



## HOMOSEXUALS HIJACK CIVIL RIGHTS BUS

### Claiming A “Civil Right” to “Marry” the Same-Sex Demeans a Genuine Struggle for Liberty and Equality

*By Janet M. LaRue, Esq.*

#### **A. Civil rights leaders and others have denounced the comparison of a “right” to same-sex “marriage” to the civil rights movement.**

“I am tired of sitting at the back of the bus,” said one 37-year-old California man who recently went to San Francisco to “marry” his male partner. “Rosa Parks didn’t wait for the courts to tell her it was all right to ride in the front of the bus,” according to San Francisco Mayor Gavin Newsom, explaining why he authorized the city to give “marriage” licenses to same-sex couples.<sup>1</sup>

Robert Oliver, a black resident of Chicago, excoriates the analogy with rhetorical flourish:

When has a multitude of gays been kidnapped and made to be slaves for 400 years?  
When was it illegal to teach gays to read and write? When were there ever any gay Jim Crow laws? When were gays required to say “sah” or “ma’am” to straight people? When were there separated gay and straight water fountains? In public buildings, when were there separate entrances for gays and straights, the gays going out the back? In theaters, have gays been forced to sit in the balcony while the straights sit on the main floor?  
When were there segregated lunch counters based on sexual preference? When was a gay required to give up their seat on a bus to a straight person? Who was the gay Rosa Parks? Were gays at the bottom of the economic social structure for decades? Where were the poor gay ghettos? When have gays gotten worse jobs and lower pay than straight people? When were there separate-but-equal schools for gays and straights?<sup>2</sup>

Black civil rights leaders have also expressed strong condemnation of attempts to hijack the civil rights movement. “We find the gay community’s attempt to tie their pursuit of special rights based on their behavior to the civil rights movement of the 1960s and 1970s abhorrent,” Bishop Andrew Merritt of Straight Gate Ministries and several other Detroit pastors said recently in a statement supporting traditional marriage. “Being black is not a lifestyle choice.”<sup>3</sup>

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<sup>1</sup> Cheryl Wetzstein, “Blacks Angered by Gays’ Metaphors,” *The Washington Times*, 2 March 2004, p. A3.

<sup>2</sup> Robert Oliver, “Gay ‘Rights’ not Analogous to Minority Civil Rights,” Illinois Leader.com, 8 March 2004, available at: <http://www.illinoisleader.com/opinion/opinionview.asp?c=12839>.

<sup>3</sup> Wetzstein.

“While some gay-rights supporters have compared their efforts to the civil rights struggles of the 1950s and 1960s, a number of blacks have rejected that comparison, including members of the [Lakeland Interdenominational Ministerial] Alliance . ‘I’m offended. Don’t ever compare the two,” said the Rev. Arthur Johnson, pastor of St. Luke’s Ministries. ... ‘I’ve never seen any homosexuals who had to go to the back of the bus because they’re homosexual.’”<sup>4</sup>

The Rev. Ken Hutcherson of Antioch Bible Church in Redmond, Washington, is a former pro-football player and black man in an interracial marriage who rejects any comparisons between the civil-rights and gay-rights movements. “Even when people of different races were prohibited by law from marrying, he noted, ‘it didn’t redefine the institution of marriage. This is not equal rights. It’s not about civil rights. It’s about people living in sin and trying to be justified by a society that says it’s wrong.’”<sup>5</sup>

Even Jesse Jackson, who can find a “civil rights violation” in the slightest offense, and has been a strong supporter of homosexual causes, rejects the comparison. He reminded Harvard Law School students that “gays were never called three-fifths human in the Constitution.”<sup>6</sup>

Thomas Sowell, a distinguished black American and senior fellow at the Hoover Institution, calls the analogy the “last refuge of gay marriage advocates”:

First of all, Rosa Parks and Martin Luther King were private citizens and they did not put themselves above the law. On the contrary, they submitted to arrest in order to gain the public support needed to change the laws.

The last refuge of the gay marriage advocates is that this is an issue of equal rights. But marriage is not an individual right. Otherwise, why limit marriage to unions of two people instead of three or four or five? Why limit it to adult humans, if some want to be united with others of various ages, sexes and species?

Marriage is a social contract because the issues involved go beyond the particular individuals. Unions of a man and a woman produce the future generations on whom the fate of the whole society depends. Society has something to say about that.<sup>7</sup>

Political commentator Bill O’Reilly asked Eugene Rivers III a black clergyman and president of the National Ten Point Leadership Fund, how he responds to the claim that anti-miscegenation laws are the same thing as “a man can’t marry a man or a woman can’t marry a woman.” Rivers explained:

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<sup>4</sup> Cary McMullen, “Local Black Ministers Condemn Gay Marriage,” *The Lakeland (Fla.) Ledger*, 13 March 2004, available at: <http://www.theledger.com/apps/pbcs.dll/article?AID=/20040313/NEWS/403130314/1021>.

