"Same Sex Marriage (Not)"

Lord Acton: "Law counts for little against the cause of the moment."

**Constitutionalized Removal of "Opposite Gender" from Marriage Equation Dictates Absolutely Removal of Its Number Limitation (Two Persons)**

"Hear ye" all judges, justices, constitutional specialists' lawyers and professors, *et al*, who favor a constitutional knockout blow of "opposite sex limitation" in the marriage equation : You know well the meaning of "law has its own integrity," particularly as applied to USSC justices interpreting the Constitution: They "must" follow time honored, accepted principles of constitutional interpretation, one of which is to keep their stinking private or personal views on the issues before them out of their decision-making process, or else there is no longer the due process guaranteed principle of "the impartiality of the adjudicator." Here is a challenge that the whole informed, impartial, constitutionally knowledgeable world puts to you: If you cannot put a constitutional dent in this argument of mine opposing same sex marriage, then, would you still rule, constitutionally, in favor of same sex marriage? If you would still do so, then, do you not favor well indeed "the tyranny of rule by men (women)," and not rule, by "the rule of law")? *See* Philip A Rafferty, Roe v. Wade: Unraveling the Fabric of America (Tate Publishing, 2012/13), pp. 65-66: Available for free online viewing in ***www.parafferty.com***.

If the USSC constitutionally rules out the requirement of "opposite sex" partners from the marriage equation per a constitutionally guaranteed same sex marriage decision, then, and in light of that decision (it being a logical precedent for this hypothetical decision or ruling that follows here), there is no reason under God's good sun why the requirement of one on one or a maximum of two persons will not also be removed from the marriage equation; so that serial marriages, polygamy galore, and multiples of persons in bisexual marriages, *et al*, become constitutionally guaranteed. No person can argue reasonably that an "opposite sex only", state - mandated requirement is less integral to the marriage equation, then is the two person limitation. I can hardly wait for this to come, because if it does (*i.e.,* if this two persons marriage limitation is removed by the USSC on the basis of its same sex rulings ), then, I will place an ad in a Manila-based, Philippines' newspaper offering to marry five (5) sisters between the ages of 16 and 24, as well as offering all five of them a free passage back to the land of the free, from morality at least.

There is no state attorney general's office, or constitutional attorney specialist or constitutional scholar that has, to date, put forth, constitutionally speaking, a same sex- constitutionally sound burial argument, as are my arguments here. Here are some additional sound arguments: 1) *See* the Tenth Amendment's embodiment of the principle of federalism ("The powers not delegated to the Unites State [including its USSC] by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.") in combination with this USSC's observation in Addington v. Texas (1979): "The essence of federalism is that the states must be free to develop a variety of solution to problems, and not be forced into a common uniform mold." 2) Justice Sotomayor to Justice Ginsburg: "Ruthie: Kagan, Breyer, myself, and Kennedy will vote same-sex marriage as a Fourteenth Amendment guarantee. With you on board, then, we can prevail 5 to 4." Ginsburg to Sotomayor: " Mi Rosa Latina: If I do so, then, all the criticism I threw at the Roe v Wade justices for "overruling democratic will" will bounce back and whack me hard in my face. I fear being undressed publicly as a hypocrite. Also, I have a question for the four (4) of you: The best argument against your same sex position is a constitutionally

sound answer to this constitutionally legitimate demand: That in your same sex constitutionally guaranteed opinions, you identify, precisely, the provision in the Constitution which forbids an opposite gender limitation to remain in the marriage equation, while permitting a number limitation ( two persons only) to remain in that equation. Once you do that, then, you must explain, in sound constitutional detail, why a number limitation of two persons far outweighs "an opposite gender limitation." If you can't fairly and reasonably answer those two distinct questions, then, every constitutionally informed person will see that what you say in your same sex marriage opinion qualifies as nothing more than actualized "judicial bias" which, by definition, is "impervious to reason", and utterly undermines the ultimate basis of our Lady Justice: "reasoned judicial rule coupled with utter judicial impartiality." Sotomayor to Ruthie: "Huh?". Ruthie, in every abortion case before the USSC in which you have participated, you voted either to affirm or extend Roe v Wade. So, how can you say that those pro- Roe votes of yours do not "affirm the overruling of democratic will? " Ruthie: to Sotomayor: "That's true; but as I pointed out a few years ago in the NY Time Magazine: Too many USA lower class or poverty-stricken children will drain us as a robust nation. So, let them (these nation draining in-womb persons) be launched into eternity (as mere medical waste) by pointy medical instruments before they have a crack at a good life as did you and me.

3): In the course of joining in the Court's majority and concurring opinions in Washington v. Glucksberg (1977), 521 U.S. 702, which held (9-0) that there is "no" "fundamental" constitutionally guaranteed right of a person to "commit" physician-assisted suicide, except when Justice Breyer will decide later to go constitutional rights window shopping in search of a fundamental right to "a dignified death" to every human being, except the aborted ones who have been relegated to "medical waste," and, then and there, to be thrown into medical furnaces. Justice O'Connor, in her concurring opinion in Gluksberg (521 U.S. at 736) related this time honored observation: "Our Nation's history, legal traditions, and practices do not support the existence of such a right. [Therefore], I join the Court's [majority and concurring] opinions]."

