



# INTERFAITH ALLIANCE

PROTECTING FAITH AND FREEDOM

## Same-Gender Marriage & Religious Freedom

### A Call to Quiet Conversations And Public Debates

*By*

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## **SAME-GENDER MARRIAGE AND RELIGIOUS FREEDOM: A CALL TO QUIET CONVERSATIONS AND PUBLIC DEBATES**

*My purpose in writing this paper is as simple as the subject of the paper is complex. I want to find a way for people with contradictory beliefs, religions, values and opinions to live together without violating the basic nature of our democracy. I am motivated by confidence in the power of religion to affect reconciliation. I am also a patriot who embodies the unwavering commitment to freedom and justice integral to the American experience. I seek to be involved in attempts to find common ground on which the people in our nation can meet and, through honest, civil debate, find a just solution to a challenge that is splintering our nation and hurting many of its citizens.*

*As President of Interfaith Alliance and as an active Baptist minister, I offer this paper and invite you to a discussion. An RSVP is attached to every personal opinion, inviting your response and a helpful ongoing conversation.*

C. Welton Gaddy

## INTRODUCTION

We need to talk. Then, we need to work cooperatively with each other. Or at least try. Whatever your point of view on the issue of same-gender marriage, likely we can agree that most discussions on this subject fall short of civility, often deteriorate into hostility, fail to move the debate toward a conclusion mutually acceptable amid vastly pluralistic people, and increase division among the American people.

The intensity and heat of the debate on this subject are not surprising. Discussions of same-gender marriage necessitate conversations about religion, politics, and government. These are subjects seldom treated without significant differences in opinions and inflammability in accompanying emotions.

There is a better way to proceed—a way that involves respect for opinions from gay and lesbian persons as well as from heterosexual individuals, a way that assures appreciation and respect both for religion and religious institutions as well as for those for whom religion holds no sway, and a way that is more consistent with the vision of this nation that birthed the guarantees of individual freedoms in the United States Constitution and guided the formation and development of our government.

Interfaith Alliance institutionally and I personally propose that we continue, broaden, and deepen our national discussion on this emotional subject. We envision, encourage, and seek to facilitate dialogue characterized by civility, mutual respect and a focus more on what it means to be an American than what it means to be a heterosexual, lesbian or gay person.

## **DON'T START WITH RELIGION**

Typically discussions on same-gender marriage, whether in the chamber of a state legislature or a chair in a hair dresser's shop, begin with comments related to religion. Seldom, however, is the result a discovery of common ground on which to continue conversations. Let's face it, dialogues about religion will not forge national consensus on any socio-political issue or serve as a source of national unity. The population of our nation is too diverse and the religions in our nation are too different for that to happen. Individual religious traditions are divided from each other externally and, internally, adherents within each of these traditions are divided from each other. Then, too, religious people tend to be divided from the growing number of individuals who favor no religion.

Not uncommonly, discussions on same-gender marriage begin with a focus on Holy Scriptures. Within Jewish and Christian traditions, predictable passages of scripture surface immediately: Genesis 19:4-8; Leviticus 18:22, 20:13; Romans 1:22-27; 1 Corinthians 5:10, 6:9; 1 Timothy 1:10; Jude 1:7; and 2 Peter 2:6. Controversy, if not heated debate, erupts rather quickly. At issue is not a particular passage of scripture so much as a particular method for interpreting all scripture. Those who claim to take every word in every passage of the Bible literally declare that the Abraham-centered narrative in Genesis 19 condemns homosexuality. However, reading this same passage of Hebrew Scripture, other people, who employ a different method of biblical interpretation, insist that this passage is about hospitality, not homosexuality.

Many students of the Jewish and Christian scriptures point out that though the phenomenon of same-gender attraction was a subject of discussion at least as early as Plato's

*Symposium*, the actual term *homosexuality* was not coined until 1869. But, disagreements related to scripture are not a matter of reason alone. Some people feel that to go against a particular interpretation of a passage of scripture is to damn themselves to eternal punishment.

Typically, when such discussions of the Bible finally end, no new insights have been discovered and the people in the debate have become more entrenched in their respective beliefs and more avid about, if not angered by, what they perceive as “the error” of the others’ point of view.

Such a result is no surprise. Careful research as well as personal experience documents the reality that people’s attitudes toward and positions on same-gender marriage heavily reflect lessons, homilies, lectures and sermons from religious leaders to whom they listen regularly and to whom they ascribe religious authority.<sup>1</sup>

Since more conversation is needed in pursuit of

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<sup>1</sup> A 2009 Public Religion Research poll found that three of the six most powerful independent influences on people’s views on same-gender marriage were related to religion – people’s view of the Bible, religious affiliation, and attendance in a house of worship. Individuals’ opposition to or support for same-sex unions tends to be determined, in large part, by the messages they hear in their houses of worship. For example, 58% of white evangelicals oppose legal recognition for same-sex couples as compared with only 26% of white mainline Protestants expressing similar opposition. (Robert P. Jones and Daniel Cox, *American Attitudes on Marriage Equality: Findings from the 2008 Faith and American Politics Study*. Public Religion Research, LLC, February, 2008, pp 4, 14.) Another Public Religion Research poll, discovered that a whopping 65% of mainline clergy favor either same-sex marriage (33%) or civil unions (32%). (Robert P. Jones and Daniel Cox, *Clergy Voices: Findings from the 2008 Mainline Protestant Clergy Voices Survey*. Public Religion Research, LLC, March, 2009, p 25.)

