

2017 SENATE JUDICIARY

SB 2043

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2043
1/4/2017
26526

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to the definition of marriage and the recognition of marital relationships.

Minutes: **Testimony attached #**

1, 2, 3, 4

Chairman Armstrong called the committee to order on SB 4043. All committee members were present.

Samantha Kremer, Legislative Management (LM) – Introduced the bill and did brief description of its contents (No written testimony)

Senator Larson: “We were told during the Interim that if we didn’t make any changes that it wouldn’t impact anything, is that correct?”

Kremer: “I believe the testimony from the Attorney General’s office did not have any recommendations for changes to the Century Code during the interim, the office could better answer that.”

Jen Dunn, ND citizen – Testified in support of the amendment (see attachment 1)

Renee Stromme, North Dakota Women’s Network (NDWM) Representative – Testified in support of the amendment (see attachment 2)

Jennifer Cook, Policy Director for the American Civil Liberties Union of North Dakota - Testified in support of the amendment (see attachment 3)

Senator Luick: “How do married unions create economic value in these dollar amounts that you have there in the testimony? How does that change anything?”

Jennifer Cook – She discussed different factors about same-sex marriage couples, how same-sex marriages and businesses benefit from the marriage industry, quoted Obergefell (Supreme Court case hearing) as well as stating the Government earns income from marriage license revenue. She concluded by saying those economic values were brought forth on the national level from Obergefell, and would therefore be analogous with regards to state revenue.

Chairman Armstrong: “Are you aware of the current bill hindering any marriage in ND.”

Jennifer Cook: "I am not aware."

Chairman Armstrong: "How about divorce?"

Jennifer Cook: "Not yet, but as an attorney I'd prefer language in Century Code is updated to reflect current law."

Chairman Armstrong: "You stated national trends on gay marriage, I have trouble with assertion that it will most likely fail in ND without any polling data. Have you seen any polling regarding this issue for the state of ND?"

Jennifer Cook: "There may have been recent polling. I can think of one organization that has done recent polling, I can double check that."

Jennifer stated a 2015 poll regarding the issue.

Chairman Armstrong: "Are you aware of groups trying to get anything on the ballot regarding ND's prohibition of gay marriage?"

Jennifer Cook: "I am not aware."

Attachment 4, proposed Amendment, was provided to the committee.

Chairman Armstrong closed the hearing on SB 2043.

Roll Call Vote was withheld until further discussion happens regarding this issue.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2043 Committee Work
1/9/2017
26692

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the definition of marriage and the recognition of marital relationships.

Minutes: **No written testimony**

Chairman Armstrong called the committee to order SB 2043. All committee members were present.

Senator Nelson – “I guess what’s bothering me on this bill is that those against it were not here to testify against it, but now they are sending me a lot of information and reasons why this bill should not be passed. We’re not here to undo the Federal law.”

Chairman Armstrong: “What I got out of the interim committee is that the law doesn’t really do anything. There is a constitutional prohibition on gay marriage in the North Dakota Constitution. If Obergefell got overturned, then that prohibition would immediately go back into place. That being said, there is an argument that when we deal with code or law, we have to deal with what it represents and not what we would wish it represent. Those were the arguments we heard in the interim committee.”

Senator Myrdal: “It seems to strange to change something in our state constitution. This an emotional issue and language matters. I will vote a Do Not Pass no matter what for this bill. I think changing the language of a 2000-year-old constitution, regardless what the Supreme Court of the United States says, is wrong, I think there’s a 10th Amendment issue here. I suggest this body does not legislate on polls, which is what essentially we are doing.”

Chairman Armstrong: “At the end of the day, the polling testimony was awkward in the way it was presented. I agree with Senator Myrdal whole heartedly.”

Senator Larson: “I plan on voting no on this bill as well. That is the leaning of my constituents. Just cause Supreme Court of the United States said something, we shouldn’t change our whole code just for that. This doesn’t change anything with respect to the law. I think we should ignore this bill, at least for now. The Supreme Court of the United States could be changed which could change things for us so. We shouldn’t have a knee-jerk reaction to this. I’ll be voting no.”

Senator Luick: "I feel the same way."

Senator Luick discussed the numbers around the state, specifically the ND poll of 2004.

"I too will be voting no. We are here to do the will of the people, and the will of the people is to say no to this bill."

Senator Nelson: "There is a motion from the Tax Department. I don't know if you want to leave it alone or you want to alter it or what you want to do?" (referring to Chairman Armstrong)

Chairman Armstrong: "Is there a motion?"

Senator Nelson motioned to adopt the Amendment. Senator Myrdal seconded.

Chairman Armstrong: "Actually, this amendment is outside the issue. I don't think it is necessary." Chairman Armstrong elaborated his reasoning for why this amendment isn't necessary.

Senator Nelson withdrew the motion. Senator Myrdal withdrew her second.

Senator Myrdal: "Just for the record, I think we need to make it clear that nobody is taking away equal rights of the people, regardless of what happens with this bill. Nobody is losing their equal rights."

Senator Nelson: "My district wants me to overwhelmingly vote yes. I will be voting for what my constituents want."

