

SAME-SEX MARRIAGE AND “GAY RIGHTS”

WHY IS PROTECTING MARRIAGE SO IMPORTANT TO SOCIETY?

Since the founding of our nation, among our “self-evident truths” is the centrality of marriage and family. This truth is an inherent expression of being human – our maleness or femaleness, the complementarity of men and women, and the fertile bonds of intimate love.

Society benefits when humans fulfill the measure of their creation in forming and maintaining natural families – our populations are replenished, the quality of rising generations is ensured, and aging generations are cared for.

Freedom is also maintained when the natural family is accepted as the fundamental unit of society. The natu-

ral family is prior to the state – indeed, natural families, living in community, created the state. In the 20th Century, dictators, such as Adolf Hitler and Josef Stalin, well-understood that the natural family (and other pillars of civil society) stood between selfish individualism and abuses of state power.

In the 21st Century, the threats to the natural family – and, hence, our freedom – have changed. No longer are they chiefly external and obviously evil. Modern-day threats are increasingly internal and subtle. The growing movement to give marital rights and benefits to unmarried people is the largest part of this new threat.

WHAT ARE “GAY RIGHTS”?

Typically, “gay rights” mean legal rights for people who self-identify as homosexuals. In their fullest expression, “gay rights” are a collective plea for public acceptance of homosexual behavior. This collective plea most often includes anti-discrimination claims such as protections against losing a job or the ability to rent a home.

Our civil rights laws lift fellow citizens to equal opportunity. For instance, civil rights that protect citizens based on the color of their skin are a signal that we believe that all people are created equal – someone’s outward appearance, innately born, should not count against them. With one historical and justifiable exception, our civil rights laws only apply to innate human characteristics, not someone’s private choices or personal behavior.*

For the law to view some people as “gay” and then grant them rights on that basis would create a new class of citizen. Among those who engage in homosexual behavior are men, women, black, white, all colors, all creeds, from all backgrounds, and from all religions. All civil rights on the books – irrespective of a person’s race, religion, national origin, ethnicity, gender, or disability – already apply to homosexuals by the mere fact they are human beings. What American jurisprudence has wisely avoided for over 200 years is creating a new

legal class of people based solely on personal, diverse, arbitrary behaviors. In fact, to do so would make our important civil rights laws meaningless.

* The single exception is religious expression. Americans have felt traditionally, and with good cause, that someone’s religious expressions complement mutual expressions of responsible citizenship and general good behavior.

WHAT IS THE “GAY RIGHTS” AGENDA IN UTAH?

The “gay rights” political agenda in Utah was created in opposition to the 2004 campaign to pass the state’s constitutional amendment defining marriage as a union between one man and one woman. From that campaign sprang the activist organization, Equality Utah. Its agenda seeks to reverse Utah’s marriage amendment.

After passage of California’s Proposition 8 in November 2008, Equality Utah created a new legislative campaign called the “Common Ground Initiative” (CGI). CGI contains several policies designed to chip away at Utah’s marriage amendment (Article I, Section 29). Its strategy is simple: pass laws giving homosexuals special rights which can then be leveraged to incrementally weaken the legal and cultural resolve of Utahns to oppose “gay

marriage.” CGI was designed to manipulate otherwise reasonable-sounding civil protections in its real quest to repeal Utah’s marriage amendment.

Any “gay rights” agenda is all about moving society to accept homosexual behavior. There are as many strategies to do this as there are opinions. In Utah, the primary strategy has been to play on the emotions of the majority Latter-day Saint population – largely through attempts to embarrass, and thereby manipulate, the LDS Church and its members – to be kind, loving, and tolerant of all people regardless of behavior antithetical to their religion.

Ultimately, the “gay rights” agenda in Utah is to make homosexuality broadly accepted – and to do it by the force of law.

CAN UTAH'S MARRIAGE AMENDMENT BE OVERTURNED?

Of course it can – the same way it was passed. Utah citizens could gather signatures and place the repeal of our marriage amendment on the ballot. Gay activists and their supporters could campaign for its repeal. And it can be repealed.

In connection with this pursuit, gay activists and their supporters can encourage the State Legislature to pass the policies embodied in the “Common Ground Initiative,” get them into law, and then challenge the “constitutionality” of our marriage amendment in court – looking for a sympathetic, and significant, legal voice that can be leveraged to their advantage during a broad initiative campaign to repeal the marriage amendment.

Proposition 8, though passed as a constitutional amendment in California, has been challenged on its constitutionality, both procedurally and substantively. All laws can be amended or repealed – even our constitutions (remember Prohibition?).

Small things lead to big change. Incremental changes in our culture are more often than not the basis for substantial changes in our laws. We have seen this sort of change through the degradation of our divorce laws to the point that marriage is now viewed largely with sentimentality, not with sanctity or purpose – modern ideas about marriage now have been denigrated to the point where many people see nothing wrong with allowing two men or two women the same privilege. Yes, certainly, Utah's marriage amendment can be overturned.

WHAT'S WRONG WITH THE “COMMON GROUND INITIATIVE”?

