No. 14-574

In The
Supreme Court of the United States

Gregory Bourke, et al., Petitioners,
v.
Steve Beshear, Governor of Kentucky, et al.Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF AMICUS CURIAE OF REVREND JOHN T. RANKIN IN SUPPORT OF RESPONDENTS

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Interest of the *Amicus Curae*[1]

The Reverend John Rankin is the President of TEI International, Inc. a corporation dedicated to the biblical definition of human freedom and the religious, political, and economic liberty for all people.

Reverend Rankin is dedicated to participation in the public policy process, which includes informing and educating the public on issues of national concern, including matters of federal constitutional import that bear on human right secured by law.

Summary of the Argument

Those advocating for same-sex marriage to be recognized as a fundamental right under the Constitution of the United States must answer the following seven questions: (1) Is there any written source for unalienable rights in the United States apart from the Creator identified in Genesis 1-2. (2) Is marriage itself an unalienable right – one that all people can demand for themselves – or is it an option under liberty? (3) How does the Creator define human sexuality? (4) Are same-sex marriage advocates thus forcing a choice between unalienable and ultimate rights given by the Creator, on the one hand, versus basic and penultimate rights defined by human authority, on the other? (5) And if so, are same-sex marriage advocates decoupling the Declaration of

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[1] It is hereby certified that counsel for the parties have consented to the filing of this brief; that no counsel for a party authored this brief in whole or in part; and that no person other than this *amicus curiae*, or their counsel made a monetary contribution to its preparation or submission.

Independence from the United States Constitution and civil law? (6) Can same-sex marriage advocates give any example in human history where a homosexual ethos has advanced the well-being of the larger social order? (7)Is homosexuality a fixed or immutable trait**?**

There is no written source indicating that any unalienable right is derived from anywhere but Genesis Chapters 1 and 2. Further marriage is a choice one if free to make or not to make and is, therefore, merely a choice, not an unalienable right. There is no Biblical basis for same-sex marriage. Because of that, it cannot be an inalienable right as all unalienable rights derive from the Bible. Thus, any right to same-sex marriage would be man-made. Man-made rights are not unalienable.

To declare a fundamental right that is not an unalienable right flies in the face of the declaration of independence. In fact, there is no historical record of a pro-homosexual ethos that has benefited the social order. Further, there is no evidence that homosexuality is an immutable trait.

ARGUMENT

Rooted in the self-evident, the marriage of one man and one woman in mutual fidelity is the *sine qua non* of a healthy human civilization. Here, the equality[2]

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[2] In the Declaration of Independence, this self-evident truth begins with being "created equal." And this equality before the Creator and the law is ontological, not being rooted in a subsequent identity or class, no matter whom. We are diverse in many ways (see below), and we are also equal. Nix "sameness." It proves true that only the marriage of one man and one woman fits this balance at the foundational level in the social order. And

and complementarily of male and female equals diversity in service to unity,[3] and uniquely provides the necessary social adhesive of trust which is then modeled for our children.[4]

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this also anticipates the seventh formal question here, relative to the nature of a "fixed or immutable trait."

[3] The language of "diversity" has been used to advance same-sex marriage, partly due to the reality and the potential strengths of a society with diverse populations. But in the matter of homosexual rights as articulated, are we talking about a unity in service to diversity, where diversity becomes an end to itself? If so, how do same-sex marriage advocates define equality? Is it found in diversity or sameness? If diversity is the goal, what produces the prior unified action toward that end? By definition, can the temptation to compulsion be thus avoided? The opposite and prior reality, being self-evident, is that of diversity in service to unity as the proper end. This is the exact nature of *e pluribus unum*. Namely, equality is that of access to the same unalienable rights for all diverse realities of a common humanity, not to Balkanized and separate identities in any individual or group capacity. It is also self-evident that man and woman in marriage equal diversity in service to unity – psychologically and physiologically to start. But man and man together, or woman and woman together, are monolithic, thus intrinsically precluding diversity in service to unity, and hence, also precluding true equality. When I was addressing this question at Smith College in February, 2004, in a setting most conducive to same-sex marriage advocacy, the self-evidence of diversity in service to unity was also clearly and publicly seen in various interactions with my interlocutor and the audience.

