

## **Tyranny of the *Status Quo*:<sup>1</sup>**

### **“Defense of Marriage” in North Carolina**

**J. Wesley Casteen, Esq., CPA – © 2011**

Mark your calendars. On or about September 12, 2011, the North Carolina Legislature could demonstrate the nature and quality of the leadership, which its collective members will offer to the citizens of North Carolina. The Legislature is considering whether to disenfranchise by constitutional fiat all persons who identify themselves as Lesbian, Gay, Bisexual, or Transgender (LGBT). During the approaching short-session of the Legislature, both the House and the Senate are expected to take up various proposed Constitutional Amendments. Each legislative body has a version of a proposed amendment, which is euphemistically called the “Defense of Marriage” amendment, and such an amendment is touted as being necessary in order to protect the sanctity of marriage within our state.

On their faces, the respective Bills [HB 777 and SB 106] seem innocuous, and the language is likely consistent with the accepted understandings of many, if not the majority, of the State’s citizens. The House Bill provides, “Marriage is the union of one man and one woman at one time. No other relationship shall be recognized as a valid marriage by the State.” Most persons would likely stop inquiry after the first sentence believing the Bill to simply be a restatement of the obvious. Most would either ignore the second sentence or assume it to be superfluous. However, it is the second sentence that carries the greater import, and it is this second sentence that carries the weight and authority of government in sanctioning as a legal imperative a less than universal moral judgment and institutionalizing a belief that LGBT persons are second-class citizens.

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<sup>1</sup> Unrelated to the book of the same title, *Tyranny of the Status Quo*, Milton and Rose Friedman (1984).

These proposed amendments are not new. They have been introduced repeatedly in the Legislature over many successive terms. Previously, these bills never gained much traction; however, proponents are emboldened by the current makeup of the Legislature. Proponents hope that a proposed amendment will appear on the ballot on November 6, 2012, and they hope that they can sway a majority of participating voters to embrace the perceived safety of that which is comfortable and familiar.

The fight is one to protect the *status quo*. Proponents seek to codify behavior which they deem appropriate and to smother any dissenting opinion. Such an objective fails to recognize that society is not stagnant. The fight to preserve the *status quo* is often a fight to hold back a rising tide, or worse to inadvertently remain mired in a bog of misunderstanding, misinformation, and lost opportunity.

The Legislature must decide whether to demonstrate strength, reason, and resolve in the face of unfounded fear or to resort to political pandering. Legislators will decide whether the role of government is to protect its citizens and the rights supposedly available for all to enjoy or to promote the institutionalization of bigotry and prejudice.

I am well aware of the visceral responses and connotations associated with those latter words, but the meanings denoted by them are entirely apt:

- “Bigotry” is defined as, “Stubborn and complete intolerance of any creed, belief, or opinion that differs from one's own;” and
- “Prejudice” means, “An unfavorable opinion or feeling formed beforehand or without knowledge, thought, or reason.”

LGBT persons compose a minority of the population. In a strict democracy, these persons could anticipate that the will of the unaffected majority could be imposed upon them.

Fortunately, our republic, inclusive of this State, is based upon principles of government, which emphasize and enshrine certain rights and protections in the furtherance of “life, liberty, and the pursuit of happiness.” These rights and protections are guaranteed by our federal and state constitutions.

The rights of individuals are of paramount importance in our system of government, and any infringements on such rights are condoned only in the protection of some equal or higher state interest. The State Constitution, which may soon be subject to revision, is structured as an instrument to avoid government oppression. It is an instrument of equality, inclusion, and protection. The controlling ideals are abandoned and lost when the powers of government are flaunted so as to impose the will of the majority and limit the rights of any minority group. To the proponents of the amendment, it is not enough that there is already a law in North Carolina that contains language nearly verbatim with the proposed Constitutional Amendment. [N.C.G.S. § 51-1.2] The proponents wish to amend the fundamental governing document of this State to assure that those affected by that and similar laws are further denied the equal protections offered by our Constitution.

For more than a generation, a clearer understanding of interpersonal relationships and sexuality, including homosexuality, has led to the growing acceptance of LGBT persons throughout nearly all segments of society. The proponents of the amendment are well aware that the tide of public opinion and the course of history are quickly turning against them. Recent polls indicate that the majority of Americans support the legalization of Gay Marriage: Gallup – 53% (05/20/2011) and ABC/Washington Post – 53% (03/18/2011). The Gallup number represents a monumental shift in just fifteen (15) years from 68% unfavorable versus 27%

favorable responses, and the ABC/WP poll showed a 17% increase in those supporting gay marriage in just the last five (5) years.

