



Fighting To End Marriage Limbo



ACLU demands Utah honor marriages of over 1,000 same-sex couples.

On January 21, 2014, the ACLU of Utah, along with the law firm of Strindberg & Scholnick LLC and the ACLU LGBT Project, brought a lawsuit to ensure that Utah honors the marriages of Utah same-sex couples. We brought the case, called *Evans v. Utah*, on behalf of four couples who legally married in Utah in the hours and days after a federal court struck down Utah's ban on allowing same-sex couples to marry.

On December 20, 2013, the federal district court in *Kitchen v. Herbert* enjoined Utah from enforcing its marriage bans. Immediately, a flood of same-sex couples converged on Utah's county offices, finally able to express their love and commitment to each other through marriage. The flow of couples fortifying their families through the protection and responsibilities that come from being legally married continued at record pace- it is estimated that at least 1,000 married- up to the moment the U.S. Supreme Court stayed the district court's ruling on January 6, 2014.

That same day, Utah officials, acknowledging the importance of the issue to so many Utahns' lives, promised careful deliberation about their next steps. On January 8, we wrote Attorney General Reyes to share our position that all of the marriages between same-sex couples in Utah are valid and may not be retroactively stripped of recognition. Among other things, we pointed to a California Supreme Court case addressing a very similar issue, called *Strauss*. In *Strauss*, the court ruled that Proposition 8, which declared that "Only marriage between a man and a woman is valid or recognized in California" did not retroactively invalidate the marriages of about 18,000 same-sex couples who had married in California

"After 13 years together, we just want the security and peace of mind to know we can be there for each other in the hard times," - Plaintiff Stacia Ireland

before Proposition 8 passed. Rather, *Strauss* concluded that the marriages were all valid and conferred vested rights on the couples that California could not take away.

Later on January 8, however, Governor Herbert announced that the night before, he had emailed a directive ordering all state agencies to put the recognition of Utah marriage of same-sex couples "on hold" indefinitely.

Evans v. Utah seeks to force the state to lift this hold and immediately recognize all marriages of same sex couples married in Utah, such as the plaintiffs. While the stay may allow Utah to apply its marriage ban prospectively while the appeal in *Kitchen* is pending, it does not allow Utah to retroactively take away recognition from those already married. Moreover, stripping recognition from these marriages is contrary to Utah law and violates due process guarantees in the Utah and federal constitutions by compromising vested rights.

"These couples were legally married under Utah law and their unions must be treated the same as any other Utah marriage," said John Mejia, legal director of the ACLU of Utah. "Regardless of what ultimately happens in the federal challenge to Utah's marriage ban, the marriages that already occurred are valid and must be recognized now."

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Meet all of the *Evans v. Utah* plaintiffs on page 3



Clockwise from top-left: plaintiff Matthew Barraza, plaintiff JoNell Evans, and ACLU of Utah Legal Director John Mejia joined by co-counsel Erik Strindberg of Strindberg & Scholnick, LLC, speak at the press conference on January 21, announcing the lawsuit.

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Civil Liberties Are For Everyone:
Save The Date: Friday, May 16, 2014
Bill of Rights Breakfast Celebration

The President's Corner



Cathleen Power, ACLU of Utah President of the Board of Directors

A couple of newsletters ago, I discussed the importance of recognizing the interdependence of everyone's rights. I ended my thoughts with this quote by Lila Watson, "If you have come here to help me, you are wasting your time. But if you have come because your liberation is bound up with mine, then let us work together." As a straight woman my liberation is bound with the liberation of gay and lesbian couples fighting for the right to marry and to have their legal marriages recognized. When people are able to be who they are, and are valued for who they are, they are able to be their best. When people are their best, they give their best to the world, and I (and you) personally benefit. I have been reminded of this often in the last month.

This week I was writing a letter of recommendation for a bright, kind, and passionate student who is gay. He is an outstanding student; however, his first year college grades were mediocre. He was closeted and struggling with negative messages he was receiving from his community about gay people. After coming out, he found places where he was valued for who he was. Thereafter, he earned exceptional grades including a 4.0 in his major. This is not this student's story alone; I have seen this story play out over and over. When people are marginalized there are costs and when they are valued there are benefits, and not for them alone. This student, at his best, is committed to improving the world that I live in. Currently he is interning at the Rape Recovery Center. Who in my life, or in your life, will benefit from him being his best?

