

Findings

The California Effect

Why Same-Sex “Marriage” May Be Coming to NC Sooner than You Think

By Paul Ribeiro



On May 15, 2008, the California Supreme Court defied centuries of recorded history, declaring that same-sex couples have the fundamental right to marry.¹ It would be easy to shrug in indifference; after all, California is over two thousand miles away. Not only that, anyone familiar with popular culture expects that kind of craziness to come from the land of Hollywood. It could never happen in North Carolina, folks believe. After all, this is the South—the “Bible belt”—where there are more traditional views about things like marriage. The truth is, North Carolina may be more vulnerable to the threat of same-sex marriage than any other state in the South—in part due to its lack of a state constitutional amendment defining marriage as the union between one man and one woman—and may be targeted in the near future by homosexual activists seeking to overturn its marriage laws.

Those who oppose the traditional definition of marriage have the goal of legalizing same-sex “marriage” in North Carolina. According to a statement by the American Civil Liberties Union (ACLU), one of the main proponents for the homosexual agenda, “[E]ven after we have convinced most states to change their laws and stop excluding same-sex couples from marriage, to get marriage for same-sex couples everywhere we’ll eventually need to have the federal courts insist that the *remaining states can’t refuse to recognize same-sex marriages.*”² (*Emphasis added.*) It is therefore naïve to believe that the opponents of traditional marriage will be content before the

institution is radically redefined in every corner of America.

The most immediate way to protect marriage in North Carolina is to amend the State Constitution to include the definition of marriage as the union between one man and one woman. One of the key reasons the California Supreme Court was able to establish same-sex “marriage” was that the California State Constitution did not explicitly define marriage. In response to the emerging threat from opponents of traditional marriage, twenty-seven States have passed marriage amendments. In the Southeastern U.S., only North Carolina has failed to take decisive action to protect marriage under its Constitution. Voters in thirteen of the fifteen Southeastern States have added a definition of marriage to their Constitution (by an average passage rate of over 75%) and Florida voters will have the opportunity to do the same on the November 4, 2008 ballot.

North Carolina voters, however, will not have that opportunity, unless the General Assembly allows voters to have a say in the issue. Bills have been introduced in the North Carolina General Assembly each year from 2004 through 2008 to allow North Carolina voters to go to the polls on this issue, but time and again the measure has been blocked. In light of the California decision, it is imperative that the voters of North Carolina be given the opportunity to vote to defend the institution of marriage with a State constitutional amendment. If North Carolina fails to protect marriage in this manner, it is only logical that homosexual activists would choose North Carolina as

the next forum in which to bring a legal challenge to traditional marriage.

“But NC has strong marriage laws.”

This is a common objection made in response to pleas for a State marriage amendment, even among those who believe in traditional marriage. This reflects erroneous ideas about how our judicial system works. The truth is that California marriage laws were actually stronger than North Carolina marriage laws, and the California Supreme Court nonetheless foisted same-sex “marriage” on Californians. California’s statute defining marriage plainly and clearly stated, “Marriage is a personal relation arising out of a civil contract between a man and a woman... .”³ North Carolina’s statute is similar: “A valid and sufficient marriage is created by the consent of a male and female person who may lawfully marry... .”⁴ In 1996, North Carolina lawmakers also passed a Defense of Marriage Act (DOMA) which states, “[T]he word ‘marriage’ means only a legal union between one man and one woman as husband and wife.” Unlike North Carolina, however, California passed its DOMA in 2000 as a ballot initiative known as “Proposition 22,” in which 61.4% of California voters, in a sheer act of democracy, confirmed at the polls that the institution of marriage in California should exist only as it had throughout history: “Only marriage between a man and a woman is valid or recognized in California.”⁵ Unlike the marriage statute, Proposition 22 could not be repealed or amended by the California

State Legislature without the approval of the voters, making it—in theory—much stronger than the legislatively enacted statute.