There is simply no question that, under the traditional Washington v. Glucksberg criterion of fundamental rights, same-sex marriage can even begin to qualify as a "fundamental right", constitutionally speaking. There is not a person under God's sun who can document so much as a single period and location in pre-1980 (or so) Anglo-American history or culture or laws when, and wherein, same sex marriage was an accepted practice.

4): Same-sex marriage can no more be considered legitimately as an aspect of the constitutionally guaranteed "fundamental right" to marry than can incestuous, bigamous, polygamous or three or four-way bisexual marriages be considered so. In West Coast Hotel Co. v. Parrish (1936), 300 U. U. 379, 391, the U.S. Supreme Court observed: "Liberty in each of its phases has its history and connotation." Throughout the Anglo-American historical period and context, the fundamental right to marry has been understood always and everywhere to mean the right of an unmarried, competent adult to marry another, unmarried competent adult who is of the opposite sex, and who is not too closely related by blood. If "opposite gender " is no longer to be considered as "integral" to the marriage equation, then, there can be no sound constitutional reason why number (which is still two) should be still considered so.

5): Given the foregoing understanding of the fundamental right to marry, and the criterion of fundamental rights adopted, more or less, by all nine judges in such cases as McDonald v. Heller (2008),

554 U. S.520 (fundamental right to possess a gun in the home) and Washington v. Glucksberg (no fundamental right "to commit" physician-assisted suicide), then, the only way for sitting USSC justices to conclude that same sex marriage is now to be included within the constitutional understanding of the fundamental right to marry, would be for them to adopt a free-for-all fundamental rights criterion of "fundamental rights" that has been condemned by every justice who has ever set on the USSC, including arch liberal Justice Thurgood Marshall as he expressed in his dissenting opinion in San Antonio Independent School District v. Rodriguez (1973),411 U.S. 1, 102: "I certainly do not accept the view that [fundamental rights determination] … need necessarily degenerate into an unprincipled, subjective 'picking-and-choosing' between various interests, or that it must involve this Court in creating [fundamental] constitutional rights." *See also* Faretta v. California (1975), 422 U.S. 806, 820 n.16: "Such a result [ *i.e.,* thrusting counsel upon an accused, against his considered wish] would sever the concept of [the constitutionally guaranteed right to counsel of one's choice] from its historic roots."

6): Since an across-the-board prohibition of same-sex marriage excludes no persons or groups of persons period (none whatsoever) to marry a competent, opposite sex person, of age, non-blood related, then, where is the discrimination? If the White House gives a Thanksgiving turkey to all USA persons, then, has it discriminated against veganites? Turkey anyone? Just because gays are prohibited from marrying their own sex implies no discrimination directed at them. (So-called homophobic *animus* will be addressed shortly.) As observed by the Court in Wisconsin v. Yoder (1971), 406 U.S. 205, 215-216: "The very concept of "ordered liberty" precludes allowing every [or any] person to make his own standards on matters of conduct in which society as a whole has important interests." Certainly the people of a particular state (and all the people of the United States) have a legitimate interest in preventing their governments from not doing their very reason for even existing: Preserving, "intact," fundamental or unalienable rights, endowed upon them by their Creator-God. (*See* the Declaration of Independence (July 4th, 1776), at 2nd paragraph.)

Tacking on same-sex marriage to the fundamental right to marry makes marriage into something that it is not. And our Declaration of Independence states very explicitly that whenever a state or government fails to preserve, secure, or facilitate the exercise of an "unalienable" or "fundamental right", then, it becomes the right of the people to either modify or abolish its government. As observed by the Court in Murphy v. Ramsey, 114 U.S. 15, 45 (1885) (Matthews, J.): "[N]o legislation can be supposed more wholesome and necessary to the founding of a free, self-governing commonwealth, fit to take rank as one of the co-ordinate states of the Union than that which seeks to establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement." And then there is this statement by Justice Anthony Kennedy (joined by Justices, Ginsburg, Breyer, Sotomayor, and Kagan (and quoting In Re Burus (1890), 136 U. S. 586, 593-64): " 'The Whole subject of domestic relations…belongs to the States, and not to the law of the United States.' "

7): Loving v. Virgina (1967), 388 U. S. 1, did not extend at all the fundamental right to marry. It simply removed a theretofore never existing prohibition to a valid marriage: No black on white marital partners. So, Loving is no valid USSC precedent for same sex marriage because: "Citation out of context is pretext."

8): As my above argument against same sex marriage proves only far too well), so-called homophobic *animus* can never be proved in light of this truth put forth by the USSC in Hammond v. Schappi (1927), 275 U. S. at 171-173: "Before any of the questions suggested, which are of novel and far reaching importance are passed on by this court, the facts essential to their decisions should be definitely found by the lower courts upon adequate evidence." I have animus against serial-rapists-child-murderers. If government locks these child-murderers away for life, then, has government done so unconstitutionally because of its harbored animus against these child-killers? *See, by way of analogy*, WCS v. Mergens (1990), 495 U. S. 226,249: "Even if some legislatures were motivated by a conviction that religious speech, in particular, was valuable and worthy of protection, that alone would not invalidate the act, because what is relevant is the legislative *purpose* of the statute, not the possibly religious motives of the legislators who enacted the law." (*See also* McGowan v. Maryland (1961), 366 U. S. 420, 442; and also Bowen v. Hendrick (1988), 487 U. S. 589, 605 & 612-13.) Furthermore, I say that I harbor no animus against gays; and no person can read my mind to say that I do.