



## A Threat to Liberty

### *Same-Sex “Marriage,” Domestic Partnerships, and Civil Unions*

written by:  
*Mary  
Summa,  
J.D.*

**I**N SWEDEN IN 2004, A COURT CONVICTED A PASTOR OF A HATE CRIME AND JAILED HIM FOR ONE MONTH FOR PREACHING AGAINST HOMOSEXUALITY.<sup>1</sup> IN CANADA IN 2007, FEARFUL OF LOSING CUSTODY OF THEIR CHILDREN FOR REFUSING TO PUT THEM IN GOVERNMENT-RUN SCHOOLS THAT TAUGHT HOMOSEXUALITY AS AN ‘ALTERNATIVE’ LIFESTYLE CONTRARY TO THEIR RELIGIOUS BELIEFS, MENNONITES FLED QUEBEC FOR ONTARIO.<sup>2</sup>

These accounts should surprise no one. The homosexual rights army has been on the march for decades. The last 10 years have witnessed the fiercest battles for legalization of civil unions (or its equivalent), domestic partnerships, and same-sex “marriage.”<sup>3</sup>

What is surprising is America’s response to the struggle. Many people, including some Christians, have adopted a laissez-faire attitude when it comes to same-sex “marriage.” They have been indoctrinated by the homosexual lobby to believe that the legalization of civil unions, domestic partnerships, and same-sex “marriage” has nothing to do with them. Sadly, it does.

Make no mistake, the legalization of same-sex “marriage” would fundamentally transform the social and legal understanding of marriage. It would affect the rights and freedoms Americans hold dear and spell the death-knell of liberty. In fact, it already has.

### **The Steep Climb Toward Same-Sex “Marriage”**

The legalization of same-sex “marriage,” domestic partnerships, and civil unions does not represent the genesis of the homosexual rights movement, but rather its pinnacle. Beverly LaHaye, the founder of Concerned Women for America, astutely wrote: “The homosexual ideology implies the intent to rearrange our perceptions, lifestyle and legal system in the strict sense of the term. This change is revolutionary. It requires, if it is to be effectively implemented, the careful and gradual application and transfer of power. The homosexual movement is a ... hard-nosed political movement bent on changing our society.”<sup>4</sup>

The goal of altering society has not come easily for the homosexual rights movement. While the first homosexual rights group was founded in 1924,<sup>5</sup>

the movement stalled and sputtered through most of the 20th Century. Things changed drastically in 1973, when the American Psychiatric Association did an about-face and removed homosexuality from its official list of mental disorders. Buttressed with their new medical ally and aligning itself to the civil rights bandwagon, the homosexual rights movement gained traction and then momentum. Focusing on anti-discrimination laws, the movement began building an arsenal of local, county, and state laws prohibiting discrimination on the basis of sexual orientation. Simultaneously, the movement began successfully targeting anti-sodomy statutes and “hate crimes” based on sexual orientation.

In the 1980s, homosexual advocacy groups began demanding legalization of their status as couples. A former ally in the fight to preserve the traditional family, numerous courts became the family’s enemy. The last 25 years have witnessed a struggle between the courts (and some legislatures) who have sought to destroy marriage, and the public who has fought to preserve it.

To date, 37 states have enacted Defense of Marriage Statutes (DOMAs) and 30 states have passed amendments to preserve the definition of marriage in their State Constitutions.<sup>6</sup> Six states and the District of Columbia have legalized same-sex “marriage,” either by judicial mandate or by legislature initiation.<sup>7</sup> Unlike every other southern state, North Carolina lacks a Marriage Protection Amendment.