<sup>5</sup> Lornet Turnbull, “Protests Oppose Gay Marriages,” *The Seattle Times*, 12 March 2004, available at: [http://seattletimes.nwsourc.com/html/localnews/2001877409\\_pastors12m.html](http://seattletimes.nwsourc.com/html/localnews/2001877409_pastors12m.html)

<sup>6</sup> Wetzstein.

<sup>7</sup> Thomas Sowell, “‘Marriage’ Confusion,” *The Washington Times*, March 13, 2004, p. A13.

[T]he laws against blacks and whites marrying were rooted in race, which is immutable and permanent. It was based in the argument that blacks and whites should not be together. The philosophic argument here is not about race or immutable characteristics. The argument is based on the assumption, incorrectly, that marriage, which by definition, philosophically, is between a man and woman, should be conferred equal status to gays. This is a non sequitur form of reasoning.<sup>8</sup>

Columnist Jeff Jacoby says the analogy “sounds so much better than the truth”:

They have not been deprived of the law’s equal protection, or of the right to marry—only of the right to insist that a single-sex union is a “marriage.” They cloak their demands in the language of civil rights because it sounds so much better than the truth: They don't want to accept or reject marriage on the same terms that it is available to everyone else. They want it on entirely new terms. They want it to be given a meaning it has never before had, and they prefer that it be done undemocratically—by judicial fiat, for example, or by mayors flouting the law. Whatever else that may be, it isn't civil rights.

The four North Carolina Agricultural & Technical College students only wanted what any white customer might want, and *on precisely the same terms*—the same food at the same counter at the same price. ... Those first four sit-in strikers, like the thousands of others who would emulate them at lunch counters across the South, weren't demanding that Woolworth's prepare or serve their food in ways it had never been prepared or served before. They weren't trying to do something that had never been lawful in any state of the union. They weren't bent on forcing a revolutionary change upon a timeless social institution. ... All they were seeking was what should already have been theirs under the law of the land.<sup>9</sup>

## B. What is a civil right?

*Black's Law Dictionary* makes no distinction between civil rights and civil liberties. Civil liberties are defined as:

Personal, natural rights guaranteed and protected by [the] Constitution; *e.g.* freedom of speech, press, freedom from discrimination, etc. Body of law dealing with natural liberties, shorn of excesses which invade equal rights of others. Constitutionally, they are restraints on government. ... State law may recognize liberty interests more extensive than those independently protected by the Federal Constitution.<sup>10</sup>

Civil rights guaranteed by federal statutes include, for example: 42 U.S.C. § 1982 protects property rights. 42 U.S.C. § 1983 provides a civil cause of action for the “deprivation of any rights, privileges, or immunities secured by the Constitution and laws.” 42 USCS § 2000a

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<sup>8</sup> “The O’Reilly Factor,” 9 March 2004. Transcript #030902cb.256 available at: <http://www.lexis.com>.

<sup>9</sup> Jeff Jacoby, “Same-Sex Marriage v. Civil Rights,” available at: <http://www.townhall.com/columnists/jeffjacoby/jj20040308.shtml>.

<sup>10</sup> *Black's Law Dictionary* 246 (6<sup>th</sup> ed. 1990).

protects against discrimination or segregation based on race, color, religion, or national origin in public accommodations. 42 USCS § 2000d prohibits discrimination on the basis of race, color, or national origin in a program receiving federal financial assistance.

Let's make unequivocally clear from the outset: Every person, including those who identify as homosexual,<sup>11</sup> has a right to equal protection and due process of law. They should and do have equal access to housing, education, employment and public accommodation on the same basis as other individuals and they should be protected from violence or threats of violence on the same basis as other citizens. But adding "sexual orientation" to any law distorts equal rights by providing heightened legal protection for new "rights" based on sexual behavior. Similarly, by claiming a "right" to marry a person of the same sex, however, homosexuals demand a right beyond any enjoyed by other citizens, despite denials to the contrary.<sup>12</sup>

### **C. Is marriage a civil right?**

Although there is no mention of marriage in the U.S. Constitution, the Supreme Court has declared the right to marry "one of the basic civil rights," a "fundamental right" that the Court has consistently linked to procreation.

*Meyer v. Nebraska*, 262 U.S. 390 (1923): The Court included within the right of liberty, "to marry, establish a home and bring up children." *Id.* at 399.