Equality Utah's “Common Ground Initiative” (CGI) is both unreasonable and impractical. Pertaining to personal preferences and private behaviors, it is unreasonable to expect the force of law to accomplish what moral persuasion cannot. Job guarantees based on an employee's private sexual choices are not protected by force of law *for anyone*. CGI would revolutionize at-will employment in a right-to-work state like Utah – meaning CGI, for the first time in Utah, would make an employee's private sexual behavior permissible to discuss and describe in the workplace.

CGI is also unreasonable in that it would equate being unmarried with being married. The natural family, with

legal marriage as its cornerstone, has measureable personal, economic, and societal benefits that unmarried relationships do not have. CGI would use the force of law to grant standing and merit to unmarried relationships that we have only reserved for legal marriages. What society bestows automatically to the legal marriage relationship is already otherwise available to unmarried relationships but must be obtained through their own individual efforts.

CGI is impractical in its quest to put the ambiguous words “sexual orientation” and “gender identity” into Utah's legal code. While some private and professional organizations have embraced these vague terms as “sci-

entific truths," the facts are otherwise. CGI assumes that not only are men and women interchangeable in biological roles and functions, but that men and women can change genders at will.

Such arbitrary personal and societal confusions will lead to even more dramatic legal confusion and denigrations. CGI is a trial lawyer's dream. In Utah, where divisions over "gay rights" are stark and deep and challenges to our historical legacy and culture are increasing, only lawyers will benefit from passage of CGI.

HOW DOES GAY MARRIAGE HURT SOCIETY?

Family is the fundamental unit of society because only the family contains the proper balance of self-interest and sacrifice to preserve lasting freedom and continuing prosperity. Society has a deep and vital interest in encouraging stable, autonomous, and inter-generational families. This paramount interest rests on the pillars of child-bearing and child-rearing – society must welcome regeneration as well as well-trained and well-grounded rising generations. Homosexual relationships cannot rise to these standards.

The natural family structure is a proven structure. With legal marriage as its cornerstone, the complementarity of a man and woman are required to give birth to children and to rear them optimally with a mother and a father. In a free society, our laws are

obligated to recognize and prioritize this optimal structure of family life.

"Gay marriage" is not marriage, even in states where it's now permissible in name, because while the term "marriage" can be legally redefined, its real personal and societal benefits cannot be artificially reconstructed – the tangible benefits of legal marriage come from the integrity of its natural family structure.

Because homosexual relationships do not contain these tangible benefits, the meaning of marriage would be redefined. Gay activists and their supporters claim that love alone makes a marriage – the only claim unmarried individuals can make absent other tangible benefits. And when love alone makes a marriage, marriage no longer has any tangible meaning or purpose.

WHY NOT PROTECT GAYS FROM BEING FIRED?

No person is legally fired for who they are – although plenty of people are legally fired for inappropriate behavior, incompatible personalities, incompetency, or anything that gets in the way of personal performance or team productivity. This is the nature of at-will employment in a free society.

Our work environments are commonly filled with the sharing of personal experiences and family life. We share all sorts of family stories, both joys and tribulations, with our colleagues. These shared experiences are freely discussed voluntarily – no one is forced to

listen or to be exposed to inappropriate experiences. Culture, not force of law, controls our workplace relationships.

The law protects men and women and children – male and female all. Only in sex professions is an employee's sexual life relevant to the workplace. In every other work environment, the issue of workplace protections based on one's sexual preferences is, in itself, discriminatory. It turns an otherwise irrelevant part of

an employee's work experience into something more important than the job itself – and does so through force of law.

Again, our long-standing cultures determine what is appropriate or inappropriate in the workplace, not the force of law. Equality Utah's "Common Ground Initiative" would use the force of law to determine what personal conversations and shared experiences are permitted in the workplace.

CAN GAYS BE DENIED HOUSING?

No person can be legally denied housing for who they are – they *can* be legally denied housing for what they do as tenants, rental experiences based on prior references, or a landlord's perceptions about how the applicant would fit into the culture of the housing project or surrounding community. These standards apply to every rental situation in a free society, regardless of someone's private sexual behavior.

Equality Utah's "Common Ground Initiative" would use the force of law to require all landlords to rent private property to homosexuals, thereby equating someone's sexual behavior with the color of someone's skin or their personal religious beliefs.

Because homosexuality only regards personal sexual behavior, there is no way for a landlord to know about a

person's sexuality unless that person tells the landlord. In other words, there is no basis for a claim of discrimination, justified or not, unless inappropriate information is shared with another person.

The real question for a landlord, in these cases, concerns her perceptions (visual, communicative, or intuitive) about the rental applicant. Would this applicant fit the culture of the housing unit, complex, or neighborhood? Based on hard experiences, the landlord may perceive that the applicant will have too many disruptive parties, too many strangers coming and going, or even undisciplined children. In the protection of private property rights in a free society, all landlords have this right to subjectively, but reasonably, screen all tenants.

IS SUPPORT FOR THE “COMMON GROUND INITIATIVE” INCONSISTENT WITH LDS BELIEFS?