When Judge Shelby found Amendment 3 to be unconstitutional, several important people in my life were able to get married. I was elated to get to share this joy with them. Many of

them felt that they and their families were being validated. One exceptionally insightful boy, Riley, said that it felt like "fireworks bursting in my heart." When his moms asked later why this was, he said that he felt like his family was being valued. When he went to school, friends and teachers congratulated him. His younger brother talked about the other side of this experience; after Herbert announced that he would not recognize his moms' marriage, this young boy's peers at school started calling his family "gross." Our children are watching us and their actions mirror ours. As Riley so eloquently put it, "Governor Herbert...says he wants to 'protect families.' But I want to tell him that my family deserves protection, too." By recognizing their marriage, we validate their family, and we model for our children how to treat others with respect and kindness. This is the kind of world that I and my children benefit from living in.

My children also benefit when I am able to provide love and protection for them. My partner and I have taken steps to ensure this, even in our absence, by designating our close friends, a lesbian couple, to be our children's guardians should we become incapacitated. Their legal right to parent our children could be questioned by the state, just as one of them has had her legal right to parent her own children denied because she cannot adopt them without being married. Now they are married and it is time to grant her full rights to parent her children. It is well established in research that children raised by lesbian and gay parents are as emotionally and psychologically healthy as their peers raised by heterosexual parents (see for example, Amlie, & Ytteroy, 2002; Stacey & Biblarz, 2001). However, research has also found that children raised by lesbian parents exhibit more empathy than children raised by heterosexual parents (Fitzgerald, 1999; Miller, 1992; Saffron, 1998) in part because they tend to teach their children about tolerance even when people are not tolerant of them (Litovich & Langhout, 2004). My friends do just this. I have much to learn from them about how to love when it isn't the obvious response. I want my children to grow up in their world where there is more empathy and love not less.

To lesbian and gay Utahns I say, my liberation

The ACLU of Utah

The ACLU of Utah, chartered in 1958, operates through public education, legal advocacy, litigation, and lobbying at both the state and local levels to ensure the constitutional rights and freedoms of everyone living in or visiting Utah. Our work is based on those principals outlined in the Bill of Rights and our priorities include: Participatory Democracy; Racial Justice; Immigrants' Rights; Religious Liberty & Freedom of Belief; and Privacy & Technology. In addition, we continue our commitment to reform the Utah criminal justice system, protect the First Amendment, reproductive freedoms, and equality for all.

For more about the ACLU of Utah and our priorities please visit www.acluutah.org

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The ACLU of Utah is excited to take part in the 2nd annual Love UT Give UT 24 hour fundraising event on March 20, 2014. It will be the biggest day of giving across the state, and it is your chance to make a real impact by donating to our work, as well as helping to support other great non-profits.

Be sure to keep up with the ACLU of Utah's participation in the Love UT Give UT campaign on Facebook, Twitter, and at www.acluutah.org throughout the month of March! Tell your friends, family, neighbors, and colleagues about this unprecedented chance to make a difference!

Evans v Utah: Meet The Plaintiffs

The following plaintiff profiles are from www.aclu.org/lgbt-rights/evans-v-utah-plaintiff-profiles



JoNell Evans & Stacia Ireland

Stacia is semi-retired after teaching math to junior high and high school students for 30 years. She now works part time at a community college, helping students with disabilities. Stacia grew up in Arizona and has lived in Utah for all of her adult life. JoNell is a painter and works as human resources director at a non-profit. JoNell has lived in Utah since she was a child. Her family has been in Utah since the pioneer days. The couple lives on land that has been in JoNell’s family for generations, and many of their immediate neighbors are family members.

Having seen friends kept from being with each other in times of medical crisis, JoNell and Stacia had wills and powers of attorney drawn up in the hopes of protecting their ability to be with one another in the event of hospitalization. In 2010, Stacia suffered a heart attack, and JoNell scrambled to locate a copy of their legal documents before they left for the hospital. Although she was allowed to stay at Stacia’s side, hospital staff were hesitant to fully include JoNell, as they would a legal spouse.