*Skinner v. Oklahoma*, 316 U.S. 535 (1942): "We are dealing here with legislation which involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race." *Id.* at 541.

*Griswold v. Connecticut*, 381 U.S. 479 (1965):

We deal with a right of privacy older than the Bill of Rights—older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions. *Id.* at 486.

In *Zablocki v. Redhail*, 434 U.S. 374 (1978), the Court reasoned:

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<sup>11</sup> Homosexual as used herein, unless otherwise indicated, includes both men and women who identify as "gay."

<sup>12</sup> The National Lesbian & Gay Journalists Association (NLGJA) issued a statement on February 10, 2004, to print and electronic media advising them to reject the terms "gay marriage" and "same-sex marriage." "The terms 'gay marriage' and 'same-sex marriage' are inaccurate and misleading. The decision made by the Massachusetts court affects the state's existing marriage law. The court has ordered the state to apply the existing law equally to gay and lesbian couples as early as May 2004. The accurate terminology on-air, in headlines and in body type should be "marriage for gays and lesbians." Available at: <http://www.nlgja.org/news/news10feb04.html>.

What the Massachusetts court majority and NLGJA refuse to recognize is that the Massachusetts law limiting marriage to opposite-sex couples applies equally to all citizens of Massachusetts, as the dissenting justices in *Goodridge v. Department of Public Health* recognized.

It is not surprising that the decision to marry has been placed on the same level of importance as decisions relating to procreation, childbirth, child rearing, and family relationships. As the facts of this case illustrate, it would make little sense to recognize a right of privacy with respect to other matters of family life and not with respect to the decision to enter the relationship that is the foundation of the family in our society. *Id.* at 386.

The *Zablocki* Court, however, distinguished the fundamental right to marry from other reasonable state regulations on marriage:

By reaffirming the fundamental character of the right to marry, we do not mean to suggest that every state regulation which relates in any way to the incidents of or prerequisites for marriage must be subjected to rigorous scrutiny. To the contrary, reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed. *Id.*

*Loving v. Virginia*, 388 U.S. 1 (1967), is commonly cited by homosexual activists as a civil rights violation analogous to denying same-sex marriage. The Court, however, rightly found that restricting the freedom to marry solely because of racial classifications violated the central meaning of the Equal Protection Clause and deprived appellants of liberty without due process of law in violation of the Due Process Clause of the 14<sup>th</sup> Amendment to the U.S. Constitution. The Court reasoned:

There is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification. The fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy. We have consistently denied the constitutionality of measures which restrict the rights of citizens on account of race. There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause. *Id.* at 11, 12.

To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law. The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State. *Id.* at 12.

#### **D. Is there a “civil right” to “marry” a person of the same-sex?**

If there is a “right to marry a person of the same sex,” it is not found in the U.S. Constitution or federal laws. If there were such a right, as *Black's Law Dictionary* states, a civil right is one

“shorn of excesses which invade equal rights of others.” It is inconceivable that any state would permit two same-sex heterosexuals to marry but not two same-sex homosexuals.

There are more than 1,000 federal laws related to marriage none of which recognizes marriage as anything but the union of a man and a woman. Congress passed the federal “Defense of Marriage Act” (DOMA), which was signed into law by President Bill Clinton in 1996. It was enacted for the express purpose of limiting marriage to a man and a woman for purposes of federal law, and to exempt the states from the Full Faith and Credit Clause of the U.S. Constitution, so that they will not be forced to recognize a marriage entered into in another state that violates its law or public policy.

1 U.S.C. § 7 states:

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word “marriage” means only a legal union between one man and one woman as husband and wife, and the word “spouse” refers only to a person of the opposite sex who is a husband or a wife.

28 U.S.C. § 1738C states:

No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

All of the states from their beginning have limited marriage to a man and a woman subject to age and kinship restrictions. Since 1996, 38 states have reaffirmed that marriage is limited to a man and a woman by enacting their own version of a “Defense of Marriage Act” (DOMA).

Enacting the DOMA is not the first time the federal government has acted to protect marriage from state redefinition. In the 19<sup>th</sup> century, Congress enacted statutes to deny statehood to federal territories that permitted polygamy, one of the “twin relics of barbarism.” Moreover, the U.S. Supreme Court upheld the right of Congress to do so. In *Murphy v. Ramsey*, 114 U.S. 15 (1885), the Supreme Court rejected a constitutional challenge to a federal statute that denied the franchise in federal territories to those who engaged in polygamous cohabitation. Justices John Marshall Harlan and Joseph Bradley wrote:

For certainly no legislation can be supposed more wholesome and necessary in the founding of a free, self-governing commonwealth, fit to take rank as one of the coordinate States of the Union, than that which seeks to establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble

in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement. *Id.* at 45.

