Abstracts of Participants in

Symposium on The Impact of Same-Sex Marriage on Education: Implications for Schools, Curriculum, Students, Their Families, and Educational Communities
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Health Consequences of Same-Sex Education Curricula on Students

This paper will begin with a review of information about SIECUS - Sexuality Information and Education Council of the United States. It will discuss particularly the Guidelines for Comprehensive Sexuality Education, 3rd Edition, produced by SIECUS, and the basis of comprehensive sex education in the US. It will consider the potential medical (including mental health) consequences of these curricular programs for children and child development. It will consider the possible changes incident to legalization of Same-Sex Marriage.
Byrd, A. Dean
President/CEO of Thrasher Research Fund

Same Sex Marriage and The Schools: Potential Impact on Children via "Sexuality Education"

As same sex marriage enters the class room, so does confusion, particularly gender confusion. The potential impact on children ranges from cognitive, to emotional to moral development. How are children, particularly young, children going to cognitively process the unlinking of child parent biological bonds? What is the potential impact of gender flexibility on gender complementarity? How is social constructionism which is essentially linked to moral relativism to be understood in the context of biological reality? As mothers and fathers are deconstructed, will gender confusion follow? Perhaps the greater question is will the introduction of same sex marriage be an impetus for the derailing of biological priming?

The paper will explore the potential impact that the introduction of same sex marriage into the classroom will have on children. From a child development perspective, the author will explore the influence that the "redefinition" of marriage as well as what it means to be a male or female will have upon the developing child.
Clark, Stephen C.
Jones Waldo Holbrook & McDonough

“Equal Access”: The Importance of Extra-Curricular Student Groups as a Forum for Debating Marriage Equality

In his dissenting opinion in Christian Legal Society v. Martinez, where a 5-4 majority of the United States Supreme Court upheld Hastings Law School’s policy requiring school-recognized and –funded groups to allow all members to join and participate without discrimination, Justice Alito announced the arrival of a new constitutional doctrine: “no freedom for expression that offends prevailing standards of political correctness in our country’s institutions of higher learning.”

This paper will explore the role of the Equal Access Act in protecting freedom for expression of unpopular viewpoints in public high schools and thereby facilitating debate over important social and public policy issues such as marriage equality. While some might fear that increasing social acceptance and legal recognition of marriage equality will be the death knell for freedom of expressive association for those who oppose marriage equality as a matter of fundamental religious belief, the Equal Access Act ensures that their freedom of expressive association will be protected right along with the same rights for those who support marriage equality as a matter of fundamental liberty and equality. In this respect, marriage equality achieved through a combination of legislative and judicial action presents just the latest example of social change in a dynamic civilization, not the end of that civilization.
As Levinas notes, the ethical plane, pre-exists the ontological: “The Other calls to me in its very existence. To recognize another is to feel obligated to respond. It impinges on my freedom. It silences my solipsism. The presence of the Other questions my right to do what I please.” He also notes, “[I]t must be understood that morality comes not as a secondary layer, above an abstract reflection on the totality and its dangers, morality has an independent and preliminary range.” However, for this salutary confrontation with the “Other” to operate there is an a priori assumption that individuals will have access to other individuals who are not closely identified with their own predispositions. There is the danger that the divide between deeply religious individuals and individuals seeking to establish rights to same sex marriage will become so wide institutionally in public school settings because of legal regulatory and policy decisions that they will flee from each other, and not be accessible to be influenced by each other in America’s common schools.

There is a tension inherent in seeking to enhance understanding of diversity and rights that ignores the deeply religious citizens in our public settings, especially minors in public schools. The stereotypical can easily wash out the clarity of the face of the “Other.” In public education it is difficult to speak across the divide between individuals focusing on civil rights and constitutional rights and individuals focused on deeply held convictions—convictions that are often reified and shaped in organized religious settings. Obviously, religious groups and individuals fear being told by a judge that their votes as expressions of public policy preferences are religious in basis and thus subject to being overturned as violative of the 1st Amendment, while other conceptions of human rights that seem motivated by equally spiritual values are appropriate bases for voting behavior and decision making in the public arena. What about when such a dialectic becomes toxically one sided in a school setting?

