



MEMORANDUM

TO: To Whom It May Concern

FROM: Brian W. Raum, Senior Legal Counsel, Alliance Defense Fund
Austin R. Nimocks, Senior Legal Counsel, Alliance Defense Fund

DATE: December 31, 2008

RE: Necessity of a Constitutional Amendment Protecting Marriage in West Virginia

According to a recent poll, 73% of West Virginians support a constitutional amendment defining marriage as the union of one man and one woman.¹ Yet, a recent memorandum published by the leading national advocates of homosexual behavior indicates that that goal of their organizations is clearly to obtain same-sex “marriage” in every state across the country,² including West Virginia. Same-sex “marriage” is a closer reality in West Virginia than many think. It is time that West Virginians made their voices heard and demand that the West Virginia legislature permit a statewide vote to permanently protect marriage.

Why is the constitutional protection of marriage required?

(1) The Defense of Marriage Act can be abolished by the West Virginia Supreme Court.

The most recent examples of such acts of judicial activism occurred in California and Connecticut where those state’s supreme courts declared as unconstitutional laws that defined marriage as the union of one man and one woman. The West Virginia Supreme Court could do at least two things to redefine marriage in West Virginia: (1) find that DOMA does not prevent alternate forms of “marriage” within the state of West Virginia, and that it only applies to out-of-state relationships; or (2) outright declare the DOMA unconstitutional.

Judicial activism is undoubtedly what concerns the 80% of West Virginians who do not want a court to redefine marriage in West Virginia.³ West Virginians are right to be concerned. Since 1936, the Supreme Court of West Virginia has cited to decisions of the California courts in approximately 393 cases, including 58 times since the year 2000. This seems to especially include reliance on California courts in matters involving marriage and the family. West Virginians should define marriage, not judges.

Absent constitutional protection, the ultimate impact of same-sex “marriage” from other jurisdictions on West Virginia is clear. Undoubtedly, same-sex couples from West Virginia have already acquired marriage licenses from Massachusetts, California, Connecticut, Canada, or elsewhere. It is only a matter of time before these relationships, and the demand for legal recognition thereof, will spill over into West Virginia’s courts. When these relationships

¹ See <http://www.campaignsitebuilder.com/user/jeremydysgmailcom/download/Poll.pdf>.

² See http://www.freedomtomarry.org/pdfs/ca_joint_advisory.pdf.

³ See <http://www.campaignsitebuilder.com/user/jeremydysgmailcom/download/Poll.pdf>.



deteriorate, applications for same-sex “divorces” will result, placing the constitutionality of West Virginia’s DOMA and marriage laws within the West Virginia courts. Undoubtedly some judge, in some place, will choose to provide a same-sex couple with a “divorce,” thereby declaring the DOMA unconstitutional. These types of same-sex “divorce” cases have already been brought in other states, and more are sure to follow. Any one of these scenarios reveals how simple it would be for advocates of same-sex “marriage” to launch West Virginia into legal chaos. Unfortunately, today the question is not “if,” but “when.”

(2) The Homosexual Agenda already has a foothold in West Virginia.

Homosexual advocates have already made significant progress in West Virginia. This progress has occurred both judicially and legislatively. In 2005, the West Virginia Supreme Court ruled in favor of homosexual advocates. In the case of *In re Clifford K.*, the West Virginia Supreme Court awarded parental rights to the former “partner” of a same-sex couple. The West Virginia Supreme Court held that the surviving lesbian partner of a deceased woman qualified as a “psychological parent” and as such had the right to participate in custodial proceedings regarding a child that was not hers. Moreover, the West Virginia Supreme Court found that the best interests of the child would be served by awarding the lesbian partner custody of the child.

Homosexual advocates have also made progress politically through the implementation of legislation. Sexual orientation “nondiscrimination” ordinances in Charleston,⁴ Huntington,⁵ West Virginia University,⁶ and Marshall University⁷ are just small examples of the seeds currently being planted in West Virginia.⁸ These seeds present a grave threat to marriage.

Finally, as an extra measure of proof that same-sex “marriage” is unfortunately already within the West Virginia legal and political bloodstream, one need only look to the West Virginia College of Law. In the last decade, the West Virginia Law Review has played an instrumental role in pushing the agenda of same-sex “marriage” through its sponsorship and publication of multiple articles that attack the traditional family and marriage.

(3) West Virginia’s Defense of Marriage Act can be repealed by the West Virginia Legislature.

Without approval of the citizens, the legislature can always repeal the current DOMA and clear the way for alternate forms of “marriage” in West Virginia. Currently, such a change would disturbingly only take the will of 69 West Virginians (18 senators and 51 delegates). Unfortunately, there is no guarantee that the West Virginia Legislature will always be composed of those who value marriage as the union of one man and one woman.

⁴ See <http://cityofcharleston.org/rights.htm> and <http://www.hrcbackstory.org/2007/08/inclusive-non-d.html>.

⁵ See <http://www.huntingtonnews.net/local/070925-rutherford-localcitycouncil.html>.

⁶ See <http://bog.wvu.edu/r/download/4239>.

⁷ See <http://www.marshall.edu/lgbo/index.htm> and <http://www.marshall.edu/eoaa/>.

⁸ Clearly, West Virginia is within the crosshairs of the homosexual advocates where they routinely describe West Virginia law as containing “no express prohibition” on matters like whether those who engage in homosexual behavior can adopt children, whether same-sex couples can adopt children, and surrogacy. See <http://www.hrc.org/1122.htm> and <http://www.hrc.org/1139.htm>. That there is “no express prohibition” on these issues will ultimately be seen on a court pleading in West Virginia.