

Supreme Court No. 75934-1

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

HEATHER ANDERSEN and LESLIE CHRISTIAN *et al.*, Respondents,

v.

KING COUNTY *et al.*, Appellants.

Appeal from the Superior Court of King County
The Honorable William L. Downing

CELIA CASTLE and BRENDA BAUER *et al.*, Respondents,

v.

STATE OF WASHINGTON, Appellant.

Appeal from the Superior Court of Thurston County
The Honorable Richard D. Hicks

***AMICI CURIAE* BRIEF OF
THE LIBERTARIAN PARTY OF WASHINGTON STATE;
LOG CABIN REPUBLICANS OF WASHINGTON**

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I. IDENTITY AND INTEREST OF AMICI

As more fully described in *Amici's* Motion to File, the Libertarian Party of Washington State has been actively defending individual liberties in Washington for over 30 years. The Libertarian Party believes that respect for individual rights is the essential precondition for a free and prosperous world. To further that core belief, the Libertarian Party works, *inter alia*, for the passage or defeat of state legislation that would impact economic and individual liberty.

The Log Cabin Republicans of Washington, comprised of heterosexual and homosexual Republicans, is the statewide chapter of the Log Cabin Republicans, a nonprofit corporation which actively promotes equal rights under the law to all Americans, promotes nondiscrimination against, or harassment of, persons who are gay or lesbian, and encourages participation in the Republican Party by gay and lesbian Americans.

This case squarely raises economic and individual liberty rights, presumptions regarding constitutionality, and the scope of the State's police power, and thus is of central concern to *Amici* Applicants.

II. SUMMARY OF ARGUMENT

Our Constitutional System is based on respect for, and preservation of, individual rights that do not infringe on legitimate rights of others. Marriage is a fundamental right. Once the constitutional rights at issue are

recognized, it readily follows that the gay marriage exclusion impermissibly, and without due process, deprives gays and lesbians (“gays”) of guaranteed liberty and other individual rights. This disparate treatment imposes broad, severe burdens on gays who are consequently deprived of liberty and other fundamental rights. The State cannot justify this regulation on individual rights, rendering the gay marriage ban an illegitimate exercise of police powers.

Respondents are all couples of two consenting, competent, of age, “unrelated” consenting adults who wish to obtain a statutory, civil marriage license. This aligns them with similarly situated disparate gender couples, and constitutes the operative “similarly situated class” before the Court.¹ There is no “reasonable ground for distinguishing between those who fall within the class and those who do not.” The disparate result cannot be allowed, whether based on “sex” or “sexual orientation.” The gay marriage ban also lead to an improper caste effect that impacts gays economically, as well as in their exercise of fundamental

¹ The “slippery slope” issues raised by Appellants (see, e.g., County Brief at 23) should not provide sensationalistic distractions. Were the issue of the legality other restrictions, such as that prohibiting polygamy, before the Court, the State would likely advance significantly different interests in support of those regulations. In light of the narrow issue before the Court, these *Amici* will not express their views on other marriage restrictions. Separately, the floodgates argument has not proven true. For example, the City of Vancouver offers domestic partnership benefits, but places certain age limitations, and limits the benefits, *inter alia*, to a couple of two. *Heinsma v. City of Vancouver*, 144 Wn.2d 556, 563–564, n. 3, 29 P.3d 709 (2001). To the author’s knowledge, there has been no legal challenge to those limitations.

rights. The second-class system, and “separate but equal” consequences invoked by separate “civil unions” violates equal protection. It also has an unjustifiable “trickle down effect,” such as negative tax implications for business. The gay marriage exclusion conflicts with the heart of our constitutional system of individual liberty and cannot be sustained.

III. STANDARD OF REVIEW

Just as in *Lawrence v. Texas*, 539 U.S. 558, 123 S.Ct. 2472 (2003), this Court should recognize that the burden of establishing the constitutionality of a measure limiting liberty rights is rightfully on the State, not the persons whose rights are being infringed. *See, e.g., Justice Kennedy’s Libertarian Revolution: Lawrence v. Texas*, Randy E. Barnett.² This view has been espoused by at least some Washington jurists. *See, e.g., Island County v. State*, 135 Wn.2d 141, 155, 157-158, 955 P.2d 377 (1998) (Sanders, J. concurring, *inter alia*, advancing proposition and

² www.cato.org/pubs/scr/docs/2003/revolution.pdf: “...Breaking free at last of the post-New Deal constitutional tension between the “presumption of constitutionality,” on one hand, and “fundamental rights,” on the other, Justice Anthony Kennedy and the four justices who joined his opinion did not begin by assuming the statute was constitutional. But neither did they call the liberty at issue “fundamental,” which the modern Court would have been expected to do before withholding the presumption of constitutionality from the statute. Instead, the Court took the much simpler tack of requiring the state to justify its statute, whatever the status of the right at issue.” (emphasis added).

attributing same view to Justice Utter.)³ To shift the burden to the individual impairs the separation of powers. *Id.*⁴

IV. ARGUMENT

A. The gay marriage ban oversteps the State's police powers.

1. The purpose of our constitutional system is the protection of individual rights and liberty principles.

The liberty principles underpinning our constitutional system require that individuals maintain substantial autonomy and liberty. Provided no harm to others, individuals *must* be allowed to freely exercise such rights.⁵

The limited scope of government's role was premised on the Founding Fathers and others, such as Locke, Tocqueville and Mill. *See, e.g.,* Bob Freedman, Government: Stay Out of Our Homes and Lives,

³ Citing Justice Robert F. Utter, Freedom and Diversity in a Federal System: Perspectives on State Constitutions and the Washington Declaration of Rights, 7 U. Puget Sound L. Rev. 491, 507 (1984).

⁴ "It is also an injudicious partiality favoring one party at the expense of the other. This maxim is inconsistent with the role of the judiciary in a constitutional republic." *See, e.g., Id.*, 135 Wn.2d 141, 160 and n.3); *see, also, Seeley v. State* 132 Wash.2d 776, 827, 940 P.2d 604, 632 (Sanders, J. dissenting). "...Better we should question the predicate which supposedly justifies state intervention in the first place than shift the burden to the private citizen to show why he should be free--which is, or should be, the natural state in a free society." (emphasis added).

⁵ At issue here are rights of individual freedom and responsibility; freedom of religion and strict separation of church and state; property rights; contract rights; rights of expression and association; freedom from government imposed discrimination; and sexual rights. These rights are the foundation of our Constitution and shape the views of these *Amici*. *See, e.g.,* Appendixes A and B, which reflect relevant portions of the Libertarian Party's Platform and positions of the Log Cabin Republicans, respectively.