Homosexuals cite Justice Harlan's dissenting opinion in *Plessy v. Ferguson*, 163 U.S. 537 (1896), that "the Constitution neither knows nor tolerates classes among citizens." *Id.* at 559. Limiting marriage to a man and a woman, however, is not based on a class-based distinction among citizens. Homosexuals have a right to marry on equal terms with all other citizens. It is not a "classification of persons undertaken for its own sake, something the Equal Protection Clause does not permit."<sup>13</sup> *Romer v. Evans*, 517 U.S. 620, 635 (1996). It is not "drawn for the purpose of disadvantaging the group burdened by the law." *Id.* at 633.

The efforts of homosexuals to seek a right to marry aren't a new phenomenon. Homosexual men sought a license to marry, were denied, and lost on appeal in New York and Minnesota in 1971, in Kentucky in 1973 and in the state of Washington in 1974.

The Minnesota Supreme Court rejected the claims asserted under the 1<sup>st</sup>, 4<sup>th</sup>, 9<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution in *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971). The court reasoned, "[T]he Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same." *Id.* at 187. Their appeal to the U.S. Supreme Court was dismissed "for want of a substantial federal question," which is the equivalent of a ruling on the merits. *Baker v. Nelson*, 409 U.S. 810 (1972).

It is absurd to equate two men or two women engaged in homosexual sex with a husband and wife engaged in the marital act by which the human race reproduces. Marriage has been respected and protected in law by all civilizations in contrast to homosexual conduct, which has been condemned for thousands of years. The mental health community classified it as a mental disorder until 1973, when it was declassified.<sup>14</sup> Pro-homosexual author Ronal Bayer exposed the

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<sup>13</sup> When Supreme Court Justice Anthony Kennedy was on the Court of Appeals, he wrote the following in a case involving discharge of homosexuals from the Navy: "Nearly any statute which classifies people may be irrational as applied in particular cases. Discharge of the particular plaintiffs before us would be rational, under minimal scrutiny, not because their particular cases present the dangers which justify Navy policy, but instead because the general policy of discharging all homosexuals is rational." *Beller v. Middendorf*, 632 F.2d 788, 808-809, n. 20 (9<sup>th</sup> Cir. 1980).

<sup>14</sup> Robert Spitzer, M.D., is a psychiatrist at Columbia University and a champion of homosexual rights. He describes himself as playing "a central role in eliminating homosexuality as a mental disorder from DSM-II in 1973." On May 9, 2001, at the annual meeting of the American Psychiatric Association in New Orleans, Louisiana, Spitzer presented the conclusions of a study he conducted on 143 men and 57 women who claimed "to have changed their sexual orientation from homosexual to heterosexual. Spitzer told the conference: "We conclude that, contrary to conventional wisdom, some highly motivated individuals, using a variety of change efforts, can make substantial change in multiple indicators of sexual orientation and achieve good heterosexual functioning. Subjects that made less substantial changes still believed that such changes were extremely beneficial. Complete change—which is generally considered an unrealistic goal in psychotherapy—is uncommon, particularly in male subjects." Spitzer's study is available online at: [http://www.bioeticaweb.com/Sexualidad/Spitzer\\_cambio\\_orien\\_sex.htm](http://www.bioeticaweb.com/Sexualidad/Spitzer_cambio_orien_sex.htm). See also: *Psychotherapy: Theory/Research/Practice/Training*, Vol. 39, No. 1, 66-75, Copyright 2002 by the Educational Publishing Foundation (<http://www.apa.org/journals/copyrite.html>). The authors present three arguments in favor of providing reorientation and related services: (a) respect for the autonomy and self-determination of persons, (b) respect for valuative frameworks, creeds, and religious values regarding the moral status of same-sex behavior, and

aggressive and successful political campaign waged by homosexual activists that intimidated the profession into taking the action without any credible new scientific evidence. He wrote: “The result was not a conclusion based upon an approximation of the scientific truth as dictated by reason, but was instead an action demanded by the ideological temper of the times.”<sup>15</sup>

The Court’s ruling in *Lawrence v. Texas*, 124 S. Ct. 2472 (2003), striking down the state’s same-sex sodomy statute, is no guarantee that the Court will strike down centuries-old marriage laws. Justice Sandra Day O’Connor emphasized that in her concurring opinion:

That this law as applied to private, consensual conduct is unconstitutional under the Equal Protection Clause does not mean that other laws distinguishing between heterosexuals and homosexuals would similarly fail under rational basis review. Texas cannot assert any legitimate state interest here, such as national security or preserving the traditional institution of marriage. Unlike the moral disapproval of same-sex relations—the asserted state interest in this case—other reasons exist to promote the institution of marriage beyond mere moral disapproval of an excluded group. *Id.* at 2487, 2488.

