

Utah
Constitutional Defense of Marriage Alliance

LaVar Christensen
Senator Chris Butters
Gayle Ruzicka

*** PRESS RELEASE ***

Former Utah Representative LaVar Christensen, Utah Senator Chris Butters, and Gayle Ruzicka of the Utah Constitutional Defense of Marriage Alliance (CDOMA) have released the attached "Summary of Opposition to the Common Ground Initiative"

We encourage the Utah State Legislature to oppose any legislation that would give marriage-type benefits to individuals who are not married.

Utah must not make the same mistakes the California Legislature made in passing laws culminating in a "gradual expansion of rights" for same-sex couples.

The California Supreme Court viewed the collective effect of these laws as "Legislative History" justifying the creation of a new "fundamental right" to marry any person of any gender. The people of California have since overturned that decision by direct vote.

Utah does not need and does not accept the legislation packaged as the "Common Ground Initiative."

For more information, contact Gayle Ruzicka at 801-756-2499 / 801-368-2990

Summary of Opposition to the “Common Ground Initiative”

Presented by the Constitutional Defense of Marriage Alliance

Introduction

Equality Utah has issued a proposal called “The Common Ground Initiative.” This proposal is actually very “uncommon”. It is ground breaking and would take our state in a direction that the people of Utah have repeatedly rejected for the reasons stated herein.

The proposed “Initiative” is a package of bills meant to move the State towards eventually giving legal status and public recognition and validation to same sex and unmarried couples. The claimed justification for these bills is extremely misleading. They present the bills as compassionate and harmless extensions of existing law, which are said to pose no threat to traditional marriage and established public policy. However, there is no current problem crying out for such new legislation. Instead, these bills are tied to the recent “gay rights” experience in California where informed and active citizens with the help of churches and organizations (including members of The Church of Jesus Christ of Latter-Day Saints) adopted a Marriage Amendment to their state Constitution as Utah did in 2004 and as 28 other states in America have now done as well. Equality Utah has publicly stated that their package of bills is directed specifically at the Church of Jesus Christ of Latter-day Saints. Equality Utah claims that the Church and its followers must formally accept any and all legislation favored by same-sex couples as long as they stop just short of formal public approval and legalization of same-sex marriage. This rebutting “Common Sense Initiative” refutes those claims.

Careful review of these six bills RAISES THE QUESTION: What is their origin and where will they lead? These bills are made in California. They are among the “Legislative History” cited and relied upon by the California Supreme Court as justification for their radical and unprecedented ruling that, henceforth, everyone in their state has a new “fundamental right” to marry any person of any gender and have that choice officially sanctioned and recognized by the state and the people of California (against their will). The people of California have since overturned that decision by direct vote (more than 7 million voters) but it is now appealed to the same state Supreme Court that prompted such action in the first place. Utah does not need and does not accept the legislation packaged and marketed this year in Utah as the “Common Ground Initiative.” In response thereto, supporters of traditional marriage and our existing laws present our “Common Sense Initiative.”

Equality Utah’s description of their six “Common Ground Initiatives” is shown below in small print. Then, our brief response follows in bold print. These bills are not the spontaneous and isolated ideas of individuals or groups in Utah who simply claim to be responding to situations that trouble them in our state. *They are pulled directly from a national same-sex partner advocacy agenda that Utah does not need and does not support.*

Individual Bill Summary

- 1. (EU) EXPANDING HEALTH CARE: Most gay Utahns cannot insure their family. This bill will mandate that public employer insurance plans which extend benefits to an employee's spouse also cover an employee's partner. When insurance plans cover families, they should cover every family member.

(CDOMA) This bill seeks to change and expand the definition of family and thereby publicly endorse same sex domestic partnerships. There is no family coverage crisis for public employees in our State. Current public employment policies allow workers to gain health insurance for spouse or children. Private employers are free to provide whatever benefits they choose for their employees. No public employees are denied coverage for their spouse or children. This proposal would allow cohabiting couples and others who can't marry to designate one another for health benefits. In a time of budget cuts, any call for expanding the pool of people eligible for taxpayer-funded employment benefits should show a compelling need for such benefits and that private arrangements cannot meet the need. As with all the bills, this proposal indirectly seeks a government mandate in support of their demand for public validation of same-sex couples.

- 2. (EU) FAIR EMPLOYMENT: Currently, it is legal to fire a person from her job just for being gay or transgender. This bill will add sexual orientation and gender identity to the list of characteristics that employers may not consider when making decisions about employment. This was introduced in the 2008 session as SH 89.

(CDOMA) Current employment law forbids an employer from inquiring about the marital status or sexual behavior of employees. The claimed "discrimination" is falsely stated. This proposal is likely to encourage lawsuits from any disgruntled employee and would be a further drain on public resources. Additionally, although it exempts religious organizations, it is not clear that it protects religiously-themed or motivated businesses not directly affiliated with a religious organization (such as religious bookstores). Courts in California, Connecticut, and Massachusetts have all pointed to the existence of lawsuits (based on and resulting from such Legislation) as evidence that the State's public policy knowingly supports and advocates redefining marriage to include same-sex couples. That is the well known and well documented origin of such legislation and where it leads. Again, the recent California Supreme Court decision confirms that this bill is part of the "Legislative History" that led to the Court's adoption of same-sex marriage. Also, these bills (individually and collectively) are designed to make "sexual orientation" and same-sex couples, in general, a "suspect class" under the law like race, religion and ethnic origin. This is a critical point and unprecedented reversal of existing constitutional law. It would shift the applicable constitutional standard of review and have sweeping effect throughout the entire body of Utah law to the point that it will be much more difficult to uphold public policy in support of traditional marriage.