Institute of Justice, Liberty and Law, April 2003,⁶ the Cato Institute's amicus in *Lawrence v. Texas*⁷ ("Cato Brief") at 6;⁸ *State v. Valentine*, 132 Wn.2d 1, 935 P.2d 1294 (1997) (Sanders, J. dissent, *passim*.)

The Government of the State of Washington was also established for the broad protection and maintenance of liberty and other individual rights. *See, e.g.*, Const. art. I, § 1⁹; *State v. Valentine, supra*, 132 Wash.2d 1, 36 (Sanders, J. dissenting); *City of Seattle v. McConahy*, 86 Wash.App. 557, 937 P.2d 1133, *rev. den.* 133 Wash.2d 1018, 948 P.2d 388(1997) (art. I, §1 acts as check on government power by requiring legislation to be reasonable and not infringe unduly on individual rights.) In order to sustain these constitutional foundations, principles regarding "individual rights" should be applied consistently. *See, e.g.*, Richard B. Sanders, Property Rights Under The Washington And U.S. Constitution. It is axiomatic that the whims of the majority cannot be invoked to interfere with fundamental rights.¹⁰ *See, e.g., West Virginia State Bd. of Educ. V.*

⁶ "Madison... wrote, "Complaints are everywhere heard . . . that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority." To protect against an "overbearing majority" we limit government power.

⁷ *Lawrence v. Texas, supra*, 539 U.S. 558, 567.

⁸ (burden was on the government to justify any regulation of traditional liberties.)

⁹ "All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights."

¹⁰ Seventh Circuit Court Judge Richard A. Posner argues, from a cost-benefit perspective, that the proper calculus to be applied in this case must "consider why homosexuals want the right [to marry,] what the consequences of giving it to them might

Barnette, 319 U.S. 624, 638, 63 S. Ct. 1178, 87 L. Ed. 1628, (1943).¹¹

These liberty principles, and the limits on legislating the views of the majority, require that similarly situated persons not be subjected to castes or second class status. Cato Brief, at 4.¹²

Liberty interests are complex, as they are comprised not of a singular interests, but instead, are comprised of a “bundle of rights”. *Cf.*, *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 379-380, 13 P.3d 183 (2002)(Sanders, J., concurring).¹³

be, why the right is so strongly opposed by the public, and whether the [United States] Supreme Court is the proper institution to authorize homosexual marriage.” Richard A. Posner, *Wedding Bell Blues*, *The New Republic*, Dec. 22, 2003, at 33. Posner concludes that this balancing cannot be conducted without gathering additional information, and that the “prudent” and “democratic” way to resolve the issue is for states to individually authorize same-sex marriage, citing the *Goodridge* decision of the Supreme Judicial Court of Massachusetts as a step that “may contribute to a democratic resolution of the controversy.”

¹¹ “The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. ...”

¹² ... the Framers of the Fourteenth Amendment emphasized that “the American system rests on the assertion of the equal right of every man to life, liberty, and the pursuit of happiness.” *Cong. Globe*, 39th Cong., 1st Sess. 1088-89 (1866). This equality principle embodied two complementary norms: rationality and anti-caste. Foundational for the liberal state, the rationality norm insists that stated differentiations be reasonably connected to legitimate public policies and not be the result of prejudice against an unpopular minority. Important for the peaceful functioning of pluralist democracies, the anti-caste norm debar the state from creating a subordinate underclass alienated from the law. (footnotes omitted; emphasis added).

¹³ But as the “legal term property denotes not material things but certain rights,” (citation omitted), the dissent fails to recognize that when the government takes one right from the bundle which comprises ‘property,’ it thereby takes an aspect or attribute of the property itself. ...If one of the rights of property has been damaged or removed from the bundle, the property has accordingly been damaged or taken to that extent. ...When the government deprives a person of a fundamental right of property, ‘the government does not simply take a single ‘strand’ from the ‘bundle’ of property rights: it chops through the

2. In furtherance of protection of individual rights, the legitimate police powers of the State are limited.

The principle that the State is to protect, not invade, fundamental liberties absent direct harm to others necessarily limits the exercise of police powers. So long as individuals are not intruding on the legitimate rights of others, they *must* be allowed to engage in pursuit of happiness.

...[T]he police power, in its purest form, is the 'power to secure rights, through restraints or sanctions, not some general power to provide public goods.' Cato Handbook for Congress: Policy Recommendations for the 106th Congress 206 (Edward H. Crane & David Boaz eds., 1999).

Manufactured Housing, 142 Wn.2d at 375-376 (Sanders, J. concurring)

(... police power is to protect our lives, liberty, and property from transgressions of our neighbors);¹⁴ *see, also, State v. Schelin*, 147 Wash.2d 562, 55 P.3d 632 (2002)(it is the police power which is subject to all of the rights specified in our Declaration of Rights).¹⁵ The State's police power is limited to ensuring such individual rights, favored or not, are not deprived.

bundle, taking a slice of every strand.' *Id.* at 435 (quoting *Andrus v. Allard*, 444 U.S. 51, 65-66, 100 S. Ct. 318, 62 L. Ed. 2d 210 (1979))(emphasis added).

¹⁴ The Hon. Richard B. Sanders, *Battles for the State Constitution: A Dissenter's View*, Gonzaga School of Law Chapter of the Federalist Society (2001).

¹⁵ *See, also, Conger v. Pierce County*, 116 Wash. 27, 33-34, 198 P. 377 (1921): "One of the greatest contributions of the English speaking people to civilization is the protection by law of the private individual in the enjoyment of his property and his personal liberties against the demands and aggressions of the public."

3. Marriage is a fundamental liberty right.

Marriage is a fundamental liberty right. *See, e.g., Castle, 22; Andersen, 16.* Pursuit of this right clearly *must* be encompassed within the Pursuit of Happiness. The State has no legitimate right to impinge on such pursuits.¹⁶

4. The gay marriage ban is an illegitimate exercise of the State's limited police powers, especially when allowing gay marriage would not impinge on the valid rights of others.