However, the California Supreme Court held both the marriage statute and Proposition 22 unconstitutional. The Court simply overruled both the legislatively enacted marriage statute and the voter initiative (i.e., the will of the people), stating:

[T]he constitutionally based right to marry properly must be understood to encompass the core set of basic substantive legal rights and attributes traditionally associated with marriage that are so integral to an individual's liberty and personal autonomy that they may not be eliminated or abrogated by the Legislature or by the electorate through the statutory initiative process.⁶ (Emphasis added.)

In other words, the Court determined that its own view of the matter trumped democracy.

Bizarrely, the Court made its determination of constitutionality regardless of the fact that, in the Court's own words, "the common law definition of marriage as the union of a man and a woman is constitutionally enshrined in the California Constitution by virtue of language in the 1849 and 1879 Constitutions that employed the terms 'marriage,' 'wife,' and 'husband' in providing constitutional protection for separate-property rights. x"⁷ Apparently such oblique references to marriage were not sufficient for the Court to understand the intent of the State Founders.

If California's strong marriage laws were not sufficient to protect marriage, then North Carolina's laws could fall, as well. It is simply not true to state that North Carolina's marriage statutes are strong enough to withstand a legal challenge by homosexual activists. And the arena that these activists will choose to pursue their goals will be our court system. This was made clear by Ira Glasser, former ACLU executive director, after Alaskans went to the polls and passed their own marriage amendment in defense of traditional marriage. He said, "Today's results prove that certain fundamental issues should not be left up to majority vote."⁸ Thus it is clear that homosexual activists prefer to eschew democracy in favor of a direct appeal to the courts. And without a constitutional

amendment in place to keep the courts in check, nothing prevents them from simply declaring unconstitutional marriage statutes that limit marriage to opposite-sex couples.

“But North Carolina judges would never redefine marriage.”

This refrain comes from those who believe that it is merely unfounded paranoia to fear same-sex “marriage” in North Carolina and that North Carolina judges are of a different stripe than those of California's high court.

First of all, it is crucial to recognize that judicial decisions change the law in ways that legislative enactments do not. There are several important ways in which the judiciary differs from the legislature:

- A single judge can change the law with the stroke of a pen by declaring it

In the Southeastern U.S., only North Carolina has failed to take decisive action to protect marriage under its Constitution.

unconstitutional. On appeal, a simple majority of two judges on a three judge panel of the Court of Appeals, or four justices at the State Supreme Court can uphold the ruling, giving it statewide application.

- Judicial decisions can change the law suddenly, without public debate. Whereas a legislative bill must be debated and subjected to public scrutiny prior to passage, a court can grant or deny rights to whole classes of people with no advance warning whatsoever, and without the opportunity for the citizens to participate in the debate.
- Courts can overrule the legislature, but the legislature cannot overrule courts. Once a court establishes a constitutional right, all public debate ceases, and there is no way to change the policy, short of the court overruling itself—which is rare.
- Judicial elections in North Carolina are non-partisan, though judges have opinions just like anyone else. Therefore, the uninformed citizen may erroneously assume that judges share their values. And while courts are only supposed

to interpret the law, many times they make policy decisions, for which they are not held accountable to the people.

Keeping these truths in mind, consider the issue of same-sex “marriage.” If a homosexual couple from North Carolina gets “married” in California and then returns to North Carolina (and it is likely this has happened by now), they could very plausibly sue to have their “marriage” recognized under North Carolina law. When that happens, they would only have to find one judge among 100+ Superior Court judges sitting on the bench in North Carolina who agrees with the reasoning of the California high court. That judge, without polling the electorate, seeking the Governor's endorsement, or even indicating to those closest to them how they plan to rule, can simply grant judgment to the homosexual couple, effectively overruling the North Carolina marriage statutes and 170 democratically elected State legislators. Although such a decision would most certainly be appealed, the effect would be that with no forewarning, there would suddenly be same-sex “marriage” in North Carolina.

