

Research Report about Same-Sex Marriage Discrimination

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Denying same-sex couples the legal right to marry is discrimination.

The Declaration of Independence ensures the following for all citizens; “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness” (Jefferson, 1776). If we all have unalienable equal rights, would this not apply to homosexuals? Are same-sex couples excluded from pursuing the happiness that occurs when you make a commitment to another human being and formally declare that commitment through marriage? If we are saying otherwise, we are sending a message that they are not equal citizens deserving the same benefits and legal rights in our society.

When Miss California, Carrie Prejean, was recently asked about same-sex marriage at the 2009 Miss USA pageant, she responded that she felt that marriage was between a man and a woman. She stated that her beliefs were based on her faith and how she was raised. While many people agree with her belief, the First Amendment of the United States Constitution provides the foundation that government and religious institutions are to be kept separate. The issue of marriage should not be about morals, God, traditional values or ethics; but rather civil rights and equality for all citizens of the United States. Every couple needs the government’s authorization when it comes to obtaining a marriage license and no religion or religious believe should influence the government on who is entitled to obtain a marriage license. Long time activist and legal scholar Cece Cox wrote an article about the influence that the Religious and

Christian right has on gay marriage laws in the United States and she makes a valid point on how the lines of morality and civil rights are clouded.

“I wish to clearly convey what I mean by ‘marriage.’ The word is frequently used in our society, yet many people confuse a marriage ceremony with marriage itself. While many couples hold public marriage ceremonies in their church or synagogue or mosque, marriage is, by and large, a legal institution that confers certain legal rights and a certain status upon those who choose to enter into it” (Cox, 2006, p. 1).

Within religious and faith-based organizations, it is accepted that marriage exists solely between a man and a woman for procreation. If this is true, then should we deny marriage to infertile couples, to women who are no longer of child bearing years or couples who choose not to have children? Heterosexual couples are not the only people with the capabilities of having and raising children, same-sex couples also have this ability. Adoption, surrogate and in vitro fertilization, are a small number of methods that can be pursued by homosexual couples, these are in fact the same avenues that many infertile couples will take to have a family. In 2004 Randi Frankle, a Juris Doctor candidate at Fordham University School of Law, wrote an article that explores a critical analysis of the gender restriction on marriage. The article also medically challenges what constitutes a man and woman.

“If marriage is a fundamental right, limited to opposite sex, or apparently heterosexual couples, classifying an intersex person becomes extremely important. The courts will have to define what constitutes an ‘opposite sex’

couple in order to determine whether that couple may exercise their fundamental right to marry” (Frankle, 2003, p. 9).

With this in mind, should all individuals be subjected to fertility and medical chromosome testing to meet the “proper standards” in order to obtain marriage licenses from the government?

Consider this, according to the United States General Accounting Office, there are approximately 1,138 benefits, protections, rights and responsibilities that the Federal law provides for married couples and their children while same-sex couples and their children are currently denied these same rights (www.goa.gov, 2004, p. 1).

George Chauncey is Professor of American History at the University of Chicago stated “among the many benefits available to married people are coverage under a spouse’s insurance and the ability to inherit his or her Social Security benefits, pension, and personal assets without excessive taxation” (Chauncey, 2004, p. 118-119). On one hand, we have the government denying the rights of all citizens to marry but financially rewarding those who are married with benefits and tax incentives. Evan Wolfson is a lawyer, Executive Director and Founder of the Freedom to Marry web site and has written a book that details the rights that are denied to homosexual couples. The following examples will illustrate the civil rights affecting the children of same-sex couples:

“Insurance: Many employers don’t cover domestic partners or their biological or non-biological children in their health insurance plans.

Parenting: Unmarried couples are denied the automatic right to joint parenting, joint adoption, joint foster care, and visitation for non-biological parents. In addition, the children of unmarried couples are denied the guarantee of child support and an automatic legal relationship to both parents, and are sometimes sent a wrongheaded but real negative message about their own status and family". (Wolfson, 2005, p. 194)

In these instances, we see the negative financial and legal effects that marriage inequality not only has on same-sex couples, but how it impacts their children. If marriage is all about reproduction and protecting the family unit, what message are we sending to the children of same-sex couples?