[4] It is self-evident that children learn trust or distrust from their earliest years, and the foundational and highest form of trust is the faithful marriage of one man and one woman for one lifetime. When children see this trust modeled, they know they are loved, they learn the nature of trust, and their strength of soul is maximized for whatever life presents. The greatest psychological, physiological, social and economic ills trace to broken trust in sexual relations, that is, sexual intimacy outside the covenantal promises made in the marriage ceremonies of man and woman. These promises are too often and sadly broken, but their presence nonetheless ensures the self-evident equality and

Thus, here are seven questions[5] that same-sex marriage advocates need to address.

1. **Is there any written source for unalienable rights in the United States apart from the Creator identified in Genesis 1-2?[6]**

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complementarily of man and woman, and ensures a far higher degree of success than possible otherwise in pursuit of trust in the social order. What serves trust the best, for what do we all strive, and what should the law serve – trust or broken trust? When doing my post-graduate Th.M. in Ethics and Public Policy at Harvard Divinity School in the late 1980s, I was once approached at lunch by three fellow students in a class on feminist ethics. One of them said that the three of them were lesbian, and that every lesbian they knew had been the victim of "physical, sexual and/or emotional abuse" by some man in her early years. Broken trust at the most disturbing level. This was new and painful information to me (yet no statistical claim is being made here despite such a pervasive reality). When I shared this testimony before the Judiciary Committee of the Connecticut State Legislature in February, 2002, I could hardly hear myself speak as a cacophony of spontaneous groans filled the room. Afterward, a friend told me that all the groans came from women wearing the same-sex marriage stickers. Accordingly, they literally held their breaths until I was done with this thought. I thus realized I had spoken a pain that dares not speak its name, while seeking to affirm the human dignity of those who know such suffering. In the debate over same-sex marriage, and as I have seen consistently across the years, it is self-evident that such pain is widespread among men and women alike. Do we honor the integrity of homosexual persons by changing the laws to conform to the image of their understandable and reactive pain? Or do we honor them through the legal and social support of the self-evident nature of proactive and faithful heterosexual marriage and parenting?

[5] These questions, and cognate ones, need to be addressed in appropriate judicial process.

[6] The question of the "separation of church and state" is often brought to the fore when the Creator is mentioned in political context. This language is examined most thoroughly, and

Same-sex marriage is being advanced, without historical precedent, as a "fundamental" or "basic" right. Beginning with *Goodridge v. Dept. of Public Health*, 798 N.E.2d 941 (Mass. 2003), the language of "fundamental" and "basic" syntactically sets itself as a parallel to the language of "unalienable." In *Goodridge*, and on forward throughout cognate court rulings and legislative debates, this definition has been advanced. Justice John M. Greaney located it in Article 1 of the Massachusetts Declaration of Rights where the use of "unalienable" is self-evidently rooted in the Creator. This rootedness is found in the Preamble's explicit gratefulness to "the Great Legislator of the universe, in affording us, in the course of his Providence, an opportunity" to form the "Solemn Compact" of the Massachusetts constitution. In the eighteenth century, the language of the Creator, God, the Great Legislator and Providence were co-extensive in reference to the Creator of the Bible (defined further below). Roger Williams, in founding the Providence Plantation in 1636, was a Baptist minister seeking religious liberty. Thus, such a

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originally, by Dr. Daniel Dreisbach of American University, in his book, *Thomas Jefferson and the Wall of Separation between Church and State (New York University Press, 2002)*. Jefferson used the phrase in his 1801 letter to the Danbury ministers, not as a constitutional phrase, but in service to the First Amendment where religious liberty is the first freedom. Without the freedom to believe what we believe (regardless of what those beliefs may be) and within a civil order, then we are not free to speak, publish, assemble or redress the government with our grievances based on what we believe. It is self-evident that the latter four freedoms depend on the former one. The nutshell of the First Amendment is a restriction on state established religion (as seen in England and across Europe at the time) that would preclude genuine individual and free association expressions of religious liberty, including political speech. And likewise, no organized religious institution has any privileged position relative to the state.

syntactical linkage between "fundamental" or "basic" rights with unalienable rights as derived from the Creator, by Justice Greaney and all concurring opinions, is an attempt at an ersatz self-evident without evidence. It is self-evident that the concept of same-sex marriage is universally novel as of the late 20th century, and is wholly devoid of any prior historical traction with the language and nature of fundamental or unalienable rights. This language matters, and since it aims for such a high threshold with cognate affect, it deserves the highest scrutiny.