On appeal, the decision may be upheld, because without a State constitutional marriage amendment, nothing prevents the courts from declaring, in the words of the California Court, “that an individual's sexual orientation—like a person's race or gender—does not constitute a legitimate basis upon which to deny or withhold legal rights.”⁹ As fair and just as that sounds, it is merely a deceptive way for the courts to justify their actions in redefining marriage. The truth is, no prior California court had ever held that there was a fundamental right to same-sex “marriage,” or that sexual orientation was to be treated as a protected class. The California Supreme Court admitted, “The issue is one of first impression.”¹⁰ Likewise, a North Carolina appellate court could determine—aided immeasurably by the precedent set by the California Supreme Court—that despite no case law on point, same-sex couples must be given “equal protection” in the form of access to marriage.

Second, and more troubling, is that North Carolina courts are already open to granting unprecedented, same-sex rights that are without basis in the law. Just days before the California marriage

decision was handed down, the North Carolina Court of Appeals granted joint legal custody of a minor to the biological mother of the child and her estranged lesbian partner.¹¹ The women had been homosexual partners for eight years, and had raised the child together for the last four years of the relationship. A year before they separated, they signed a parenting agreement, under which both women would take responsibility for parental decisions. On these facts, the Court accepted the parties' stipulation that they had created a "family unit,"¹² in a way that North Carolina had not previously recognized—as a union between two lesbians, which would otherwise be illegal under North Carolina's marriage laws.

More disturbing still, in arriving at its unanimous decision, the North Carolina Court stated, "It is important to first observe that the factual context of this case—involving same-sex domestic partners—is immaterial to the proper analysis of the legal issues involved."¹³ (Emphasis added.) Essentially, the North Carolina court—like the California court—held that sexual orientation was completely beside the point when evaluating matters related to parenting and the establishment of a family. Once a legal principle of this nature is established in case law, it does not require a significant leap for a court to uphold a right to same-sex "marriage." After all, if sexual orientation is immaterial as between two individuals who share parenting duties, why should sexual orientation matter when those same individuals wish to formalize that relationship in a wedding chapel or before a magistrate?

In a Superior Court case from Pender County, another judge struck down the North Carolina cohabitation statute – which outlaws adultery and fornication – as unconstitutional.¹⁴ What does that have to do with same-sex "marriage," one may ask. The judge relied on *Lawrence v. Texas*, the landmark 2003 U.S. Supreme Court case that established a right to homosexual sodomy, and the same case that the Massachusetts and California courts cited in establishing the right to same-sex "marriage" in those States. While a Superior Court ruling is limited in its application to the district in which it is decided, it is indicative of the courts' increasing willingness to extend the application of *Lawrence* beyond sodomy cases

in an effort to sever any right the State has in regulating sexual relationships.

Note that although same-sex "marriage" was first legalized within the U.S. in Massachusetts in 2004, Massachusetts law prohibited, until recently, the issuance of marriage licenses to residents of states where same-sex "marriage" would not be recognized. This lack of "portability," as it is referred to, is the only reason that same-sex couples from North Carolina and elsewhere have not been flocking to Massachusetts over the past few years. California does not have a portability law, meaning that Cali-

Once a legal principle of this nature is established in case law, it does not require a significant leap for a court to uphold a right to same-sex "marriage."

fornia will readily issue marriage licenses to couples from other states. In July, the Massachusetts Legislature voted to repeal its own portability law, at least in part due to economic motivations.¹⁵ Also note that the California Court relied on the legality of same-sex "marriage" in Massachusetts and five foreign countries to demonstrate a so-called trend in support of same-sex "marriage" rights.¹⁶ Thus, there is a domino effect; as other States and countries continue to institute same-sex "marriage"—and allow out-of-state couples to obtain licenses—North Carolina grows ever more vulnerable.

"But California is far more liberal than NC—it couldn't happen here."