Black Americans sought the right to experience and benefit from existing civil rights enjoyed by their fellow white citizens. Homosexuals are seeking a right that does not exist for anyone under current law. When homosexuals are asked whether a “right” to same-sex marriage would have to be extended to polygamists and incestuous relationships on the basis of equal protection, they dismiss the question as slippery-slope hysteria. They refuse to explain why, if their “loving and committed relationships” qualify for marriage, the same “civil right” they demand should not be granted to other “loving and committed” relationships.

### **E. Is homosexuality an absolutely immutable characteristic—a prerequisite for heightened civil rights protection?<sup>16</sup>**

Sexual orientation never has been included as a “suspect class” for equal protection analysis, nor has a “right to same-sex marriage” ever been classified as “fundamental” for purposes of due process analysis under the 14<sup>th</sup> Amendment to the U.S. Constitution. No court has ever extended the “fundamental right to marry” to a fundamental right to marry any person whatsoever. Limiting marriage to a man and a woman has nothing to do with arbitrary and invidious discrimination against homosexuals. Heterosexuals are equally prohibited to marry a person of the same sex even though they could claim the same need to obtain benefits and legal protection for a needy relative or friend, as homosexuals claim as a need. Limiting marriage to a man and a woman does not discriminate on the basis of sex or sexual orientation.

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(c) service provision given the scientific evidence that efforts to change thoughts, behaviors, and feeling-based sexual orientation can be successful.

<sup>15</sup> Ronald Bayer, *Homosexuality and American Psychiatry: The Politics of Diagnosis* (New York: Basic Books, 1981), pp. 3-4.

<sup>16</sup> See Brief of *Amicus Curiae* of Concerned Women for America in support of Respondent, United States Supreme Court No. 02-102, *Lawrence v. Texas*, Janet M. LaRue, Counsel of Record and Thomas L. Jipping.

Furthermore, to qualify as a suspect class, a group must meet what the courts have recognized as the “traditional indicia of suspectness.”<sup>17</sup> It must “have been subjected to discrimination,” must “exhibit obvious, immutable, or distinguishing characteristics that define them as a discrete group” and be “politically powerless.”<sup>18</sup>

The Supreme Court has consistently identified as immutable characteristics such things as “race, gender, or ethnic background”<sup>19</sup> and “height or blindness.”<sup>20</sup> As such, the only classes recognized by the Court as “suspect” are race,<sup>21</sup> alienage,<sup>22</sup> and ancestry.<sup>23</sup> Central to each are the “obvious, immutable, or distinguishing characteristics that define them as a discrete group.” Lower courts have held, as the Court implied in *Romer v. Evans*, 517 U.S. 620 (1996), that homosexuals are not a suspect class for equal protection purposes. The Ninth Circuit, for example, concluded that “[h]omosexuality is not an immutable characteristic; it is behavioral and hence is fundamentally different from such traits as race, gender, or alienage.”<sup>24</sup>

Jeffrey Satinover, M.D., a psychiatrist who counsels homosexuals seeking help, rejects the immutability claim: “We will see later the falsity of activists’ repeated assertions that homosexuality is immutable. They seek to create the impression that *science* has settled these questions, but it most certainly has not. Instead, the changes that have occurred in both public and professional opinion have resulted from politics, pressure, and public relations.”<sup>25</sup>

In addition, the facts of modern American society demonstrate that homosexuals do not meet the Court’s definition of a suspect class. An extensive *National Journal* analysis concluded, “gays and lesbians have achieved unprecedented acceptance in America.”<sup>26</sup>

The proliferation of anti-discrimination laws that include sexual orientation demonstrates that “homosexuals are not without political power.”<sup>27</sup> Homosexual political action committees and activists raise millions for political candidates.<sup>28</sup> A spokesman for the National Gay & Lesbian Task Force told a September 2000 event: “The Gay vote is large, powerful, and able to swing a

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<sup>17</sup> *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 28 (1973).

<sup>18</sup> *Bowen*, 483 U.S. at 602. See also *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 313; *San Antonio Independent School District*, 411 U.S. at 28.

<sup>19</sup> See, e.g., *Holland v. Illinois*, 493 U.S. 474,496 (1990); *Lockhart v. McCree*, 476 U.S. 162,175 (1986).

