

An Open Proposal to Wyoming State Legislators

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The following is a proposal that Wyoming State statutes be amended to specify that what has heretofore been referred to in state law as “marriage” be designated as “civil marriage” as distinct from any religion’s beliefs about the institution of marriage. I want to propose that the statutes be further amended to state that civil marriage is “a relationship between two people” as opposed to only “a relationship between a man and a woman.” In this way the state of Wyoming can offer the same legal support for the love and commitment of same sex couples that it offers to heterosexual couples who choose to be married.

While the proposal that Wyoming become the first state to recognize same sex civil marriages as a result of legislative action might seem on the surface to be a wild fantasy, I would like to suggest that it is in fact well within the historic traditions of Wyoming and would be highly beneficial to the state.

First of all, such action would further enhance Wyoming’s claim to being the “Equality State.” States, like any group of people, are often known for the quality of their leaders’ ability to envision the future. Who in Wyoming is not proud of Wyoming’s history as the first state to grant women the right to vote - long before that right was universally recognized? A similar action with respect same sex partners’ right to enter into committed relationships supported by the force of the laws of the state would reinforce Wyoming’s place in history as a state where equality matters.

From an historical perspective there can be little doubt that in this country at least the rights of a class of people to equal treatment under the law will eventually win recognition whether this comes about via legislative or court action. The fact that same sex couples are a minority does not diminish their right to the equal protection and support of the legislation designed to benefit families. Such action does not have to be popular to be the right and just thing to do. George Wallace had tremendous popular support for standing in the schoolhouse door to prevent the integration of the public school system, and yet who among us would choose him as a mentor, except perhaps as someone who later publicly admitted that he regretted his former stance.

The right of same sex couples to equal treatment by the laws designed to benefit families is often opposed on religious grounds. This could be remedied by specifying that civil marriage is just that – a civil contract designed to support and protect families and children by clarifying the legal rights and responsibilities couples undertake when they identify themselves as wishing to be considered a married couple. The various religious traditions practiced within this state have little uniformity with respect to how they understand the institution of marriage and how they define it for themselves. For some it is a sacrament, for some the marriage ceremony is so sacred that it may only be witnessed by members in good standing within that faith tradition, for some marriage is a relationship that may only be entered into by those who have been baptized in that

faith tradition. All of this is exactly as it should be. Whatever restrictions on religious marriage any faith tradition wishes to prescribe for the practitioners of that faith tradition should not be subject to any comment by the state based on the tradition of separation of church and state functions. Currently however, those faith traditions that choose to recognize same sex marriages are constrained from performing such ceremonies and calling them a religious marriage based on the ambiguity that exists between what is a religious ceremony and what constitutes entering into a civil contract.

Marriage is the only legally binding contract of which I am aware that is entered into, not by the notarized signatures of the parties involved, but by their participation in another religious or civil ceremony which has no prescribed content. How much better to separate the civil contract from the religious one so that couples might be clearer on the difference between a civil marriage contract that allows for divorce and, in some cases at least, a sacred contract from which there may be no exit now or in eternity – depending on the religious beliefs of the faith involved. The resulting confusion about what really constitutes a marriage could be remedied by the state's clarifying that its sole interest in the institution of civil marriage is in promoting the civil contract designed to benefit all families.

The benefits to Wyoming of taking such a step would be enormous. On the economic front, it would enhance the state's tourism industry by emphasizing that Wyoming is not only a state with beautiful scenery which is concerned about its physical environment, it is also a state which is concerned about the fair treatment of all citizens.

It would also enhance the state's profile as a desirable place to locate companies. It is worth noting that approximately half the Fortune 500 companies now extend benefits to the same sex partners of their employees. The ones that do are overwhelmingly those that have a large investment in their employee's skill level and training and thus want to keep them, as opposed to those companies who see employees as interchangeable cogs in a business machine. These are the same companies that pay above average wages and which would be highly beneficial to Wyoming's economy. It is worth noting that many of the companies who do not extend such benefits say that they refrain from this action not because they see it as undesirable or unjust, but because it is too difficult to distinguish who is registering with the company as a domestic partner for the sake of convenience, and who is willing to undertake the responsibilities as well as the benefits of domestic partnership. A civil marriage contract would alleviate that ambiguity.

Recognizing civil marriage for all couples would also enhance Wyoming's stature as a desirable place to retire, particularly for those with high incomes who are seeking to escape high tax states. (It should be noted that retiring couples often contribute a great deal to the state's economy while placing minimal demands on its

infrastructure, as they often have considerable purchasing power and their children are usually grown.)

Establishing civil marriage contracts for all citizens would also be highly beneficial to Wyoming families. It would appear to be obvious that the laws supporting the stability of marriages benefit families. If this were not the case, would it not be as easy to get a divorce as it is to get a marriage license? There are so many arguments to be made in favor of marriage as opposed to simply deciding to raise children while cohabiting that I will not take the time to enumerate them here. The only down side of recognizing same sex marriages is the claim that in doing so, we would somehow diminish the significance of heterosexual marriages. While this argument might have strong emotional appeal, I have yet to encounter anyone who can tell me how recognizing a same sex couples' marriage in any way diminishes my marriage.