It is unquestionable that the California decision was facilitated by the prevalence of radically liberal social views—specifically, homosexuality as a natural and normal lifestyle—that had been widely accepted in California. In other words, the Court merely endorsed a viewpoint that was already present in the culture—namely, that homosexuality was equally valid and valuable as heterosexuality. Therefore, some North Carolinians believe that because their State is socially more traditional, it is not vulnerable to an attack on marriage. The truth is, efforts

to normalize homosexuality in North Carolina have increased with each passing year.

This normalization process happened quickly in California. The California Supreme Court itself acknowledges, "From the beginning of California statehood, the legal institution of civil marriage has been understood to refer to a relationship between a man and a woman."¹⁷ The Court then explains how over the course of 150 years from 1849 to 1999 every statutory enactment and modification related to marriage continued to affirm the basic proposition that marriage is between one man and one woman. Starting as recently as 1999, however, the California Legislature began to adopt comprehensive domestic partnership legislation, granting same-sex couples virtually all of the same rights and privileges as married couples. Only nine years later, in a move the California Court's dissenting judges call "legal jujitsu," the Court's majority relies on those very laws as evidence of "explicit official recognition" of a right to homosexual equality, which the Court then uses to create a constitutional right to same-sex "marriage."¹⁸ Thus, while the California Legislature normally would not be able to amend the constitution without voter approval, the Court indirectly allows them to do that very thing, by virtue of the fact that the Legislature had passed laws favorable to gay rights.

North Carolina has begun to go down the same slippery slope. Homosexual activists have enjoyed some successes in advocating full acceptance of homosexuality, and the result is a gradual normalization of so-called "alternative lifestyles" within North Carolina. Here is a brief list of some of the advances that have been made by homosexual activists within North Carolina:

- In 2003, Durham County and Orange County passed measures awarding domestic partner benefits to homosexual partners of county employees.¹⁹ Domestic partner benefits have also been available to town employees in Carrboro since 1994, in Chapel Hill since 1995, and to city employees in Durham since 2002.²⁰
- In 2004, the Guilford County Board of Education adopted a non-discrimina-

- tion policy protecting “sexual orientation” and “gender identity/expression.”²¹
- In 2005, the Mecklenburg County Board of Commissioners added “sexual orientation” as a protected class under its employment non-discrimination policy.²²
 - In 2007, the State Personnel Commission voted to include “sexual orientation” as a protected class. While the rule was later overturned by the North Carolina Rules Review Commission, some are claiming the policy remains in effect.²³
 - In 2008, the Charlotte Mecklenburg School Board adopted an anti-bullying policy protecting “sexual orientation” and “gender identity/expression.”²⁴
 - In 2007 and 2008, the North Carolina General Assembly considered—and rejected, after contentious debate—HB 1366—School Violence Prevention Act, or “Bullying Bill,” which would have made “sexual orientation” and “gender identity or expression” protected classes under State law.²⁵
 - 15 of 16 campuses in the University of North Carolina have included “sexual orientation” in their non-discrimination policies.²⁶ UNC—Chapel Hill has also begun to offer benefits to same-sex partners of faculty and students.²⁷
 - N.C. State University and UNC—Chapel Hill have even gone so far as to include transsexuals in their non-discrimination policies (covering “gender identity” and “gender expression”).²⁸

While the stated goal of these actions is to protect homosexuals from discrimination, the hidden agenda—and subtle, underlying effect—is to codify rights for alternative sexual behaviors, leading to legitimacy and affirmation.

