

Court overturns Utah same-sex marriage ban

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A federal appeals court ruled marriage is a fundamental right that cannot be denied based solely on the sex of the person a citizen chooses to marry.

The U.S. 10th Circuit Court of Appeals in Denver upheld a lower-court decision striking down Utah's ban on same-sex marriage. It is the first time a federal appeals court has backed gay marriage.



(RNS photo courtesy Stefano Bolognini via Wiki Commons) Last year, the U.S. Supreme Court [struck down](#) parts of the federal Defense of Marriage Act, finding it unconstitutional to deny federal benefits to same-sex couples who are legally married in their state, but the court stopped short of declaring a fundamental right to marriage for gay couples no matter where they live.

The appellate court affirmed a lower court's ruling that Utah's 2004 constitutional amendment ensuring the state "will not recognize, enforce or give legal effect to any law" providing "substantially equivalent" benefits to

a marriage between two people of the same sex as are allowed for two individuals of the opposite sex abridged the right to equal protection under the law guaranteed by the Fourteenth Amendment of the U.S. Constitution.

“We hold that the Fourteenth Amendment protects the fundamental right to marry, establish a family, raise children and enjoy the full protection of a state’s marital laws,” the appellate court ruled. “A state may not deny the issuance of a marriage license to two persons, or refuse to recognize their marriage, based solely upon the sex of the persons in the marriage union.”

ERLC joined brief

The [Ethics & Religious Liberty Commission](#) of the Southern Baptist Convention joined Mormon, Catholic, Lutheran and evangelical groups in a brief filed in February asking the appeals court to uphold Utah’s gay marriage ban and a similar law in Oklahoma, claiming children do best growing up in a traditional home with a married mother and father.

“Undermining the husband-wife marital institution by redefining it to include same-sex couples will, in the long term, harm vital child-welfare interests that only the husband-wife definition can secure,” the religious groups argued. “The result will be more mothers and fathers concluding that the highest end of marriage is not the welfare of their children but the advancement of their own life choices.”

Rejected argument

The appeals court rejected that argument, noting it also would apply to opposite-sex couples who choose not to have children.

“There can be little doubt that the right to marry is a fundamental liberty,” the court opined. “The marital relationship is older than the Bill of Rights—older than our political parties, older than our school system.”

“Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred,” the ruling continued. “It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects.”