The unalienable rights of life, liberty and the pursuit of happiness are introduced in the Declaration of Independence, and codified as life, liberty and property in the Fifth and Fourteenth Amendments to the United States Constitution.[7] They are given by the Creator to all people equally, as individual people, regardless of religion, race, gender, sexual identity or other criteria. In appealing to the self-evident truth of unalienable rights being rooted in the Creator, the signatories of the Declaration – including the heterodox in their midst – went over the head of King George III who was also head of the Church of England. This appeal to what may not be alienated by human authority against humankind, apart from due process of law, was also at the core of the cognately self-evident language of "the consent of the governed." Such an appeal thus paved the way for the nation to later overcome then existing injustices, especially with respect to slavery and women's suffrage. All people

[7] This combines the words of John Locke and Thomas Jefferson, where the language of social happiness and the right to own, buy, sell or trade property, greatly interface.

have these self-evident and equal rights, as people, regardless of secondary classifications (whether objective or subjective in nature), including here, expressions of "sexual identity." So often, in the debate over same-sex marriage, painful human experience clouds sound legal judgment. I have addressed three public forums with Arline Isaacson, co-chair of the Massachusetts Gay and Lesbian Political Caucus – at Boston University, Harvard University and the largest African-American church in New England. Arline led the grass roots efforts for the first in the nation statewide Gay Rights Bill in Massachusetts in 1989, and likewise in the legislative lobbying for the Same-Sex Marriage Bill in 2004. Arline calls me "a true gentlemen and a thoughtful advocate" (with permission to publish the same) and hugged me after our last forum, despite our continued differences on the subject. Namely, for those of us who grasp the self-evident Source, nature and universality of unalienable rights, communication across the "barricades" of political debate, and unfeigned respect for a mutual humanity, is possible. Thus, sound law based likewise becomes possible, and not law shaped to conform to the images of pain of one self-identified group, then another group, then another … As a nation founded on unalienable rights, we are better than that. It would do well for those who disagree with same-sex marriage to first articulate the universal humanity we all share, and the unalienable rights of those who disagree with us – as secured by the rule of law – and only then to debate definitions of the proper delineation of those rights.

Unalienable rights precede and supersede any human authority, and as such, all definitions of human rights are thus derived, however fundamental or basic they may otherwise be described. By definition, unalienable rights may not be defined, given or taken away by human government – only acknowledged. The only source in recorded history for unalienable rights is the Creator identified in Genesis 1-2.[8] No ahistorical or amorphous Enlightenment

[8] It is self-evident among theological scholars that Genesis 1-3 is unique in all religious literature. (And for those who know the Babylonian genesis, in contrast, this is especially true with respect to the concepts of the Creator, the universe, human nature, human sexuality, freedom and the definitions of good and evil.) Namely, the biblical text identifies an original good creation, its brokenness, and the promise of its restoration to wholeness (*shalom*). In Genesis 1-2, the order of creation, it assumes and defines an original goodness nowhere else defined in all religious or secular history. The order of creation identifies God's gift of human life, then human freedom, and then, in the stewardship of the good earth, the basis for property rights, which yields in sum a happiness equally for the individual and the social order (also, "happiness" in the eighteenth century was not individually myopic, but rooted in the assumption of the family unit, and hence, Jefferson's philosophical flourish in the Declaration is parallel to "property"). This involves some exegetical work to make clear what was understood by the original readers and hearers of the biblical text, in terms of "you are free" being rooted in the *akol tokel* metaphor of "in feasting you will continually feast" as the sole original and positive definition of human freedom in history (with boundaries against eating poison); and of a man leaving his father and mother to become one with his wife and form a new household (as rooted in the Hebrew *bayith* for household, and thus the *oikonomos* in the Greek of the Septuagint, from which we derive the English word "economics"). Yet, too, the self-evidence of freedom and heterosexual marriage has been clear across all Hebrew and Christian history, only suffering concerted challenge (and apart from sound textual exegesis) from within and without very recently. It is also self-evident across human history that the most powerful economic