Senator Larson motioned a Do Not Pass on SB 2043. Senator Myrdal seconded.

A Roll Call Vote was taken. Yea: 4 Nay: 2 Absent: 0
The motion carried.

Senator Myrdal carried the bill.

REPORT OF STANDING COMMITTEE

SB 2043: Judiciary Committee (Sen. Armstrong, Chairman) recommends **DO NOT PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2043 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

SB 2043

1/4/17

When my wife and I married in May 2015, we had to travel to Minnesota to obtain our legal documentation. We were granted a ceremony in front of a judge that lasted 4.5 minutes before we were deemed legally bound for life. While we are grateful to the Clay County judicial system for validating our vows, we would have preferred to exchange vows at home, in Burleigh County, but Burleigh County and North Dakota refused to recognize our relationship at that time. The North Dakota Century Code still does.

The month after we were married, specifically June 26, 2015, the United States Supreme Court ruled that state bans on same-sex marriage were unconstitutional. That alone should be reason enough to change the language of the ND Century Code to include pronouns that apply to married couples of all sexes. As it is currently written, the Century Code's definition of marriage does not apply to my relationship. The Century Code refers to husband and wife. There is no husband in my marriage. To deny same-sex couples inclusive language is to deny equal value to their union.

Definition of Marriage

Opponents of SB 2043 may say that changing the definition of marriage will violate their religious beliefs. The definition change will not, in fact, attempt to alter or violate any religious views. The language change will only affect those consenting adults who wish to enter in to a same-sex marriage. Those who do not value same-sex marriage need not apply for one. This bill is a plea for the state's laws to be consistent and to protect the meaning of the marriage licenses it dispenses, regardless of the demographics of the married couple.

Mutual Obligation

How about mutual obligation among spouses? Before I got married, I spent a year in South America as a missionary. The transition was difficult as I went there alone and possessed just enough Spanish to get my basic needs met. I had no family there. I had no friends. I lacked any sense of deep, meaningful connection with any of the people with whom I interacted. It was a practice in solitude. One that I did not handle well. My wife – then girlfriend – was the one who answered my tearful Skype calls at 4:00 a.m. when she had to be in class at 8:00. She is the one who showed me the love and compassion that I was starving for. She is the one who told me that it would all be okay, that what I was doing mattered, and that it would get better. She was my one constant, my rock, my pillar of hope in the year that I was away.

I feel more happy and complete when I am with my wife than I have ever felt before in my life. We are a team. We support each other in our endeavors and dreams. My beautiful wife has and continues to embody the respect, fidelity, and support that the Century Code outlines as mutual obligations between two married partners. How does the state benefit from continuing to tell us that our commitment is not good enough based on what rests between our legs?

Adoption

This bill will affect language regarding adoption. History demonstrates that the opposition will take case against homosexual couples and adoption. The language change doesn't automatically grant every married couple adoption rights. Each couple must still go through the rigorous adoption approval process. They must provide character references, pass criminal background checks, and prove financial stability among other criteria. A same-sex couple that chooses to adopt endures a battery of testing. In comparison, couples that create their babies the old-fashioned way, coitus, undergo exactly zero tests to prove their fitness for parenthood.

The opposition will likely cite studies that say a child fares better when raised by both a mom and a dad. The studies that are commonly cited in denouncing same-sex parenthood are actually studies that compare two-parent households to one-parent households. Of course a household with

11/4/17

two parents is more likely to have more resources and more parent-child one-on-one time than a one-parent household. That's just math. Show me the evidence that shows a two-mom or two-dad household leaves a child worse off than a household with 1 mother and 1 father and I'll rest my case.

Furthermore, it is often argued that same-sex parents will make their children gay or influence them to have unnatural desires. Although having a gay child isn't a bad thing, having gay parents doesn't necessarily equate to a raising gay child. I've been surrounded by straight people my whole life – my parents, grandparents, siblings, friends, co-workers, television, everywhere I turn straight people - and that didn't seem to affect me at all.

Divorce

Finally, consider that this bill will affect laws regarding divorce. God forbid that my marriage should ever fall apart, but it is inevitable that some same-sex marriages are going to end in divorce. Just as opposite-sex marriages cannot achieve a 100% success rate, neither should we expect that of same-sex marriages. The ND Century Code needs to allow homosexual couples a way to terminate a toxic relationship just as it does for heterosexual couples.

For those still on the fence, consider that actions speak louder than words. The longer ND takes to validate same-sex marriage, the longer gay people will flee the state in search of more amicable conditions. The longer employees with a strong work ethic, talent, and entrepreneurial prowess will be lost to more accepting states. The longer gay youth will interpret and internalize the message that they are less-than, undesirable, and tainted. Does ND want to send the message that it is inclusive and seeks diversity in humanity, or should the legacy of ND continue to persevere in acts of exclusion and a desire for homogeny?

What will the state, the community, the legislature gain by defeating this bill? How will excluding gay couples from the rights and privileges of marriage make North Dakota a better place? In what way will it provide happier citizens?