Excluding gay couples from the right to a statutory, civil marriage is an unconstitutional exercise of police powers.¹⁷ Even under a rational basis test, the State has no legitimate interest in exercise of its limited police powers to regulate the consensual, private, intimate, autonomous association of marriage for similarly situated couples, distinguished only by the gender of their chosen spouse.¹⁸

¹⁶ In Oregon, the Libertarian Party last year proposed the elimination of civil marriage, to be replaced with civil unions for hetero and homo sexual couples. *See, Appendix F.*

¹⁷ Contrary to the County's assertion (at 33), *State v Fenn, 47 Wash. 561, 92 P. 417* (1907) does not stand for the proposition that the State's police powers re: marriage are unlimited; in fact, it expressly recognizes to the contrary. *Fenn, 47 Wash. at 565.*

¹⁸ "State conformity requirements are most questionable when they... disrupt personal relationships..." *Cato Brief at 8, characterizing Griswold v. Connecticut, 381 U.S. 479, 85 S. Ct. 1678, (1965); accord, Roberts v. United States Jaycees, 468 U.S. 609, 622-23, 104 S.Ct. 3244, (1984)* "Th[ese] precedents reflects the Framers' liberty principle: People should be left alone by the state unless their conduct has third-party effects unrelated to 'nosy preferences' (my preference to make you just like me)." *Cato Brief at 22.*

Sanctioning marriage for same (or opposite) gender couples is not violative of any other individual's or group's rights.¹⁹ Men and women will continue to be allowed to marry. Prohibiting the legally recognized bargain of two individuals who wish to join their lives together does not serve to protect any general or specific private rights granted legal protection; there is no incursion on "preserving the traditional institution of marriage" except to eliminate its impermissible limitation.²⁰

5. The gay marriage ban is unduly oppressive of gay people. It interferes with their freedom and responsibility.

The Libertarian Party believes that to deny an individual's ability to "make choices for themselves and to accept responsibility for the consequences of the choices they make"²¹ "fosters irresponsibility."

¹⁹ Personal views or emotionalism about "same sex marriage" are not material to the legal question of whether excluding gays from the civil right to marry is an illegitimate exercise of police powers. A "tradition or history" of wrongfully imposed limitations on constitutional rights does not take away from the nature of the fundamental right itself, nor properly limit every citizen's inalienable right to have full access to such rights. (Castle, 42; Andersen, 62). That incremental challenges, and consequent victories, have been necessary to overturn illegitimate limitations placed upon the right of marriage (*e.g.*, *Loving v. Virginia*, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967)) is indicative of improper exercise of police powers, not an everlasting constitutional imprimatur.

²⁰ The civil recognition of marriage, whether same sex or opposite sex, does not interfere with peoples' right to a religious view of marriage.

²¹ The Libertarian Party recognizes that "Our support of an individual's right to make choices in life does not mean that we necessarily approve or disapprove of those choices." Log Cabin Republicans also value personal responsibility, and protection of individual rights over "group rights." Appendix B. These values seem reflected in *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 850, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992) ("Our obligation is to define the liberty of all, not to mandate our own moral code.")

Appendix A. The marriage ban fails, in part, because it is “unduly oppressive upon individuals” in violation of the *Lawton*²² test, as discussed, for example in *Seeley v. State*, 132 Wash.2d 776, 824 - 825, 940 P.2d 604, 628 - 630 (Sanders, J. dissent).

B. The gay marriage ban interferes with other individual constitutional rights; to do so is an unconstitutional exercise of police power.

1. The gay marriage ban violates the State Establishment Clause.

The prohibition on same sex marriage is impermissibly based on religious concerns that the State has no right to codify or institutionalize.²³ The history of “marriage” for purposes of sexual exclusivity and procreation seeds from religious dictates, not a truly legitimate “State Interest”.²⁴ To use religious mores to exclude otherwise similarly situated persons from marrying violates the State Establishment Clause, art. I, §11,²⁵ in at least two ways: (1) giving religious mores state sanction; and (2) favoring the mores of some religions over others.

²² *Lawton v. Steele*, 152 U.S. 133, 137, 14 S.Ct. 499, 501, 38 L.Ed. 385 (1894).

²³ See, e.g., Appendixes D and E.

²⁴ See, e.g., *Lawrence v. Texas*, *supra*, 539 U.S. 558, 571, 123 S.Ct. 2472, 2480:

“...*Bowers* was making the broader point that for centuries there have been powerful voices to condemn homosexual conduct as immoral. The condemnation has been shaped by religious beliefs, ... and respect for the traditional family. ... These considerations do not answer the question before us... whether the majority may use the power of the State to enforce these views on the whole society through operation of the criminal law.”

²⁵ See Appendix G for text.

The institution of religious norms through the law is constitutionally prohibited. *See e.g., Edwards v. Aguillard*, 482 U.S. 578, 107 S.Ct. 2573, 96 L.Ed.2d 510 (1987). Because gay marriage bans are driven by historic religious beliefs, the gay marriage exclusion violates the proscriptions against the establishment of religion found in art. I, §11. The Establishment Clause is also violated by giving preference to those religious beliefs over those religions that recognize gay marriages.²⁶ *See, e.g., Lynch v. Donnelly*, 465 U.S. 668, 673, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984)(hostility toward any religion forbidden). To ban gay civil marriage because some, but not all, religions disfavor it, reflects an impermissible State religious establishment.

2. The gay marriage ban impermissibly interferes with free expression and association rights.

The First and Fourteenth Amendments guarantee both free exercise of expression and association rights. There is also a recognized right in “expression by association.” *See, e.g. Boy Scouts of America v. Dale*, 530 U.S. 640, 120 S.Ct. 2446, 147 L.Ed.2d 554 (2000);²⁷ *see, also, Roberts v. United States Jaycees, supra*, 468 U.S. 609, 622 (1984).²⁸

²⁶ *See, e.g., Amicus Brief of Multifith Works...passim*, esp. pp. 4-7.

²⁷ *Dale* Amici Cato Institute supported the Court decision based on freedom of association, not based on anti-gay bigotry. “...The ultimate acceptance or rejection of particular views or beliefs is a matter reserved exclusively to citizens in their private capacities, inheres in the very notion of the People’s sovereignty, and may not be imposed through the compulsions or prohibitions of government.” “...It’s not about whether homosexuality is good, bad or indifferent. The case before the court is about the

The gay marriage ban impermissibly infringes on the exercise of such rights by gay individuals.²⁹ The State and the County seem to implicitly concede that same sex couples *do* have rights to government recognized unions. *See, e.g.* State, 49; County Reply at 38. They cannot deny that those individuals also have a right to *express* themselves, by holding themselves out as “a couple”. Gay couples are severely burdened by the marriage licensing statute, which prevents them from doing so in a government sanctioned way. By choosing to advance their expression through the public vehicle of association, they exercise fundamental rights.³⁰ *See also Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 234-35, 97

First Amendment and the right to freedom of association - nothing else.”