"deism" has any such idea, nor does any other religious or secular source. The Reformation started as an ad hoc pursuit of freedom for the whole (small "c" catholic , i.e., universal) church. And despite its theological and political messiness, it arrived in my mind at its highest success in the opening sentences of the Declaration of Independence. Our nation was founded on "freedom for religion" as a gift of the Creator. It is self-evidently distinct from the Enlightenment and the French Revolution that were rooted in a de facto goddess of reason and a "freedom from religion." That led to the Reign of Terror and boomerang to Napoleon Bonaparte. Thus, those who say that "unalienable rights" come from the Enlightenment are running contrary to history. As well, there cannot be located any deism of a putative deity that exists in history or worship, and one where life, liberty and property are defined as the unalienable gifts of the same. Such an Enlightenment deity is both ahistorical and

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engine is when a man is faithful to one woman as his wife for life, and as they build their *oikonomos* accordingly. These issues need to be addressed in the courts before same-sex marriage can be considered. The self-evidence of Genesis 1-3 came home to me once when speaking with my advisor at Harvard, Dr. Arthur Dyck. When I made mention of "creation, sin and redemption" (the formal definition of what I stated above), he leaned back in his chair and said, "Even Krister Stendahl would agree with you. He said the one thing that holds the Bible together is that it is 'the story of creation and the repair of a broken creation.' " Dr. Stendahl was a world class scholar, and former dean of Harvard Divinity School. His theological assumption and conclusion was that the Pentateuch, for example, was based in four competing and contradictory sources. Mine is quite the opposite – it is a complete literary unit written by Moses, with Joshua's epilogue – as the text presents itself. Regardless, we share affirmation of a self-evident reality of Genesis 1-3.

amorphous. Too, in the range of philosophic deisms, the major postulate is that of a watchmaker deity who makes the universe and humankind, then steps back from any further involvement. This is the opposite of the One who gives the gift of unalienable rights to humankind to order their social lives with shalom. There are other postulates in deism of a deity somewhat more involved in human affairs, but none conceived as that of Genesis 1-2 where the Creator is personally involved in giving such unalienable rights to us as image-bearers of God with eternal worth. In a forum with Professor Nadine Strossen, Esq., past president of the American Civil Liberties Union, in February, 1997 at Gordon-Conwell Theological Seminary, I said this is a historical statement of fact that requires no belief in the Creator of Genesis 1-2. But if we forsake even mere acknowledgement of such a historical fact (i.e., that the signatories were self-consciously referring to the God of the Bible, and not anything or anyone else), then to where will we go to reclaim unalienable rights once they are lost? Professor Strossen did not give contrary historical evidence, while at the same time not affirming my theological convictions. This reflects a mutual grasp of the self-evident from distinctly different postures, and as she also quoted the Declaration thus in her opening presentation. At the core of the debate over same-sex marriage is the possibility of jettisoning such rights for the whole nation in exchange for an entirely novel and untried idea, one where basic human rights are not guaranteed by that which or whom transcends human politics, but by that or those for whom human politics

is a means to rule arbitrarily over others – depending always on the changeability of who is in power at a given time with what sentiments.

2. **Is marriage itself an unalienable right – one that all people can demand for themselves – or is it an option under liberty?**

In the Fifth and Fourteenth Amendments, no person may "be deprived of life, liberty, or property, without due process of law." Thus, if marriage, whether defined as heterosexual and/or homosexual, is an unalienable right for all, would not all unmarried persons have the right to demand provision of a spouse from the government if they feel so deprived, i.e., a form of forced servitude in service to such a "right"?[9] To the contrary, marriage is an exercise of liberty, with attending covenantal and legal responsibilities. Why is it that advocates of same-sex marriage need to appeal to "fundamental" rights in order to advance their cause? If marriage does properly come under the category of liberty rights, they thus have the freedom to argue the laws should change, and if they can win the necessary constitutional process, they can properly prevail. There is an internal conflict within same-sex marriage advocacy – namely, the desire on the one hand to assert something as close as possible to the history and sentiments of unalienable rights, while on

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[9] Some may think this is *reductio ad absurdum*. But it has its self-evident logical cause and effect reality. In the 1970s on forward, many who questioned the homosexual rights movement said it would lead to same-sex marriage. The rejoinder was that such an objection was *reductio ad absurdum*. Yet, here we are.

the other hand and at the same time, denying the very Source and nature of those rights. Thus, what is the new syncretism and stated identity of the source and nature of fundamental human rights being put forth? Not yet defined to my knowledge, but necessarily needful to resolve this internal conflict.