Take, for example, HB 1366 which included “sexual orientation” and “gender identity or expression” as protected classes. As it stands, North Carolina public schools have been required since 2004 to have anti-bullying policies in place, protecting all students from violence.²⁹ Thus, a bill that specifies “sexual orientation” is unnecessary and redundant. One must then ask, if students are already protected against bullying under the law, what is the real purpose of the bill? Considering that the bill’s

sponsors refused to remove the term “sexual orientation,” even when doing so would have ensured the measure passed, it seems clear that getting the term “sexual orientation” into North Carolina law was the bill’s primary point. It is important to remember that the California Supreme Court was emboldened to create same-sex “marriage” both by the cultural support

Efforts to normalize homosexuality in North Carolina have increased with each passing year.

for homosexuality as well as by the pro-homosexual policies, such as the 2003 Domestic Partner Act, that had been legislatively enacted within the State, to justify its decision.³⁰

(As a side note, the original version of HB 1366 would also have required North Carolina public schools to “Develop a process for discussing the policy with students.”³¹ In other words, school children, starting in kindergarten, were to be taught that diversity of sexual orientation must be tolerated, respected, and affirmed as normal!)

While the North Carolina General Statutes are currently free of any reference to “sexual orientation” or “gender identity or expression,” the very introduction of that language bolsters the argument that under North Carolina law, homosexuality is a protected, or “suspect” classification. In constitutional law lingo, “suspect classification” is code language of great significance when courts are dealing with claimed violations of the Equal Protection Clause. The general rule is that courts exercise “rational basis review” of legislation, meaning that courts presume laws to be valid and will uphold them as long as they are rationally related to a legitimate state interest.³² However, courts are required to exercise “strict scrutiny”—the most intense degree of examination—of any law dealing with people on the basis of a “suspect classification,” such as race, religion, or gender. When the court applies a “strict scrutiny” standard of review, it means that the Government must show that its law is “narrowly tailored” to serve a “compelling state

interest.” Thus, if sexual orientation is deemed a “suspect classification,” a law such as North Carolina’s marriage statute (defining marriage as between a man and a woman) could be held unconstitutional if the Court determines that the law distinguishes people according to their sexual orientation, without a “compelling interest” in doing so.

This was one of the ways the California Supreme Court went about overruling California’s traditional marriage laws—it declared sexual orientation a “suspect classification,” and then held that the State had no “compelling interest” in withholding the title “marriage” from same-sex couples, who under California’s domestic partner laws were already entitled to otherwise “equal” treatment.³³ Those domestic partner laws were significant to the analysis, because there can be no Equal Protection claim at all unless a law is treating “similarly situated” persons differently.³⁴ The audacity of the California Court’s analysis lies in the fact that neither the U.S. Supreme Court nor any other state supreme court had ever held sexual orientation to be a “suspect classification.”³⁵ The criteria for entry into the leagues of “suspect classification” have been zealously guarded, and courts have usually required that to be considered “suspect,” a characteristic must: 1) be based on an immutable, or unchangeable, trait; 2) bear no relation to a person’s ability to contribute to society; and 3) be associated with a stigma of inferiority, manifested by the group’s history of legal and social disabilities.³⁶ Faced with the controversial social question of whether sexual orientation is an immutable, innate characteristic, the California Court simply punted, tossing out “immutability” as a factor, with no legal authority to do so.³⁷ Instead, the Court determined that sexual orientation was a “suspect classification,” because homosexuals are fully able to contribute to society and because they have faced a history of prejudicial treatment—regardless of the fact that the homosexual lobby is “obviously able to wield political power in defense of its interests.”³⁸

The link is direct: pro-homosexual legislation creates a foothold from which activists can argue for their stated goal of same-sex “marriage.” One North Carolina pro-homosexual advocacy group, which according to its mission statement,

“works to secure equal rights and justice for lesbian, gay, bisexual, and transgendered North Carolinians,” recently initiated an online advocacy campaign encouraging constituents to contact their legislators in support of the so-called “Bullying Bill.”³⁹ If the goal is just to prevent bullying of all children, why is the bill supported by groups like these? And why do these groups oppose amendments to the bill that would remove language about sexual orientation? Regardless of their motives, the result of the bill would be to introduce “explicit official recognition” of homosexual rights into North Carolina law—the very step that the California Supreme Court found necessary in establishing same-sex “marriage” in California.⁴⁰

