

Point of View: Marriage laws and N.C.'s justices

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CHAPEL HILL -- With the Tar Heel state ravaged by both natural and economic disaster, this week the General Assembly will launch a singular legislative session - our political equivalent of treatment in the emergency room. There, we will reportedly consider, principally, whether to amend our state constitution to outlaw same-sex marriage.

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Maybe I should repeat that. Given the crushing and relentless problems faced, today, by millions of dispirited Carolinians, our representatives will gather on Jones Street to constitutionalize the marginalization of lesbians and gay men. No kidding.

There are many and diverse theories for amending a constitution. Regardless of one's governing perspective, though, each includes an essential, and perhaps obvious, requisite - need. It is serious business to alter a state's foundational charter. We do it rarely. The process demands super-majorities in both houses and a ratifying vote of the people. It assumes that we face problems so pronounced that it's necessary for the citizenry to rise to modify our governing premises.

Oddly, though, same sex marriage has already been prohibited in North Carolina. Twice. N.C. General Statutes section 51.1.1 provides that a marriage celebrated within our borders must be between a man and a woman. Section 51.1.2 adds that same-sex marriages performed in any other state will not be deemed effective here.

I'll concede I oppose these laws - believing they work to deny full humanity to many of our sisters and brothers. But still, there they remain - passed by significant margins, fully enforceable, fully enforced. Whether this proposed amendment passes or fails, gay marriage will remain illegal in North Carolina. Why the call to exigency?

Legislative leaders pressing the amendment explain it is crucial to act boldly "to prevent activist judges from overturning the marriage laws already in place." Say what? In North Carolina?

Perhaps we should unpack that claim. It must mean, practically speaking, that our legislators fret that the North Carolina Supreme Court - our final arbiter of state law - may be poised to strike down our two anti-gay marriage laws under the existing state constitution. This is so because any conceivable gay marriage determination by the federal courts, interpreting the United States Constitution, would be unaltered by whatever we might add to our state charter.

But no one familiar with North Carolina institutions could believe there is the slightest chance, and I mean the slightest, that our state Supreme Court would choose to step forward and help lead the nation in the recognition

of path-breaking gay rights.

They would sooner resign their commissions. At present, they seem interested only in opening new and unexplored venues for the expansion of gun rights. It is more likely that Roy Williams and Mike Krzyzewski would agree to change jobs and work pro bono than that the North Carolina Supreme Court would become this feared bastion of gay sanctuary.

It is possible, of course, that the national activists giving apparent marching orders to our Republican leaders know nothing about this. I've had the eerie experience of debating some of them on the matter. They typically concede, right readily, they have no idea what our judges or traditions of interpretation are actually like. They mean, simply, to instruct us from afar. But our legislators either know better or they're unconscious.

Whichever holds true, the fact remains that the asserted basis for this proffered constitutional alteration is flatly, demonstrably and undeniably false.

What's not false, though, is the wrenching challenge faced, at this very moment, by actual North Carolinians. More of us live in poverty today than at any time in our history. Over a half million of our kids.

Unemployment hovers at debilitating levels - and, now looks, again, to be on the rise. More of us have lost our health insurance than in almost any state. We haven't yet found a path out of career-destroying recession. A new generation of our children faces barriers to employment, not of their own making, that may hamper their economic fortunes for decades.

And we have now declared, as thousands of teachers are dispatched, that we are insufficiently responsible to assure that the next cohort will enjoy the full array of opportunities we have secured.

I don't claim to have answers for all these chilling difficulties. But a legislature that simply ignores them - that offers no conceivable platform to move a threatened people forward - mocks us. It's not sufficient to say we're idea-less; all we can think of is to ask you, again, to turn on one another. We've been there before.

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