After learning about the *Kitchen* decision, JoNell and Stacia rushed to downtown Salt Lake City that very day for a marriage license. Only a few days later, Stacia had severe chest pains so they had to go to the hospital again. This time, upon learning that JoNell and Stacia were married, the hospital staff was much more welcoming and included JoNell in all medical decision making conversations.



Donald Johnson & Carl Fritz Shultz

Donald Johnson proposed to Fritz Schultz on the Sunday after Thanksgiving in 1992. They’d been dating since Labor Day, and when Fritz went out of town with his family for the holiday they both realized how much they meant to each other. “That was the first time I’d really been away from him, and that’s when I realized I couldn’t let this one go,” Fritz says.

After Utah’s anti-gay marriage amendment was overturned, it was Fritz’s turn. Don describes the moment: “We were eating breakfast and he reached across the scrambled eggs, took my hand, and said, ‘So, want to get married?’ They spent the next day shopping for rings. After standing in line for eight hours in 20-degree weather, Don and Fritz were finally legally married. “I’d have stood longer, it was that important to me,” says Don. “Everything about getting married was surreal and beautiful and we’d waited such a long time for it.”

Fritz works in retail sales and Don has been a special education teacher with the same district for 37 years, working with high school students. When school started again after the Christmas holiday, Don told his students that he had married his partner of 21 years over the holidays. They burst into excited applause for him. One of his students told him afterward, “I was just so afraid you were about to tell us you were quitting teaching!”



Matthew Barraza & Tony Milner

Matt and Tony are lifelong Utahans – Tony was born in and raised in West Jordan, and Matt’s family moved to Ogden when he was only a year old. Matt is an attorney and Tony is the director of a non-profit organization that serves homeless families. “Tony and I share the same values, the same love for our families and for Utah, and a similar outlook on life,” says Matt. “Our relationship was built on a strong foundation, and it’s only gotten better over our 11 years together.”

They had been contemplating starting a family when, in 2009, a couple they knew who were expecting a baby approached them and asked if they would consider adopting the child. Matt and Tony resolved to being dedicated and involved parents, they attended all of the pre-natal appointments with the birth mother, were present at their son Jesse’s birth, and Tony cut the umbilical cord.

Under Utah law, only one of them could legally adopt Jesse, so only Matt is a legal parent to the son they’re raising together. Within days of getting married in Salt Lake City, Matt and Tony asked a court to allow Tony to become Jesse’s second legal parent. But when the governor announced his intention to treat the marriages of same-sex couples as invalid, the family court judge postponed Matt and Tony’s adoption hearing. They’re now in limbo, waiting to see what the courts do next. Tony says, “Our son deserves the safety and security of being certain that if something happens to Matt, his other dad won’t be forced to disappear from his life too.”



Elenor Heyborne & Marina Gomberg

Marina and Elenor are born and raised Utahns, from Salt Lake City and Ogden, respectively. They met nine years ago through friends, started dating shortly afterward, and have been together ever since. Unless you count the five minutes they once broke up because, Elenor says, “She made me ride the New York, New York rollercoaster in Las Vegas!”

On the day the federal court struck down the anti-gay marriage ban, Marina and Elenor were stunned but thrilled. “Within an hour of hearing the news, we were racing to the county building. We ran in and went to the wrong doors a couple of times, while staffers were cheering us on and pointing us in the right direction. It was madness and it was awesome.”

Marina and Elenor have been talking about having a baby soon, but they worry about the ability to protect their family because Utah law would only allow the biological mother to be a legal parent to any children they have together. They rankle whenever someone suggests that they just leave Utah because, says Elenor, “We love where we live. We want to raise a family here.”

Find out more about this case at www.acluutah.org/legal-work/current-cases

ON THE HILL



TOP: Marina Lowe, ACLU of Utah's Legislative and Policy Counsel, expresses concern about proposed legislation during an interview. ABOVE: The inside stairs leading to the legislative chambers.

