



March 3, 2009

Food For Thought

The following article was written by Maggie Gallagher to counter the claim that the creation of civil unions with religious exemptions would be an equitable "compromise" in the same-sex marriage debate.

Trading Civil Unions for Religious-Liberty Protection? [1]

The *New York Times* published [an op-ed by David Blankenhorn and Jonathan Rauch](#), proposing a Big New Idea: Federal recognition of state-level civil unions and same-sex marriage but if and only if those states offer substantive religious-liberty protection — and the federal government offers substantive religious-liberty protection, too.

(Readers may not know: David Blankenhorn has previously endorsed the idea of civil unions in his book *The Future of Marriage*.)

It's a generous essay that acknowledges the serious impact same-sex marriage (and civil unions, too) can have on religious people and institutions who cannot accept same-sex unions as marriages. If this marriage debate were really about providing practical legal benefits to same-sex couples, it might represent a real breakthrough.

I don't think that's the debate we are in, sadly. From where I stand, it looks like the progressive/democrat position states: If you believe marriage means a husband and wife, you are not just wrong, you are downright wicked and deserve to have your home address put up on the internet so strangers can harass you. I think the pro-marriage side is going to have to demonstrate an ongoing capacity to organize far more effectively before the gay-marriage juggernaut is going to be looking for a way to compromise. (Full disclosure: [I'm president of the National Organization for Marriage](#))

I have two big questions, one practical and one political:

1. Can Congress provide effective religious-liberty protections? Could Congress really tell the Massachusetts court or the California court it must provide — or must accept the legislature's provision of — substantive religious-liberty protections? The California court has just declared that orientation is a protected status just like race. And racial equality trumps religious liberty in our system of government. What would the language look like? Lawyers,

please discuss.

2. Is anyone over at Human Rights Campaign and Marriage Equality seriously interested in this compromise?

Because, to date, gay rights groups have shown little willingness to offer any substantive religious-liberty protections at the state level. When the Catholic Church asked for a very tight exemption that would permit Catholic Charities to keep helping find good homes for adopted children, Joe Solomnese fumed that the Church was evil for asking for such an exemption — and the entire political leadership of the state refused point blank to consider the idea. (I was personally present in December of 2007 when Princeton's Prof. Robby George raised the religious liberty issue to the New Jersey legislature. One pro-SSM Democrat state legislator explained, "You have religious liberty; you have the religious liberty to go out of business.")

If gay rights groups are not interested in a compromise, this Congress and President are not likely to force them to accept one.

Final word of warning: At the state level, civil unions have not proved part of any compromise; gay rights groups turn around and use the civil union laws in courts to argue that gay marriage laws are unconstitutional, and two state supreme courts (California and Connecticut) have now accepted this line of legal reasoning. A federal civil-unions law would surely be used the same way in federal court: to endanger DOMA and state marriage laws. I don't personally believe a civil-union law should be used in this way (that is, I don't believe the legal argument is valid) but two state supreme courts are a lot more persuasive than I am.

If it were easy, it would have happened by now.

For more information visit www.PA4Marriage.org or call 717-657-4990 x106.

[1] Gallagher, Maggie, "Trading Civil Unions for Religious-Liberty Protection?", National Review Online, February 23, 2009.