<http://www.cato.org/pubs/legalbriefs/boyscoutsbrief.pdf>.

²⁸ “Such protected association ensures the free formation of private views by ‘preserving political and cultural diversity and ... shielding dissident expression from suppression by the majority.’”

²⁹ Intervenor’s position (*e.g.*, Brief at 5) that gays are not denied the right to marry because they could marry someone of a different gender [albeit, presumptively, without the feelings, etc. giving rise to marriage – *i.e.*, a sham right] does not cure the constitutional defects, and in fact, would constitute “compelled association”. For example, it remains violative of the First Amendment’s guarantee of protected association, which “ensures the free formation of private views by ‘preserving political and cultural diversity and ... shielding dissident expression from suppression by the majority.’” *Cato Dale Amicus* Brief at 10 “[f]reedom of association therefore plainly presupposes a freedom not to associate.” *Roberts*, 468 U.S. at 623. “Where a private expressive association is involved, the desire to exclude should all but end the inquiry.” *Cato Dale Amicus* at 23. Similarly, “It is well-established First Amendment law that the State ‘may not compel affirmance of a belief with which the speaker disagrees.’” *Id.*, citing *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 573, 115 S.Ct. 2338, 132 L.Ed.2d 487 (1995).

³⁰ This expression also implicates the privacy rights being deprived to Respondents. That they are not in the privacy of their bedroom is not the issue; they have the right to private, autonomous, intimate relationships; they have the right to express such private decisions through the civil construct of marriage.

S.Ct. 1782, 52 L.Ed.2d 261 (1977).³¹ There is no compelling, or even legitimate, state interest in prohibiting gays a civil marriage license.

3. The gay marriage ban impermissibly interferes with their constitutional rights surrounding contracts.

The State's position that "Washington law only goes to the nature of the civil contract..." (Brief at 39) admits that the State is governing contractual rights amongst people. This is not a legitimate exercise of police powers.³² See, e.g., Richard B. Sanders Property Rights Under The Washington And U.S. Constitution, citing *King County v. Taxpayers of King County*, 133 Wash.2d 584, 949 P.2d 1260 (1997) (art. I, § 10 prohibited any state from impairing the obligation of contracts.)

4. Washington's constitutional guarantee of individual privacy is violated by the gay marriage exclusion.

Privacy rights are one of the strongest underpinnings of our Constitution (Const. art. I, § 7), the protection of which is urged by *Amici*, who adopt the analysis set forth in the Castle Brief at 56 *et seq.*

³¹ "[A]t the heart of the First Amendment is the notion that an individual should be free to believe as he will, and that in a free society one's beliefs should be shaped by his mind and his conscience rather than coerced by the State".

³² The County makes a powerful admission (n.8 (pg 24)) that the trial court recognized "no analytical distinction" exists between marriage between two capable adults able to enter into contracts and otherwise determine property and familial rights. The rights of individuals to contract, and to determine how their property will be distributed, is illegitimately impacted by the gay marriage prohibition.

C. The gay marriage ban also unfairly treats the group unequally.

- 1. Equal protection/privilege & immunities requires that persons similarly situated with respect to a legitimate purpose of the law be treated equally.**

The State must allow the private, intimate associations of those similarly situated to be recognized equally. There is no “legitimate purpose of the law” for the State to sanction marriage for opposite sex couples, but prohibit same sex couples from the same rights and responsibilities. *Amici* thus assert that the State constitutionally cannot allow opposite sex, consenting, capable pairs of two adults such a civil marriage license, while denying the same to same sex, consenting, capable pairs of two. To do otherwise illegitimately creates a separate and unequal class of citizens.³³ When viewed in this light, it is clear that different and same sex couples are similarly situated for purposes of receiving all benefits now incident to the civil, statutory rights and title of marriage. Even under the lowest form of scrutiny, there is no legitimate purpose of the law to disallow that those similarly situated couples from receipt of like treatment and the same status, as opposed to one designating a lesser

³³ “Although libertarians question the “need” for couples (heterosexual or otherwise) to register with the government for permission to marry, we definitely oppose attempts to turn any group of people into second-class citizens. That is exactly what this proposed amendment would do: permanently create a separate class of people which the government can legally discriminate against.” The Libertarian Party’s Political Action Alliance <http://www.libertarianaction.com/gaymarriage.htm> (emphasis added).

tolerance for statutory gay union license (e.g., *Medina v. Public Utility Dist. No. 1 of Benton County*, 147 Wash.2d 303, 53 P.3d 993 (2002).)

A civil marriage license confers a bundle of rights, including the title “marriage”; civil unions are simply not the same. A “marriage” license codifies the set of rights and obligations³⁴ of a couple making that commitment. Those rights and obligations are not driven by the gender of those making the commitment. The title of “marriage” confers a certain status that is simply not the same as creating a separate, but purportedly equal, method for recognizing gay intimate, committed relationships.

No cognizable “general welfare” right is served by creating a different vehicle to recognize the same of rights, but imbuing a lesser statutory title. It is a violation of equal protection (let alone the state Privileges and Immunities clause) for the State to treat same and different sex couples disparately in this way. See, e.g., *Miguel v. Guess*, 112 Wash.App. 536, 51 P.3d 89; *rev. den.*, 148 Wash.2d 1019, 64 P.3d 650 (2003)(also engaged in “pretext” analysis.); *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir.1996). The legislation is neither reasonable nor has a fair basis. *Contra*, e.g., *Faxe v. Grandview*, 48 Wash.2d 342, 294 P.2d 402 (1956). Appellants offer no *legitimate* state purpose that justifies

³⁴ *Manufactured Housing Communities of Washington v. State*, *supra*, 142 Wn.2d 347-380, (Sanders, J., concurring).

discriminating against couples whom wish to marry, simply because of the gender of their chosen spouse; that disparity fails under any test.³⁵

If all of the privileges of marriage are to be recognized through the separate vehicle of civil unions, then certainly those couples are engaged in “innocent activity.” *See, e.g., City of Seattle v. McConahy, supra*, 86 Wash.App. 557, 564 (constitutions prohibit legislation that unreasonably interferes with individual’s right to be let alone while engaged in innocent activity.) Denying the right to the full bundle of marriage unreasonably interferes with that right and cannot be sustained.