How do we reconcile the deeply religious citizens’ and students’ sense of higher duties, including viewpoints that seem apocalyptic in some ways, with those who fear tyranny over a minority by a majority rooted in a subjective sense of morality that impinges on individual rights? This presentation and paper discuss these questions within the framework of the quest for what makes a nurturing, safe, and effective educational environment. It argues that an environment that silences deeply religious students and their parents, either through policy, or because they will be impelled to leave public education for private and other choice options does not create an educational environment that is optimal for gay, lesbian, bisexual, and transgendered and other students with other diverse backgrounds and core characteristics. In addition, attention must be paid to statutes and regulations in some states that codify opt-out provisions from portions of curricula based on moral or conscientious grounds. This tension and possible battleground over opt-out provisions will be discussed in the context of several states’ provisions, and will be used to frame the larger issues above. Qualitative research that tends to highlight the attitudes of deeply religious individuals towards those with gender and sexual preferences that differ from the deeply religious individual are also discussed to help identify what will be lost if students and parents on both sides of the divide over same sex marriage are isolated from each other.
This presentation will examine the legal dimensions and relationships regarding same sex marriage and partnerships and U.S. public education. The most widely litigated matters in this area of the law concern the content of public school curricula. These cases address a myriad of challenging and passionately debated questions. For example, how and to what extent can or should a public school address sexuality, sexual orientation, and same sex-parented families in its K-12 curriculum? Further, do parents, community groups, and/or national advocacy groups have recognized legal rights to dictate the content of public school curriculum on these matters? And when, if ever, might Fourteenth Amendment substantive parental familial rights or individuals’ First Amendment rights to free religious exercise require schools to modify curricula, to notify parents of curricular instructional content, to seek parental permission for curricular instruction, or to respect parental opt-out requests?

The presentation will consider as well how the legal status of same sex romantic relationships from state to state influence how schools communicate with and involve students’ parents, caregivers, and custodians in decision-making about students.

Additionally, the presentation will explore significant employment-related legal issues including the provision of benefits to same sex-spouses and partners as well as cases regarding teacher privacy challenges.
“Procreativity” – the capacity and the disposition to procreate – is a fundamental aspect of human good. The term refers not only to biological reproduction, but to the development and nurturing of offspring as regards their personalities and characters as well.

Marriage, understanding that term to mean an aspirationally permanent affiliation between a man and a woman – is a procreatively just affiliation, for reason extensively developed by the author in previous articles. Other affiliational forms, specifically nonmarital cohabitation and same-sex relationships, fall short. Procreativity of offspring is fostered and fulfilled by marriage, whereas it is thwarted or at least imperfectly promoted by other forms of relationship.

Justice in education requires that the educator not attack, and in many instances, requires that the educator foster, the basic goods of his students. In support of these propositions this article proposes a basic framework of the ethics of education: the ethics of the teacher-student relationship.

Justice in education therefore demands respect for, and in many instances the promotion of, procreativity. That is, it demands that educators at least not attack or distort the capacities and understandings which establish and underlie the procreativity of the student. Therefore educators must not attack, and in many instances must foster and promote, an appreciation of marriage as a worthy affiliational mode and as an appropriate a context for begetting and raising children, and should refrain from promoting, as of equal procreative value, alternative modalities such as nonmarital cohabitation and same-sex child-rearing relationships.
Same Sex Marriage and the Public School Curriculum: Can Parents Opt Their Children Out of Curricular Discussions about Sexual Orientation?

Several states, primarily in the Northeast, have approved same-sex marriage; while other states have amended their constitutions to prohibit the recognition of same sex marriage. In those states where same-sex marriage has been approved, we can expect same-sex marriage to become part of the public school curriculum—at least any aspects of the school curriculum that deal with sexuality. Parker v. Hurley (1st Cir. 2008), in which two Massachusetts families sought to shield their elementary-school-age children from exposure to positive portrayals of same-sex marriage in reading materials is probably a harbinger of conflicts to come in same-sex marriage jurisdictions.

Parents have raised constitutional objections to some aspect of a public school’s curriculum since at least 1987, when the Sixth Circuit rejected an effort by evangelical families to shield their children from the school district’s reading program (Mozert v. Hawkins County Board of Education, 1987). A long string of federal court decisions have established that parents have no constitutional right to opt their children out of a public school’s curriculum (Fossey, DeMitchell, & Eckes, 2007; Rogers, 2010).