3. **How does the Creator define human sexuality?**

In Genesis 1-2, where original goodness is defined, and prior to the introduction of broken trust, the assumption for all human sexuality is the marriage of one man and one woman in mutual fidelity.[10] Neither

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[10] The self-evident nature of Genesis 1 and 2, the biblical order of creation, is that of positive assumptions. "In the beginning God" is an assumption upon which all else follows. This precedes Gödel's observation about the assumptive nature of 1 + 1 = 2 before mathematics can work. Genesis 1-2 is the only text in human history that assumes human sexuality to be one man and one woman in faithful marriage. In February, 1996, I addressed a forum at Yale Divinity School on the subject of homosexuality, theology (e.g., the image of God) and civil rights. I made the argument, that in order for homosexuality to be regarded as biblical, all they had to do was show its presence in Genesis 1-2 (many there, professors and students alike, were seeking to find a biblical rationale or permission for a "modern" expression of homosexuality). No one there could make the case despite some creative attempts extraneous to the text (one being a double negative argument from silence). This is an example of the power of the self-evident in the face of those who sought to deny it. Genesis 1 and 2 both conclude with the defining of man and woman, of marriage between them, and from there, a healthy social order (the word "marriage" is not used in the text, for that is a later term describing the conjugal union of man and woman – in Jewish history, it is assumed that when a man and woman thus join, they are de facto "married"). In the introduction of broken trust in Genesis 3, it happens first between the man and

woman as husband and wife. In Genesis 4, this brokenness leads to murder and bigamy. In Genesis 5, the reassertion of the equality and complementarity of man and woman in marriage is in place. In Genesis 6, the judgment of the flood is due to the reification of women in the building of harems by the "sons of god" (an ancient Near Eastern expression for human kings who claimed pagan divinities as their ancestors, and thus set themselves up as gods with arbitrary power over other people). This was the very mockery of marriage. In Genesis 19, the judgment on Sodom and Gomorrah is due to a sexual anarchy (with its apex example being an attempted gang rape by de facto "bisexual" or "pansexual" men) that morphs into social anarchy, lawlessness and the trampling of the poor (per the 24 principal references to Sodom and Gomorrah across the whole Bible). This biblical overview, summed up tightly here, has been affirmed in Judaism and Christianity across the millennia. Only now does novelty appear in the conceptual advance of same-sex marriage, one which seeks to redefine the self-evident, not one which acknowledges it. Thus, the Declaration of Independence is likewise under assault. In 2001, one year prior to my above referenced testimony before the Judiciary Committee in the Connecticut State Legislature, and before the same Committee, the Rev. Dr. Davida Foy Crabtree, Conference Minister of the Connecticut Council of Churches, gave testimony that Jesus says nothing in the Gospels about homosexuality, and thus, in an argument from supposed silence proceeded to testify in favor of same-sex marriage. I was asked by one legislator to answer her perspective. In sum, I said that 1) Jesus affirmed marriage as defined in the biblical order of creation, 2) he fulfilled the Law of Moses that says no to homosexual actions, and 3) the apostle Paul ratified the same. I could have added other details such as Jesus explicitly opposing *porneiai*, a *koine* Greek word rooted in classical Greek literature for a "sexual immorality" inclusive of homosexual actions. Jesus was a quintessential rabbi where pedagogy begins with the teaching of how to ask hard questions, with the ability thus to separate the primary from the secondary and superfluous, and in order that evidenced answers can be fully owned. Such an ethical purpose is being pursued here. I then noted to Dr. Crabtree that Jesus had no need to mention homosexuality per se, since first century Judaism was not struggling with the issue in its midst. Nor did Jesus mention the three cardinal sins for which Jeremiah chastised ancient Judah, that which led to the Babylonian exile in 586 B.C. – sorcery,

this *sine qua non* nor any cognate idea is ever asserted outside the Bible. The self-evident nature of every other religious or secular source in history does not define human sexuality or marriage as does the Bible. A libertine heterosexual or homosexual ethos is assumed, e.g., broken trust and a war between the sexes, with the only restrictions on sexual conduct being placed over others by the self-aggrandizing power of (overwhelmingly male) political and religious elites. Thus, same-sex marriage advocates can find far more source assumptions in the materials of pagan religion or in a godless universe. If so, they should thus make their case if historical traction has any merit. Thus, same-sex marriage cannot lay claim to any relationship with the language of unalienable rights, its nature or content. The highest claim for same-sex marriage "rights" is located in novel and malleable human opinion.