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finding a solution to the same-gender marriage dilemma and discussions of scriptural teachings tend to end such conversations, we had best find a different starting place for our considerations of this subject. Surely, people of different faiths and no faith can all be Americans. People who recognize the authority of scriptures certainly need not ignore the issues of scriptural teachings both on homosexuality and marriage. Neither, though, do scriptural teachings or religious beliefs belong as topic number one in discussions about the government's role in this controversy. No individual has to give up a religious conviction in order to extend the government's provision of the rights and privileges, as well as the responsibilities and accountability, of marriage to people of the same gender.

## **WE HOLD THESE TRUTHS**

Interfaith Alliance and I are honestly seeking common ground on which we can work together to provide basic civil rights benefits to same-gender couples without violating a religious organization's right to marry only people whom it judges worthy of its blessing. We don't believe such common ground ever will be reached by beginning the discussion on the subject of Holy Scriptures or religious traditions. Indeed, since marriage is a civil issue, not a religious issue in the United States, we feel it appropriate to begin discussions from the perspective of religious liberty and with a focus on rights that all citizens should enjoy. We seek to explore whether or not those currently opposed to same-sex marriage are willing to grant constitutional rights to all citizens, knowing their religious institutions are protected by the religious liberty provisions in the First Amendment.

*“ . . . Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. . . ”*

The constitutional guarantee of religious freedom is the best perspective from which to view the subject of same-gender marriage and around which to convene a national dialogue on the legality of same-gender marriage. These religious freedom clauses in the First Amendment to the Constitution emerged from devotion to the very principles that many of us seek to preserve and strengthen in the outcome of public debate on same-gender marriage.

Prior to writing the first word of this paper, I sought to articulate some of the most important of these principles:

- The United States government is secular in nature though appreciative of the importance and contribution of religion to its past and present.
- Institutions of religion and institutions of government should remain separate from each other, while maintaining appreciation and mutual respect for each other and recognizing that religion and politics will always interact in people individually.
- Neither the federal government nor a state or local government should insert itself into or intrude upon the confessions, beliefs, ceremonies and rituals of houses of worship unless violence and personal harm are occurring in the name of religion.

## A NEW PLACE TO BEGIN

Law, not scripture, is the foundation of government regulations related to marriage in our nation. Presently, the United States government recognizes marriage on the basis of a properly authorized, government-issued marriage license. Inconsequential to the legitimacy and the legality of a marriage recognized by agencies of American government are the ceremonial rites – civil or religious – involved in the wedding that produced the marriage. In the United States, marriages may result from vows stated and pronouncements made in the midst of grand spiritual services conducted by vested clergy in spaces for sacred worship – or in the cramped office of a justice of the peace who offers a simple declaration of marriage after reading lyrics from a Bob Dylan song.

Here! Let's start discussions of same-gender marriage here: focusing on the civil basis of marriage and being ever mindful of the importance this marital relationship may have within various religious traditions. Making religious freedom the starting point of discussions of same-gender marriage can be of inestimable help in broadening our conversations and perhaps even in discovering resolutions.<sup>2</sup>

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<sup>2</sup> Significant encouragement for my proposal can be found in the *American Attitudes on Marriage Equality* poll released early in 2009. Based on their expert analysis of that polling data, Robert P. Jones and Daniel Cox found: "Addressing religious liberty concerns significantly increases support for same-sex marriage." Assurance of religious liberty guarantees raised support for legalized marriage equality from 29% to 43%. (*American Attitudes on Marriage Equality*, p 4.)

## WITH LIBERTY AND JUSTICE FOR ALL

We must be honest. Debates on the moral acceptability and personal equality of gay and lesbian persons likely will not end soon, if ever. Such is the consequence of vast numbers of people whose judgments about homosexual persons are shaped by vastly different views of religion, religious authority, morality, and theology. People who are condemnatory of homosexuals and/or homosexual behavior seldom change their minds as a result of biblical studies, rational arguments, or theoretical debates. A major shift in opinions or complete changes in people's minds tend to occur, if at all, as a result of personal experiences with gay and lesbian individuals.<sup>3</sup>

In our nation, however, issues of social acceptability and civic equality have a secure foundation independent of religion. That foundation is called the United States Constitution. Informing that document and standing alongside it is the force of the Declaration of Independence that, as far back as 1776, trumpeted to the world that "all men are created equal . . . endowed by their Creator with certain unalienable Rights." The founders of this nation did not encumber basic rights and liberties with a requirement of affirmation from any religion. Their resolute compliance with core democratic values prevailed despite differences in opinions about religion and beliefs shaped by religion. The founders launched this grand experiment in democracy in order to find ways to work together for the betterment of this

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3 *American Attitudes on Marriage Equality*, p 4. Not surprisingly, the Public Religion Research poll found that 48% of the people who have close relationships with individuals who are gay or lesbian support same-sex marriage. That number drops to 14% among individuals who have no relationship with gay or lesbian persons.

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government and for assurances of liberty and justice for all of their present and future fellow patriots.

