



American Civil Liberties Union of Utah Foundation, Inc.

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March 11, 2004

Dr. Martha Kupferschmidt
147 East 5065 South
Murray, Utah

Dear Dr. Kupferschmidt,

We have learned that officials of Murray High School have told students that couples of the same sex may not participate in the promenade during this year's prom. I am writing to inform you that such a policy violates the constitutional rights of gay and lesbian students and must be revoked immediately.

Further, the policy violates the Utah Administrative Code, which, as you aware, has the effect of law. The rule governing the Professional Practices and Conduct for Utah Educators, under section R686-103-6, states:

An educator shall: . . . (e) not exclude a student from participating in any program, deny or grant any benefit to any student on the basis of race, color, creed, sex, national origin, marital status, political or religious beliefs, physical or mental conditions, family, social, or cultural background, or sexual orientation, and may not engage in a course of conduct that would encourage a student to develop a prejudice on these grounds or any others.

Accordingly, prohibiting same sex couples from participating in the promenade as co-ed couples would, denies them a benefit to which they are entitled. Further, the denial is a course of conduct that encourages students to develop or maintain prejudice against other students, based on the students' sexual orientation.

Any policy specifically excluding same-sex couples from participating in the prom or from enjoying the same benefits as co-ed couples who have bought the same tickets, as well as any policy adopted as a pretext for such discrimination, violates the rights to free expression and association guaranteed by the First Amendment to the United States Constitution. This was the conclusion of a federal court in *Fricke v. Lynch*, a 1980 case in which a gay high school senior successfully challenged the school's ban on same-sex couples at prom. *Fricke v. Lynch*, 491 F. Supp. 381 (D. R.I. 1980).

More recently, the U.S. Supreme Court ruled that a policy based on nothing more than animosity or prejudice toward gays and lesbians violates the equal protection clause of

the Fourteenth Amendment. *Romer v. Evans*, 517 U.S. 620 (1996). The school, or the student body, has no grounds on which to prohibit the girls from participating in the promenade. Upholding tradition is not a sufficient reason to violate an individual's constitutional rights.

Please contact me and let me know that the girls will be able to both attend prom as a couple, and participate in the promenade as co-ed couples do, and that Murray High School will not interfere. Because the prom is Saturday, I will need your response by the end of today, March 11, 2004. If necessary, we would consider immediately requesting a temporary restraining order. Please understand that our intention is not to stop the promenade—that would be an enormous disappointment for all the students involved—but to stop the promenade from going forward in a discriminatory manner.

Thank you for your prompt attention to this matter.

Respectfully,

Margaret Plane
Staff Attorney