Some courts, although unwilling to overturn traditional marriage laws, began mandating that state legislatures enact laws to allow and recognize civil unions. The homosexual rights lobby saw civil unions, simply, as a legal waiting room for the subsequent coronation of the marriage title. In 1999, responding to a court mandate, Vermont became the first state to legalize civil unions.<sup>8</sup> Praising the decision, Lambda Marriage Project Director Evan Wolfson commented, “Americans will see that when lesbians and gay men are given access to most of the rights and obligations of civil marriage, the sky will not fall and the institution of marriage will be even stronger.”<sup>9</sup> Seven years later the New Jersey Supreme Court mimicked Vermont’s high court and mandated the legislature to enact civil unions legislation.<sup>10</sup> In 2005, Connecticut became the first state to legalize civil unions without a court mandate.<sup>11</sup>

Judges and legislators who thought the legalization of civil unions would quell the demand for same-sex “marriage” have been proven dead wrong. As Archbishop Charles Chaput, Archbishop of Denver, noted in a recently published article, “...in every state where civil unions have become law, the political pressure for ‘gay marriage’ has not declined; it has increased.”<sup>12</sup>

To date, seven states—Connecticut, Vermont, New Hampshire, New Jersey, Hawaii, Illinois, and Delaware—have enacted civil unions laws. The

laws in Hawaii and Delaware will go into effect in January 2012. Seven states—California, Oregon, Nevada, Washington, Hawaii, Maine, and Wisconsin—and the District of Columbia legally recognize domestic partnerships.<sup>13</sup>

Three of those jurisdictions—Connecticut, Vermont, and New Hampshire—have subsequently replaced civil unions with legalized same-sex “marriage.” The District of Columbia has legalized same-sex “marriage” and retained its domestic partnership law.<sup>14</sup> If the trend in the U.S. continues, most, if not all, of these states with legalized civil unions or domestic partnerships will eventually legalize same-sex “marriage.”

## Undermining Marriage

Marriage is God-given, not a creation of government, and has, in fact, existed outside of government.<sup>15</sup> In every known human society, marriage has served as the foundational institution for society, and its purpose to regulate heterosexual activity and provide stability for the rearing of children has remained constant.<sup>16</sup> Courts have recognized both of these facts.

Attempting to accommodate same-sex relations within the definition of “marriage,” some recent court decisions have ignored its source and minimized its foundational role in society. According to at least one court, God did not institute marriage. The State did. In *Baehr v. Lewin*, the Hawaii court described marriage as “a state-conferred legal status, the existence of which gives rise to rights and benefits reserved exclusively to that particular relationship.”<sup>17</sup> In *Goodridge v. Department of Public Health*, a court decision that forced Massachusetts to legalize same-sex “marriage,” the court ignored the long-standing procreational aspect of marriage and described it in terms of “exclusivity, mutual support and commitment to one another.”<sup>18</sup> The words “commitment” and “love,” as pointed out by William Duncan, Director of the Marriage Law Foundation, “are terminable in a way that ‘obligation’ is not because both are subjective and can, to some degree, be chosen or unchosen.”<sup>19</sup>

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## Who Cares?

Anyone who cherishes freedom should care about marriage. Traditionally, state legislatures and courts have only slightly regulated the marital institution or the decisions made regarding children. The state has simply provided a “legal shell that gave the institution status and legal effect.”<sup>20</sup>

In contrast, same-sex “marriage,” domestic partnerships, civil unions, and the rights ensuing from those institutions are totally created by government. Their lifeblood depends on the winds of power. As courts and legislatures empower these institutions with rights and privileges identical to marriage, the lines of distinction blur, and government begins to tread on the rights and privileges of traditional marriage.

## Undermining Parental Rights

As the definition and purpose of “marriage” has been altered, so, too, have been the rights of parents. In 2007, William Duncan argued that if marriage is no longer about “procreation” but simply a “mutual commitment,” “it is at least possible that natural parents will have to be treated the same as individuals with no natural tie to a child.”<sup>21</sup> In fact, by 2007, the courts in several states had already re-crafted the definition of “parenthood” by legalizing “de facto” parenting, giving individuals who were not biologically linked to a child the status of “parent” with at least partial parenthood rights and privileges.