Our challenge is to live out the vision of our founders and to assure every citizen a realization of the promises of our Constitution. This requires that everyone respect the conscience and convictions derived from the many religious traditions and non-religious people that call this land their home. *A free exercise of religion!*

At a minimum, such work requires the government not to force any religious body to violate its most profound theological, spiritual and moral convictions; nor should any religion or religious institution seek to use the government to impose its particular views on the American public by means of law. *No establishment of religion!*

This also means the government guarantees that all citizens – gays, lesbians, heterosexuals, or otherwise – enjoy the full benefits of American citizenship without compromising the rights of any other person. The application of religious freedom to the issue of same-gender marriage means that government must not discriminate among persons to whom its officers issue licenses for marriage and certificates of marriage. It requires that government, through its elected leaders and chosen authorities, must respect houses of worship and religious traditions that disagree with its provision of liberty and justice for all people.

## MARRIAGE AT THE INTERSECTION OF RELIGION, POLITICS AND GOVERNMENT

Government controls marriage in the United States. Despite the religious community's avid interest in marriage and heavy involvement in wedding ceremonies, legal marriage does not exist in this country without a government-issued license for marriage and certificate of marriage. Indeed, religion has no actual influence, legal or otherwise, on the United States government's recognition of marriage. Couples do not have to be religious to get married. Religious leaders do not have to preside over marriage ceremonies. Marriage partners do not have to make any pledge to support or be involved in a religious institution. To summarize, in the United States marriage is a legal institution—sanctioned by government and restricted by the government in the number of partners allowed in a marital relationship and the minimum age of those partners.

To confuse the civil institution of marriage with a religious institution to be protected by the government is to seriously misunderstand marriage and its relationship to government in the United States! Civil law determines the formation and dissolution of a marriage as well as the duties, responsibilities, rights and benefits of married people: rights related to property, insurance, inheritance, bankruptcy, social security and more; duties related to mutual support, payment of taxes and more; and a variety of privileges.

Since the inception of this nation, religious leaders have recognized that the governance of marriage resides with the state. Leaders of religious organizations have complied with state requirements that those who officiate at marriages – even religious marriages with rites performed in houses of worship

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– be authorized by the government to serve as representatives of the government in the marriage ceremony. Similarly, religious leaders and houses of worship continue to look to the government to decide when marriages should be terminated.

Thankfully, the government’s control of marriage is not without limits. The First Amendment to the Constitution prohibits the government from imposing its meaning of marriage on a house of worship. Our constitutional principle of mutual reciprocity is invaluable. The government has no more right to define marriage for a house of worship than any religious body has a right to impose its sectarian view of marriage on the entirety of a government by means of law. As legal scholar Douglas Laycock asserts, “Religious and legal marriage are . . . distinct in conception as well as in origin.”<sup>4</sup>

In recent court decisions and legislative actions in the states of Massachusetts, California, Iowa and Vermont favoring same-gender marriage, officials stated explicitly that they have no power to redefine a religious institution. Civil marriage is a secular institution. The California Supreme Court even raised the possibility of choosing a word other than marriage to designate the civil relationship.

But there is a problem. Exacerbating an already complex challenge posed by same-gender marriage is the involvement of politics – partisan politics – in national discussions.

President Bush, in particular, heightened confusion in our nation when, for political reasons, he assumed the

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<sup>4</sup> Douglas Laycock, “Afterword,” *Same-Sex Marriage and Religious Liberty: Emerging Conflicts*. Edited by Douglas Laycock, Anthony R. Picarello, Jr., and Robin Fretwell Wilson, (The Becket Fund for Religious Liberty and Rowman & Littlefield)

posture of a theologian and lectured us about the meaning of marriage. Responding to the Massachusetts decision on same-gender marriage on February 4, 2004, President Bush declared that redefining marriage by recognizing same-sex marriage threatened the “sanctity” of marriage. Of course, there is the question of “how.” More importantly, protecting the sanctity of marriage is not the business of the President of the United States or of any branch or officer in our government. Their responsibilities are to protect the Constitution and assure that their administration of government provides constitutional services to people with equity and justice.

“Sacred” and “sanctity” are words related to holiness. Government does not have the capacity to create holiness or to sanctify anything, including marriage. Unfortunately, President Bush assumed that the courts of Massachusetts were redefining a religious institution. The courts of Massachusetts were clear: they were dealing with law as assigned by the government.

As pointed out above, agencies of the state governments that have expressly supported same-gender marriage stated explicitly that they have no power to redefine a religious institution. The debate on marriage equality would be enhanced considerably and perhaps aided in its progress in finding solutions if all politicians recognized that civil marriage is a secular institution.

Politicians are doing no favor to our nation by confusing the public on the issue of same-gender marriage. Speaking with one voice, voters should say to their government representatives: “Stop playing politics with marriage!”

The manner in which the government handles divorce can be instructive regarding the manner in which

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government should handle marriage. The United States government does not look to majority religious opinions to inform the justifications for which it grants divorces. Indeed, the government's action on divorce often conflicts with the values of some religious traditions. Catholics, for example, believe marriage is forever, beyond dissolution. Yet states grant divorces. Ponder the principle involved here. A house of worship does not have to recognize divorce, but the government does. And, a divorced person can secure a marriage license to marry again; the government makes that provision regardless of several different religions' opposition to divorce and remarriage. Additionally, the government respects a house of worship's right to refuse to participate in the remarriage of a divorced person. I repeat: the manner in which the government handles divorce can be instructive regarding the manner in which government should handle marriage.