At the same time, 44 states allow parents to opt their children out of at least some parts of the school curriculum either by statute or administrative regulation (Rogers, 2010). A majority of these states allow parents to withdraw their children from sex education, but some allow parents to opt their children out of any portion of the curriculum that is objectionable to them. The language of these statutes varies considerably from state to state as do their scope. For example, 10 states allow parents to withdraw their children from parts of the curriculum that involve the dissection of animals; and one state (Ohio) allows parents to opt their children out of instruction on Cardiopulmonary Resuscitation (CPR).

In the years to come, statutory provisions allowing parents to shield their children from curricula that discuss sexual orientation may become critically necessary to avoid open conflict in the schools about sexual orientation and same-sex marriage. This paper will examine statutory and regulatory curriculum opt-out provisions as they currently exist in all 50 states and the District of Columbia and determine whether the language of these provisions is broad enough to address parental objections to curricular discussions about sexual orientation. The paper will conclude with recommendations for a model curriculum opt-out law that will allow parents to opt their children out of any curricular discussion pertaining to sex education, sexuality, or sexual orientation.
The notion that religious educational institutions can make employment decisions compatible with their religious beliefs about marriage would appear, on its surface, to be axiomatic. However, the U.S. Supreme Court and a number of federal courts of appeal over the past three decades have taken issue with the right of such institutions to make employment decisions that touch upon protected categories. The degree to which a category is protected is complicated, on one hand, by federal and state constitutional and statutory rights prohibiting sexual orientation discrimination while, on the other hand, constitutional and statutory rights protecting the religious belief systems undergirding the practice of one’s religion. While the current debate concerning same-sex marriage has served to galvanize support for differing perspectives on this issue, this debate should not obscure the wide ranging and devastating impact that judicial decisions and legislative enactments supporting same-sex marriage could have on the employment practices of religious institutions. At stake in the debate are more troublesome concerns as to the role of courts and legislatures in imposing on non-governmental, religious entities vague and ill-defined notions of social justice. In the end, to what extent will the press for conformity protecting same-sex marriages erase the employment distinctiveness of religious institutions.
There have long been clashes over the curriculum in public schools. Bible reading and prayer in the public schools have been controversial for more than a century. More recent controversies include the Tennessee and Alabama textbook cases of the mid-1980s. In recent years, there have been controversies relating to the promotion of same-sex marriage in the public schools. The Parker v. Hurley case from 2008 is one prominent example. In Parker, the First Circuit rejected a variety of constitutional arguments parents made in challenging a requirement that their children read books that promoted same-sex marriage. These controversies are likely to intensify with the increasing legalization of same-sex marriage.

This paper explores the controversy over the curriculum in public schools. The paper considers the rights of parents in this context with a primary focus on US constitutional law. I will briefly discuss older cases involving parental rights (Meyer and Pierce) but the primary focus of the paper will be on more recent cases such as Parker v. Hurley.

The current cases afford parents very little protection to resist the curriculum in public schools that may interfere with parental control over the education and upbringing of their children. I will critically analyze this state of affairs. I will consider the issue as a matter of US constitutional law. I will in addition consider the approach to these issues reflected in Catholic social thought.
Examining Context in the Conflict over Same-Sex Marriage and Education: The Relevance of Substance, Processes and the People Involved

During the 2008 campaign in California over Proposition 8, education became a flash-point for conflict between proponents and opponents of the measure. Television ads produced by opponents of same-sex marriage warned voters that the failure to pass proposition 8 would have a significant impact on such education, while opponents protested with their own television ads that such claims were false and that to involve children in the contest was dishonest. This paper addresses the legal implications of same-sex marriage on K-12 education by examining the issues in context, looking at the substance of such influence, the processes of education where impact is likely, and the various people and organizations whose motives and intent will likely play a significant role in the nature and extent of this influence. California Law and the contest over Proposition 8 will provide a case study for this analysis.
Same-Sex Marriage and Education: Implications for Schools, Students, and Parents