The 2014 General Session is shaping up to be an interesting one, with issues such as freedom of religion and LGBTQ rights taking center stage. Various proposals related to criminal justice will also be a key focus of our work up at the Capitol.

During the legislative session, things move very rapidly. To find out the latest about our legislative agenda and see which bills we are supporting or opposing visit our website www.acluutah.org/legislation, or follow us on Twitter, Facebook, and Google+.

Criminal Justice/Fourth Amendment

Drones

The ACLU of Utah has been actively involved in the discussion around drone use in our state, including participating on the Governor's Advisory Board on Unmanned Ariel Systems, to advocate for privacy protection. We are working with a legislator and other advocacy groups to advance legislation to regulate drone use in our state, particularly when used as a law enforcement tool.

No-knock warrant reform

All too often, the military-style tactics used by law enforcement result in harm to officers and their targets and family and friends. The ACLU of Utah has been working with legislators and advocacy groups to draft legislation to place greater limits on when "no-knock" warrants can be issued; thus reducing the potential for harm to those involved in warrant scenarios.

Administrative Subpoenas

The use of warrantless administrative subpoenas by Utah law enforcement has been deeply troubling for the ACLU, since state law permitted their use several years ago. This concern is shared by various legislators and other groups, who are pushing for our state law to be amended, and perhaps eventually, repealed entirely. Two bills this session add additional requirements to the use of administrative subpoenas, and will hopefully create a clearer record of how and when these subpoenas are being used.

Expansion of collection of DNA upon arrest

The ACLU has long protested the practice of taking DNA from individuals who are accused of committing, and not convicted, of a crime. Nonetheless, Utah and other states have enacted laws allowing for this

practice. Current Utah law requires that DNA be collected from those accused of certain felonies. A lawmaker intends to introduce legislation to expand that class of individuals from whom DNA can be taken prior to conviction. The ACLU will continue to push back against this legislation.

First Amendment

In the wake of Judge Robert Shelby's historic decision overturning the ban on LGBT marriage in Utah, we are anticipating a fierce legislative backlash in the name of religious liberty. Two such bills have already emerged; both would reaffirm that a religious clergyperson cannot be forced to perform or recognize a marriage that is contrary to the tenets of his or her faith. To the extent that these bills restate the principles embodied in the First Amendment, we would offer our support. However, should these bills extend beyond the First Amendment, and seek to allow religion to be used to discriminate, we will necessarily oppose.

Equality

We will continue to support our allies in promoting the passage of a bill requiring nondiscrimination in housing and employment on the basis of sexual orientation and gender identity. Last year's efforts were unprecedented; with the bill sponsored by a Republican Senator, it passed out of a committee for the first time ever. Hopefully, we can build on that success by passing the bill outright.

Voting Rights/Participatory Democracy

Voting rights will play a prominent role up on Capitol Hill in 2014. The ACLU of Utah worked very closely with legislators and allies to advance Election Day Registration (EDR) during the 2013 session. While the bill narrowly failed to pass, we have been hard at work during the past year, meeting with legislators and county and state officials. We are confident that this will be the year that Utah passes EDR!

Unfortunately, other legislators are hard at work devising legislation to make voting more difficult. A bill has already been introduced for this session that would require proof of U.S. citizenship prior to voting. We will be working to assure that this unnecessary and harmful legislation does not advance.

Learn How To Be A Citizen Lobbyist

Are you interested in finding out more about how the Utah Legislature works? Are you interested in civil liberties issues but don't know how to get involved? The ACLU of Utah and our allies Alliance for a Better Utah, Equality Utah, Planned Parenthood Assoc. of Utah, and the League of Women Voters of Utah, hold periodic Citizen Lobby Trainings around the state.

Attendees get updates about potential upcoming legislation related to civil liberties, government transparency, the criminal justice system, public education, LGBTQ equality and more! Our presenters will also share tips on how to contact elected officials and how citizens can ensure that their voices are heard throughout the legislative session.

Find out about an upcoming Citizen Lobby Training near you by visiting our website or Facebook page, follow us on Twitter, or sign up for our email list.



Citizen Lobby Training in St. George.