4. **Are same-sex marriage advocates thus forcing a choice between unalienable and ultimate rights given by the Creator, on the one**

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sacred prostitution and child sacrifice. In fact, the sacred prostitution of male homosexuality was explicitly happening inside the temple of Solomon at the time prior to Josiah's reforms which were quickly reversed at his death in 609 B.C. Jesus did not have to do so in his own day, given the power of self-evident biblical assumptions being in play in all he said among his biblically literate fellow Jews. Subsequent to the Judiciary Committee testimony, I worked through the largest United Church of Christ congregation in the state (Dr. Crabtree's denomination) to invite Dr. Crabtree to address a public forum with me on this very topic. She demurred. Thus, an honest question at large – does not the self-evident, by definition, have confidence in the face of cross-examination?

hand, versus basic and penultimate rights defined by human authority, on the other?

When human authority defines basic civil rights for the larger social order, it depends on who holds that authority – by whatever means. A devolvement into "might makes right" cannot by definition be precluded, and where all citizens are vulnerable to a loss of rights.[11] Since power does shift between competing elites and opposing political opinions, no person or group can be assured of equality before any law based on human opinion.

5. **And if so, are same-sex marriage advocates decoupling the Declaration of Independence from the United States Constitution and civil law?**

If so, such a decoupling should be made explicit. And the delineation of the newly defined and however sourced "fundamental" or "basic" human rights should be clearly articulated. Is the new source located in a syncretistic deity, a secular idea, a philosophical notion, or otherwise? Such a newly defined source should be expected to substantiate its putative equality or superiority to the old order of Creator-sourced unalienable rights. It is self-evident that the United States Constitution assumed the Declaration of

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[11] For those who know the sociology of self-avowedly homosexual associations, it is self-evident that "might makes right" already exists within the same – as found, sadly, in most other social affiliations – and can be readily magnified once the Source and nature of unalienable rights is abrogated.

Independence as its own foundation and *raison d'être* – the philosophic and moral basis for its itemization of checks and balances on power -- and in the Fifth and Fourteenth Amendments specifically, the rootedness in unalienable rights. To redefine or remove unalienable rights from the Creator and the Declaration is to divorce cause and effect.

6. **Can same-sex marriage advocates give any example in human history where a homosexual ethos has advanced the well-being of the larger social order?**

This would mean a society where some expression of homosexuality has place as an acknowledged social good for all. And at the same time, such an ethos would successfully advance basic human rights for all people equally at an equal or superior level to that of unalienable rights. This would also include religious, political and economic liberty for all people equally, including those who dissent from homosexuality in any form. If such an example is not demonstrable, what are the consequences for same-sex marriage advocacy?[12]

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[12] It is self-evident that homosexuality finds no intrinsic prohibition in any source outside the Bible, only finding socially hierarchal regulations at most. Now, resistance to homosexuality may be part of assumptive frameworks in various cultural or extra-biblical and post order of creation religious expressions – in echoes of the image of God – but not with the explicit biblical prohibitions that are rooted in the positive assumptions of man and woman in marriage in the order of creation. This is why the Bible is consistently brought into this debate by same-sex

7. **Is homosexuality a fixed or immutable trait?**

In *Goodridge*, *re Marriage Cases* (2008) 43 Cal.4th 757 [76 Cal.Rptr.3d 683, 183 P.3d 384] and in *Kerrigan v. Commissioner of Public Health*, 289 Conn. 135, 957 A.2d 407, no scientific basis for a supposed genetic or social determinism for homosexual identity was even attempted. [13] And I have seen none attempted otherwise. Apart from clear evidence of a "fixed or immutable trait," Title VII of the 1964 Civil Rights Act, relative to "suspect" or civil rights class status,[14] is not met for homosexual persons qua self-

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marriage advocates. It is their most daunting hurdle as they pursue a socially approved and legally underwritten pansexuality, and likewise for the subsequent hurdle of the biblical ancestry of constitutional structure and laws. And it is especially self-evident that no such religion, philosophy or culture outside the Bible even imagines the concept of unalienable rights. Thus, how can same-sex marriage advocacy root itself in any track record for service to the common good congruent with the founding of the United States?