Education by its very nature is value-laden and political. It is the process by which individuals are formed, culture is passed on, and social norms of right and wrong are inculcated. What children should become, whose culture should be passed on, and whose notions of right and wrong should be inculcated are part of the perennial culture war in education. Same-sex marriage challenges substantive traditional norms of what constitutes a family, the importance of a father and a mother, and sexual morality. At a more fundamental and individual level, same-sex marriage challenges traditional notions of self-identity, psychological development, and sexual behavior. This paper argues that the introduction of the notion of same-sex marriage as the new social norm into school curriculum and culture is not based on sound assumptions or evidence and is often done in manner that is subversive to students and their parents. Attempts to impose same-sex marriage on education ignore the need for free and honest dialogue with all major stake holders about a proposal to radically change traditional beliefs about the family. It also creates a cognitive and normative dissonance within children as they are taught one concept and value system at school and another distinctly different one at home. This places parents and teachers at odds with each other and the child caught in the middle. The fact the children in K-12 education are mandated by law to attend school and are a captive audience should be sufficient reason to proceed with great caution in turning schools into advocates for hotly contested social issues. Given the vulnerable nature of young children, who are in the process of developing rational thought, self-identity, and notions of right and wrong, schools must not take advantage of this rather defenseless situation to indoctrinate rather than education these childre
In light of the issues that legalizing same sex marriage presents for education, the paper opens with an introduction that broadly reviews controversies involving same-sex marriage and gay friendly lifestyles in order to help set the context for education whether in public or religiously affiliated non-public schools. The remainder of this paper is divided into two substantive sections. The first part reviews legal developments, both judicial and legislative, involving the ramifications of gay marriage on school communities. The second section discusses implications for educators, parents, and their attorneys, culminating with recommendations on how all parties can deal with disagreements ranging on such controversial topics as gay friendly material in curricula to reenrolling the children of same-sex couples in religiously affiliated schools that do not recognize the “marriages” of the parents to whether students can bring same sex dates to high school proms. The paper rounds out with a brief conclusion.
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Teaching the Case and the Controversy: Studying the Massachusetts Goodridge Decision as an Antidote to Mutual Misunderstanding and as a Lesson in Law and Civics.

How do most public schools deal with the most controversial issues of politics and religion? They don’t. They avoid them. This paper argues that avoidance is the wrong approach – that the wiser way is to teach about them; and that doing so decreases irrational polarization and extreme misunderstanding and can promote tolerance and mutual respect.

If public high schools avoid discussing the important political/religious issues of the day among their diverse students who know each other, graduates are likely to associate primarily in like-minded communities of friends and family who reinforce and intensify similar views and tend to see those with opposing beliefs as dangerous opponents – as ignorant and bigoted and/or evil and immoral. Such polarized positions make thoughtful dialogue and mutual respect extremely difficult and sometimes impossible. This is especially true about the contentious question of same-sex marriage.

On the other hand, one way to decrease mutual misunderstanding about controversial issues is to teach about them in the context of appellate decisions. Reading, analyzing and understanding the majority and dissenting opinions of appellate judges can remove most of the passionate and inflammatory rhetoric about emotional issues and can provide a rational arena for more civil discussion and debate.

Thus I believe that schools should incorporate the issue of same-sex marriage into the social studies or civics curriculum by studying the opposing opinions in the 2003 Massachusetts Supreme Judicial Court case of Goodrich v. Department of Public Health. In Goodrich the majority held that denying marriage licenses to same-sex couples violated the state constitution and lacked a reasonable basis. Dissenting justices argued that there were reasonable grounds for the existing policy and that any change should be made by the legislature not the courts.

The goal of teaching about Goodrich would not be to seek agreement or to have students abandon their basic beliefs. Instead it would be to have them better understand and respect views with which they disagreed and to encourage them to view judicial opinions not as deciding right against wrong or good against evil but as a way our constitutional democracy tries to resolve legitimate values in conflict.
Since the advent of constitutional adjudication in South Africa in 1994 the overriding purpose of the courts has been to advance transformation towards the creation of an egalitarian society. Over the past decade almost all the provisions in the common law and statutory law that differentiated directly or indirectly between heterosexuals and homosexuals have now been set aside by parliament or declared invalid by the courts. The legalisation of same-sex orientation has resulted in the complete secularisation of traditional societal norms and the “normalisation” of same-sex lifestyles.

The main contention of this paper is that the exercise of same-sex rights in the public domain of education will not be in the best interest of children, will infringe the rights of parents, will undermine the purpose of education. Proponents of same-sex rights argue that family, family life and conventional spousal relations, and social institutions such as schools are in no way threatened by same-sex relationships. The argument therefore goes that because the Constitution establishes that a person’s sexual orientation is of no legal consequence, the state can never have a legitimate interest in protecting society and its institutions by excluding gay men and lesbians from society or its institutions.

