

The Salt Lake Tribune

Should government get out of the marriage business?

Gay rights » Civil unions for all could be a compromise that helps churches and the state.

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Salt Lake Tribune

Updated:02/12/2010 09:36:53 AM MST

When a bride and groom exchange vows in a cathedral, chapel or temple, they receive a marriage license, blessed simultaneously by their clergy and their state.

But why? Other religious ceremonies aren't wedded to civil ones. The county clerk doesn't issue a baptism license. A priest doesn't deliver a funeral eulogy and then sign the death certificate.

Could separating religious and civil marriages solve the gay-marriage standoff?

Some legal scholars think so. The "compromise" is simple: The government would offer civil unions to all couples, gay or straight. Couples who want their unions blessed as marriages then would go to their respective churches after stopping at City Hall.

Churches would lose nothing in their ability to sanction unions as they see fit. And the added separation between church and state would bolster religious liberty. All couples, gay or straight, would have equal access to state and federal benefits -- now granted to married couples -- with a civil-union license.

"Legally and conceptually, it's an elegant solution," said Frederick Gedicks, a law professor at LDS Church-owned Brigham Young University in Provo. "Politically, it's probably a nonstarter for both sides."

Marriage means something. And those who can legally participate in it now and those who are fighting to be included may be loath to give it up.

"Part of the power of marriage is it combines both civil and religious recognition," said Clifford Rosky, a University of Utah law professor who sits on Equality Utah's legal panel. "It's weird that it's both religious and political -- but that's the beauty of it."

Say 'I do' to civil unions

Still, two law professors from Pepperdine University, a Christian college in Malibu, Calif., have argued it is just the salve needed to heal the divide created from one of the nation's most contentious marriage fights:

Proposition 8, the 2008 California ballot initiative that overturned a state Supreme Court ruling legalizing same-sex marriage in the Golden State.

Professors Douglas W. Kmiec and Shelley Ross Saxer, "dear friends" and colleagues for a decade, found themselves on opposite sides of the ballot box: He voted "yes" to define marriage as between a man and a woman, and she voted "no."

Hashing out their differences in faith and politics -- Kmiec is a Republican Catholic and Saxer is a Democratic member of the United Church of Christ -- was "difficult," Saxer told *The Salt Lake Tribune* .

But they reached a "compromise" that they touted during a California Supreme Court trial a year ago. The state court ultimately upheld Prop 8, along with the 18,000 same-sex marriages performed when such unions were legal. (A second, federal trial about whether the proposition violates the U.S. Constitution is now before a judge in San Francisco.)

Kmiec and Saxer, in a *San Francisco Chronicle* op-ed piece, argued the California high court could uphold Prop 8 and the vote of the people, inserting into the state's constitution a definition of marriage as limited to a man and a woman. But, the pair said, the court also should remove the word "marriage" from all existing California legislation, directing the state to use "nonmarriage terminology for all couples."

Thus, the court would comply with its earlier ruling, in favor of same-sex marriage, that found state legislation referring to "marriage" and applying only to straight couples violates constitutional rights to equal protection.

"Marriage is of religious origin; it should remain there," the professors wrote. "While new terminology for all may at first seem awkward -- mostly in greeting-card shops -- [it] dovetails with the court's important responsibility to reaffirm the unfettered freedom of all faiths to extend the nomenclature of marriage as their traditions allow."

They suggested such a solution in California eventually could prompt the federal government to follow suit -- just as the U.S. Supreme Court did two decades after California protected the right of people of different races to marry.

Bishop Carolyn Tanner Irish, who leads the Episcopal Diocese of Utah, sees the civil-unions solution as "one way forward." Her faith offers blessings to same-sex unions but does not recognize those relationships as marriages. (When the issue comes before the whole Episcopal Church, Irish said, she will vote in favor of performing gay marriages. Until then, she upholds the policy of her church.)

"I'd like to see same-sex couples treated like all other people," she said. "It makes sense to me that [the government] might separate a marriage union from a legal union."

The Utah-based Church of Jesus Christ of Latter-day Saints does not endorse the civil-unions-for-everyone concept.

"The issues surrounding religious freedom and the importance of traditional marriage in society extend far beyond questions of who performs marriages," church spokesman Scott Trotter said via e-mail.

But it could, perhaps, provide a compromise to a thorny dilemma faced by many LDS couples planning their nuptials: When they marry in a temple -- one of the faith's most sacred rites -- only the couple's temple-worthy family members and friends can attend the ceremony. Even parents who are either non-Mormon or lack a "recommend" must wait outside the temple doors.

If a couple participated in a civil ceremony first -- where all were invited -- family and friends excluded from the temple might feel more included in the wedding day.

Opposition from both sides

Pastor Greg Johnson, president of Standing Together, an association of evangelical Christian Churches along the Wasatch Front, maintains the civil-union compromise would "weaken the institution of marriage."

"Our country's religious history has acknowledged the sanctity of marriage and deferred to religious communities to sanction those marriages," said Johnson, who opposes gay marriage. Offering civil unions to everyone "would lead to greater and greater secularization, which I think is sad."

Promoting a civil-unions compromise would be a perilous stance for gay-marriage advocates to take, Rosky noted. Foes of same-sex marriage often argue that allowing gay and lesbian couples to wed threatens the institution.

"The opposition," Rosky added, "would say, 'See, we've told you all along they're trying to ruin marriage.' "

Evan Wolfson, a national advocate for gay marriage and author of *Why Marriage Matters: America, Equality, and Gay People's Right to Marry*, objects to the civil-union option.

"That's really kind of an unnecessary solution to a false problem," said Wolfson, executive director of New York-based Freedom to Marry. "There already is a difference between legal and religious marriage. Under the law, religions are free to decide who celebrates marriage in their own faith. Government can't tell them what to do -- and shouldn't."

He questions why the government needs to invent a whole new system to recognize relationships just because more couples want to participate in marriage. He also doesn't want to take something away from married couples.

"We don't need to run around requiring every non-gay couple in America to turn in their marriage to be issued some new kind of civil union," Wolfson

said. "What we need to do is stop discriminating against [gay] couples who want the same freedom to marry as their non-gay brothers and sisters."

Still, Derek Streeter, a St. George resident who married his partner of 21 years when gay marriage was briefly legal in California, would be happy with a civil union if all couples were awarded the same status.

"I don't care what people call it," he said. "The important thing is that everyone is treated the same."

For Streeter, it comes down to whether he and his husband, Stephen Eiche, can obtain the same state and federal benefits that other married couples enjoy. For instance, the couple lack the financial security of being able to draw on each other's Social Security benefits when one of them dies.

"Right now, for me, it's important that I be married," Streeter said, "because that is what has been legally given to straight people."

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