

**GIBBS LAW FIRM, P.A.**  
**Attorneys and Counselors at Law**

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January 4, 2011

VIA EMAIL [wvff@wvfamily.org](mailto:wvff@wvfamily.org)

Mr. Kevin McCoy  
West Virginia Family Foundation  
PO BOX 3421  
Charleston, WV 25334

Dear Mr. McCoy:

Thank you for contacting our law firm regarding the issue of protecting traditional marriage in the state of West Virginia and whether a state constitutional amendment is needed despite the fact that West Virginia already has a Defense of Marriage Act (DOMA) in place.

By way of introduction, our law firm serves as corporate counsel for the Christian Law Association, a nonprofit organization that has been in existence for more than forty years to protect the constitutional rights of Christians all across America. On behalf of CLA, our law firm provides an additional educational function by sending out hundreds of letters every year to churches, individuals, community groups, private companies and government officials with information about the law. For reasons that are included below, our law firm endorses and supports the proposed constitutional marriage amendment, which reads.

**ARTICLE III. BILL OF RIGHTS.**

**§23. Marriage Protection Amendment.**

Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions. This state and its political subdivisions shall not create or recognize a legal status for same-sex relationships to which is assigned the rights, benefits, obligations, qualities or effects of marriage.

It is our legal position that a traditional marriage and family is the most basic and fundamental building block of society, and that it is the state's prerogative to support and to benefit financially only those behaviors and relationships that best contribute to the stability and protection of society. The support of only traditional marriage is an

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important aspect of that goal. By supporting only traditional marriage, we do not support any governmental subsidy, support or promotion for same-sex marriages, civil unions, or any other intended familial relationship other than traditional marriage between one man and one woman, with its biological or adopted children. We do not believe that same sex marriage, civil unions or any other intended familial relationship should be given the support and financial benefits which society has always used to encourage traditional marriage since traditional marriage serves a unique and historic role in society that is not equivalent to any other types of intended familial relationships.

It is our legal opinion that a DOMA law is no longer sufficient to ensure that a state will be able to protect traditional marriage. Every state now needs to have a state constitutional amendment in place. The federal government has indicated an intent to repeal the federal DOMA, which would in turn undermine state DOMA laws. We believe that ultimately a Federal Marriage Amendment to the federal Constitution will be the only sure way to protect traditional marriage and avoid financial incentives for any lesser familial relationships, which have not proven to be successful building blocks for any society.

In addition, we believe that state constitutional amendments should continue to treat traditional marriage as the primary relationship foundation of society and the only familial relationship that should be encouraged by the government legislatively, financially and morally. In order to do that, neither state constitutional amendments nor laws, should encourage same sex relationships with the same financial incentives as are provided to encourage traditional marriages and families. Studies show that children do best in traditional families with married opposite sex parents, as does society. Therefore, traditional marriage is the only relationship that states should encourage in any way, including financial benefits and incentives. There is no reason for states to encourage any other sort of relationship, be it same sex relationships, polygamy or any sort of opposite sex partnerships, unions or cohabitation. There is no difference, for instance between cohabiting same sex couples or opposite sex couples. Government has never encouraged such relationships as fundamental building blocks of the society. A state must draw the line somewhere, not only for moral reasons, but also for financial reasons. Government does not have unlimited financial resources. Therefore, those resources should only be used to encourage traditional marriage and family, which over thousands of years has been the only recognized building block for societies around the globe.

CLA has recently had several inquiries about how the legalization of homosexual marriage might negatively impact those Christians whose faith does not permit them to support or encourage this lifestyle. These calls included one from a West Virginia government worker who was concerned about whether government clerks who oppose gay marriage because of their religious beliefs would be required to issue marriage

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licenses to same sex couples should gay marriage or civil unions be legalized in West Virginia. These questions all ultimately revolve around the issue of whether the West Virginia Defense of Marriage Act will continue to sufficiently protect West Virginia Christians from being required to either recognize gay marriages or civil unions directly by a state court decision or indirectly through courts requiring recognition of gay marriages or civil unions performed or recognized in other states. The questions we are hearing from West Virginians and others involve the following specific issues.

- 1) If the federal Defense of Marriage Act is repealed, will state DOMAs sufficiently protect state interests or will states be required to have state constitutional amendments recognizing marriage in that state as only between one man and one woman in order to be protected?