North Carolina joined the “de facto” parenthood bandwagon in 2008, when the State Court of Appeals in *Mason v. Dwinnell* ruled that a non-biological ex-partner was given rights to custody and visitation to a child over the objection of the biological parent.<sup>22</sup> This de facto parenting doctrine recently was used by the North Carolina Supreme Court in *Boseman v. Jarrell* to justify the awarding of custody and visitation to a non-biological parent over the objection of an ex-same-sex partner, who was the biological mother.<sup>23</sup> Biological parents can no longer be assured that their rights, at least the rights to custody and visitation, are secure.

The court’s creation of marriage-like institutions has adversely affected other parental rights in traditional marriage. The fundamental right of parents to provide for their child’s educational, moral, and religious upbringing—rights long protected by the courts—have been victimized as well. After Massachusetts legalized same-sex “marriage” in 2003,

the State Board of Education altered its curriculum to accommodate same-sex couples. In 2008, the kindergarten “Diversity Book Bag” included a picture book, *Who’s In a Family?*, which depicted a variety of families, including two moms or two dads. Second graders were required to listen to the reading of *King and King*, which describes the story of a prince falling in love with another prince. Parents objected to the content of these pro-homosexual materials and sued because they had never been given the opportunity to remove their children from the classroom while the materials were being taught. The lower court dismissed the lawsuit, and on appeal, the federal circuit court affirmed that dismissal. Brushing aside a parent’s rights to provide for the spiritual and moral well-being of their own children, First Circuit Judge Sandra Lynch admitted in the opinion that the book “affirmatively endorsed homosexuality and gay marriage,” and boldly concluded, “It is a fair inference that the reading of *King and King* was precisely intended to influence the listening children toward tolerance of gay marriage. That was the point of why that book was chosen and used.”<sup>24</sup>

## Threatening Religious Freedom

For the past 20 years, churches and religiously-affiliated institutions worldwide have felt the sting of the homosexual rights movement. While not yet directly barring biblical teaching against homosexuality, many institutions have found themselves staring down the barrel of a lawsuit because they have refused to accommodate the homosexual lifestyle. In 1987, 13 years before D.C. legalized same-sex “marriage,” in *Georgetown University v. Gay Rights Coalition of Georgetown Law Center*, the D.C. Courts found Georgetown University, a Catholic institution, in violation of a public accommodations law for failing to allow homosexual groups to meet on campus. In the opinion of the court, “the goal of eradicating sexual orientation discrimination represents a more important government interest than protecting religious liberty.”<sup>25</sup>

The legalization of civil unions, while not called “marriage,” intensified the wrath against those who courageously spoke out against the homosexual lifestyle. In 2007, civil unions in California were legal but same-sex “marriages” were not. Four San Diego firefighters objected to participating in the San Diego Gay Pride Parade. Their superiors forced them to do so. (Subsequently, the firefighters won a sexual harassment suit in 2010 for injury occurring from working at the event.)<sup>26</sup> In 2007, one year after New Jersey legalized civil unions, the State of New Jersey removed a greenway tax exemption from a New Jersey Methodist camp, because that camp refused to host a same-sex union in its marriage pavilion.<sup>27</sup>

The legalization of homosexual “marriage” has intensified the government’s scrutiny of organizations and individuals who have refused to bow to

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the homosexual agenda. In 2006, three years after the courts forced the Massachusetts legislature to legalize same-sex “marriage,” Catholic Charities of Massachusetts was faced with a dilemma: place children with same-sex couples or lose its license. Unable to obtain a waiver of the anti-discrimination laws regarding sexual orientation, and refusing to violate religious convictions, Catholic Charities closed its doors to the adoption business after 100 years of service.<sup>28</sup>

In 2008, the same year the judiciary redefined marriage,<sup>29</sup> a California court refused to allow a physician to claim a religious exemption when he was asked to perform In Vitro Fertilization treatments on a lesbian woman. The court, in *North Coast Women’s Care Medical Group v. San Diego County Superior Court*, found that the state’s compelling interest in extinguishing discrimination on the basis of sexual orientation superceded a religious belief, even if that burden on freedom of religion was “substantial.”<sup>30</sup> The legalization of same-sex “marriage” will elicit numerous cases of this nature.