<sup>20</sup> *Cleburne*, 473 U.S. at 472.

<sup>21</sup> See *Loving v. Virginia*, 388 U.S. 1 (1967).

<sup>22</sup> See *Graham v. Richardson*, 403 U.S. 365 (1971).

<sup>23</sup> See *Korematsu v. United States*, 323 U.S. 214 (1944).

<sup>24</sup> *High Tech Gays v. Defense Industrial Security Clearance Office*, 895 F.2d 563,573 (9<sup>th</sup> Cir. 1990). See also *Ben-Shalom v. Marsh*, 881 F.2d 454,464 (7<sup>th</sup> Cir. 1989); *Woodward v. United States*, 871 F.2d 1068,1076 (Fed. Cir. 1989); *Padula v. Webster*, 822 F.2d 97,102 (D.C. Cir. 1987).

<sup>25</sup> Jeffrey Satinover, M.D., *Homosexuality and the Politics of Truth* (Grand Rapids, Michigan: Hamewith Books, Baker Books, 1996), p. 38. See Robert Knight, “Born or Bred? Science Does Not Support the Claim that Homosexuality is Genetic,” (Washington, D.C.: Concerned Women for America, March 2004).

<sup>26</sup> Shawn Zeller, *Marching On, but Apart*, *The National Journal*, 12 January 2002.

<sup>27</sup> *High Tech Gays*, 895 F.2d at 574. Last year alone, according to a leading homosexual publication, Connecticut extended legal rights to same-sex couples and cities prohibiting discrimination against homosexuals included New York City; Takoma, Washington; Dallas, Texas; Westbrook, Maine; Chicago, Illinois; Baltimore, Maryland; and Orlando, Florida. “News of the Year; 2002 Time Line,” *The Advocate*, 21 January 2003.

<sup>28</sup> See Lou Chibarro, “A Hard Line On ‘Soft Money’” *The Washington Blade*, 3 August 2001.

closely contested election.”<sup>29</sup> *The National Journal* found that homosexuals “use their clout and their dollars to shape laws and social policy.”<sup>30</sup>

Open homosexuals are being elected to legislatures<sup>31</sup> and courts<sup>32</sup> and appointed to be U.S. ambassadors.<sup>33</sup> According to a leading homosexual publication,<sup>34</sup> significant events during 2002 alone include:

- “The first openly gay candidate to be selected to run with a sitting U.S. governor.”
- The majority leader of the Maryland House of Delegates became “the state’s first legislator to come out of the closet.”
- “The American Academy of Pediatrics officially endorses adoption by gay people.”
- “The ... National Education Association adopts a policy asking school districts to protect gay and lesbian students and staff members.”
- “Newspapers nationwide, including, most significantly, *The New York Times* began running same-sex union announcements.”
- Homosexual activists saw only one “Election Day ballot measure defeat” last year.
- “The first openly gay mayor of a U.S. state capital.”

Homosexual activist groups claim increasing influence over many aspects of American culture and politics. The Gay & Lesbian Alliance Against Defamation (GLAAD) claims to have “changed the way lesbians and gay men are portrayed on the screen and in the news” and to be “a major source of resources and information for entertainment and news media decision makers. *Entertainment Weekly* has named GLAAD as one of Hollywood’s most powerful entities.”<sup>35</sup>

Groups such as the National Lesbian and Gay Journalists Association,<sup>36</sup> Gay and Lesbian Medical Association, National Gay and Lesbian Chamber of Commerce, National Organization of Gay and Lesbian Scientists and Technical Professionals, Servicemembers Legal Defense Network, and the Gay, Lesbian & Straight Education Network are a few of the homosexual organizations targeting specific sectors of society.

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<sup>29</sup> Quoted in Lisa Keen, “Groups Tout Clout,” *The Washington Blade*, 22 September 2000.

<sup>30</sup> See, *supra*, note 55.

<sup>31</sup> The U.S. House of Representatives now has at least three openly homosexual members.

<sup>32</sup> See Lisa Krieger, “Judicial Election Shatters Barrier; First Gay Elected to Superior Court,” *San Francisco Examiner*, 28 March 1996, at A-9.

<sup>33</sup> President Clinton appointed James Hormel to be Ambassador to Luxembourg and President Bush has appointed Michael Guest to be Ambassador to Romania.

<sup>34</sup> *News of the Year*, *supra* note 66.

<sup>35</sup> GLAAD, “Our History,” available at <http://www.glaad.org/about/history.php>.