Historically, the government's control of marriage is clear. As recently as 1987, in a unanimous decision on a case giving prisoners the right to marry, the United States Supreme Court ruled that marriage is such an important institution that prohibitions to marry cannot be arbitrarily established by the government.<sup>5</sup> Of course, the Fourteenth Amendment to the United States Constitution cites no gender-based exclusion when extending "equal protection of the laws" to all citizens. A marriage certificate is a civil document issued by an agency of government on the basis of a decision about the civil rights of two people.

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5           Turner v. Safely, 482 U.S. 78 (1987).

## MARRIAGE AND CIVIL RIGHTS

Cognizance of historical precedent and governmental declarations related to civil rights and marriage evokes the question of why any citizen in our nation should not be granted freedom to marry. How can sexual orientation be made a legitimate disqualifier for couples interested in the civil institution of marriage? If marriage is primarily a civil institution, as regularly illustrated in the attitudes and actions of religious leaders, why should marriage not be available to all citizens? Must gay and lesbian people be considered less worthy of civil rights than criminals?

Some anti-same-gender-marriage activists adamantly argue that sexual orientation cannot be treated in the same manner as race because a choice is involved in sexual orientation. Such thought represents faulty science as well as deafness to the voices of civil rights leaders.

Commenting on African-American civil rights leaders' support for same-gender marriages, D. James Kennedy and Jerry Newcombe wrote with no equivocation: "Blacks resent this notion."<sup>6</sup> I assume that not all African-American civil rights leaders support same-gender marriage. However, the distinguished civil rights leader John Lewis, who is now an influential member of the United States Congress, left no doubt about this matter in a speech calling for defeat of the "Defense of Marriage Act." Lewis said, "This is a mean bill. It is cruel." He called it a "slap in the face of the Declaration of Independence" and asserted, "Marriage is a basic human right." Reflecting on the civil rights struggle, Lewis continued,

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6 D. James Kennedy and Jerry Newcombe, *What's Wrong with Same-Sex Marriage?* (Wheaton, IL: Crossway Books, 2004) p. 37.

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“I have fought too hard and too long against discrimination based on race and color not to stand up against discrimination based on sexual orientation.” In conclusion, the congressman declared, “This bill stinks of the same fear, hatred, and intolerance” as racism.<sup>7</sup>

Early in my professional career, I tried to make a sharp distinction between rights for gay and lesbian people and civil rights for African-American people. But the burden of the argument became too heavy (even as the flawed reasoning defied defense). As Lewis Gates points out, African-Americans were denied the right to marriage as a means of emphasizing their lack of full humanity.<sup>8</sup> I wanted, and I want, no part of such bigoted thought. Civil rights exist to assure equality under the law for everybody.

Respected author and religious leader Peter Gomes has questioned why our government subjects enforcement of the civil right of marriage to electoral referendum. The only reason why our government would hold a referendum on a right guaranteed in the Constitution, Gomes asserts, is because of the influence of powerful special interest groups. He remembers similar occurrences along the path to guaranteeing full civil rights for women and for African Americans.<sup>9</sup>

Legal scholar Evan Gerstmann declares, “The Constitution guarantees every person the right to marry the person of his or her choice.”<sup>10</sup> Thus, as with other rights, the

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7 John Lewis, “House Debate on the Defense of Marriage Act, *Same-Sex Marriage: Pro & Con, A Reader*, Andrew Sullivan, editor, revised edition (New York, Vintage Books, 1997, 229-230), p 229-30.

8 Evan Wolfson, *Why Marriage Matters: America, Equality, and Gay People’s Right to Marry*, (New York: Simon and Schuster, 2004), p 110.

9 Wolfson, p 167.

10 Evan Gerstmann, *Same-Sex Marriage and the Constitution*, second edition (Cam-

right to marry applies to gay and lesbian people as it does to every other citizen. The government's provision of same-gender marriage does not require a change in the Constitution, only a change in the will of politicians who hold public offices.

Our nation's understanding of marriage would be helped immensely and advancement of the right of all people to marry extended significantly if leaders in our government would rise above partisan politics, eliminate unnecessary confusion by articulating the truth about the government's singular control of marriage, and announce their intent to comply with the Constitution such that the right of every person to marry is fundamental.

## **MARRIAGE AT THE ALTARS OF RELIGION**

If government officials and religious leaders distinguished the differences between legal marriage and religious marriage, they could greatly reduce the amount of conflict in public discussions on same-gender marriage. Many people seem either to ignore or to be unaware of the fact that, despite the soaring language and lofty images used to describe marriage in most religious traditions, in the United States marriage is a civil institution. Decisions about who is married and who is not married are the prerogative of the government, not a house of worship, a spiritual leader, or a religious tradition. Lawful marriage does not occur in the United States without a marriage license and a certificate of marriage, both of which must be acquired from an agency of the civil government.

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The government of the United States recognizes marriage completely without reference to religion. In the United States, marriage is a legal institution—sanctioned and restricted by government. To confuse the civil institution of marriage with a religious institution to be protected by the government is to seriously misunderstand marriage and its relationship to government in the United States.

Religious freedom protects every house of worship from government intrusion to impose a particular view of marriage or to demand a religious blessing for a special kind of marriage – like same-gender marriage. The United States Constitution provides a way for the government to keep its promise of guaranteeing equal rights for all people while, at the same time, protecting the freedom of religious institutions to practice their respective doctrines and values. Both religious bodies and governmental institutions can function with integrity while supporting liberty for everybody.