As LGBT men and woman openly assume their places in society and their numerous positive contributions become recognized, stereotypes begin to dissolve. LGBT persons become known to their friends, co-workers, and neighbors as individuals rather than the descriptors “gay” or “lesbian” (or other terms much more derogatory). When accepted as individuals, it becomes evident that these persons are no threat to the pillars upon which our society is founded. LGBT persons are not societal menaces deserving of isolation. Their happiness and contentment are not detriments to the happiness and contentment of others not similarly inclined.

More importantly, institutionalizing bigotry and prejudice against LGBT persons will do nothing to promote, defend, or improve upon the quality of marriages within this state. Marriage is an institution based upon a solemn vow and personal commitment between two individuals. Governments long ago realized that they could not enforce by coercion the solemnity of that vow nor dictate the level of commitment necessary to maintain a marriage. Similarly, denying a particular committed couple the opportunity to marry serves only to ignore those things that provide happiness to those individuals and to actively oppress the pursuit of that happiness with no legitimate State interest or counterbalancing benefit to the remaining citizens.

The question that politicians should be asking themselves is not, “What is politically expedient?” Rather, they should ask, “On what side of history do I want to position myself?” Do you want to align yourselves with those who, in deference to the *status quo*, defended slavery, opposed women’s suffrage, and resisted Civil Rights for racial minorities? Or, are you going to demonstrate true leadership and integrity by upholding the ideals of individual freedoms and personal rights?

A vote against the proposed amendment is not a vote against marriage; it is not a vote against religion; and it is not an indictment against those who may oppose homosexuality on moral grounds. Instead, it is a vote to uphold the ideals of equality, liberty, and freedom for which this country is known. Those who identify as LGBT will forever be a part of our culture and our society. LGBT persons cannot be marginalized for the convenience of those who may be bigoted and prejudiced against them.

Those persons, who recognize marriage as a loving, caring, committed relationship between two persons, should understand that the institution is not compromised by the joining together of additional couples regardless of their sexual orientations. If the sanctity of any marriage is dependent upon that immensely personal and revered relationship being cared for as a ward of the State, the perceived attacks against which the amendment purports to defend are among the least dangerous offenses to threaten that venerable institution.

The biggest fear faced by each of us is that of the unknown. Our understanding of any issue or situation is influenced by our personal perspectives. Unless one's perspective includes knowing LGBT persons as individuals rather than painting all such persons with the broad brushes of caricature and stereotype, the resulting picture is inevitably clouded. If everyone were to take the time and make the effort to get to know LGBT persons genuinely, I am confident that preconceptions of what it means to be LGBT would disappear quickly. Unfounded fears would likely be replaced by shared understanding and an appreciation of common aspirations and goals.

LGBT persons are people like all other persons. They have the same wishes and dreams as well as the same frailties and shortcomings of all human beings. The wishes of LGBT persons that they be afforded opportunities to contribute to society, to join with someone they love, and to live their lives in the pursuit of happiness are no different than anyone else's dreams and

aspirations. Other individuals do not have to understand or participate in those dreams and aspirations, regardless of whether any reluctance is based upon personal preference or moral conviction. Nevertheless, any action by the State which institutionalizes bigotry and prejudice is unconscionable and reprehensible.

It takes very little in the way of leadership to advocate that a course never change. Similarly, leadership is not embodied by following the crowd blindly hoping to reach a suitable destination. Leadership requires defining an appropriate destination, planning the route, and moving to the front of the line so that others may follow in confidence. That which is comfortable, familiar, and easy is not always right, just, and proper. History identifies turning points, at which reason was victorious over prejudice. We are approaching such a turning point. Society is moving toward broader acceptance of LGBT persons.

The destination is within sight, and arrival is all but certain. However, the question is whether our Legislature will provide the leadership to guide us to that destination and participate in planning our arrival or whether our State will detour upon a path trod by others before, a circuitous path in deference of the *status quo*. In times of change and uncertainty, we deserve true leadership. Let us hope that our Legislature is up to the task of leading by protecting and promoting the rights of all citizens.

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