Particularly where the distinction is between a favored group and a historically (and contemporaneously) disfavored group,³⁶ the distinction is grossly “unreasonable, inequitable and unjust.” *See, State on Behalf of Sigler v. Sigler*, 85 Wash.App. 329, 932 P.2d 710 (1997). Imposing the

³⁵ The State’s position that “the Revised Code of Washington does not imbue a relationship with meaning or stand as an acknowledgement of the commitment...” (Brief at 39) is inconsistent with creating two classes— marriage and civil unions. Marriage carries with it far reaching legal implications, such as the related right to recognition of property distribution concepts under the meretricious relationship doctrine. Sanders, J., dissenting, *Vasquez v. Hawthorne*, 145 Wash.2d 103, 33 P.3d 735 (2001), recognized that the meretricious relationship doctrine was applicable to those couples eligible to “marry”.
³⁶ *See, e.g., Miguel v. Guess*, 112 Wash.App. at 556, 557, 51 P.3d at 99: “... the Constitution prohibits intentional invidious discrimination between otherwise similarly situated persons based on one’s membership in a definable minority, absent at least a rational basis for the discrimination. There can be little doubt that homosexuals are an identifiable minority subjected to discrimination in our society. Given the legislation across the country both positing and prohibiting homosexual rights, that proposition was as self-evident in 1988 as it is today. *Nabozny*, 92 F.3d 446 (7th Cir. 1996) at 457 (footnote omitted). We agree with the court in *Nabozny*.”

distinction is an impermissible, arbitrary exercise of police power. See, e.g., *Seeley v. State*, 132 Wash.2d 776, 940 P.2d 604 (1997).

Contrary to the mandate of *Romer v. Evans*,³⁷ the gay marriage ban singles out gays and confers a similarly illegitimate, broad and fundamental disability on them, based on pretextual or otherwise illegitimate bases. The State's briefing confirms that the restriction against marriage is aimed at gays as a class. DOMA's legislative history confirms this. Andersen, 74. Gays cannot "marry" the partner of their choice merely due to that person's gender. Such a disability does not serve any rational, let alone reasonable or compelling, government interest. Limiting the fundamental right of marriage to opposite gender couples impermissibly marginalizes gays and lesbians in their most private, consented agreement. Just as in *Evans*, the marriage restriction on gay couples is not defensible because it "classified homosexuals not to further a proper legislative end but to make them unequal to everyone else". *Evans, supra*, 517 US at 635.³⁸ It is improper, pervasive class based legislation. See also, *Plessy v. Ferguson*, 163 US 537, 552-55 (1896) (Harlan, J., Dissenting).

³⁷ (Court disallowed state statute that "impos[ed] a broad and undifferentiated disability on single named group"--specifically, homosexuals" (517 U.S., at 632, 116 S.Ct. 1620))

³⁸ See, e.g., Appendix C, capturing the true motivation for the exclusion - homophobia.

2. The Country does not accept separate but equal; civil unions are not enough and would not cure the equal protection violation.

Recognition of only a “civil union” is not an appropriate answer to the questions before the Court— the Country’s legal system has already determined that “separate but equal” is not equal. *See, e.g., Brown v. Bd. Educ.*; 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954)³⁹ *U.S. v. Virginia*, 518 U.S. 515, 116 S.Ct. 2264, 135 L.Ed.2d 735 (1996). Being “married” has implications beyond just those articulated by the State. By imposing a separate category for their most intimate associations, gays are negatively casted- a result abhorrent to constitutional principals.⁴⁰ The stigma created by the marriage caste system has dangerous, far reaching implications. *See Anderson, 78 et seq.* Business also faces economic disparity based on the gender of the spouses their employees.⁴¹

³⁹ “We conclude that in the field of public education the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

⁴⁰ The “anti caste norm debar[s] the state from creating a subordinate underclass alienated from The Law.” Cato Brief at 5.

⁴¹ For example, businesses providing domestic partner benefits suffer negative tax consequences for no justifiable reason. Currently, the IRS considers domestic partner benefits to be “taxable income” to the employee providing such benefits to her partner. <http://www.logcabinwa.com/archive/200501181618.shtml>: The Domestic Partners Health Benefits Equity Act –sponsored by Senator Gordon Smith (R-OR), would end double taxation of domestic partner benefits provided by employers. Under current federal law, married heterosexual employees do not pay taxes on their employers’ contribution for health insurance benefits, while lesbian and gay employees do. Additionally, because employers must pay payroll taxes on their employees’ taxable incomes, employers who

Equal protection requires that the classification rest on “real and not feigned differences.” *City of Seattle v. See*, 67 Wn.2d 475, 486, 408 P.2d 262 (1965), *rev. on other grounds*, 387 U.S. 541, 87 S.Ct. 1737, 18 L.ed.2d 943 (1967).⁴² The asserted reasons for restricting the civil right to marriage are pretextual and/or contrary to the law of the land.⁴³ Intervenor’s narrow “rationale” for the marriage ban is pretext intended to meet the holding of *Lawrence*⁴⁴ by diverting attention from the primary motivation to exclude gays from the fundamental right of marriage: moral disapproval and religious tenets. *See, also, Seeley v. State, supra*, 132 Wash.2d 776, (for proposition that one cannot rely on “conceivable” state of facts where the facts have so far changed as to render the classification arbitrary and obsolete.) There is no legitimate interest in allowing marriage for some, but not all, similarly situated couples.

provide these benefits are taxed at a higher rate as well.” Immigration issues are implicated, *id.* Ensuring that the relationships of all employees are treated equally assists business in the retention and management of its personnel.

⁴² The ban cannot withstand the rational basis standard, let alone that required under strict scrutiny. Respondents’ Briefs, *passim*. The “no conceivable grounds test” (County at 32) must exclude consideration of illegitimate or pretextual grounds.

⁴³ For example, as demonstrated by Respondents, it is not the State’s business to regulate exclusivity of sexual relations (State’s Brief at 34); in fact, it does not. Intervenor’s argument regarding the propriety of a male/female child rearing situation is a slippery slope to challenging rights of gay parents, regardless of biological connection.

⁴⁴ Moral opprobrium towards a particular group can no longer be the basis for legislative prerogative. *E.g.*, Castle at 29; *Lawrence, supra*; *see, also, Miguel v. Guess*, 112 Wash.App. 536, 51 P.3d 89; *rev. den.*, 148 Wash.2d 1019, 64 P.3d 650 (2003).

