



FAMILY LEADER BACKGROUNDER



WHY A MARRIAGE PROTECTION AMENDMENT IS NECESSARY

On May 15, 2008, in a 4-3 split, the will of four-and-a-half million people in California was overturned as the state Supreme Court legalized same-sex marriage.

With this move, the judges not only imposed same-sex marriage on California, but on the rest of the nation because there is no residency law attached to marriage. For those in any state who wish to be in a same-sex marriage, they can come to California, get their nuptials, and then head home claiming their marriage is legal. This makes California the “Las Vegas” of same-sex marriage.

This not only opens the door for legal chaos, but for courts, along with rogue state officials to systematically dismantle state statutes and amendments designed to protect the traditional definition of marriage. Most recently, New York Governor Paterson ordered state agencies to recognize out-of state homosexual “marriages” even though New York’s Court of Appeals ruled in 2006 that only the union of a man and woman is a legal marriage in the state.



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Most troublesome is the rationale behind the California court decision which goes where even the European Court of Human Rights or the United Nations Human Rights Committee would not go. The court said that sexual orientation should be treated just like race under the California equal protection amendment, subject to “strict scrutiny.”

According to social experts, “this is a ruling, which means that religious groups, who see marriage as the union of husband and wife, and view sexuality as best confined to marriage so defined, are in the exact position as racists under California law.” In Great Britain, a similar idea recently led a court to fine an Anglican bishop \$100,000 for refusing to hire an openly gay man -- as a youth minister in one of his parishes. There are religious liberty defenses under the U.S. Constitution for youth ministers, but not for Christian schools, physicians, social workers, teachers, attorneys, psychiatrists, counselors or tax-exempt charities.

These will be tough battles that demand sophisticated education and politically-savvy get-out-the-vote techniques in order to succeed. The struggle is epic in its ramifications for our children and our future.

A Radical Experiment Eroding Marriage and Children

In 1996 the U.S. Congress made the following findings, "Marriage is the **foundation** of a successful society," and "marriage is **an essential institution** of a successful society which promotes the interests of children." Decades of government and social science data prove these statements are true. **Yet, never in the history of the world has the institution of marriage been under such aggressive assault legally, legislatively and culturally.**

Ask a child, “Which is unnecessary, a mother or a father?”

In the last twenty years a very small percentage of the population has sought to redefine marriage for the vast majority. Some argue marriage is a private matter and redefining it causes no harm to others or society as a whole. Nothing could be further from the truth!

Any law that dilutes the definition and purpose of marriage leads to less marriages and more children being born out of wedlock. Sadly we have already witnessed these alarming trends in Scandinavian countries which legalized same-sex marriage, civil unions or domestic partnerships over 10 years ago and now the out of wedlock birthrate is between 50 to 60 percent depending on the country. Family fragmentation is a public issue with public consequences. For example, in April of 2008 the Institute for Marriage



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and Public Policy along with others issued a study showing that **family fragmentation in the United States is costing taxpayers \$112 billion annually.**

According to the 2006 American Community Survey, .07 percent of U.S. households are headed by same-sex couples. Alarming, these activists are increasingly well organized and well financed. They wield enormous power in state and federal governments, in public schools, in corporate America, the media and the entertainment industry.

Lead by the Human Rights Campaign (HRC), in the last decade gay-rights activists have succeeded in gaining legal recognition of same-sex marriage in Massachusetts, the legal equivalent of marriage for homosexual couples in six states and marriage like benefits in three states. HRC has a \$60 million budget with an astounding 91 state organizations-- most of them lobbying organizations. **HRC and its allies are succeeding, especially among those under age 30, in gaining public acceptance for same-sex marriage and civil unions.**

If we fail, then we can expect increased out of wedlock birthrates, expect that school children as young as kindergarten will be taught that same-sex marriage is acceptable without parental notice (already happening in MA), expect that organizations opposed to same-sex marriage will lose access to public facilities, be penalized (already happening in MA & NJ) and conceivably lose their tax-exempt status.

Harvard Law professor Mary Ann Glendon wrote in 2004, during the same-sex marriage debate in Massachusetts, "the experience in other countries reveals that once these arrangements become law, there will be no live-and-let-live policy for those who differ. Gay-marriage proponents use the language of openness, tolerance, and diversity, yet one foreseeable effect of their success will be to usher in an era of intolerance and discrimination...**The ax will fall most heavily on religious persons and groups that don't go along.**"

Protecting Marriage Preserves Religious Freedom

Anthony Picarello, president and general counsel of the Becket Fund for Religious Liberty, a top law firm that defends all faith groups, says, "The impact [of gay marriage] will be severe and pervasive. This is going to affect every aspect of church-state relations...the church is surrounded on all sides by the state. The boundaries are usually peaceful, so it's easy sometimes to forget they are there. But **because marriage affects just**



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about every area of the law, gay marriage is going to create a point of conflict at every point around the perimeter."

