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Gay Rights



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[The Constitutional Case For Gay Marriage](#)

by [Michael A. Jones](#)

category: [Marriage Equality](#)

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What's the number one reason we should have gay marriage? It's not moral, political, or even civil rights related. It's constitutional. That's one of the factors driving a federal court case challenging gay marriage bans, [moving forward in California next week](#). But the issue extends far beyond the Golden State.

In fact, if Thomas Jefferson were around today, [the chairman of the Cato Institute says that he'd likely be in favor of gay marriage](#). Why? Because the principles behind legal gay marriage are on full display in the Declaration of Independence.

"Thomas Jefferson set the stage in the Declaration of Independence: '[T]o secure these Rights, Governments are instituted among Men,'" writes Robert Levy, who has chaired the Cato Institute for the past two years. "The primary purpose of government is to safeguard individual rights and prevent some persons from harming others. Heterosexuals should not be treated preferentially when the state carries out that role. And no one is harmed by the union of two consenting gay people."

The nation's founding documents support gay marriage? Sure do. Now if that meme can just get out to a few state legislatures ([here's looking at you, New Jersey](#)), we'd be set.

The constitutional case for gay marriage is exactly the case being made by Ted Olson and David Boies, the two lawyers challenging California's ban on gay marriage, otherwise known as Proposition 8. [Boies wrote two months ago](#) that both the Constitution -- not to mention U.S. Supreme Court precedent -- show that gays and lesbians should have the right to marry.

"People's personal views of the appropriateness of same-sex relationships naturally influence their views of our lawsuit," Boies wrote. "However, it is important to remember that the legal question does not, and under our Constitution cannot, depend on people's personal preferences."

In other words, if you combine Thomas Jefferson, mix in all the rest of our Founding Fathers (and mothers), and add in the U.S. Supreme Court, you get a collective body of work that says one simple thing: there should be no limitations on the right to marry.

Photo: [U.S. Sen. Mike Crapo](#)

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1.

Indeed...

Other than the requirement that the participants be of legal age and sound mind...

(Said for the benefit of the bible thumpers who will no doubt jump on that last sentence in order to base their idiot arguments about pedophilia and bestiality on)

Now if we could only get the politicians to see it that way.

Posted by [Reverend Boony](#) on 01/07/2010 @ 04:53PM PT

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2.

I forgot to add that they must also be of the same species.

Posted by [Reverend Boony](#) on 01/07/2010 @ 04:53PM PT

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3.

There must be no preferential treatment when it comes to government in the United States, thus the right of same-sex marriage must be available in every state and territory of the United States. It's good that according to the Cato Institute's chairman, Thomas Jefferson would support same-sex marriage if he were still here. It's also good that Ted Olsen and David Boies are challenging Proposition 8 so that there will be equality for lesbians and gays.

Posted by [Edwin Bonilla](#) on 01/07/2010 @ 05:12PM PT

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4.

I just e-mailed, the text of the article this is based upon to The leader Lawyer for GLLAD. She was afraid using just the Maine Constitution, we would Lose because Maine courts has Nullified Parts of that.

And Our nations US Supreme Court Nullified the right of law makers to extend Civil Rights to Non- governmental parties, in the Boy Scott Leader Vs NJ Boy Scouts.

Background on that statement my partner and I was thinking of suing the state of mMaine saying the people had no right to vote upon Civil rights maters-any other law Yes. - not civil rights given by the legislature. GLAD did not want use suing in case we lost. With this augument and a decent lawyer, Plus public attention we can not lose.

Posted by [jan Lightfootlane](#) on 01/07/2010 @ 07:19PM PT

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5.

The Government should not interfere with the decision making and happiness of two consenting adults unless it physically will stop the civil liberties of others! As Boise put it our liberties cannot "depend on people's personal preferences!"

Posted by [Peter Taddeo](#) on 01/07/2010 @ 10:29PM PT

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6.

It is our constitutional right to marry. Once people were allowed to discriminate against minorities until Earl Warren became chief justice of the Supreme court in the fifties and things began to change. When more liberal justices sit on the supreme court discrimination against us will be ruled unconstitutional.

Posted by [Martin Martinez](#) on 01/08/2010 @ 05:29AM PT

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7.

like the war on drugs this issue is all about telling us we have no freedom.....if I am in my house harming no one.....why do cops break down my door.....and destroy lives every day.....could it be supporting the ones who prosper from the 100 billions wasted ever year and this year 1.7 million found out what lack of freedom really means.....

Posted by [Cherokee Fred Jesus](#) on 01/08/2010 @ 05:42AM PT

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8.

The bans on same-sex marriage are offensive to Constitutional liberty on two fronts. The first is the literal lettering of most state laws, which establishes arbitrary limits on every individual's right to marry based on his or her sex. After all, no sexual orientation test is given at the time of marriage. The second is the spirit of these laws, which is designed to create a class of people in homosexuals and then separate this class from their legal claim to full protection under the law despite there being no proof that doing so is necessary for the greater good of the public. The constitutional threshold for limiting a class of people from their rights as Americans is not met in these hateful state laws as there has been no proven benefit to society for doing so, and they only are allowed to exist because our courts by and large have refused to insist upon upholding the

supreme law of our nation.

In each instance, the action itself is repugnant to the concepts of liberty and pursuit of happiness, and especially to the Fourteenth Amendment of the United States Constitution (Equal Protection Clause).

Anyone looking to argue the true legal merits of the Constitutional case for marriage equality should start by reading the unanimous decision reached by Iowa's Supreme Court last year.

Posted by [Lena Ryan](#) on 01/08/2010 @ 06:52AM PT

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Author



Michael Jones is a Change.org Editor.

He is the former Communications Director for the Human Rights Program at Harvard Law School, as well as the former Director of Communications for Pax Christi USA, a national Catholic peace and justice organization. Mike is a graduate of Syracuse University's S.I. Newhouse School of Public Communications and he is also a proud sketch comedy writer.

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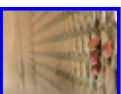



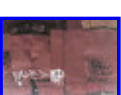

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