V. CONCLUSION

Appellants invite this Court to disallow fundamental rights to, and sanction discrimination against, a disfavored minority on the basis of state interests Appellants have alleged, but have not shown, are “necessary to burden the plaintiff’s rights.” The State’s interest in excluding gays from the statutory, civil right to marry is not rational, reasonable, compelling or valid in any other way. This Court should decline the invitation and affirm the Trial Courts.

Respectfully submitted this 4TH day of February 2005.

LAW OFFICES OF SUZANNE J.
THOMAS, P.S.



By: Suzanne J. Thomas
WSBA #17338
On Behalf of *Amici Curiae*
The Libertarian Party of Washington
State; Log Cabin Republicans of
Washington

APPENDIX A

APPENDIX A

The Libertarian Party of Washington State's mission and values are found at <http://www.lpws.org/> <http://www.lpws.org>:

The Libertarian Party of Washington State (LPWS) is the *only* political party defending economic and individual liberties -- and we've been doing that for over 30 years.

We are the newest *major political party* in Washington state, on even legal footing with the two older major parties. With over 500 Libertarians holding public office nationwide, we are the third party in American politics.

What is a Libertarian?

Party members and supporters come from both the political left -- for our principled stands on individual liberty -- and from the political right -- for our principled stands on economic liberty

The National Libertarian Party has adopted a platform and specific aspirations relating to many of the liberty interests at stake here.

<http://www.lp.org/issues/platform>.

For example, it provides, *inter alia*:

- **Freedom and Responsibility**

The Issue: Personal responsibility is discouraged by government denying individuals the opportunity to exercise it. In fact, the denial of freedom fosters irresponsibility.

The Principle: Individuals should be free to make choices for themselves and to accept responsibility for the consequences of the choices they make. We must accept the right of others to choose for themselves if we

are to have the same right. Our support of an individual's right to make choices in life does not mean that we necessarily approve or disapprove of those choices. We believe people must accept personal responsibility for the consequences of their actions.

Solutions: Libertarian policies will promote a society where people are free to make and learn from their own decisions.

Transitional Actions: Repeal all laws that presume government knows better than the individual how to run that person's life. Encourage private sector dissemination of information to help consumers make informed decisions on products and services. Enforce laws against fraud and misrepresentation.

▪ **The Right to Property**

The Issue: We oppose all violations of the right to private property, liberty of contract, and freedom of trade, especially those done in the name of national security. We also condemn current government efforts to regulate or ban the use of property in the name of aesthetic values, risk, moral standards, cost-benefit estimates, or the promotion or restriction of economic growth. We specifically condemn all government interference in the operation of private businesses, such as restaurants and airlines, by either requiring or prohibiting designated smoking or non-smoking areas for their employees or their customers. The taxation of privately owned real property actually makes the State the owner of all lands and forces individuals to rent their homes and places of business from the State. We condemn attempts to employ eminent domain to municipalize sports teams or to try to force them to stay in their present location.

The Principle: There is no conflict between property rights and human rights. Indeed, property rights are the rights of humans with respect to property, and as such, are entitled to the same respect and protection as all other human rights. All rights are inextricably linked with property rights. Such rights as the freedom from involuntary servitude as well as the freedom of speech and the freedom of press are based on self-ownership. Our bodies are our property every bit as much as is justly acquired land or material objects. The owners of property have the full right to control, use, dispose of -- or in any manner enjoy -- their property without interference, until and unless the exercise of their control infringes the valid rights of

others.

Solutions: We demand an end to the taxation of privately owned real property. Where property, including land, has been taken from its rightful owners by the government or private action in violation of individual rights, we favor restitution to the rightful owners.

Transitional Action: Repeal property tax laws and force government to fund property protection services with user fees.

- **Freedom of Association and Government Discrimination**

The Issue: Discrimination imposed by government has caused a multitude of problems. Anti-discrimination laws create the same problems.

The Principle: Individual rights should not be denied, abridged or enhanced at the expense of other people's rights by laws at any level of government based on sex, wealth, race, color, creed, age, national origin, personal habits, political preference or sexual orientation. The right to trade includes the right not to trade -- for any reasons whatsoever. The right of association includes the right not to associate, for exercise of this right depends upon mutual consent.

Solutions: While we do not advocate private discrimination, we do not support any laws which attempt to limit or ban it.

Transitional Action: We support repealing any laws imposing discrimination by government, rather than extending them to all individuals.

- **Freedom of Religion**

Issue: Government routinely invades personal privacy rights based solely on individuals' religious beliefs. Arbitrary tax structures are designed to give aid to certain religions, and deny it to others.

Principle: We defend the rights of individuals to engage in (or abstain from) any religious activities that do not violate the rights of others.

Solution: In order to defend freedom, we advocate a strict separation of church and State. We oppose government actions that either aid or attack any religion. We oppose taxation of church property for the same reason that we oppose all taxation. We condemn the attempts by parents or any others -- via kidnappings or conservatorships -- to force children to conform to any religious views. Government harassment or obstruction of religious groups for their beliefs or non-violent activities must end.

Transitional Action: We call for an end to the harassment of churches by the Internal Revenue Service through threats to deny tax-exempt status to churches that refuse to disclose massive amounts of information about themselves.

- **Sexual Rights**

The Issue: Government has presumed to decide acceptability over sexual practices in personal relationships, imposing a particular code of moral and social values and displacing personal choice in such matters.

The Principle: Adults have the right to private choice in consensual sexual activity.

Solutions: We advocate an end to all government attempts to dictate, prohibit, control or encourage any private lifestyle, living arrangement or contractual relationship.

Transitional Action: We would repeal existing laws and policies intended to condemn, affirm, encourage or deny sexual lifestyles, or any set of attitudes about such lifestyles.

A. I. Individual Rights and Civil Order

Families and Children

The Issue: Government involvement in traditional parenting responsibilities has weakened families and replaced family-taught morals with government-taught morals.

The Principle: Families and households are private institutions, which should be free from government intrusion and interference. Parents, or

other guardians, have the right to raise their children according to their own standards and beliefs, without interference by government -- unless they are abusing the children. Because parents have these rights, a child may not be able to fully exercise his or her rights in the context of family life. However, children always have the right to establish their maturity by assuming administration and protection of their own rights, ending dependency upon their parents or other guardians, and assuming all responsibilities of adulthood. A child is a human being and, as such, deserves to be treated justly.

Parents have no right to abandon or recklessly endanger their children. Whenever they are unable or unwilling to raise their children, they have the obligation to find other person(s) willing to assume guardianship.