[13] If homosexuality were genetically or socially determined, and thus obviating entirely the role of human choice, the whole social and legal debate would be over. Same-sex marriage advocates have to show it as truly self-evident by supplying the scientific data. If the data does exist sufficiently, and in view of such assertions over the years in various studies and reports, why has there been no attempt in the legal process to argue it?

[14] In June, 2012, I had the pleasure of hearing Attorney Mary L. Bonauto speak at the University of Connecticut School of Law, and to communicate with her afterward. She represented the Gay & Lesbian Advocates & Defenders, as plaintiffs, before the United States Court of Appeals for the First Circuit, No. 10-2204: *Commonwealth of Massachusetts, Appellee, v. United States Department of Health and Human Services*, et al. and et al. Attorney Bonauto's presentation was articulate and gracious as she argued for the equal protection clause in the Fourteenth Amendment. She described the four criteria for "suspect" classes

in Title VII – 1) the group has historically suffered discrimination, 2) the group is powerless in the political process to protect itself, 3) the group's distinguishing characteristic does not prohibit their meaningful contribution to society, and 4) the group poses a fixed or immutable trait that is highly visible. When Attorney Bonauto addressed the fourth criterion, the "fixed or immutable trait" language, she only did so in subjectively determined language. No attempt at an objective definition as the language requires. This is seen in *Commonwealth* where the prior three criteria are subject to "strict scrutiny," and then there is the admission that "intermediate scrutiny to sexual preference classifications is not a step open to us" due to the legal record that had already declined to "create a major new category of 'suspect classifications,' " along with a stated "no indication" that the Supreme Court is about to do so. The language of "preference" speaks of choice, not a fixed trait as with all other classifications. Moving from an admission of no objective substance, *Commonwealth* then argues for the subjective pleas for equal protection of "purported justifications where minorities are subject to discrepant treatment." Discrepant treatment is heinous, period, with respect to our nation's foundation in universal unalienable rights. But that is the debate here – the Source and nature of rights. And *Commonwealth* here is engaged in circular reasoning, begging a definition of "minorities" that admittedly does not meet strict or intermediary scrutiny. Thus, as it were, any self-identified class of subjectively aggrieved parties can claim suspect classification. No firm basis in law can thus remain. How far down the path have we traveled from the simplicity of unalienable rights belonging to all people as people, period, and having them enforced accordingly? To multiply definitions of objective or subjective "civil rights classes" of people groups only exacerbates social conflict, dehumanizes and then degrades the possibility of equality before the law. And though *Romer v. Evans*, 517 U.S. 620 (1996) "rested on the case-specific nature of discrepant treatment" of homosexual persons, this train of thought in *Commonwealth* is the crafting of a deliberately slippery slope seeking to justify a presupposed conclusion. Case specificity is ultimately arbitrary and knows no bounds. *Commonwealth* seeks the decoupling of the Declaration of Independence from the Unites States Constitution, making unalienable rights a moot idea.

identified homosexuality.[15] Homosexuality is not a civil rights class in U.S. law.

Conclusion

Unless these seven questions are answered with clarity and substance, then same-sex marriage advocates have not begun to sustain their position.

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[15] It is self-evident that homosexual identity is both subjective and malleable, however deeply rooted in a person's psyche and potentially pre-cognizant variables where environmental factors leave indelible marks. Other identity claims are subjective and malleable too, starting with religion. The Constitution protects religious liberty, but no single religion is regarded as a fixed trait nor defined as such in law. Self-identified homosexual persons, as individuals, have full constitutional and equal protection rights, but not in being defined as a fixed identity suspect class – until and unless they present the genetic evidence. Thus, since there has been no scientific attempt to present homosexuality as a fixed or immutable trait, how can same-sex marriage as a human rights issue rooted in suspect class status have any standing to begin with?