Those involved in advancing the homosexual agenda have expressly acknowledged that the introduction of pro-homosexual policies is a strategic, incremental step towards larger goals. According to the National Gay and Lesbian Task Force’s Domestic Partnership Organizing Manual, introduction of non-discrimination policies are an essential step toward legal recognition of domestic partnerships. Within the employment context (both government and private sector), the Manual advises, “Before attempting to get domestic partner benefits from your employer, it is imperative that the company’s non-discrimination policy include sexual orientation. ... A common rationale for establishing domestic partner benefits is that the failure to do so is contradictory to a non-discrimination clause.”⁴¹ Thus, it seems that homosexual activists are intentionally deceptive about their true goals; while campaigning for so-called non-discrimination, they are actually seeking domestic partnership benefits.

Domestic partnership benefits policies in turn reinforce support for pro-homosexual laws. In pushing for federal domestic partner legislation, one U.S. Congressman stated, “What is good for corporate America is good for the country.”⁴² And once domestic partnership legislation has been introduced in a jurisdiction, it is a small step indeed to require those partnerships to be called “marriages.” This is precisely what the California Supreme Court did this year, and the logic is plain: once homosexual couples have been given the rights and

benefits of marriage, the Equal Protection Clause dictates that similarly situated persons must be treated similarly.⁴³ And that means—in the opinion of some—that the name “marriage” must be extended to same-sex relationships.

A Federal Amendment?

Consider again the hypothetical same-sex couple that “marries” in California and returns to North Carolina. There are at least two distinct ways in which a legal challenge may be formulated, and recognizing the difference is important in determining what must be done now to protect marriage.

First, a direct challenge may be made to the constitutionality of North Carolina marriage statutes under the Equal Protection clause of the North Carolina Constitution, alleging that the plaintiffs’ fundamental right to marry has been abrogated, or that the State has no justifiable interest in treating a homosexual couple differently than a heterosexual couple. As discussed above, the same-sex couple’s chances of success under this theory are difficult to predict because of the nature of judicial decisions; unlike legislative enactments, courts’ decisions are often unpredictable, and sometimes contrary to the will of the people. What is certain is that the introduction of pro-homosexual policies and legislation can significantly influence courts and give judges who are predisposed the justification they need to find a constitutional right to same-sex “marriage.” Furthermore, the California Supreme Court has given other states’ courts clear precedent on which they can rely if they are seeking a justification to change the traditional definition of marriage. The only way to protect against such a direct constitutional challenge is to amend the State Constitution to explicitly define marriage as between one man and one woman.

Second, a legal challenge may be brought under the Full Faith and Credit clause of the U.S. Constitution, which requires states to give effect to “the public acts, records, and judicial proceedings of every other State.”⁴⁴ Most people believe that the states are protected from application of the Full Faith and Credit clause to the same-sex marriage issue by virtue of the 1996 federal Defense of Marriage Act (DOMA), which defines marriage for federal purposes as between a man

and a woman, and which further provides that States are not required to recognize same-sex “marriages” from other States.⁴⁵ Forty States, including North Carolina, have passed similar DOMA legislation at the State level.⁴⁶

However, there is serious scholarly conjecture that the “long-term viability” of DOMA legislation is in doubt.⁴⁷ If the constitutionality of DOMA laws were challenged at the U.S. Supreme Court, it appears that the controlling precedent is *Lawrence v. Texas*,⁴⁸ a case affirming the right to homosexual sodomy, and under which DOMA laws could be held unconstitutional. Responding to the Lawrence Court’s assertion that the decision did not implicate marriage, Justice Scalia in dissent said, “Do not believe it. x Today’s opinion dismantles the structure of constitutional law that has permitted a distinction to be made between heterosexual and homosexual unions, insofar as formal recognition in marriage is concerned. x This case ‘does not involve’ the issue of homosexual marriage only if one entertains the belief that principle and logic have nothing to do with the decisions of this Court.”⁴⁹