Intolerance and discrimination of any kind should be eliminated in today's society and this includes the same-sex couples right to marry. Can you imagine if a black person would not be allowed to marry a white person in today's society? Such a union was not legal until 1967 when a Supreme Court decision struck down the remaining interracial marriage bans that still existed in 16 states, thus effectively ending race discrimination in marriage. The ruling contained the following statement,

"The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men. Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival"(Supreme Court, 1967, sec. 2, para. 2).

The Supreme Court ruled in 1967 that there is a fundamental freedom to marry in the United States, yet, 42 years later, this freedom does not extend itself to same-sex

couples in all states. Currently, Massachusetts, Connecticut, and Iowa allow same-sex marriage and same-sex couples will be allowed to marry in Vermont and Maine in September, 2009. New Hampshire will allow same-sex marriages to take place beginning January 1, 2010 and while New York and Washington, DC recognize same-sex marriage, these two states do not license them. A Supreme Court ruling effectively allowed same-sex marriages to take place in California from June, 2008 until November, 2008 subsequently Proposition 8 was introduced and placed on the November election ballot where the voters passed the resolution which restored the opposite-sex definition of marriage and once again took away the right for same-sex couples to marry (Rutgers Law Library, 2009). Since when is it a good idea to allow a majority of citizens to vote on the legal rights of a minority? If this took place in 1967, the interracial marriage ban could still be in place and it would still be illegal for interracial couples to marry. The court system was created and exists to ensure fair and impartial judgment on such matters as well as to guarantee that all citizens' rights are equally protected.

The history of our country supports the equality for all citizens starting with the supreme law of the United States, the Constitution and in particular, the 14th Amendment which states,

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws". (United States Constitution, Article 14, 1868, Sec. 1)

This amendment provides equal protection for all citizens and requires states to provide equal protection under the law to all people within their jurisdictions. Again, the question arises, are gay and lesbians not equal under our own constitution? In addition, the Universal Declaration of Human Rights was adopted by the United Nations General Assembly in 1948 to which the United States was and is currently a member. This document represents the rights that are afforded to all human beings, "universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion" (United Nations, 1948, preamble). Within this document, is Article 16 and it clearly defines the rights of marriage.

1. "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State" (United Nations, 1948, article 16).

Upon reading the words "without any limitation" due to race, nationality or religion, "free and full consent", one must ask why we continue to exclude same-sex couples from this

equality. The United States signed onto this declaration in 1948, yet we clearly have not adopted and implemented these rights to all citizens. Our current President, Barack Obama, said it best in a recent speech given in Washington, D.C.,

“The documents that we hold in this very hall — the Declaration of Independence, the Constitution, the Bill of Rights — these are not simply words written into aging parchment. They are the foundation of liberty and justice in this country, and a light that shines for all who seek freedom, fairness, equality, and dignity around the world” (Obama, 2009).

Our country has always fought for freedom, democracy and equality; the documents cited are the cornerstone of this great nation and an inspiration to the world. We must remember the five words that our founding fathers so eloquently penned “all men are created equal”; these words are the foundation of our democracy and apply to all citizens. Throughout history, minorities have struggled for equality and against discrimination; our 16th President, Abraham Lincoln, stated the following in a speech to the One Hundred Sixty-Fourth Ohio Regiment,

“We have, as all will agree, a free Government, where every man has a right to be equal with every other man. In this great struggle, this form of Government and every form of human right is endangered if our enemies succeed” (Lincoln, 1864).

President Lincoln spoke these words 145 years ago and he demonstrated the true meaning of equal rights and equal protections under the Constitution. Yet the fight for

equality in our great nation still remains; ignorance, discrimination and prejudices may be different, but the conflict continues.

Now is the time to once more fight two enduring enemies facing our nation: discrimination and prejudice. Now is the time to terminate the inequality and denial of civil rights to same-sex couples. Now is the time to support and protect all American families. Now is the time to treat all Americans equally and allow all same-sex couples the right to marry.

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