IN THE COURTS

Victory! Utah Supreme Court Vacates Gang Injunction

Weber Co v. Ogden Trece

The ACLU of Utah and cooperating attorneys from Parr Brown Gee & Loveless and Richards & Pace, were victorious in the Weber Co v. Ogden Trece case. On October 18, 2013, the Utah Supreme Court vacated the unconstitutional Ogden “gang injunction” because Weber County violated Utah’s rules regarding service of process. Service of process is crucial because it ensures that the party being sued has proper notice of the lawsuit and an opportunity to be heard.

Weber County violated the rules because it sued Ogden Trece as an unincorporated association, thus seeking to bind hundreds of alleged members without having to name them, but did not follow Utah rules to serve such an organization. Rather, the trial court improperly allowed the County to follow California procedure, which differs from Utah’s. Because of this serious error, the Utah Supreme Court found that the trial court had no jurisdiction over the Ogden Trece and required that the injunction be vacated.

We opposed this unjust injunction, which originated in 2010, because of its many unconstitutional provisions and its grant of overbroad powers to police. The injunction contained unlawful limits on the rights of association, expression, bearing arms, due process, travel, and more. Further, some of the prohibitions were vague, such as refraining from annoying conduct, which gave police the power to selectively decide what conduct might be a violation of the injunction.

Worse yet, the injunction applied the entire city of Ogden and allowed police to unilaterally

decide who would be subject to its panoply of restrictions! Rather than require a court to decide who was a member of the gang and thus subject to all of the injunction’s prohibitions, the injunction gave police discretion to decide who would be bound by the injunction. Once that person was bound, he or she had to go to court to prove that he or she was not a gang member.

Because the Utah Supreme Court decided that service was improper, however, it did not have to grapple with these many constitutional problems.

Cooperating attorney David Reymann said, “No one disputes that gang crime exists and is a problem in our communities. But that fact does not justify imposing martial law on a targeted minority group and sacrificing core constitutional liberties for the mere illusion of security.”

John Mejia, Legal Director of the ACLU of Utah, stated “It is a victory for every Utahn’s rights that this overreaching and overbroad injunction is no longer on the books.” He then spoke about the future of the types of injunctions handled in this case, “Because the Court did not reach the merits of the injunction, though, this may only be the beginning of a longer fight. You can be certain that if Weber County tries again to push for this kind of injunction, we will be on the other side pushing back.”

More information on this case can be found at www.acluutah.org/legal-work/resolved-cases

Victory! Free Speech Returns To Utah’s State Roads

iMatter Utah v. UDOT



iMatter Utah supporters begin walking down the sidewalk of State St. on September 24, 2011. The event, “Swing into Action,” made stops at the Capitol, the Federal Building, and the City County building.

In November of 2013, the federal court in Utah made it clear that the First Amendment and the fight for freedom of speech are alive and well. The federal district court struck down the Utah Department of Transportation’s insurance and indemnification requirements, for those seeking permits to march on state highways, as unconstitutional. This is a true victory and rids Utah of the “two-tiered system” described to by Stewart Gollan of the Utah Legal Clinic.

“UDOT’s insurance requirements created a two tiered system for speakers: those who could afford insurance could march on the street, and those without the means to pay were relegated to the sidewalk,” said Stewart Gollan.

The case we brought in 2011, when the ACLU of Utah and the Utah Legal Clinic sued the Utah Department of Transportation (UDOT) on behalf of members and supporters of iMatter Utah. iMatter Utah is a local youth-driven organization that works to encourage public discussion on climate change and initiate action. Members of iMatter Utah were organizing, as they called it, a Parade (a parade and march). Their plan was to march from the federal building at 125 South State Street to Library Square to bring awareness of environmental issues that affect Utahns. However, because iMatter planned on using a section of State Street that was part of Utah State Highway 89, organizers were required to obtain permits from UDOT in addition to Salt Lake City.

iMatter organizers then discovered that UDOT would require them to buy an insurance policy for one million dollars per incident and two million dollars in aggregate coverage. In addition, UDOT required anyone and everyone who participated in the march to sign



The ACLU of Utah team with cooperating attorney (and Board member), David Reymann and Board member Representative Rebecca Chavez- Houck stand outside the Utah Supreme Court after the hearing on the June 4, 2013, appeal of Weber County v. Ogden Trece.