<sup>36</sup> At an NLGJA event on April 12, 2000, longtime member Richard Berke, national correspondent for *The New York Times*, said, “Literally three-quarters of the people deciding what’s on the [*The New York Times*] front page are not-so-closeted homosexuals.” See Peter LaBarbera, “Just How ‘Gay Is The New York Times,’” available at <http://www.cultureandfamily.org/articledisplay.asp?id=3249&department=CFI&categoryid=cfreport>.

A recent GLAAD report claimed, “in mainstream and gay media gay consumers are becoming big business.”<sup>37</sup> According to Online Partners, owners of the Web portal gay.com,<sup>38</sup> homosexuals represent a \$450 billion market.<sup>39</sup> The *Miami Daily Business Review* reports that homosexuals have “extraordinarily high disposable income, and are very attractive targets for advertisers.”<sup>40</sup>

## **F. We the People, not judges, create civil rights.**

As a result of the Civil War, the American people amended the federal Constitution to add the 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> Amendments to prohibit slavery and involuntary servitude in the United States and to provide black Americans with civil rights. Congress followed by enacting civil rights statutes. Unfortunately, most were either struck down by federal courts or violated by southern states. The civil rights movement of the 1960s resulted in the enactment of new civil rights statutes to provide equal rights for black Americans. When necessary, presidents used federal troops and marshals to enforce them and protect those who sought to experience them.

Homosexuals have an equal right to try to persuade the American people and their elected representatives to enact legislation permitting same-sex couples to marry. For the most part, however, they have abandoned the democratic process provided for in the Constitution because they realize the overwhelming majority of the American people want marriage reserved to a man and a woman. Thus, homosexuals and their leftist allies are determined to achieve their goal through the undemocratic process of a court-created “civil right.”

Their allies include mayors like Newsom and other public officials who have defied state laws to issue “marriage” licenses to same-sex couples based on their personal interpretation of equal protection and liberty under their state constitution. These officials try to justify their lawless actions by wrapping themselves in the mantle of civil rights. These officials are not acting as private citizens engaging in civil disobedience willing to endure arrest, jail and prosecution.

When public officials sworn to uphold the law refuse to do so, they have violated their oath. In the present situation, they have also usurped the constitutional authority of the legislative and judicial branches of their state government and the separation of powers expressed in their state constitution. They are in league with judges, such as the four on the Massachusetts Supreme Judicial Court, who took it upon themselves to rewrite the definition of marriage for the Commonwealth in violation of their oath and the separation of powers mandated in the state’s constitution.

David Marion, a professor of political science at Hampden-Sydney College cogently expressed the problem when courts invade the province of the legislature and abandon their “role as the principal protector of the dignity and stability of the law in the United States.”

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<sup>37</sup> Katherine Sender, “Business, not Politics: Gays, Lesbians, Bisexuals, Transgender People and the Consumer Sphere” (New York, New York: GLAAD Center for the Study of Media and Society, 2002), at 4.

<sup>38</sup> Online Partners boasts that “According to DoubleClicks @plan research, Gay.com is the #1 site on the Internet in reaching single men with household incomes over \$100,000,” <http://www.onlinepartners.com/pages/market.html>.

<sup>39</sup> Selig Center for Growth, University of Georgia, available at <http://www.onlinepartners.com/pages/market.html>.

<sup>40</sup> Marcia Philbin, “Branching Out,” *Miami Daily Business Review*, 6 October 2000, p. A13.

Legislative bodies are well positioned to reform established practices; judicial officials should be poised to jump in only on extraordinary occasions. The judiciary should be less interested in updating social practices or advancing social consciousness than in promoting respect for legal rules.

...There is a clear correlation between restrictions on personal freedoms, including privacy rights, and the absence of general law-abidingness on the part of the people. ... The judiciary should make us think twice or even three times before we redefine words such as “due process of law,” “liberty” or “equality” that appear in the federal and state constitutions. Practices and shared convictions that have survived for generations should not be lightly discarded. ... If constitutional and legal principles are to have any stability and credibility, they must have a meaning rooted in something more permanent than the passions of the times.

If we can pour any meaning we wish into constitutional clauses, their value to us is considerably diminished. ... No other institution of government is as well positioned as the judiciary to counsel sobriety and restrain our pursuit of the “new and improved.”<sup>41</sup>

Homosexuals and the far left are unrelenting in their quest to have courts expand and redefine individual rights at the expense of the democratic process and the Constitution. What they fail to consider is, what the judge gives, a judge can take away. When new “civil rights” are created by judges rather than the people acting through the democratic process, they will not have the respect of the people and are unlikely to endure. What the people provide, however, the people do not readily remove.