Equality Utah’s “Common Ground Initiative” is a political and legal expression of homosexuality. It views homosexuality as natural, normal, and healthy. The Church of Jesus Christ of Latter-day Saints (LDS Church) has commented extensively on homosexuality. It views homosexuality as sin – not natural, not normal, and not healthy.

Gospel doctrine within the LDS Church centers on its “Plan of Salvation” wherein marriage between one man and one woman is essential to exaltation. This Plan includes intergenerational, natural family structures and child-bearing and child-rearing within legal marital bonds. Additionally, the LDS Church’s “Family Proclamation” details the complementary nature and roles of men and women – going so far as to rule out alternative gender distinctions embraced by Equality Utah’s “Common Ground Initiative.”

The LDS Church has not commented on the “Common Ground Initiative.” It has inveighed, very publicly, in favor of Proposition 8 in California and strongly urged its members to work for passage. The precedent for its strong support of Proposition 8 was established here in Utah in 2004 through Amendment 3, a constitutional amendment defining marriage as between one man and one woman, and prohibiting legal expressions of marriage in any other form (i.e., civil unions, domestic partnerships, etc.).

The LDS Church speaks for itself – and it has. No amount of wresting scriptures, theorizing, speculating, or sophistry can change its position on the sanctity of marriage and its requirement for exaltation. Only presiding LDS Church authorities can change its doctrines. From its establishment in 1830 to present day, LDS beliefs are firmly centered on the natural family structure as the fundamental unit of heaven and earth – and homosexuality is sin and not to be encouraged privately or publicly.

ARE PEOPLE BORN GAY?

The short answer is no. We are born male and female with moral agency to choose our behaviors at any given time. The way humans reproduce is through opposite-sex sexual relations. There is certainly, within each of us, a natural heterosexual bias – that’s the way we are built. But with whom and how we go about engaging in sex is a choice we make.

No existing replicable scientific or medical studies prove that people are born homosexual. In fact, homosexual-

ity is a behavior, not a “thing,” or a “way,” or something innate. It is only human action.

Everyone knows of some very effeminate boys and some very “tomboyish” girls which, sometimes, lead us to think that maybe, just maybe, a few people really are “born that way.” Even so, effeminate boys or “tomboyish” girls are no more an indication of homosexuality than an uncoordinated child is an indication of permanent physical disability.

The human body is complex, and so is life itself. Human emotions are powerful and we can be convinced of just about anything – especially if our lives have included

sexual abuse or trauma. Even so, notwithstanding the aggressive efforts of homosexual researchers, there is no scientific or medical evidence that anyone is born “gay.”

DOESN'T TOLERANCE DICTATE THAT WE SHOULD BE ACCEPTING OF "GAY RIGHTS"?

Because of the humanity we share, we often receive public and private lectures about how tolerant we ought to be for those different than us. And rightly so. In fact, one definition of being an American is how tolerant we are in applying certain truths and principles to *others*.

Of course, there are some things we do not and should not tolerate as a people. We do not tolerate murder, for instance. To a lesser degree we usually do not tolerate a child who talks back to mom or a boisterous blowhard that interrupts the movie at the local theater or a litter bug who dumps trash in all the wrong places. If we put our minds to it we can think of a lot of behaviors we simply do not tolerate.

People who truly respect their own privacy and the privacy of others would not tolerate those who would impose their private sexual behaviors onto strangers. But that is what “gay rights” do – they impose private and intimate behaviors on strangers not interested or unwilling to entertain them.

Tolerance recognizes dignified human behaviors that just happen to be different – it has nothing to do with recognizing undignified behavior or intimate behaviors that should remain private.

WHY NOT OFFER GAYS THE OPTION OF CIVIL UNIONS?

Civil unions, like “domestic partnerships,” are marriage by another name. Civil unions bestow the automatic benefits of marriage to unmarried people. If we cherish marriage between one man and one woman, civil unions only mock this standard.

In Utah, Article I, Section 29 of our state Constitution precludes civil unions. For that reason, Equality Utah’s “Common Ground Initiative” calls for the repeal of the second part of our marriage amendment. Such repeal would leave state law in contradiction if civil unions

were legalized – on the one hand, marriage only between one man and one woman and, on the other hand, the benefits of marriage bestowed on unmarried people.

Marriage is a matter of public policy because it benefits society. Men, women, and children are safer, healthier, more prosperous, better educated, less addictive in their behaviors, and better citizens because of marriage. In other words, public policy rewards marriage because marriage rewards society. Civil unions only benefit the

recipients of special privileges they would then enjoy as unmarried people – there are no societal benefits associated with civil unions.

Civil unions are often thought of as a reasonable compromise to marriage when, in fact, civil unions only

compromise the integrity and societal purposes of marriage. There is no “common ground” between married and unmarried under the law – that is, as long as society wants to maintain the benefits derived from the marriage between one man and one woman.



Crane Building
307 West 200 South, Suite 5005
Salt Lake City, UT 84101
www.sutherlandinstitute.org
office: 801.355.1272
fax: 801.355.1705