

They say Question 2 affirms the status quo and reverses Virginia's ban on gay marriage by writing the Supreme Court case of Obergefell into the Virginia Constitution. *But it does something else.*

What they won't tell you:

Same-sex marriage is already the law in Virginia. The Supreme Court required that in 2025. Repealing Virginia's 2006 ban on gay marriage is simple—you need only to strike the language. This proposal does not.

How the text does it

Instead, it **introduces a new self-defining term—gender—in Virginia's Constitution**. The United States Supreme Court has never defined the term "gender" or ruled that "gender" is a suspect class. The Supreme Court uses the term "sex." Placing "gender" in the Constitution is experimental. No one can really predict its impact—in fact, no one is capable of providing a stable definition of gender.

The World Health Organization states "gender refers to characteristics of women, men, girls and boys that are socially constructed...[and] refers to a person's deeply felt, internal and individual experience of gender." Healthline, an Internet health blog, identifies (at last count) **"68 terms that describe gender identify and expression."**

Constitutions with self-defined subjective terms place unpredictable constitutional obligations on courts, agencies, and citizens because the meaning of the term is not fixed, not judicially, settled, and not capable of stable definition.

The proposed language:

1. **Goes further than the Obergefell Supreme Court case and further than federal law.** *Obergefell* is about "same-sex couples" and sexual orientation. It never uses "gender identity," "transgender," or "nonbinary." The federal Respect for Marriage Act uses "sex," not "gender." *Bostock* said homosexuality and transgender status are "distinct concepts from sex."
2. **The official ballot explanation fails to acknowledge that the Supreme Court has never interpreted the term "gender" and most supporters agree that "gender" is self-defined, not legally defined.** If the amendment's only aim were to match the Supreme Court's allowance of same-sex marriage and to repeal Virginia's 2006 ban, it would do just that and not include "gender" in the constitution.
3. **"Gender," as its own advocates define it, has no fixed boundary.** Writing that word into the Bill of Rights creates uncertainty no Virginia court has ever resolved—uncertainty far beyond gay marriage.
4. **That uncertainty enters numerous areas of law.** Parental custody, adoption, inheritance, labor, and tax law enforcement and interpretation will possibly experience challenges and litigation by inclusion of the word gender.

What they say—and what they wrote

They say: remove the 2006 ban and "affirm that two adults may marry regardless of sex, gender, or race." (Official voter explanation.)

If that were all, the text would say: the Commonwealth may not deny a marriage license to two adults because of the sex of the parties. Same-sex marriage is already legal. That sentence would have finished the job.

What they wrote: "gender," twice, with no definition. The Human Rights Campaign—not a critic—defines gender identity as an "innermost concept of self as male, female, a blend of both or neither," which "can be the same or different from their sex assigned at birth." Genderqueer people, HRC writes, "reject notions of static categories of gender and embrace a fluidity of gender identity and often, though not always, sexual orientation."

What it does not do: It still says "two adult persons." It does not, by itself, create group marriage. Bisexual people already marry under current law.

If they meant gay marriage, they had the word for it: sex. They chose gender.



Read Before You Vote: Don't Radicalize the Virginia Constitution. Vote No.

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