

SAME SEX MARRIAGE: FREQUENTLY ASKED QUESTIONS

Isn't it unconstitutional to treat someone as a second class citizen by denying them the chance to marry the person they choose?ⁱ

Arguments about “second class citizens” are grounded in legal principles of equal protection and relate, in part, to our country’s civil rights history.ⁱⁱ However, equal protection “does not require things which are different in fact or opinion to be treated in law as though they were the same.”ⁱⁱⁱ

Washington’s definition of marriage acknowledges the fundamental truth that opposite-sex couples are different from same-sex couples, which flows from the fact that men and women are uniquely different. Such an affirmation is neither offensive nor unconstitutional. Rather, it recognizes the real and crucial differences between same-sex unions and marriage between a man and a woman.

And it is these legitimate, undeniable differences which show that not only *can* the government give official recognition to marriage, it *should*. Particularly, numerous courts have relied on the unique procreative capacity of opposite-sex relationships in concluding that “the many laws defining marriage as the union of one man and one woman ... are [constitutional because they are] rationally related to the government interest in „steering procreation into marriage.”^{iv}

This is true not only of every appellate court—federal and state—to consider this issue under the U.S. Constitution, and also true of the Washington State Supreme Court which found Washington’s current definition of marriage to be constitutional.

Doesn't current law deny homosexuals the fundamental right to marry that heterosexual couples enjoy?

No. Everyone has the same limitations in who they marry.

When a couple applies for a marriage license, there are several limiting factors. You cannot marry a relative who is closer than a second cousin. You cannot marry someone who is already married. You cannot marry a minor without parental permission and/or permission from the court. And, of greatest concern to gay marriage advocates, you cannot marry someone of the same gender. These restrictions apply equally to everyone.

That does not restrict the kinds of relationships that people can form. And in Washington, domestic partnerships, which can include same-sex or opposite-sex couples, have precisely the same legal protections as married couples.

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Public opinion seems to be favoring gay marriage. Shouldn't that be reflected in our laws on marriage?

Public opinion has never favored same-sex “marriage.”

Public opinion consistently holds that marriage should be between a man and a woman, and this is reflected in the way they vote.

Currently 31 states have constitutional amendments that define marriage as between one man and one woman. These amendments have passed in every state where they have been placed on the ballot, and it is likely that two more states will follow suit in 2012. Even in more liberal states like Maine and California, voters have always concluded that marriage is, and should be, defined as a relationship between a man and a woman.

While it is never a good idea to govern by public opinion poll, it is inaccurate to say that the public is in support of same-sex marriage.

If love makes a family, why would we deny gay people who love each other the opportunity to live as they choose?

There is no movement anywhere in America that wants to prevent individuals or couples from living life as they choose. This issue is not about the freedom to live life as you choose. That already exists, and in Washington same-sex couples have equivalent rights and benefits. We are debating whether our government should redefine the millennia old definition of marriage, pretend there is no difference between men and women, and bring the force of state government to bear on those who disagree.

Shouldn't the government just give a civil union to anyone who wants one and leave marriage to the religious communities?

Eliminating marriage entirely in favor of universal civil unions is unlikely to eliminate the current debate.

In the absence of marriage laws, the government would still need a way to manage the relationships that we call marriages. That would likely be done through civil union legislation. However, it is improbable that we would actually open up civil unions to “all” relationships. Washington State is not prepared to provide benefits to “civil unions” involving adult family members or polygamists.

Unless you opened up civil unions to every conceivable relationship, the government would still be in the position of preferring some relationships over others with civil union status. As a result, the debate would be precisely the same, except we would be discussing civil unions instead of marriage.

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Why are people trying to change the law to discriminate against gay people?

Actually, the opposite is true. State law has always defined marriage as a relationship between a man and a woman and people have always been free to marry or not. It is the supporters of same-sex “marriage” who are trying to revolutionize state law and force their belief that there is no difference between homosexual and heterosexual relationships on those who disagree.

Why should it be illegal for gay people to live life the way they want to?

It isn't.

Not only is it not illegal for gay couples to live however they wish, Washington law eliminated any difference between marriage and same-sex domestic partnerships. They can live together, own property together, visit each other in the hospital, and in most states, including Washington State, they can adopt children. A same-sex couple has the ability to obtain every right that a married couple has. Moreover, the ability to register as domestic partners provides all of these rights automatically.

The only freedom at stake in the debate over gay marriage is the freedom of those who have a moral or religious objection to the homosexual lifestyle to be able to respectfully live their life in accordance with those beliefs.