Solutions: We recognize that the determination of child abuse can be very difficult. Only local courts should be empowered to remove a child from his or her home, with the consent of the community. This is not meant to preclude appropriate action when a child is in immediate physical danger.

Transitional Action: We would repeal all laws that impede these processes, notably those restricting private adoption services. In particular, we call for the repeal of all laws restricting transracial adoption. We oppose laws infringing on children's rights to work or learn, such as child labor laws and compulsory education laws. We also oppose the use of curfews based on age.

We call for an end to the practice in many states of jailing children not accused of any crime. We call for repeal of all "children's codes" or statutes which abridge due process protections for young people.

APPENDIX B

APPENDIX B

Log Cabin Republicans of Washington is the home for mainstream gays and lesbians who want to make a difference in their state and country. We care deeply about equality, and we hold Republican views on crime, fiscal responsibility and foreign policy. We believe in individual rights rather than group rights. We believe in limited government rather than big government. We believe that free markets lead to free people, and that *all* Americans should be able to participate fully in the political process.

<http://www.logcabinwa.com/>

National Log Cabin Republicans

<http://www.logcabin.org/logcabin/about.html>

Log Cabin Republicans courageously stand on the front lines of today's most important battleground for gay and lesbian civil rights. We are the nation's leading voice for fairness, inclusion, and tolerance in the GOP.

Our party stands at a crossroads. The GOP must choose between fairness and freedom or intolerance and exclusion. Log Cabin works tirelessly to make sure the Republican Party chooses the right path. Ending up on the wrong side of history will cost the GOP for decades to come. So we tirelessly strive to achieve liberty and equality for all Americans.

What we believe

We are loyal Republicans. We believe in low taxes, limited government, strong defense, free markets, personal responsibility, and individual liberty. Log Cabin represents an important part of the American family-taxpaying, hard working people who proudly believe in this nation's greatness. We also believe all Americans have the right to liberty, freedom, and equality. Log Cabin stands up against those who preach hatred and intolerance. We stand up for the idea that all Americans deserve to be treated equal-regardless of their sexual orientation.

Why we exist

The mere existence of our organization recognizes the fact that the Republican Party still has a long way to go on issues affecting gay and lesbian civil rights. In recent years, the GOP has made important strides toward inclusion, however much more must be done. Too many people in the party remain hostile to gay and lesbian civil rights. Log Cabin will confront the radical right's bigotry head-on as we join the majority of Republicans who believe inclusion wins.

Creating Change

We are first and foremost a grassroots organization. Thousands of members in dozens of chapters across the country work tirelessly to change minds and hearts. One person at a time, we are building a stronger Republican party and a better America.

Aside from our growing membership base spread around the nation, Log Cabin boasts an experienced political staff in our nation's capital. The office serves as an important link to the Republican Party leadership in the White House and on Capitol Hill. We might not win every fight in Washington, but our voice will not go unheard.

Working Together

Aside from working within the party for change, Log Cabin continues building new alliances in the gay and lesbian community. Both parties have an important role to play in advancing our civil rights. Without allies in the Republican Party, our push for equality will take decades longer. Despite our political differences with those on the left, some of the issues at stake are too important to let petty partisanship impede real progress. We must work together on the many issues where common ground exists.

APPENDIX C

APPENDIX C

FROM LOG CABIN REPUBLICAN'S NATIONAL SITE

http://www.logcabin.org/logcabin/talking_points_radical_right_quotes.html

Talking Points: What the Radical Right Says About Us

You can learn the radical right's true intentions by reading what they say about us. Whatever they try to say about traditional marriage, their true motivation is trying to marginalize gay and lesbian Americans. Their own words, based on fear and intolerance, reveal their true motives.

"The future of our country hangs in the balance because the future of marriage hangs in the balance. Isn't that the ultimate homeland security—standing up and defending marriage?"—**Senator Rick Santorum (R-PA)**, July 2004 during U.S. Senate debate on the anti-family Federal Marriage Amendment.

"I really believe that the Pagans, and the abortionists, and the feminists, and the gays and lesbians, ... the ACLU, People For the American Way - all of them who have tried to secularize America - I point the finger in their face and say 'you helped this [terrorist attack] happen.'"—**Jerry Falwell**, 700 Club, September 13, 2001

"There is a master plan out there from those who want to destroy the institution of marriage."—**Senator Wayne Allard (R-CO)** during U.S. Senate debate on the anti-family Federal Marriage Amendment.

"Barring a miracle, the family as it has been known for more than five millennia will crumble, presaging the fall of Western civilization itself."—**James Dobson**, Focus on the Family, in a 2004 anti-gay fund raising letter

"If you still think homosexual 'marriage' won't affect you, think again. Your job may be at stake!...Once the state approves of homosexual 'marriages,' the full weight of the law will be brought down against men and women of faith who believe in Judeo-Christian values."—**Gary Bauer**, Campaign for Working Families in a letter to supporters.

"It does not affect your daily life very much if your neighbor marries a box turtle. But that does not mean it is right.... Now you must raise your children up in a world where that union of man and box turtle is on the same legal footing as man and wife."—**Senator John Cornyn (R-TX)**, July 2004, during U.S. Senate debate on the anti-family Federal Marriage Amendment

"For the sake of our children and society, we must OPPOSE the spread of homosexual activity! Just as we must oppose murder, stealing, and adultery! Since homosexuals cannot reproduce, the only way for them to 'breed' is to RECRUIT! And who are their targets for recruitment? Children!"—**Don Wildmon**, direct mail letter from the American Family Association

"If the Supreme Court says that you have the right to consensual (gay) sex within your home, then you have the right to bigamy, you have the right to polygamy, you have the right to incest, you have the right to adultery. You have the right to anything," Santorum said in an interview published April 21, 2003 by the Associated Press. "All of those things are antithetical to a healthy, stable, traditional family," Santorum continued. "And that's sort of where we are in today's world, unfortunately. It all comes from, I would argue, this right to privacy that doesn't exist, in my opinion, in the United States Constitution."—**Senator Rick Santorum (R-PA)**, April 21, 2003, AP interview.