Other scholars have said that the federal DOMA does not implicate constitutional concerns, but that the law merely states what the law would be without it.⁵⁰ That is to say, marriages valid in the place of celebration are generally valid everywhere (the “place of celebration rule”), unless an out-of-state marriage is violative of public policy.⁵¹ These scholars note that definition and recognition of marriages is a state law issue, and the Supreme Court has typically been deferential to state courts’ choice of law.⁵² Finally, they note that the Full Faith and Credit Clause only applies to judgments, which by definition require the adjudication of a dispute,⁵³ and is therefore inapplicable to marriage licenses.

Although to date homosexual activists have preferred to take a slow and steady, state-by-state approach, it is important to note that after the California decision, 18.6% of Americans live in a State with same-sex marriage or a marriage equivalent, such as civil unions.⁵⁴ Thus, a direct attack on DOMA laws may soon be seen as a logical incremental step.⁵⁵

If the DOMA laws were held unconstitutional, State marriage legislation may

not be sufficient to protect traditional marriage. For this reason, many have argued in recent years that an amendment to the United States Constitution is needed. Some conservatives adamantly oppose such an amendment, on the grounds that the Federal Government has traditionally stayed out of family law issues and that the matter is properly one for the States. However, it is important to be aware that without the protection of DOMA, and without a federal constitutional marriage amendment, activist federal judges could import same-sex marriage from California to North Carolina under the auspices of the Full Faith and Credit clause.

Conclusion

North Carolina is especially vulnerable to an attack on traditional marriage, in part because it has failed to act to protect marriage in its State Constitution, unlike its sister states in the South. The threat is especially imminent in light of the California Supreme Court's recent decision to extend the institution to same-sex couples, regardless of residency. Since the decision took effect, same-sex "marriage" has already been exported from California to New York,⁵⁶ and North Carolina may be next.

It is only a matter of time before North Carolina same-sex couples begin "marrying" in California and demanding recognition of their "marriages" in North Carolina. Their likelihood of success—as in California—rests in great part on the extent to which pro-homosexual rights and policies are written into North Carolina law. It is not too late to protect traditional marriage in North Carolina. However, legislators and the citizens must act soon to define marriage under the

Paul Ribeiro served as an Alliance Defense Fund Blackstone Fellowship legal intern at the North Carolina Family Policy Council

Copyright © 2008. North Carolina Family Policy Council. All Rights Reserved.