- 3. (EU) FAIR HOUSING: Similarly, a people can be evicted from their homes if they are gay or transgender. This bill will add sexual orientation and gender identity to the list of the characteristics that landlords may not consider when making decisions about eviction.

(CDOMA) Both direct and indirect references to “sexual orientation and gender identity” pose the same challenges as previously noted. Again, current law already addresses any concerns this bill claims to address. The proposed law would likely encourage lawsuits and the “religious exemption” falls far short. Once adopted, numerous cases show that such “discrimination laws” in Alaska and California have been used to support lawsuits against small property owners and property managers who object to renting to cohabiting couples on religious grounds. As noted in the previous point, the existence of these laws has lead to judicial imposition of same-sex marriage in other states. Utah rejects that proposition and chooses not to go down that path.

- 4. (EU) WRONGFUL DEATH: The sudden death of a loved one is always painful. When someone dies because of the negligence or malpractice of another, we can help families stay in their homes by removing existing barriers to inheritance and insurance. This bill was introduced in the 2007 session as SB 58 and in the 2008 session as SB 73.

(CDOMA) Again, this is another bill that seeks to publicly validate and treat same-sex partners as spouses and blood relatives for litigation purposes. The number of such suits is comparatively very small but of most importance to Equality Utah is the ability to use every path available to create the virtual legal equivalent of marriage for same sex couples. The solution this bill offers, however, does not respond to an actual need (since anyone can designate another person as a beneficiary in a will or insurance policy). Litigation is not always the best way to respond to life’s tragedies and often benefits only attorneys. This bill also raises questions about whether existing dependents, such as children, would gain a lesser settlement if they have to share that settlement with other persons. Insurance premiums rise and insurance companies cannot possibly anticipate and plan for the expansion of claims outside of marriage, which has always been the unique natural relationship that society endorses and encourages to promote and provide the optimum opportunity for children to be conceived and raised by both a father and a mother. This bill, as drafted and presented, is filled with so many disclaimers and assurances that it is effectively stripped of any necessity or effectiveness. Its true purpose seems very transparent, which is to create multiple avenues for public acceptance and validation of same-sex domestic partnerships (even if other individuals and circumstances must be included to further that objective). The net effect is that the bill is not good public policy and current law does not call for alteration in the proposed manner.

- 5. (EU) DOMESTIC RIGHTS AND RESPONSIBILITIES ACT: Apart from marriage, we can do much more to help committed couples in Utah care for each other. This bill creates a domestic partner registry and will attach rights of inheritance, insurance, and fair housing.

(CDOMA) Again, such a registry is not necessary unless the state wants to publicly accept, identify and officially recognize same-sex domestic partnerships. Private individuals and companies can do as they please but this legislation again seeks to mandate government action and the use of public tax dollars. Again, the California Supreme Court included such legislation in the "Legislative History" that led to the Court's formal acceptance of same-sex marriage (before being later overturned by 7 million voters). Every individual can specify and direct the hospital to permit visitations during their hospital stay by anyone the patient desires. If the supporters of the bill contend otherwise, a study of actual hospital policies may be appropriate to see if there is truly a widespread denial of visitation just because the prospective visitor is not married to a patient. Utah public policy strongly favors the legal relationship between a man and a woman in a marriage. Any other legal status based on a sexual relationship is contrary to that policy. Additionally, medical decision-making and inheritance rights are easily obtained through legal documents that do not require the creation of a government sponsored institution and mandatory regulations for unmarried couples.

- 6. (EU) CLARIFY AMENDMENT 3: A government registry involving inheritance, housing, and insurance is nowhere near the legal equivalent of marriage. But the second part of Amendment 3 has been misinterpreted to prevent any recognition of gay and transgender couples in Utah. This bill would repeal the portion of Amendment 3 which states "no other domestic union, however denominated, may be recognized as marriage or be given the same or substantially equivalent legal effect." It will not change Utah's current definition of marriage, which is one man and one woman.

(CDOMA) "Amendment 3" (Utah's Marriage Amendment), as adopted by the Legislature and the people of Utah, serves our state well. It expresses the public policy of our state in recognition and support of traditional marriage and family as the foundation of our society and opposition to same-sex marriage or its equivalent under some other name. It also protects the freedom of conscience rights of third parties who support the ideal of marriage as the union of a man and a woman. Recent cases from other states that have created alternative legal statuses for unmarried couples (such as "civil unions" and "domestic partnerships") have caused significant conflicts for religious liberty. Examples include - a wedding photographer who was sued for declining to photograph a same-sex commitment ceremony, a Methodist camp association that lost part of its tax exemption because it would not allow a commitment ceremony between two women on its property, a doctor who was sued when he referred a woman in a same-sex relationship to another doctor for assisted reproduction services because of his religious beliefs, etc. The people of Utah have expressly rejected the alternative designation and approval of same sex domestic partnerships. This bill seeks to take our state down the road in California that ultimately required their "Proposition 8". That is not "common ground" and we urge the Utah Legislature to not alter or weaken existing law in these areas.