"The family unit is under attack by dark and conspiring forces who desire to redefine the bond of marriage to include same-sex partners. This design is an abomination of nature and, if adopted by society as normative, will ultimately lead to society's downfall and destruction."—**American Society for the Preservation of the Family**

"'Gay' activists are like a freight train out of control, running over everyone and anyone in their paths, desperately seeking and desiring one thing: acceptance of their sin."—**American Family Association**, *The Deception and Desensitization of America's Youth*, February 20, 2003

"After all, since homosexual couples can't reproduce, they will simply go after your children for seduction and conversion to homosexuality."—**Rev. Lou Sheldon**, Traditional Values Coalition, from report *Homosexuals Recruit Public School Children*

"Homosexuals are not monogamous. They want to destroy the institution of marriage. It (same-sex marriage) will destroy marriage. It will destroy the Earth."—**James Dobson**, Focus on the Family, October 2004 speaking at a rally for OK GOP Senate candidate Tom Coburn

"I'm trying to find the correct name for it ... this utter absolute, asinine, idiotic stupidity of men marrying men. ... I've never seen a man in my life I wanted to marry. And I'm gonna be blunt and plain; if one ever looks at me like that, I'm gonna kill him and tell God he died."—Televangelist **Jimmy Swaggart**—in a September 2004 television broadcast.

APPENDIX D

APPENDIX D

http://www.au.org/site/News2?page=NewsArticle&id=6649&abbr=pr&security=1002&news_iv_ctrl=1241&JServSessionIdr012=ku8q21d9d1.app1

3a

Marriage Amendment Violates Separation Of Church And State, Says Americans United *Thursday May 13, 2004*

Religious Right Scheme Would Give Government Blessing To Marriage Rites Of Majority Faiths, But Make Others Illegal

A proposed "marriage amendment" to the U.S. Constitution would undercut religious liberty in America and write the Religious Right's views into law for everyone to follow, according to Americans United for Separation of Church and State.

The House Judiciary Committee's Subcommittee on the Constitution will hold a hearing May 13 on U.S. Rep. Marilyn Musgrave's Federal Marriage Amendment. Musgrave is scheduled to testify, along with failed Supreme Court candidate and Religious Right favorite Robert Bork and Jay Sekulow, chief counsel for TV preacher Pat Robertson's American Center for Law and Justice.

The Rev. Barry W. Lynn, Americans United executive director, said the marriage amendment would give constitutional endorsement to some religious traditions while denying the free exercise rights of others.

"This unwise proposal would give a federal government blessing to the marriage rites of some religious communities and make the practices of other faiths illegal," Lynn charged. "That's totally unacceptable in a nation that respects religious pluralism and diversity."

Lynn said nothing about limiting its mandate to government authorities, and many fear its sweeping provisions would apply to church officials as well.

"Bork, Sekulow and the religious movements they represent want the marriage practices of the majority faiths written into the Constitution," said Lynn. "The Religious Right wants to wed church and state. Members of Congress should say, 'I don't,' not 'I do.'"

The Americans United leader, who is an ordained minister in the United Church of Christ, said Bork and Sekulow have a well-documented and long-standing disregard for the rights of minorities.

"Robert Bork's views were so outside the judicial mainstream in 1987 that he was rejected by the Senate for a seat on the Supreme Court," said Lynn. "Incredibly, his positions have become more extreme since then and now reside firmly in the twilight zone of legal thought."

Lynn noted that Bork has a long track record of insensitivity. He cited a report Americans United issued in 1987, when Bork was nominated for the high court. The report recounted that in September of 1985, Bork spoke at a forum on church-state separation in Washington and advocated more religion in public schools. One attendee challenged Bork, telling a story about a Jewish boy who felt uncomfortable with Christian exercises at his school. Bork blithely replied, "So what? I'm sure he got over it."

In a speech delivered in November of 1984, Bork called for a "major recasting of doctrine" on church and state. He criticized Thomas Jefferson's metaphor of a wall of separation between church and state, dismissing it as a non-compelling "individualistic view." The amendment's broad language limiting marriage to unions of one man and one woman would effectively prefer majority religions over others. At the same time, he noted, many legal analysts say the language could make it illegal for denominations that perform same-sex marriages to continue to do so. The amendment says

In more recent years, Bork has called for giving Congress the power to overturn Supreme Court rulings by vote, although he now claims he no longer supports this idea.

Lynn criticized Sekulow for using extreme rhetoric as well. ACLJ fundraising letters signed by Sekulow have stated, "[T]he homosexual agenda [is] a runaway train bent on destroying communities," "The homosexual rights movement is engaged in a concerted effort to radically alter the definition of marriage, and thereby the family" and "Homosexuals are not only out of the closet, they are out to destroy the family as we know it."

Said Lynn, "When discussing gay people, Sekulow always reaches for the most lurid rhetoric possible. This type of language is clearly intended to inflame passions and spark hate. It has no place in civic or political dialogue."

APPENDIX E

APPENDIX E

Interfaith Leader Fights Against Discrimination of Same-Sex Marriages

- On February 29, 2004 *The Northwest Indiana Times* reported, "As much as many people would like to sweep it back into the closet, the gay marriage debate has swept the nation -- and the fallout didn't spare Northwest Indiana this week... On Thursday, Jeff Miner, an Indianapolis pastor who leads the Interfaith Coalition on Nondiscrimination, reminded lawmakers that America is a country that protects the rights of unpopular minorities from the 'tyranny of the masses.' 'Remind us that there was a time when slavery was considered an institution established by You, when allowing women to vote was considered contrary to the Bible, when interracial marriages were believed to threaten the very foundations of the American family, when left-handed children were thought to be under the influence of the devil,' Miner said." (February 29, 2004, *The Northwest Indiana Times*)
[Read the full story](#)

APPENDIX F

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March 12, 2004

Gay Marriage: The Libertarian Approach

A tangential discussion to the gay marriage debate has become a formal proposal, at least here in Oregon. The Libertarian Party of Oregon passed a resolution yesterday to replace state-sanctioned marriages with civil unions (warning: KGW link, requires subscription) and leave questions of marriage to individual religious interpretation. In other words:

Under the Libertarian approach, the government would stop issuing marriage licenses, replacing them with civil unions for everyone, regardless of sexual orientation.

Couples could then go to their churches to have their unions sanctified as marriages. Churches would determine which couples are allowed to marry.

"Our approach lets churches control their marriage sacraments while ensuring that government doesn't sanction gay marriages," state party Chairman Adam Mayer said in a statement.

"On the other hand, our approach puts all couples on an equal footing before the law and allows gay couples to be married by more liberal churches and other organizations."

APPENDIX G

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Washington State Constitution, art. 1, § 11. Religious Freedom

Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: Provided, however, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional, and mental institutions, or by a county's or public hospital district's hospital, health care facility, or hospice, as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

