to marriage from within the state by protecting against state judicial rulings that may seek to void our strong marriage statutes, or force the State to recognize the same-sex "marriages" of another state.

But even with a state marriage amendment, North Carolina's marriage laws still face the risk of an attack in the federal courts. For example, in May 2005, a federal district court judge struck down Nebraska's marriage amendment, which was adopted by 70 percent of its citizens in 2000. Although a higher court recently overturned the decision and restored Nebraska's marriage amendment, the case is an example of the threat to state marriage laws (and amendments) posed by the federal courts.³⁶ The only way to protect marriage from redefinition at both the state and federal levels is to amend the United States Constitution, in addition to amending state constitutions, with a definition of marriage as only the union of one man and one woman.

State marriage amendments help build support for a federal marriage amendment. Amending the United States Constitution is a lengthy process that will take years. Two-thirds of the House and Senate must approve the amendment, which then must be ratified by 38 state legislatures. The more states with constitutional amendments defining marriage as only between a man and a woman, the more likely the federal marriage amendment is to pass. State marriage amendments also send a clear message to the federal courts, including the U.S. Supreme Court, that Americans recognize and value the timeless and universal understanding of marriage as only the union of one man and one woman.³⁷

Time to Say "I Do"

Homosexual activists have made it clear that marriage matters enough to their cause to keep them fighting at the local, state and federal levels until they win. They recognize that redefining society's most fundamental institution will change more than just who can obtain a marriage license. It will alter the nature of sex, gender, and the family. If marriage matters in North Carolina, then there is no excuse for allowing marriage preservation legislation to languish in the General Assembly. Members of the state legislature are elected to serve the best interests of their constituents, and no other issue is more important to the well-being of this state than preserving the timeless and universal understanding of marriage as the union of a man and a woman. North Carolinians deserve the chance to join the 19 states and counting that have adopted constitutional marriage amendments. It is time for the state's leaders to send the Defense of Marriage Amendment to the people for a vote.

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