Quite the contrary, as Jonathan Rauch – a writer with impeccable conservative credentials - points out in his book *Gay Marriage*, not recognizing the marriage of same sex couples does tend to undermine the institution of marriage. Here's how. In order to comply with their sense of just treatment of employees and in order to keep high value employees, a number of states, municipalities, and companies are now offering the same benefits to cohabiting partners that they offer to married couples. While some of these entities have restricted these benefits to same sex cohabiting partners who cannot get married, when faced with potential law suits from cohabiting heterosexual partners who simply choose not to marry but want the benefits that go with marriage, an increasing number of them are extending these benefits to unmarried heterosexual couples as well.

According to the 2000 census there were 54.5 million married couples living in the US. There were also 5.5 million couples living together but not married (a little over 1 in 10) and of these about 1 in 9, 594,000 were same sex couples though this number may well have been underreported due to fears about identifying officially as same sex partners. Marriage is obviously no longer seen as the only acceptable option for couples who want to live together. Nevertheless, it seems hard to see how establishing an atmosphere that says "If you want the benefits of marriage accept the legal responsibilities as well." would do more to harm heterosexual marriage than the situation as it currently exists.

When it comes to judging the benefits to children of recognizing same sex marriage, a similar situation exists. While it has been argued that gay parents are not as good as heterosexual parents, as Evan Wolfson points out in his book, *Why Marriage Matters*, "...the American Psychological Association reported in 1995, upon reviewing the body of studies, that children raised by gay parents are not 'disadvantaged in any significant respect relative to the children of heterosexual parents.' Since then, most of the nation's leading organizations devoted to children's health, children's welfare, and mental health have declared that a parent's sexual orientation, gay or non-gay, is irrelevant to that parent's ability to raise a child. In addition the APA, these groups include the American Academy of Family Physicians, The American Psychiatric Association, the American Psychoanalytic Association, the Child Welfare League of America, the

North American Council on Adoptable Children, the National Education Association, and the National Association of Social Workers, among others.

In 2002, the American Academy of Pediatrics, the organization representing our nation's kid's doctors, issued a formal policy statement in support of gay parents and their children and recommended that the law provide structures of responsibility and support for those families and for others." (p.93)

While there is some research indicating that children in families where the parents are married fair better on average than those in families with single parents or where the parents are merely cohabiting, given the literature's support of the ability of gay parents to raise healthy children, this becomes an argument for supporting same sex marriage rather than against it.

While it would be easy to argue against taking this step on the basis that it does not represent the people's will based on their current understanding of the issue, hardly any societal change towards creating a more just society had popular support when it was first taken. Advances in society come about when leaders choose to act on their own clear vision of justice despite the lack of popular support. Ask yourself, at what point would you have supported the American revolution, at what point would you have supported the abolition of slavery, when - during the 70 year struggle it took to accomplish it - would you have spoken out for a woman's right to vote, when - had you lived in the south - would you have spoken out against Jim Crow laws and embraced the legal finding that separate is not equal, when would you have spoken out against the laws against interracial marriage? These social changes, which seemed cataclysmic to some at the time, are now taken for granted as the right thing to have done and yet they only came about because of the vision and courage of those who were willing to step beyond the limits of popular opinion in the direction of greater justice.

We are facing a similar social change now. No matter how much some folks might wish gays and lesbians would just go back in the closet and leave the rest of us alone it's not going to happen nor should it happen. Our choices are to side with the likes of Rosa Parks, Nelson Mandela, and Bishop Desmond Tutu, or with the likes of George Wallace. How this issue will eventually be resolved is not in doubt. How we will be remembered by history is an open question. Believe me, the world is watching.

There are even international implications to the decisions before us. In our attempts to spread American style democracy to Iraq the biggest question that new nation faces is whether or not the religious beliefs of the majority Shiites, who favor a nation based on fundamentalist Islamic law, will find a way to respect the civil rights of those minorities who have different religious beliefs. Under fundamentalist Islamic law it is appropriate to stone to death a Christian who witnesses to their faith in such a way as to convert someone from their Islamic faith. While none of us would find this acceptable, it is more difficult to make a case for respecting the rights of religious

minorities in Iraq if we are not willing to practice what we preach by extending civil rights to minorities in this country, despite the fact that doing so is not yet the view of the most vocal religious faction in this country. Civil marriage is a civil right that does not need the support of any religious tradition even though it has the support of many.

A century and a half ago, Unitarian minister Theodore Parker expressed his confidence that the eventual abolition of slavery was inevitable based on his faith that while the arc of the Universe is long, it does bend towards justice. I know that the decision to embrace the concept of civil marriage as separate and distinct from the religious institution of marriage is probably a new concept for many people. Still, I would propose that it represents a possible path through what may otherwise prove to be a thorny and divisive issue for many years to come. The issue of recognizing same sex marriages will eventually be resolved in favor of justice – such issues always are. The question that remains open is what role we want to be remembered as having played in the drama that leads to that inevitable outcome. May we each choose wisely.