This paper advances three contentions: Firstly, the legal positivistic adjudication of same-sex rights is based on a secular or humanistic worldview, which is value-laden and is influenced by prejudicial assumptions. Secondly, the injudicious application of positivistic adjudication in hard cases that address issues of morality and religion, lead to unjust results because positivistic epistemology unfairly restricts and delimits otherwise valid knowledge systems. This is particularly significant and evident in South Africa which has the highest murder rate per capita and the highest rate of HIV/AIDS infection. Thirdly, social institutions such as schools – even if they are not by definition heterosexual in nature – perform an important social function of perpetuating culture and rearing civilised and civic-minded young people. The paper demonstrates that non-conformist sexual orientation and same-sex friendly propaganda has a significant legal consequence as it impacts on the rights of parents to direct the education of their children, and that the state has a legitimate interest in protecting the rights of children, and rights of schools against same-sex friendly conduct or propaganda. These interests are examined view of the section 36 limitations-clause of the South African Constitution.

Finally, it is recommended that insofar as conflicting interests, values, worldviews and cultural traditions are certainties in pluralist societies and liberal democracies, such conflicting ideas and non-conformist practices should be tolerated to the extent that the legal consequence is negligible. However, it is recommended that injustice and unconscionable law or conduct should not be tolerated if interests are infringed, rights are violated and the resultant harm surpasses an acceptable threshold. In this regard it is suggested that the judiciary has a responsibility to exercise restraint by avoiding strict positivistic formalism and by allowing religious arguments to influence adjudication in hard cases of moral import. Also, it is suggested that state has a responsibility to protect the legitimate interests of parents and children and to strengthen public institutions such as schools.
On Same-Sex Marriage and the Public Schools

Some commentators suggest that the legal recognition of same-sex unions will result in schools being forced to discuss same-sex relationships in ways that undermine the deeply held convictions of many parents. Yet, such a suggestion raises serious concerns about what is being said in schools located in states that do not offer legal recognition to same-sex relationships. This article addresses the degree to which state recognition of same-sex relationships should affect what is taught in the public schools, suggesting that neither recognition nor non-recognition of same-sex relationships should be playing the role in educating the nation’s children that is described by many of these commentators.
Constitutional Law is not a zero sum game. The vindication of one constitutional value does not mean the subordination of other constitutional values. America was founded on the self-evident truths of freedom and equality. The Constitution requires all governmental actors to vindicate both self-evident truths.

While state recognition of same sex unions represents a vindication of the self-evident truth of equality, it does not diminish the self-evident truth of freedom. Public education must accommodate the new legal reality, but must also respect the religious liberty of those who object on religious grounds. The Constitution provides absolute protection for those who disagree with same sex marriage, but also mandates acceptance of the State's choice to have same sex marriage.
The principle that the Constitution protect the right of parents to direct the education of their children has been recognized explicitly by the Supreme Court for nearly one hundred years, and the continuing validity and viability of those precedents and that principle are uncontroverted. The line of cases establishing the constitutional right of parents to control the education of their children will be reviewed. However, the Constitution does not always protect, let alone mandate, everything that constitutes good or desirable public policy. Thus, the Constitution does not compel states to adopt the best, wisest, or most family-protective policies. One clear example of that is in the area of sex education and safe-sex practices (from abstinence to encouraging the use of contraceptives), where precedents clearly show that states constitutionally generally may protect parental notice, involvement, participation and non-participation, but that states usually are not constitutionally required to protect parental notice, involvement, participation and non-participation in or about provision of sex-education curriculum.

The potential impact of legalizing same-sex marriage and civil unions on the constitutional rights of parents to direct the moral education of their children presents a similar potential conflict between parental rights and some educational policies. Incidents and debates in the United States reflecting or raising issues concerning the impact of same-sex marriage (or civil unions) upon education are growing. Those incidents, issues, and arguments will be reviewed.

It is likely that courts that properly follow precedents will hold as a general principle that states constitutionally may protect parental notice, involvement, participation and non-participation, but that states usually are not constitutionally required to protect parental notice, involvement, participation, and non-participation in or about provision of curriculum teaching about same-sex marriage and same-sex sexual relations.

However, there are some differences between education regarding general sex education and education regarding the morality of same-sex marriage and same-sex sexual relations. This paper will note some of those differences and will explore whether those differences may result in different results regarding whether some possible impacts of the legalization of same-sex marriage upon public education and education policies and practices violate the constitutional rights of parents.