## ENDURING ASSURANCES

Americans' attitudes toward same-gender marriage are changing. That should be no surprise. Changes in attitudes toward marriage can be documented throughout secular history and even in sacred scriptures. A recent poll indicates "A majority of Americans support either allowing gay couples to legally marry (29%) or form civil unions (28%)."<sup>11</sup> According to this poll, 57% of the American people favor a legal recognition of same-gender unions. How best to translate that public will into law is a question without a consensus answer.

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<sup>11</sup> *American Attitudes of Marriage Equality*, p 7.

Disagreements on the best way forward exist even among those who agree that some form of legal recognition for same-gender unions is needed. New proposals for such a provision are emerging regularly. While opinions are coalescing around details on how to proceed, however, certain assurances rise above debate. Any policy on same-gender marriage that is proposed for adoption as a legal statute must contain certain key provisions.

First, the same benefits should be guaranteed to same-gender marriages that are provided to marriages between men and women. Currently at least 1,138 statutory provisions are available to people who can marry that are unavailable to same-gender couples who are denied marriage.<sup>12</sup> The outcome of the current debate on same-gender marriage will impact significantly the benefits, rights and privileges available to same-gender couples related to housing, employment practices, public accommodation, medical and pharmaceutical services, licensing, government funding, access to civic property, membership in private clubs, freedom of speech, death, debts, divorce, family leave, health, immigration, inheritance, insurance, parenting, portability, privilege, property, retirement, taxes and more—legal provisions rightly expected by all married persons, regardless of their respective sexual orientations, in a democracy committed to equality and justice.<sup>13</sup>

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<sup>12</sup> In 2004 in a letter to Senator Bill Frist, who was at that time the majority leader in the United States Senate, Associate General Counsel Dayna K. Shah cited a 1997 report in which 1,049 federal statutory provisions in the United States Code that were contingent on marital status. That figure was updated to 1,138 in light of statutory provisions involving marital status that were enacted between September 21, 1996 and December 31, 2003. See the United States General Accounting Office's document GAO-04-353R entitled *Defense of Marriage Act*.

<sup>13</sup> A particular outrage of justice arises when same-gender couples who have lived together faithfully for many years are deprived certain benefits that, especially in times

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Second, and more difficult to assure, same-gender marriages should enjoy a status that commands the same recognition and respect as that extended to marriages between men and women. This may prompt memories of protests against racial integration and the passage of civil rights legislation. “You can’t make me love anybody by passing laws!” segregationists shouted. And, they were right. However, in that turbulent, focused period of civil rights struggles and its immediate aftermath, our nation learned that social attitudes were positively affected by federal legislation. Once civil rights legislation had been enacted, law-abiding citizens strove for more peaceful and respectful relationships across racial lines.

Predictably, people who believe that the legalization of same-gender marriages will erode the stability and sanctity of

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of crisis, deprive a couple of togetherness and opportunities for mutual love and support. This concern is not about an abstract debate regarding law; it is about flesh-and-blood human beings who are experiencing debilitating discrimination.

I have a close personal friend who has been in a committed lesbian relationship for 23 years. Her former husband has more rights related to my friend than does her partner for nearly a quarter of a century. Several years ago when my friend faced the necessity of a major surgical procedure with a lower-than-usual success rate, she not only had to deal with the anxiety related to her physical well-being but also with worry related to her wishes being carried out in the case of death. The law offered her little assurance that her partner would be recognized as the caretaker of her body or the recipient of her inheritance.

My friend was especially panicked because five years prior to that crucial moment in her life, she had seen a tragic situation unfold for a lesbian couple who were her friends. One of these women took a hard fall and was afflicted by an aneurism. The hospital would not allow her partner any privileges without a document establishing her power of attorney. The couple had no standing as a family. While one member of the couple was attempting to get legal paperwork faxed to her at the hospital, the partner in physical distress died *alone*, without her partner by her bedside; the hospital had kept the couple separated. Sadly, only by securing help from the dead woman’s former husband, was the grieving partner allowed to help make funeral arrangements for her deceased lover/partner. This is wrong!

On May 19, 2009 the *New York Times* reported on a recent case in which a trauma center in Miami, Florida denied visitation to a woman whose partner of eighteen years was a patient there as a result of an aneurysm. Visitation also was denied to the two women’s adopted children. (Tara Parker-Pope, “Kept From a Dying Partner’s Bedside,” *New York Times*, May 19, 2009.)

heterosexual marriages will have trouble with this provision. The logic involved in that argumentative assertion is questionable. Why would anyone decry a marital relationship that exhibits fidelity and community between two people across scores of years?

As Gomes observed, “To extend the civil right of marriage to homosexuals will neither solve nor complicate the problems already inherent in marriage . . . what it will do is permit a whole class of persons . . . deprived of a civil right, both to benefit from and participate in the valuable yet vulnerable institution which in our changing society needs all the help it can get.”<sup>14</sup>

Third, the legalization of same-gender marriage can and should be accomplished in a manner that poses no threat to religious bodies that oppose this action. Assuring this provision, though, is more difficult than may be apparent at first. At a minimum this guarantee must assure houses of worship that they will not have to offer rituals or blessings for marriages they do not condone. Consideration also must be given to the advisability of religious exemptions related to fair housing laws, public accommodation laws, and employment laws to name only a few realms of challenge. This may not be easy. Indeed, Marc D. Stern argues that “if there is to be space for opponents of same-sex marriage, it will have to be created at the same time as same-sex marriage is recognized, and, probably, as part of a legislative package.”<sup>15</sup> Assuring justice is

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<sup>14</sup> Peter J. Gomes, “A Chance and a Choice,” *Same-Sex Marriage: Pro & Con, A Reader*, Andrew Sullivan, editor, revised edition, (New York, Vintage Books, 1997, 348-353), 353.

