

# ▽ NC GALA Institute for Equal Rights ▽

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## **WHAT'S WRONG WITH THE PROPOSED CONSTITUTIONAL AMENDMENT BILLS S1057 AND H1606?**

### **THE PROPOSED AMENDMENT HAS NO PLACE IN NORTH CAROLINA'S CONSTITUTION**

Our state constitution is a document that celebrates and protects the rights of individuals. It states that all citizens of NC possess the inalienable rights of “life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.” The proposed amendment would tarnish this sacred document by explicitly denying basic civil rights to a targeted group of North Carolinians.

A state constitution should not be amended in response to the ever-changing political winds, for doing so would undermine the very stability and continuity that the document is designed to create. North Carolina has amended its constitution less frequently than most states and should not stray from that pragmatic approach now. Marriage is an evolving institution, as evidenced by the numerous twentieth century changes including the expansion of women's property rights and the end to prohibitions on interracial marriage. An amendment—particularly one that denies access to the fundamental right of marriage—is impractical and overzealous.

### **THE PROPOSED AMENDMENT IS UNNECESSARY AND REDUNDANT**

North Carolina and federal law already prohibit the recognition of marriage between same-sex couples.

In 1996 the U.S. Congress passed the “Defense of Marriage Act.” It specifies that “the word ‘marriage’ means only a legal union between one man and one woman as husband and wife” and no state is required to give effect to any other type of marriage.

The North Carolina General Assembly also passed its own prohibition on same-sex marriage in 1996 which states that “[m]arriages, whether created by common law, contracted, or performed outside of North Carolina, between individuals of the same gender are not valid in North Carolina.”

These state and federal acts combine to restrict marriage in North Carolina to one man and one woman and empower the state to declare marriages in other states invalid.

### **THE PROPOSED AMENDMENT HARMS FAMILIES**

The 2000 Census reveals that at least 16,198 same-sex couples live in North Carolina, more than one-fourth of which have children in their households. The proposed amendment would prevent these couples from securing legal protections for themselves and their children. Because it includes a prohibition against the recognition of any relationship “similar” to marriage, the proposed amendment potentially undermines existing joint parenting and partnership agreements and detrimentally affects the stability and security of children in these families.

## **THE PROPOSED AMENDMENT LIMITS THE AUTONOMY OF LOCAL GOVERNMENTS AND COMPANIES**

The proposed amendment could affect the legality of domestic partner benefits offered by employers incorporated in NC, because such benefits are “incidents of marriage” which are traditionally reserved for married couples.

The proposed amendment could also undercut existing and developing policy decisions by local governments to offer domestic partner benefits to city or county employees.

Lastly, potential litigation under this law from employees whose would lose benefits could prove quite costly to local and state governments and private employers.

## **THE PROPOSED AMENDMENT DOES NOT MAKE GOOD ECONOMIC SENSE**

In these difficult economic times when the state is trying to attract new industries and more businesses, North Carolina cannot afford such an openly discriminatory amendment to its constitution. Many major companies recognize and honor the diversity of their workforce and include sexual orientation in their non-discrimination policies. Here in North Carolina, 19 of the state’s top 30 employers include sexual orientation in their company non-discrimination policies, and 8 of those companies offer domestic partner benefits. These companies include Wachovia Bank, IBM, Duke University, Bank of America, and RJ Reynolds Tobacco Company.

Efforts to revitalize and diversify North Carolina’s economy will be handicapped if the amendment is passed. It will be more difficult to attract companies—particularly those staffed and run by the so-called “Creative Class”—if this state is viewed as unwelcoming to their gay and lesbian employees. The proposed amendment will discourage employers who offer such benefits from coming to our state and limits the ability of existing businesses to attract and retain the best workforce by offering competitive benefits.

## **LEGISLATORS IN 10 STATES HAVE ALREADY REJECTED SUCH PROPOSED AMENDMENTS THIS YEAR**

Legislatures in different parts of the country have already rejected these kinds of measures in the last few months. Proposed amendments in Arizona, Kansas, Idaho, Indiana, Iowa, Louisiana, Maine, Maryland, Minnesota, and Washington died or were defeated.

## **THE PROPOSED AMENDMENT DOES NOTHING TO ADDRESS THE STATE’S REAL PROBLEMS**

Amending the state constitution to prohibit same-sex marriage simply is not a high priority for most NC voters. Voters are more concerned about the economy, the flight of jobs, taxes, health insurance, schools, and homeland security. In fact, a study by the Pew Research Center revealed that a constitutional amendment prohibiting same-sex marriage ranked 21<sup>st</sup> out of 22 issues.

Clearly, the state legislature has more pressing issues to address during this session.

*The NC GALA Institute for Equal Rights was founded in 2003 by the Board of the North Carolina Gay and Lesbian Attorneys Association (NC GALA), as a non-profit organization to expand the programs and goals of NC GALA beyond the limited scope of the organization as a professional membership association. After almost 10 years as a referral source for individuals seeking LGBT-friendly attorneys and a provider of continuing legal education on topics of LGBT interest, the Board determined that a more expanded program was needed. The NC GALA Institute for Equal Rights is a federal tax-exempt non-profit organization.*