Only a state constitutional amendment will permit a state to protect traditional marriage should the federal DOMA laws be repealed by Congress. Only a state constitutional amendment will assure that neither courts nor a future legislature could legalize gay marriage or civil unions in West Virginia. Beyond that looms the issue of recognition of polygamy or opposite sex cohabitation should these other relationships be legalized by either courts or legislatures in America. There is absolutely no legal or constitutional standard for moving the line beyond traditional marriage since these other relationships have never been recognize as important foundational building blocks for America or for any other society. There are already polygamy proponents gearing up to follow in the wake of gay marriages or civil unions, despite the protestations of gay activists that this could never happen. This would add additional financial burdens for government without any of the other foundational benefits that traditional marriage and family have always provided for America.

- 2) There is also some question as to whether federal benefits for same sex couples have already undermined a state's ability to preserve its protections for traditional marriage and whether the repeal of Don't Ask, Don't Tell in the military will have an additional negative effect of undermining a state's ability to protect and encourage traditional marriage with financial and other benefits.

This question is particularly relevant to West Virginia since many federal workers reside there. Again, the question of polygamy also looms large. These are no longer questions that states can avoid. How could it be "equal protection" to provide government benefits to same sex families and not provide them for polygamous families or other unmarried families that are cohabiting? This will be the next issue to surface, but a state constitutional amendment protecting the definition of traditional marriage as between one man and one woman will cover

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any of these additional problems. Equal protection is only required for similarly situated citizens. If marriage by constitutional definition only means one man and one woman, there are no "equal protections" constitutionally required for any other relationships that do not meet this definition. Before the push for gay marriage and/or civil unions, no one questioned the benefit to society and the definition of marriage as between one man and one woman. This was universally understood and presumed in the original constitutions of all states and of the federal government. Therefore, a constitutional definition was not previously required. That is no longer the case, so state constitutions must now spell out exactly what they have always meant by the term "marriage." It would be even better if there were a federal marriage amendment, but if that is not to be then the states must protect themselves individually by state constitutional amendments as best they can. The definition of a dog cannot be changed at will to include cats. Neither should the definition of marriage be extended beyond one man and one woman to include other non traditional relationships. These other relationships are not similarly situated with respect to traditional marriage within our society and there is no constitutional reason to declare that they are.

- 3) Why would a state look to increase its government expenses by providing benefits to citizens who are not related by traditional marriage?

In a time of increasing state financial requirements and decreasing budgets, there is no reason to add a new category of people who must be provided for by state government. From a purely financial perspective, treating civil unions as equal to traditional marriage for the purpose of providing state financial benefits makes no sense. States have provided financial incentives for citizens to marry in the traditional sense of that term because they have been shown to be important building blocks of society. There is no reason to extend these incentives beyond traditional marriage, particularly at a time when state finances are limited.

- 4) How will government clerks be affected by a state recognition of gay marriage? Would they be required to issue marriage licenses to gay couples even if they are opposed to gay marriage on religious or moral grounds? A related question is how state government workers will be affected by the recent federal provision of benefits for federal government workers, many of whom are based in West Virginia

The question of protecting religious and conscience objections to homosexuality and gay marriage or civil unions is also an important one. State laws must protect Christians and Christian institutions and/or other citizens from being required to promote and/or support a lifestyle that their religion or conscience prohibits. Such


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protections would be similar to Right of Conscience laws regarding abortions. Those citizens who cannot support abortion or homosexuality should be protected by state law exemptions or Right of Conscience laws in order to protect their rights to religious liberty. Having a state constitutional amendment limiting marriage to traditional marriage would help to support such exemptions and Right of Conscience laws regarding sexual orientation and gay marriage or civil unions. The same questions are involved even with Christian employers and Christians in other positions of authority where they could be adversely affected, such as state clerks or state employees. State exemptions or Right of Conscience protections for those morally or religiously opposed to gay marriage and to homosexual practice are also needed. Religious liberty has always been considered to be the First Freedom of the Constitution, the one on which all others are based.

Ultimately, we believe that only a Federal Marriage Amendment will fully and permanently protect traditional marriage for all Americans, but until that happens, state constitutional amendments must be enacted to protect traditional marriage state by state. There is no reason for a state to add to its current financial obligations by protecting relationships that have not been shown to be valuable building blocks for society like traditional marriage and family. There is no way to know which other groups will also begin to clamor for state financial benefits beyond same sex marriage or civil unions. The next groups could include polygamists, couples who merely cohabit or any number of “marriage and family” inventions that could occur in the future. It is best for states to draw the line at traditional marriage, not only with regard to legalities, but also with regard to state financial obligations.

Sincerely,

*Gibbs Law Firm, P.A.*

A handwritten signature in cursive script that reads "Barbara J. Weller".

Barbara J. Weller  
*Admitted in Florida*