<sup>15</sup> Marc D. Stern, “Same-Sex Marriage and the Churches,” *Same-Sex Marriage and Religious Liberty: Emerging Conflicts*. Edited by Douglas Laycock, Anthony R. Picarello, Jr., and Robin Fretwell Wilson (The Becket Fund for Religious Liberty and Roman & Littlefield

worth the effort.

Fourth, movement toward same-gender marriage can provide an opportunity for our nation to engage in a serious reconsideration of the place of marriage in government and in religion. Fearing second-class citizenship for same-gender couples, Evan Wolfson insists on the use of the term *marriage* for same-gender couples, anticipating that the term “civil unions” will bear the stigma of provisions of tolerance rather than conveying genuine acceptance.<sup>16</sup>

Fifth, in the United States, a marriage recognized in one state should also be recognized in every other state. As a basic right provided by the Constitution, same-gender marriages should not be restricted to only specific locales in the nation. Recognition of marriage in one state by another state would fulfill the Full Faith and Credit Clause of the Constitution and underscore the fact that ours is one nation as opposed to a loose confederacy of independent states. Marriage for everybody ought to be available everywhere anybody lives.

## FORWARD MOVEMENT

Significant change, especially when prejudice and religion are involved, is always accompanied by challenges and difficulties. But promise is also present. Alterations in our nation’s current marriage policies certainly reflect the reality of that principle. Change is underway. Various proposals for a

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Publishers, Inc., 2008, 1-57), p 57.

16 Wolfson, *Why Marriage Matters* p. 123-144

way forward appear regularly.

Two highly visible proposals illustrate current efforts to temper the vitriolic debate over same-gender marriage and move forward in a manner that would civilize dialogue on the subject, provide same-gender couples the legal recognition they desire, and ease the anxiety of houses of worship that fear a government mandate to perform marriages that they oppose.

In an essay printed in *USA Today* in the spring of 2006, Jonathan Turley urged the government to drop the term “marriage” in its licensing laws for all couples and to use instead the term “civil union.”<sup>17</sup> Turley also would leave the use of the more religion-oriented term “marriage” to religious organizations. Under this arrangement, like any heterosexual couple, same-gender couples desiring life together would sign a civil union agreement establishing their legal obligations to each other and to their progeny. They would have no reason to feel a sense of inferiority or discrimination stemming from being denied “marriage” by the government – because nobody would receive “marriage” from the government. After entering a civil union, same-gender couples, again like heterosexual couples, if they so willed, could seek marriage in a house of worship.

Whatever one thinks of this proposed arrangement, it wisely acknowledges that all couples have the same rights, that the government has no business in determining the moral credibility of a couple’s union, and that houses of worship can choose whom they will and will not bless with the term “marriage.”

Until recent years, the government has stringently

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Turley, “How to End the Same-Sex Marriage Debate”

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sought to avoid involvement in religious institutions or conflict with houses of worship. But, as Turley observed, marriage always has been “a conspicuous door placed in the wall of separation between church and state.”<sup>18</sup>

More recently, a supporter of same-gender marriage and an opponent of same-gender marriage co-authored an op-ed in the *New York Times* to plead for a pragmatic solution to end the escalating debate on same-gender marriage.<sup>19</sup> David Bankenhorn and Jonathan Rauch call for the United States Congress to give federal endorsement to civil unions for same-gender couples, conferring on them all of the rights and benefits of marriage. But, there is a caveat. The writers think the federal government should recognize only unions licensed in states that have strong religious conscience exemptions. Such an arrangement, they argue, would alleviate same-sex couples’ fear of a double standard in the granting of benefits and rights to unions not called marriages. At the same time, religious organizations would be allowed to treat same-gender couples differently than they treat heterosexual couples. The authors explain, “Linking federal civil unions to guarantees of religious freedom seems a natural way to give the two sides something they would greatly value while heading off a long-term, take-no-prisoners conflict.”<sup>20</sup>

An interesting and insightful response to this particular proposal appeared in the *Associated Baptist Press*. A former Southern Baptist pastor, Benjamin Cole, complains that both writers miss the fundamental point at the center of the current

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18 Turley

19 David Blankenhorn and Jonathan Rauch, “A Reconciliation on Gay Marriage,” *New York Times*, February 22, 2009.

20 Bankenhorn and Rauch

debate—the nature of marriage. “It is a question of ontology rather than theology,” Cole writes, “The reason that many conservatives do not approve of same-sex marriage is not because we wish to deny basic liberties to gays and lesbians. It is because we do not believe such relationships constitute marriage.”

What do you think? How do you propose we move forward?

## A PERSONAL CONCLUSION

When I began writing this paper on behalf of Interfaith Alliance, I had no intention of sharing a proposal in my conclusion. However, my studies related to this project have eradicated old presumptions and prompted the development of new ideas. I share my thoughts as an example of what a careful study of this issue did to one person. What such study will do for others, I dare not judge. I hope for helpful actions.