I want to leave you with this thought: People are people regardless of their shape, size, color, language, gender, or orientation. Just because something is different doesn't make it bad. What I don't understand is why we are fighting so hard against love. To make people and couples feel inferior because of the love they share. With all the hate, violence, abuse, and neglect in this world and in this state, I do not understand why we are using our intelligence and our energy to denounce love among two consenting adults. All marital rights and privileges need to be protected for all married couples, without exception. Please consider what and whom North Dakota has to gain with a yea vote and what and whom North Dakota will lose with a nay vote on this bill.



**Senate Judiciary Committee
Senate Bill 2043
January 4, 2017**

Good morning Chairman Armstrong and members of the Senate Judiciary committee. I am Renee Stromme representing the North Dakota Women's Network (NDWN). We are a statewide advocacy organization working to improve the lives of women and standing for equality for all. We stand in support of Senate Bill 2043.

This legislation is simply common sense language updates to keep our state laws in compliance with the Supreme Court ruling on marriage equality. Choosing to update language has no negative consequences on the state, but provides clarity that is in line with law.

NDWN does applaud the ruling and the arc toward equality it provides. It is the closing paragraph written by Justice Kennedy provides the most salient and compelling statement for updating the statutes:

"No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right."

SB 2043 provides statute updates to bring ND in compliance in word, not just deed, with federal law. By enacting these changes, North Dakota would be recognizing the value of marriage for all couples who seek marriage. Therefore we urge this committee to look favorably on 2043 and give it a do pass recommendation.



3

Testimony In Support of SB 2043

American Civil Liberties Union of North Dakota

Senate Judiciary Committee

January 4, 2017

Thank you, Chair Armstrong and members of the Senate Judiciary Committee for your time and attention this morning. My name is Jennifer Cook and I am the Policy Director for the American Civil Liberties Union of North Dakota. The ACLU of North Dakota is a nonprofit, nonpartisan organization with more than 6,000 members, activists, and followers. The ACLU of North Dakota is one of the state's leading organizations dedicated to advancing and defending civil liberties and civil rights.

SB 2043 brings North Dakota Century Code in line with the United States Supreme Court's historic *Obergefell v. Hodges* decision, which made it possible for same-sex couples to marry in all 50 states. According to the Williams Institute at the University of California at Los Angeles School of Law, in the first four months following the court's ruling, 96,000 same-sex couples married.¹ Those unions added an estimated \$813 million to state and local economies and \$52 million in state and local tax revenues. Here in North Dakota, the statistics are likely less dramatic, but it is very likely there have been similar positive impacts.²

Leading up to the Supreme Court's *Obergefell* decision, approximately 60 percent of American adults supported marriage equality.³ Post-*Obergefell* the Williams Institute reports that support for marriage equality in 2016, would be greater than 50 percent in 46 states and greater than 40 percent in every state.⁴ Arguably, given the national statistics, it is very likely that North Dakotans would vote to dismantle the constitutional amendment they instituted in 2004, more than a decade ago when national polling was much lower, that limited the right to marry in North Dakota to opposite-sex couples.

Although the passage or failure of SB 2043 will not change the state's already existing obligation to treat same-sex and opposite-sex couples similarly under *Obergefell*, the bill does provide important clarity, consistency, and uniformity to our state's Century Code. And as equally important, the bill and the passage of it would recognize the dignity, humanity, and equality of the marriages of LGBTQ North Dakotans. A simple "yes" vote by members of this committee and members of this legislative body will formally acknowledge in the eyes of North Dakota law that LGBTQ North Dakotans' marriages, like opposite-sex marriages, are equally rooted in the values of family, love, devotion, sacrifice, and liberty.

¹ See <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Marriage-and-Same-sex-Couples-after-Obergefell-November-2015.pdf>

² See <http://www.ndaco.org/ndaco-news/interim-committee-to-consider-changing-state-law-to-reflect-same-sex-marriage-ruling>

³ See <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Marriage-and-Same-sex-Couples-after-Obergefell-November-2015.pdf>. See also <http://www.gallup.com/poll/183272/record-high-americans-support-sex-marriage.aspx>

⁴ *Id.*



4

SB 2043
1/4/17

Prepared by the
Office of State Tax Commissioner
January 5, 2017

PROPOSED AMENDMENTS TO SENATE BILL 2043

Page 1, line 8, replace the first "section" with "sections 57-40.3-05 and"

Page 12, after line 4, insert:

"**SECTION 32. AMENDMENT.** Section 57-40.3-05 of the North Dakota Century Code is amended and reenacted as follows:

57-40.3-05. Purchaser to furnish motor vehicle purchaser's certificate to director of the department of transportation.

Any person purchasing a motor vehicle and any person acquiring a motor vehicle by way of gift from a ~~husband or wife~~wife, parent or child, or from a brother or sister shall complete a motor vehicle purchaser's certificate in such form and manner as may be prescribed by the director of the department of transportation, showing a complete description of the motor vehicle, the seller's name and address, the buyer's name and address, the full purchase price of the vehicle, trade-in allowance and description of the trade-in, if any, whether the vehicle was the subject of a gift, and any other information that the director of the department of transportation may require."

Renumber accordingly