The pro-homosexual attitude in government has pervaded government entities even in jurisdictions without civil unions or same-sex “marriage.” In many cases, local human rights commissions have wielded the hammer.

- In 2006, the Arlington, Virginia Human Rights Commission ordered a professed Christian, who operated a video duplicator business, to do a job for a lesbian activist. He had refused because he did not want to help promote homosexuality.<sup>31</sup>
- In 2008, a Christian couple in Albuquerque, New Mexico was tried before the State Human Rights Commission after declining to photograph a same-sex ceremony. Reportedly, the couple had to pay the commission a fine of \$6,600.<sup>32</sup>

These few examples provide a glimpse of how far the homosexual agenda has advanced in this country. Looking at Canada, a country that legalized same-sex “marriage” in 2005, one can see what persecution might lie ahead.

- In 2005, the Alberta Roman Catholic Bishop Fred Henry, faced two complaints filed against him because of his pastoral letter defending the traditional definition of marriage. In a 2008 article, Bishop Henry is quoted as saying, “The social climate right now is that we’re into a new form of censorship and thought control, and the commissions are being used as thought police.”<sup>33</sup>
- In 2007, a Catholic city councilman from British Columbia was fined \$1,000 and required to apologize for saying that homosexuality is “not normal or natural.”<sup>34</sup>
- In 2009, Ontario’s Ministry of Education mandated a policy that required every school board in Ontario, Catholic and public, to



implement a new ‘equity and inclusiveness’ policy recognizing sexual orientation” as a ground protected from discrimination by September 2010.<sup>35</sup>

These situations make one wonder how anyone could ever question how the legalization of same-sex “marriage” will affect them.

## For Family and Freedom

Thomas Jefferson wrote in the Declaration of Independence, 235 years ago, that man is endowed with the inalienable right to liberty. That right includes religious freedom and the right of parents to instill those religious beliefs in their children. Our forefathers understood that those rights serve as the foundation of freedom and a government must protect them.

Totalitarianism, on the other hand, is a system of government that is dictatorial and requires complete subservience of its citizenry. Strong families and the Church are its two primary enemies because both diminish the power of the State to control the loyalty of its citizenry. One demands loyalty to one’s spouse and children. The latter demands loyalty to God.

As the battle over homosexual “marriage” continues to be waged in state legislatures and courtrooms nationwide, marriage defenders should not fool themselves into thinking that it does not affect all individuals and marriage at large. Amidst charges of “homophobia,” “unfairness,” and “bigotry,” the fight to preserve traditional marriage—the foundation of freedom—must continue. North Carolinians must act now to stem the tide by demanding a state constitutional amendment that will protect the definition of marriage as being between a man and a woman with that relationship being the only valid and legally recognized domestic union in the state. If pro-family citizens sit back and do nothing, this religious persecution and all-out war against the family will intensify here in North Carolina. As a result, parental and religious freedom will be lost. ❖

*Mary Summa, J.D., is an attorney in Charlotte, North Carolina, who served as Chief Legislative Assistant to U.S. Senator Jesse Helms during the 1980s. For a footnoted version of this article, please visit [ncfamily.org](http://ncfamily.org).*

ENDNOTES:

1) Office of the Prosecutor General v. AG, Case No. 1050-05, November 25, 2005 <http://oldsite.alliancedefensefund.org/userdocs/GreenSupremeCourtRuling.pdf>.

The conviction was later overturned. See “Swedish Anti-Gay Pastor Acquitted,” BBC News.com, November 29, 2005. <http://news.bbc.co.uk/2/hi/europe/4477502.stm>. Last visited 21 May 2011.