For me, a close look at the meaning of religious liberty, the necessity of disentangling the institutions of government and the institutions of religion and the respective responsibilities of government and houses of worship in relation to marriage suggested the possibility that religion, government and all citizens would be best served by the government getting completely out of the business of marriage. In such a scenario, the government would be responsible for issuing licenses for civil unions for any couple seeking a legal relationship. The matter of marriage would be left to houses of worship. Couples who had entered into a civil union and wanted the blessing of a house of worship could request marriage. Each house of worship, in turn, could decide

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on which relationships it would bless and to those extend its blessing of marriage. Such a plan seemed to serve the joint causes of liberty and justice for all.

However, the more I tried to live with that conclusion, the more I realized the distinct possibility of civil unions being considered a status secondary to that of marriage. I must admit also that I was continuing to give credibility to the idea that marriage always has been the prerogative of religious institutions. Of course, that is not the case. Government officials can perform marriages in the United States.

Civil marriages and religious marriages have existed side by side for an untold number of years. Both civil marriages and religious marriages have been recognized, respected and treated equally in our society. I see no reason for that situation to change.

Only days before sending this paper to members of a peer review committee, the Supreme Court of Iowa affirmed the constitutionality of same-gender marriage in the Iowa Constitution. What's more, the opinion of the justices, who ruled unanimously in favor of same-gender marriage, read like the principles presented in this paper.

Acknowledging that most of the opposition to same-gender marriage in their state was rooted in religion, the Iowa justices addressed the implications of their ruling for the religious community. Writing with respect for religion and avoiding even the hint of a denigration of religion, the justices explained that they approached the issue of same-gender marriage as "civil judges, far removed from the theological debate of religious clerics" and cognizant that

the Iowa Constitution defines marriage as a “civil contract.”<sup>21</sup> “State government can have no religious views, either directly or indirectly, expressed through its legislation,” the justices declared, explaining that “civil marriage must be judged under our constitutional standards of equal protection and not under religious doctrines or the religious views of individuals.”<sup>22</sup> The justices explicitly vowed to protect “the free exercise of religion in Iowa” and thus the right of a religious organization to “define marriages it solemnizes as unions between a man and a woman.”<sup>23</sup> According to the justices of the Supreme Court of Iowa, their historic ruling was a result of their interest in protecting constitutional rights for all people without intruding into the beliefs and practices of any of the religions in their state.

Here is a perfect example of civil marriage offered to all couples by the government and religious marriage offered by houses of worship only to those couples whose relationship a house of worship wants to bless.

Regardless of what happens next in Iowa or in any other state, I remain committed to dialogue about and efforts to find support for two fundamental convictions related to the assurance of equality in law and independence for religion: all citizens should have equal access to civil marriage and to the benefits of marriage provided for citizens in this government. Couples who desire religious marriage can seek a house of worship in which to receive that blessing. But, as is the case now, no house of worship would be legally obligated to provide marriage for a couple whom it does not want to bless. All

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21 Varnum v. Brien, No. 07-1499 (Iowa 2009). p 65

22 Varnum v. Brien, p 66

23 Varnum v. Brien, p 65

houses of worship should be free to advocate for, defend and perpetuate the view of marriage that is consistent with their religious traditions and convictions.

## AN INVITATION TO ENGAGE

The Introduction to this paper expresses how I feel about the need for all of us to talk and, then, try to work cooperatively with each other. It is offered as a serious reflection intended to evoke and encourage extended conversation. As I near the end of this paper, I am more convinced than ever of the importance of its observations and the invitation to dialogue inherent in them.

Debate on its major points is as desirable as it is predictable. This paper is the product of a person who, like scores of other people, wants to be religiously faithful, politically responsible, socially compassionate, and appropriately influential as a patriotic citizen. I dare to be hopeful of encouraging, if not enabling, readers to take a step forward toward achieving mutual understanding and advancing social justice. Interfaith Alliance is eager to help facilitate such discussions. The subject of marriage equality merits our best thoughts and influential actions as United States citizens, whether or not we are religious people or individuals who adhere to no religion.

*Please send your critique, commendation, questions or suggestions for expansion to Interfaith Alliance, 1212 New York Avenue, NW, Suite 1250, Washington, D.C. 20005 or visit [interfaithalliance.org](http://interfaithalliance.org).*

## PRINCIPLED DEBATE

Interfaith Alliance enters into our discussion about same-gender marriage upon a framework of the following ethical principles:

**PRINCIPLE:** Government should provide basic rights, freedom, and justice to every person without regard to an individual's religion, race, or sexual orientation. State and local governments should offer to all citizens the civic rituals and arrangements, including marriage, that are offered to any citizens.

**PRINCIPLE:** No house of worship should have to perform a marriage ceremony against its will, and never because of the intrusion and/or compulsion of government. Guided by the constitutional guarantee of religious freedom, government should not try to define persons suitable for marriage in houses of worship. However, governments can and should define persons to whom civil licenses for marriage will be made available. The primary concerns of government are legal. Houses of worship share an interest in what is legal while focusing more intensely on what they consider moral.

