

Why North Carolina Needs a State Marriage Amendment

Applicable Bills: **Senate Bill 13, House Bill 493**

On May 17, 2004, the Massachusetts Supreme Judicial Court ordered that Massachusetts must issue marriage licenses to same-sex couples. This action set off a firestorm across the country. During the last two election cycles, voters in 18 states have approved amendments to their state constitutions defining marriage as the union of one man and one woman. A total of 27 states now have marriage amendments, including all the states in the Southeastern U.S. except Florida and North Carolina.

As recently as October 2006, the New Jersey Supreme Court ruled that the New Jersey Legislature must legalize same-sex “marriage” or an equivalent within six months in order to comply with the equal protection guarantee of the state constitution. The New Jersey Legislature responded by approving civil unions similar to those already approved in Vermont and Connecticut. Currently, there are several lawsuits pending in other states challenging the definition of marriage as the union of one man and one woman. A similar challenge could happen in North Carolina.

CHALLENGES TO NORTH CAROLINA’S MARRIAGE LAWS: North Carolina is fortunate to have strong marriage laws in place, which state in part:

“A valid and sufficient marriage is created by the consent of a male and female person who may lawfully marry...” (NC General Statute 51-1)

“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.” (NC General Statute 51-1.2)

However, these laws are not immune from legal challenges. The following is a sample of the activity we have already seen in North Carolina:

- On March 22, 2004 a homosexual couple in Durham sought a marriage license from the Durham County Register of Deeds. Upon being denied the license, the two men sued in District Court in an attempt to force the County to grant the license. After this lawsuit was dismissed, the two men expressed their intentions to file a similar suit in Superior Court.
- Also in March 2004, two homosexual couples in Asheville approached the Buncombe County Register of Deeds and asked to be married. Their request was denied.
- On May 5, 2004 a homosexual couple in Charlotte applied for and were denied a marriage license in Mecklenburg County.
- On December 8, 2004 the *Charlotte Observer* ran a story about two women who moved to Charlotte after obtaining a marriage license in Massachusetts. While the article did not suggest that these women planned to challenge our marriage statutes, we must anticipate that such a lawsuit will be forthcoming.
- On March 7, 2005 the Chapel Hill Town Council approved a legislative agenda supporting the elimination of North Carolina’s Defense of Marriage law (§ 51-1.2), opposing a State Marriage Amendment, and adding “sexual orientation” to the list of protected classifications in the state’s hate crime law.

Our state will undoubtedly face additional challenges in the future. It is likely that these challenges will come not only from same-sex couples who want the State of North Carolina to issue marriage licenses

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to them, but also from same-sex couples who move to the state after obtaining a marriage license or civil union from another state and demand the same status and recognition here. Unless North Carolina has language in our Constitution defining marriage as the union of one man and one woman, our state laws will remain vulnerable to attack.

THE STATE MARRIAGE AMENDMENT: The surest way to protect North Carolina and our strong marriage laws from legal attacks against the institution of marriage is to amend the State Constitution. Legislation has been introduced in the N.C. General Assembly to do just that. **Senate Bill 13—Defense of Marriage** is sponsored by Senators Jim Forrester (R-Gaston) and Fred Smith (R-Johnston) and is co-signed by 16 other members of the Senate. An identical bill in the House, **House Bill 493**, is sponsored by Representatives Tim Moore (R-Cleveland), Jim Crawford (D-Granville), Dewey Hill (D-Columbus), and Linda Johnson (R-Cabarrus). House Bill 493 is signed by a bipartisan group of 63 House members, which represent a majority of the 120-member chamber. The bill proposes the following amendment to the North Carolina Constitution.

“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.”

Each sentence of the amendment serves a critical purpose. The first two sentences are necessary to specify that only the union of one man and one woman at one time constitutes a valid marriage in North Carolina. The third sentence is necessary to defend against legal challenges from within the state as well as legal challenges resulting from marital recognition granted outside of the state. Sentence three—along with sentence one—make it clear that bigamy and polygamy are prohibited. The fourth sentence is necessary to clarify that neither state courts nor the General Assembly can assert that the North Carolina Constitution requires the recognition of same-sex marriages or a “substitute” form of marriage, such as civil unions, as legal and valid in North Carolina.

Amending the North Carolina Constitution in the manner proposed above will provide the strongest support and protection for our existing marriage laws and the greatest defense against legal efforts to redefine marriage in North Carolina.

QUESTION & ANSWER:

Q: Why do we need to amend our Constitution when we already have strong marriage laws in place?

A: We are fortunate to have strong marriage laws in place, but those laws are not immune from legal challenges by those who want to overturn them and allow same-sex marriage in North Carolina.

Q: North Carolina has conservative courts. You don’t really believe that state judges will overturn our marriage laws, do you?

A: There is no guarantee. Homosexual activists have taken their fight to the judiciary, because this is where they are experiencing the most success. Future legal challenges will be fueled by court decisions by activist judges in other states, and lawyers for homosexual couples will seek to find a friendly venue in North Carolina for a lawsuit to overturn our marriage laws.

Q: Couldn’t the General Assembly just wait to see if a lawsuit is successful and then act?

A: Yes it could, but this would result in the havoc that has plagued other states. In some instances, local judges have taken it upon themselves to completely ignore the law and impose their own will and their own interpretation of the constitution upon their state. The North Carolina General Assembly should act swiftly and decisively and not subject this critical matter to a protracted legal battle.