Endnotes

1. In re Marriage Cases, 183 P.3d 384 (Cal. 2008).
2. ALAN SEARS & CRAIG OSTEN, THE ACLU VS. AMERICA 49 (2005)
3. California Family Code Section 300
4. N.C. Gen. Stat. Ann. § 51-1 (West 2008).
5. California Family Code Section 308.5
6. Marriage Cases, 183 P.3d at 399.
7. Id. at 447.
8. ALAN SEARS & CRAIG OSTEN, THE HOMOSEXUAL AGENDA 106 (2003).
9. Marriage Cases, 183 P.3d at 400.
10. Id. at 441.
11. Mason v. Dwinell, 660 S.E.2d 58 (N.C. Ct. App. 2008).
12. Id. at 67.
13. Id. at 60.
14. Hobbs v. Smith, 2006 WL 3103008 (N.C. Superior Ct. of Pender Co. Aug. 25, 2006).
15. See http://www.boston.com/news/local/massachusetts/articles.2008/07/29/mass_house_votes_to_let_out_of_state_gays_marry_1217362393/?rss_id=Boston.com+++Latest+news (last visited July 30, 2008).
16. Marriage Cases, 183 P.3d at 452 n.70.
17. Id. at 407.
18. Id. at 458 (Baxter, J., dissenting).
19. <http://ncfamily.org/stories/050426s1.html> (last visited July 30, 2008).
20. DORRIAN HORSEY, NORTH CAROLINA FAMILY POLICY COUNCIL, DOMESTIC PARTNER BENEFITS 2 (2004), available at http://ncfamily.org/PolicyPapers/Findings_0410-DomPartBenefits.pdf.
21. <http://ncfamily.org/stories/040123s1.html> (last visited July 30, 2008).
22. <http://ncfamily.org/stories/050519s1.html> (last visited July 30, 2008).
23. Bob Geary, N.C. Weighs Protection for Gay Workers, The Independent, June 25, 2008, at 7.
24. <http://ncfamily.org/stories/080313s1.html> (last visited July 30, 2008).
25. <http://ncfamily.org/stories/080718s1.html> (last visited July 30, 2008).
26. Bob Geary at 7.
27. <http://lgbt.unc.edu> (last visited July 30, 2008).
28. Lisa Sorg, Jonathan Merlini: Campus Advocate, The Independent, June 25, 2008, at 18.
29. <http://ncfamily.org/stories/040702s5.html> (last visited July 30, 2008); board policy available at: <http://sbepolicy.dpi.state.nc.us/>.
30. Marriage Cases, 183 P.3d at 414.
31. House Bill 1366, School Violence Protection Act (April 10, 2007); available at <http://www.ncga.nc.us/Sessions/2007/Bills/House/HTML/H1366v1.html>.
32. Marriage Cases, 183 P.3d at 464 (Baxter, J., dissenting).
33. Id. at 446, 452.
34. Id. at 464 (Baxter, J., dissenting).
35. Id. at 442 n.60 (majority opinion), 465 (Baxter, J., dissenting).
36. Id. at 442.
37. Id.
38. Id. at 443.
39. Equality North Carolina, <http://equalitync.org> (last visited Jul. 2, 2008).
40. Marriage Cases, 183 P.3d at 461 (Baxter, J., dissenting).
41. Sally Kohn, The Domestic Partnership Organizing Manual for Employee Benefits, The Policy Institute of the National Gay and Lesbian Task Force, 18. Available at <http://ngltf.org>; then search for document by title.
42. Sears & Osten, supra note 8 at 180.
43. See Misha Isaak, What's in a Name? Civil Unions and the Constitutional Significance of Marriage, 10 U. PA. J. CONST. L. 607, 610-13 (2008).
44. U.S. CONST. art. IV, § 1.
45. 1 U.S.C. § 7 (2007); 28 U.S.C. § 1738C (2006).
46. See <http://domawatch.org> (last visited July 3, 2008).
47. Roger Severino, Or For Poorer? How Same-sex Marriage Threatens Religious Liberty, 30 HARV. J.L. & PUB. POL'Y 939, 954 (2008).
48. Id. at 956.
49. Lawrence v. Texas, 539 U.S. 558, 604-05 (2003).
50. Patrick J. Borchers, The Essential Irrelevance of the Full Faith and Credit Clause to the Same-Sex Marriage Debate, 38 CREIGHTON L. REV. 353, 358 (2005).
51. Id. at 354.
52. Id. at 354, 358.
53. Id. at 358.
54. Severino at 951-55.
55. Id. at 955.
56. <http://www.nytimes.com/2008/05/29/nyregion/29marriage.html>.

Organized in 1992, the North Carolina Family Policy Council is a nonpartisan, nonprofit, research and education organization. Our goal is to serve as a voice for families and traditional family values in the public policy arena. We are supported solely by private contributions which are tax deductible as provided by law. Our mailing address is P.O. Box 20607, Raleigh, NC 27619. Phone: (919) 807-0800. Fax: (919) 807-0900. Web: www.ncfamily.org. Findings is a publication of the North Carolina Family Policy Council which is intended to communicate research findings and perspectives on public policy issues that affect the family. Nothing written here should be construed as necessarily reflecting the views of the North Carolina Family Policy Council or as an attempt to aid or hinder the passage of any bill before Congress or the North Carolina General Assembly. Printed September 2008.