By prohibiting gay marriage, aren't we violating the separation of church and state?

No.

The phrase “separation of church and state” does not appear anywhere in the United States or Washington State Constitutions. Regardless, the fact that people of a particular religious faith share common ideas does not mean that those ideas are necessarily unconstitutional because they are religious.

To the contrary, our laws against stealing, killing, lying, perjury, incest, rape, battery, and destruction of property were all religious tenets before they were laws. No one wants to repeal the criminal code because its major themes were first recorded in the Bible.

The idea that a preference for heterosexual marriage is unconstitutional simply because it is consistent with the teaching of every major religion, (except, perhaps Buddhism) is practically and constitutionally unsupportable.

Our founding fathers wanted to avoid a situation where a religious organization wrote the law for the country. However, they did not intend to create a country in which citizens and elected officials were

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forbidden from reading, discussing, thinking about, or legislating ideas that happened to be religious in nature.

Isn't it wrong to legislate morality?

No. In fact, it is impossible not to legislate morality.

The distinction between secularism and religiosity is meaningless because every idea, whether secular or religious, is moral. All law is a statement of belief that a particular behavior is either good or bad. Such positions are beliefs are the very definition of morality. Whether your morality comes from Confucius, Mohammad, Oprah, Freud, Dr. Phil, Dr. Seuss or Jesus has no bearing on the fact that all legislation will be moral legislation.

As a result, every individual citizen should feel completely free to zealously advocate for his or her ideas through all legal means.

Our constitution ensures that there will be a distinction between religious law and secular law because it does not give legislative authority to religious institutions. However, it does not exclude religious thought from the marketplace of ideas. It simply guarantees that ideas with religious roots will only become law once they have gone through the legislative process and satisfied constitutional requirements.

Most thoughtful citizens have no interest in legally imposing their religion. That is one of the many things that make America great. However, good ideas should not be disqualified from public policy discussions because they happen to have religious roots.

In a Democracy, don't we need to be concerned with the rights of the minority?

Yes, and we are.

The majority is always limited in what it can do by the state and federal constitutions. This is appropriate. However, the constitution allows things that are different to be treated differently. And because homosexual and heterosexual relationships are different, the Washington State Supreme Court has already stated that the people of Washington State are free to define marriage as they see fit. Every state and federal appellate court, including the Washington State Supreme Court, has concluded that there is no constitutional right to marry anyone you want. As a result, it is perfectly legal to continue to define marriage in the way it has been defined for the entire history of the state.

Isn't it bad to discriminate?

In a literal sense, of course not.

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Discrimination is not only appropriate, it is necessary for survival. In fact, the inability to rationally discriminate (or exercise discretion) is one of the ways psychologists diagnose mental illness.

In its most basic form, discrimination is simply a choice. Every person discriminates constantly on the basis of cost, value, personal preference, convenience, comfort, competency, effectiveness, and danger to yourself and others. When you refuse to allow a sex offender to baby-sit your child, you discriminate against him.

The law discriminates against people because of their age (voting laws, drinking laws,) income bracket (for tax purposes) physical disabilities (driving restrictions) and even their gender (women are not eligible for the draft). Most thoughtful people agree that discrimination is essential to life and orderly government. However, the word “discrimination” is frequently used in an effort to silence people whose opinions are not appreciated.

The proper question is not *if* we should discriminate, but how we should discriminate. Contrary to their rhetoric, same-sex “marriage” advocates are not attempting to end discrimination in marriage. They simply want to redefine marriage in a way that includes them, but excludes others.

Both sides agree that not every relationship involving two adults should fall within the definition of marriage. However, one side is typically not transparent about that fact.

Sometimes, when we talk about the need to end “discrimination”, what we really mean is that we need to be kind, especially to those who are not just like us. That should be a place we can find common ground. But the idea that one side wants to end discrimination but the other side wants to continue discriminating is either ignorant or intellectually dishonest.

ⁱ The response to this question is taken, with only slight modifications, from written testimony delivered to U.S. Sen. Chuck Grassley by Austin R. Nimocks, Senior Legal Counsel with the Alliance Defense Fund, after a question during testimony before the Senate Judiciary Committee on July 20, 2011.

ⁱⁱ See, e.g., *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961).

ⁱⁱⁱ *Plyler v. Doe*, 457 U.S. 202, 216 (1982) (quoting *Tigner v. Texas*, 310 U.S. 141, 147 (1940)).

^{iv} *Citizens for Equal Protection v. Bruning*, 455 F.3d 859, 867 (8th Cir. 2006).

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