2) Mennonites threaten to abandon Quebec” The Vancouver Sun, 16 August 2007 < <http://www.canada.com/vancouvernews/news/story.html?id=9783f327-d369-401f-9a61-eaaa68f0db14>> Last visited 20 May 2011.

3) Civil Unions –Belgium in 1998, the province of Quebec in 1999 and Sweden in 2005. and all three legalized same sex marriage—Belgium in 2003, Canada in 2005 (by 2005 with the passage of the Civil Marriage Act all but 5 Canadian provinces had legalized same sex marriage by court decisions. M v. H 2 SCR 3 (1999), a Canada Supreme Court case had mandated spousal benefits to same sex couples since 1999 and Sweden in 2009.

4) Beverly LaHaye, *The Homosexual Agenda, Concerned Women for America*. 1991.

5) Henry Gerber established the first homosexual rights group in 1924 but it folded a year later with his arrest. See [http://www.glhalloffame.org/index.pl?item=18&todo=view\\_item](http://www.glhalloffame.org/index.pl?item=18&todo=view_item). Last visited 22 May 2011.

6) “Same Sex Marriage, civil Unions, and Domestic Partnerships,” National Conference of State Legislatures, February 2011. <http://www.ncsl.org/default.aspx?tabid=16430> last visited May 20, 2011.

Hawaii’s amendment does not specifically define marriage but specifies that only the legislature “shall have the power to reserve marriage to opposite sex couples.”

7) “Same Sex Marriage, civil Unions, and Domestic Partnerships,” National Conference of State Legislatures, February 2011. <http://www.ncsl.org/default.aspx?tabid=16430> Last visited May 20, 2011.

8) Baker v. Vermont, 744 A.2d 864 ( Vt. 1999).

9) “Vermont Civil Unions Law to Take Effect, Putting Fairness in Full Swing,” [www.LambdaLegal.org](http://www.lambdalegal.org)., June 30, 2000. [http://www.lambdalegal.org/news/pr/ny\\_20000630\\_vt-civil-unions-law-to-take-effect.html](http://www.lambdalegal.org/news/pr/ny_20000630_vt-civil-unions-law-to-take-effect.html). Last visited 22 May 2011.

10) Lewis v. Harris, 188 N.J. 415, 908 A.2d 196 (N.J. 2006)

11) “Same Sex Marriage, Civil Unions and Domestic Partnerships, National Conference of State Legislatures, February 2011. <http://www.ncsl.org/default.aspx?tabid=16430> Last visited 20 May 2011.

12) “Voice Your Support for Marriage and Thank these Law-makers”, Denver Catholic Register, April 6, 2011.

13) “Same Sex Marriage, civil Unions, and Domestic Partnerships,” National Conference of State Legislatures, February 2011. . <http://www.ncsl.org/default.aspx?tabid=16430>. Last visited 20 May 2011.

14) “Same Sex Marriage, civil Unions, and Domestic Partnerships,” National Conference of State Legislatures, February 2011. . <http://www.ncsl.org/default.aspx?tabid=16430>. Last visited 20 May 2011.

15) William Duncan, “Constitutions and Marriage, 6 Whittier Journal of Child and Family Advocacy 331 (2007).

16) See Justice Robert J. Cordy’s dissenting opinion in *Godridge v. Department of Public Health*, 440 Mass 309, 798 N.E.2d 941 (Mass 2003).

17) Baehr v. Lewin, 852 P.2d 44 (Haw. 1993).

18) 440 Mass. 309, 798 N.E.2d 941 (Mass 2003) at 440 Mass 337.

19) William Duncan, “Portrait of an Institution”, 50 Howard Law Review 95 at 105 (2006).

20) William Duncan, “Portrait of an Institution”, 50 Howard Law Review 95 (2006).

21) William Duncan, “Constitutions and Marriage, 6 Whittier Journal of Child and Family Advocacy 331 (2007).

22) *Mason v. Dwinnell*, (660 S.E.2d 58 (N.C. App. 2008).

23) *Boseman v. Jarrell*, 695 S.E.2d 753 (2010).

