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THURSDAY, JANUARY 7, 2010

## Cato Institute Chairman makes the constitutional case for same-sex marriage

Posted by Joe Sudbay (DC) at [10:28 AM](#)

The Chairman of the Cato Institute, the libertarian think tank, has an op-ed in today's [New York Daily News](#) making the case for same-sex marriage. Robert Levy argues the Courts must apply the "strict scrutiny" standard to the issue:

To pass constitutional muster, racial discrimination had to survive "strict scrutiny" by the courts. Government had to demonstrate a compelling need for its regulations, show they would be effective and narrowly craft the rules so they didn't sweep more broadly than necessary. That same regime should apply when government discriminates based on gender preference.

No compelling reason has been proffered for sanctioning heterosexual but not homosexual marriages. Nor is a ban on gay marriage a close fit for attaining the goals cited by proponents of such bans. If the goal, for example, is to strengthen the institution of marriage, a more effective step might be to bar no-fault divorce and premarital cohabitation. If the goal is to ensure procreation, then infertile and aged couples should be precluded from marriage.

His conclusion is quite powerful:

Yet our politicians, unwilling to privatize marriage, seem congenitally unable to extricate themselves from our most intimate relationships. One would hope, in the coming months and years, that more enlightened federal and state legislators will have the courage and decency to resist morally abhorrent and constitutionally suspect restrictions based on sexual orientation. Gay couples are entitled to the same legal rights and the same respect and dignity accorded to all Americans.

This is helpful. It's always good to have allies from what is viewed as the other side make our case. It's like having Ted Olson arguing the case against Prop. 8 in California.

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- DailyKos
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Gay politics from a local, national and international perspective.

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