**PRINCIPLE:** A house of worship should be able to bless and perform a marriage ceremony for couples whom it deems marriage appropriate. When a house of worship bases its blessing of a marriage on the government's criteria for recognition of a marriage, the house of worship consents to a compromise of the free exercise clause related to religion and participates in a violation of the Constitution's prohibition of government establishing religion.

**PRINCIPLE:** Members of a committed same-gender couple have the same right to be faithful to their moral integrity as

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do religious institutions respectfully disagreeing with the couple's moral integrity. Neither, however, has the right to seek to impose its moral values on the other, though both have the right to benefit from the government's constitutional commitment to the values of equality, freedom, and justice for all citizens.

**PRINCIPLE:** "Some aspects of human identity are so fundamental that they should be left to each individual, free of all non-essential regulation, even when manifested in conduct."<sup>24</sup>

**PRINCIPLE:** An individual should not be penalized personally or prohibited socially from enjoying basic rights and freedoms because of religious beliefs or sexual orientation unless that person's behavior inflicts harm on other people.

**PRINCIPLE:** To ban civil marriage to couples based on gender denies them access to civil rights and undermines their civil liberties. Gay and lesbian persons deserve all of the same rights and privileges enjoyed by all other citizens of the United States.

**PRINCIPLE:** Religion, government and all citizens would be best served by the provision of civil marriages and religious marriages that receive recognition, respect and equal treatment without regard to the gender or sexual orientation of the marital partners.

*Again, we welcome your critique, commendation, questions or suggestions. Interfaith Alliance, 1212 New York Avenue, NW, Suite 1250, Washington, D.C. 20005 or visit [interfaithalliance.org](http://interfaithalliance.org).*

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24 Laycock, "Afterword," p. 184.

## ACKNOWLEDGEMENTS

The Arcus Foundation and the E. Rhodes and Leona B. Carpenter Foundation provided generous financial support that made the research, writing and publication of this paper possible.

A prestigious peer review panel provided helpful counsel to the author. The distinguished members of this panel included Archbishop Desmond Tutu, Bishop Tonyia Rawls, The Right Reverend Jane Holmes Dixon, Rabbi Elliot Dorff, Mitchell Gold (philanthropist), Ruth Davis (constitutional expert), Chrys Lemon (attorney), Jonathan Stoller (TAO Management), and Tom Minar (American University).

Additionally, my wife, Judy, other staff members at Interfaith Alliance and a wide circle of friends and colleagues offered questions, challenges, suggestions, ideas, and encouragement that strengthened the substance of the content and sharpened the clarity of the paper. Among these contributors are D. H. Clark, Craig Henry, Sharon Gedan, Nelrose Sims, Greg Lebel, Patti Pate, Paul Barby, Matt Dorf and Steve Rabinowitz.

Donna Red Wing, Senior Advisor for Program and Development at Interfaith Alliance, excelled in bringing together all of the elements necessary to give this initiative an opportunity to succeed. Other staff members at Interfaith Alliance who provided helpful critique and counsel include William Blake, Jonathan Craig, Ari Geller, Isa Hyde, Jay Keller, Francilla Laville, Julie Mashack, Jessalyn Pinneo and Julius Weiss.

Special thanks go to James Semmelroth Darnell who served as a research assistant for the project and to Thaler Pekar of Thaler Pekar & Partners, LLC for her editorial expertise.

The staff of Interfaith Alliance will now implement the primary purpose of this paper – facilitating civil dialogue among

numerous voices representing diverse perspectives in search of common ground.

## **ABOUT THE AUTHOR**

The Rev. Dr. C. Welton Gaddy is president of Interfaith Alliance. Dr. Gaddy also serves as the Pastor for Preaching and Worship at Northminster (Baptist) Church in Monroe, Louisiana, and he is the author of more than 20 books addressing religion in America.

Every week, he hosts State of Belief on Air America Radio, where he explains and explores the role of religion in the life of the nation. Dr. Gaddy provides regular commentary to the national media on issues relating to religion and politics.

Dr. Gaddy is recognized as a leading advocate for protecting the boundaries between religion and government. He has been a forceful critic of the faith-based initiative and has been at the forefront of efforts to pass comprehensive hate crimes legislation, end religious profiling and keep religion out of public classrooms.

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## **ABOUT INTERFAITH ALLIANCE**

Interfaith Alliance celebrates religious freedom by championing individual rights, promoting policies that protect both religion and democracy and uniting diverse voices to challenge extremism. Founded in 1994, Interfaith Alliance has 185,000 members from 75 faith traditions as well as those with no a faith tradition.



# INTERFAITH ALLIANCE

PROTECTING FAITH AND FREEDOM

While many faith traditions have grappled with issues of equality, including same gender marriage, much of that work has been viewed through a scriptural lens. Interfaith Alliance seeks to shift the perspective on LGBT equality from that of problem to solution, from a scriptural argument to a religious freedom agreement, and to address the issue of equality as informed by our Constitution.

*Same-Gender Marriage and Religious Freedom: A Call to Quiet Conversations and Public Debates* by Interfaith Alliance President, Rev. Dr. C. Welton Gaddy, offers a diversity of ideas based on Interfaith Alliance's unique advocacy for religious freedom and interfaith exchange. This project's cross-denominational nature is at the core of Interfaith Alliance's effort to spark national conversation and action.

**This project is made possible through the support of the Arcus Foundation and the E. Rhodes and Leona B. Carpenter Foundation.**