Those who are opposed to deconstructing marriage are reacting to an attack on the institution of marriage they neither wanted nor started. They have a constitutional right to attempt to persuade the people and their representatives to amend the Constitution so that marriage will remain between a man and a woman. The process is called “We the People”—acting as masters of the Constitution and all branches of government, including insubordinate mayors and judges.

The marriage deconstructionists and their allies are attempting to thwart a movement to amend the federal Constitution by intimidating those who support it by calling them “hateful,” “mean spirited,” “vicious” and “bigoted.” They characterize it as “writing discrimination into the Constitution.”<sup>42</sup> *Ad hominem* attacks are the first resort of those lacking a principled argument.

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<sup>41</sup> David Marion, “Judicial Statesmanship and the Culture War,” *The Washington Times*, 14 March 2004, p. B4.

<sup>42</sup> The Constitution limits the office of President of the United States to natural born citizens who are at least 35 years old. Is it because the American people have “animus” toward aliens? United States Senators must be at least 30 years old and a citizen of the U.S. at least nine years. Members of the House of Representatives must be at least 25 years old and a citizen of the U.S. at least seven years. The 15<sup>th</sup> Amendment gave the vote to black men but not to women. Women gained the vote 50 years later through the democratically enacted 19<sup>th</sup> Amendment—not by engaging in illegal voting facilitated by lawless public officials in violation of the Constitution. The 26<sup>th</sup> Amendment reserves the right to vote to those at least 18 years of age or older. Does anyone believe these provisions are nothing more than irrational age discrimination? Abortion advocates and their judicial allies find no unconstitutional discrimination in denying the father of an unborn child any say in whether his child should be aborted or against parents who have no say in whether their daughter aborts their grandchild.

Dr. Jeffrey Satinover warns of the destruction awaiting a society whose public policies are grounded in nihilism:

The underlying problem is clearly that we've lost our moorings in terms of what life is all about. We don't know what's good and what's evil. People simply have lost the ability now to stand up and say this is good, this is bad, this is what I believe in.

We've now entered into a stage in our civilization of absolute nihilism, where the opinion leaders—the people who should be the moral exemplars—are simply espousing a philosophy of absolute nihilism. That's simply what it amounts to. The language is very fancy—deconstructionism, relativism, etc.—but what it all boils down to is that there is nothing outside of the cogitations in one's own skull. It seems to me that anybody with even a passing familiarity with history should see that that kind of an attitude leads nowhere but to destruction.<sup>43</sup>

Scott T. FitzGibbon, a distinguished professor at Boston College School of Law, analogized the demand for same-sex marriage to Plato's *Beautiful City*, where equality and liberty devolved into licentiousness:

Great civilizations fail most dramatically through the misunderstanding and corruption of their central beliefs. The American social and political order could come to grief some day by embracing a distorted view of liberty and equality. A view is gaining currency which has it that we make people free by maximizing the quantity of their choices, however arbitrary or destructive. Another branch of this ideology has it that we treat people equally when we minimize discrimination—in other words when we erase as many distinctions among them as we can, and ignore the ones we cannot erase.

Plato's city, besides indulging licentiousness, is characterized by the fading away of distinctions and the blurring of discernment. Its denizens have lost the capacity to discriminate and to treat differences differently.<sup>44</sup>

As Dostoevsky said in *The Grand Inquisitor*: “Without God, everything is permissible.”

## **G. Conclusion:**

Rosie O'Donnell, who recently defied California law to “marry” another woman in San Francisco, is no Rosa Parks. Rosa Parks wanted to experience a right that was hers under the U.S. Constitution and federal law—the right to sit on a bus where every white passenger had a right to sit. She didn't need a court to tell her she had the right. O'Donnell, who could buy her own bus line, represents a status that is the converse of a minority class seeking equal treatment under law.

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<sup>43</sup> “Reflections from Jeffrey Satinover,” National Association of Research and Therapy of Homosexuals, available at: <http://www.narth.com/docs/satinovr.html>.

<sup>44</sup> Scott T. FitzGibbon, “Same-Sex Marriage and Plato's ‘Beautiful City,’” *The Boston Pilot*, February 2004.

In addition to demeaning the civil rights movement, a bus is the wrong vehicle to symbolize marriage. God created and ordained marriage. He chose an ark as the vehicle to preserve His creation and convey an irrefutable message about marriage and procreation—four husbands, four wives and animals two-by-two, male and female.

Unless they believe that God and the vast majority of the American people are “hateful,” “mean spirited,” “vicious” and “bigoted,” homosexuals may board the marriage ark the one way by which everyone else boards—with a spouse of the opposite sex.

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