In December 2005 Picarello hosted a conference of noted First Amendment scholars from across the political spectrum to assess the religious freedom implications of legalized same-sex marriage. Some of the scholars supported gay marriage and some opposed it. Picarello says, "All the scholars we got together see a problem; they all see a conflict coming. They differ on how it should be resolved and who should win, but they all see a conflict coming."

Areas of Conflict

Tax-Exemptions and Government Benefits: Religious groups could find themselves suffering along with the Boy Scouts, as access to public facilities is stripped away. Gay-rights lawyers will likely challenge groups' federal tax-exempt status charging that such an exemption "subsidizes discrimination." In March 2007, San Francisco's United States notorious Ninth Circuit Court of Appeals ruled for the city of Temecula, CA, that municipal employers can completely censor the terms "natural family," "marriage" and "family values" as hate speech.

The time may come when religious groups that receive government funding will be forced to follow non-discrimination rules. Furthermore, what about organizations that are tax exempt? Religious groups that take government funding will almost certainly be required to play by the nondiscrimination rules, but what about groups that, while receiving no government grants, are tax-exempt?

"Can a group--a church or religious charity--that opposes gay marriage keep its tax exemption if gay marriage becomes the law?" Marc Stern, general counsel for the American Jewish Congress, says "That is the 18 trillion dollar question."

Professional Licenses: Professional licenses might also be denied to psychological clinics, social workers, marriage and family counselors, and others who believe same-sex relationships are "objectively disordered." Would family service providers affiliated with a religion that opposes same-sex marriage have to give marriage counseling to same-sex couples to help them preserve their marriage?



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Religious Employers: Suppose a Catholic summer camp refuses to hire or retain employees in same-sex marriages, they could be sued on the basis of "marital status discrimination."

Religious Colleges: Colleges that refuse admission to same-sex couples could face civil lawsuits and loss of accreditation. Marc Stern says that "same-sex marriage will affect religious educational institutions, in at least four ways: admissions, employment, housing, and regulation of clubs."

Public Accommodation Laws: Many legal scholars agree that public accommodation laws can require all commercial enterprises to serve all customers. However, if same sex marriage is legal Marc Stern asks, "What about religious camps...? Will they be considered by courts to be places of public accommodation, too? Could a religious summer camp operated in strict conformity with religious principles refuse to accept children coming from same-sex marriages? What of a church affiliated community center, with a gym and a Little League, that offers family programs?"

The Legal Assault:

An astounding **68 lawsuits** have been filed over the issue of same-sex marriage since the first cases were filed in about 1971. **Fifty or more lawsuits** have been filed since the Supreme Court's sodomy decision in Lawrence v. Texas on June 26, 2003.

Sadly some states have not been able to escape these legal assaults. Activist judges have thrust recognition of same-sex unions on its citizens in Massachusetts and New Jersey. In May of 2004 Massachusetts began issuing marriage licenses to same-sex couples and, on October 25, 2006 the New Jersey Supreme Court issued a ruling ordering the New Jersey Legislature to legalize same-sex marriage or create a new law recognizing civil unions within 180 days.



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The Legislative Assault:

In several states same-sex marriage or civil union bills have been introduced but have not made it out of committee or have not had enough votes to pass both houses. However, three states in particular are dangerously close to passing same-sex marriage including New Jersey, Vermont and New York. One pro-family activist says the New Jersey Legislature will pass a same-sex marriage bill as early as November 2008 and the governor will surely sign it into law. The California Legislature passed a same-sex marriage bill twice that the governor vetoed, only to have it implemented by the courts. Vermont is dangerously close to turning its civil unions law into same-sex marriage and the New York Legislature is just a few votes short of having enough votes in the Senate to pass a same-sex marriage bill.

Strategies and Solutions

- Mass public education about the implications of same-sex marriage is critical to winning these battles. **Most people simply do not understand the ramifications of same-sex marriage, particularly its impact on religious freedom.** A tsunami is coming our way, and most of us are playing blissfully unaware on the beach.
- **Education must be particularly targeted at the youth.** Even religious youth have bought the idea that this is an issue that is primarily about compassion or tolerance, and they do not see beyond that.
- As we have many times before, we must continue to use legal muscle and aggressively make our arguments in the courts in definition of marriage cases.
- We must help ordinary people to wake up to the role of incrementalism and language manipulation in law and policy so that domestic partnerships and civil unions, which are exactly like marriage but in name only, do not become the laws in the states.