24) *Parker v. Hurley*, 514 F.3d 87 (1st Cir. 2008) cert. denied 129 S. Ct. 56 (2008).

25) *Georgetown University v. Gay Rights Coalition of Georgetown Law Center*, 536 A.2d 1 (D.C. App. 1987).

26) See “San Diego Firefighters Prevail in Gay Pride Parade Lawsuit”, The United Families International Blog, October 19, 2010. <http://unitedfamiliesinternational.wordpress.com/2010/10/19/san-diego-firefighters-prevail-in-gay-pride-parade-lawsuit>. Last visited 8 May 2011.

27) *New Jersey Attacks Religious Freedom of Methodist Campground*”, Catholic News Agency, September 27, 2007, [http://www.catholicnewsagency.com/news/new\\_jersey\\_attacks\\_religious\\_freedom\\_of\\_methodist\\_campground](http://www.catholicnewsagency.com/news/new_jersey_attacks_religious_freedom_of_methodist_campground) Last visited 20 May 2011.

28) Colleen T. Rutledge, “Caught in the Crossfire: How Catholic Charities of Boston Was Victim to the Clash Between Gay Rights and Religious Freedom,” 15 Duke Journal of Gender Law and Policy 297 (2008). <http://www.google.com/search?hl=en&q=15+Duke+Law+Journal+of+Gender+Law+and+Policy+297+%282008%29&btnG=Search> Last visited 22 May 2011.

See also Maggie Gallagher, “Banned in Boston, The Coming Conflict Between Same Sex Marriage and Religious Liberty”, *Weekly Standard*, May 25, 2006.

<http://www.weeklystandard.com/Content/Public/Articles/000/000/012/191kgwgh.asp>. Last visited 22 May 2011.

29) *In re Marriages*, 76 Cal. Rptr. 3d 683, 183 P.3d 384 (Cal. 2008).

30) *North Coast Women’s Care Medical Group v. San Diego County Superior Court*, 189 P.3d 959, 968 (Cal. 2008).

31) *Businessman Ordered to Duplicate Lesbian’s Videos*, *WorldNetDaily.com*, April 28, 2006 <http://www.wnd.com/?pageId=35927> Last visited 20 May 2011.

32) Jeff Johnson, “New Mexico Commission Orders \$6,000 Fine for Christian Beliefs,” *onenewsnow.com*, 11 April 2008.

<http://www.onenewsnow.com/Legal/Default.aspx?id=75547> Last visited 20 May 2011.

33) Pete Vere, “Canada’s Human Rights Beef With Catholics,” *Zenit.com*, 5 February 2008 <http://www.zenit.org/article-21689?l=english> Last visited 20 May 2011.

34) “Canadian City Councillor Fined \$1000 for Saying Homosexuality ‘not Normal or Natural’,” *LifeSiteNews.com*, January 19, 2007. <http://www.lifesitenews.com/news/archive/ldn/2007/jan/07011902> Last visited 20 May 2011.

Also see “The Impact of Same-Sex Marriage on Religious Freedom”, *Christian Examiner* online, December 2008.

[http://www.christianexaminer.com/Articles/Articles%20Dec08/Art\\_Dec08\\_11.html](http://www.christianexaminer.com/Articles/Articles%20Dec08/Art_Dec08_11.html) Yet

35) “Policy/Program Memorandum No. 119,” Ontario Ministry of Education, June 24, 2009, <http://www.edu.gov.on.ca/extra/eng/ppm/119.html> last visited on 8 May 2011.

See also “Anti-Christian Persecution & Oppression in Canada: The High Cost of Legalizing Same-Sex Marriage (SSM)” *Campaignlifecoalition.com*., [http://campaignlifecoalition.com/shared/media/editor/file/PersecutionOfChristians\(1\).pdf](http://campaignlifecoalition.com/shared/media/editor/file/PersecutionOfChristians(1).pdf) Last visited 8 May 2011.