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POWERFUL AND UNACCOUNTABLE: UTAH’S BROKEN INTERNAL AFFAIRS PROCESS



In late August 2013, the ACLU of Utah began a study of twelve police departments from all over Utah. The study was modeled after a study by the ACLU of Connecticut which studied the complaint process of police departments. The goal for our study was to evaluate the situation of the complaint process of police officers in Utah. The sample group included departments that were diverse in location and size.

When an encounter between a civilian and a police officer goes wrong the complaint process is the beginning of repairing the relationship between the public and the police. The complaint process can also be the first step in discrimination, deterrence, and intimidation if departments do not put enough care into creating and enforcing fair policies. The effort to maintain a fair complaint process benefits the police departments’ reputation and allows for opportunities to correct mistakes made by officers before they become habits.

In the course of our research, a variety of problems became clear. Concerns over accessibility came from several issues. In many jurisdictions it took multiple calls to to gather all of the information needed. Out of twelve departments surveyed, 50% required more than one call to complete the survey. Also, 33.3% of the twelve departments required more than one day to complete the survey. In addition, the difficulty of locating a non-emergency or complaint line number for some police departments caused concern over accessibility. 58.3% of departments surveyed had difficult to find non-emergency numbers. If a police department does not have a piece of information as basic as a complaint number easily available, many complainants will be kept from filing their complaint, even if a complaint system is in place.

The validity of information given varied between employees we happened to reach. During the survey, 41.7% of departments had employees who gave mixed messages to questions. For example, a mixed response to questions such as whether a complainant could file anonymously or whether there was a formal time limit to filing a complaint. It is disturbing to think that a complainant

could receive false information, especially if the answer could stop a complainant from filing a complaint or cause a complaint to be dismissed.

A further concern was how some departments treated vulnerable groups such as non-English speakers and undocumented immigrants. Only one department said that they had forms available in Spanish. This is particularly important in jurisdictions with Spanish speaking populations. There was also evidence of insensitivity as one employee said “because we live in America you should speak English and also we would not be able to read them,” This employee worked at a department that did not have a Spanish form. When asked whether an undocumented immigrant would have immigration called on them, 25% of departments said that they would call and another 25% percent said that they were unsure whether or not they would call immigration on an undocumented immigrant. Regardless of a person’s status, their complaints are valid and necessary to communities and police departments. By denying protection to undocumented immigrants, police departments create a group of people that lack protection from abuse.

Some quick facts:

- **Less then 10% of police departments offer citizen complaint forms in Spanish**
- **Over 16% of police departments do not have Spanish-speaking staff available to help translate.**
- **25% of police departments would call INS if a complainant were undocumented.**

Although the majority of police departments we contacted need to improve, there is some good news. In the original study from Connecticut, several departments were labeled as hostile. In the study conducted in Utah, only two out of twelve studies were considered hostile. Additionally, in Utah, most departments did not require

notarization of complaints and did allow multiple ways to file a complaint.

The ACLU of Utah applauds law enforcement agencies like the Provo Police Department and the Grand & San Juan Counties’ Highway Patrol Offices. They have helpful and consistent complaint processes in place.

Our complete findings and recommendations will be compiled into a report to be released later this year.

KNOW YOUR RIGHTS What To Do If You Are A Victim Of Police Misconduct in Utah

The ACLU of Utah is committed to stopping law enforcement abuse, wrongdoing, and racial profiling by officers. In order to do this, we need to know the types of problems occurring in the community. If you feel your rights have been violated please review our resources on our website at www.acluutah.org/need-help

iMatter v UDOT - Continued from page 5

indemnification agreements that protected UDOT weeks ahead of the time the event would take place. This rule was later changed to make the organizers the only people obligated to sign indemnification agreements.

Salt Lake City issued a “free expression” permit covering the iMatter’s Utah’s Marade. Nevertheless, UDOT insisted that iMatter Utah obtain a large liability insurance policy. These conditions successfully deterred the iMatter organizers from marching on State Street. They instead marched on State Street’s sidewalks.

In the lawsuit, the ACLU of Utah and the Utah Legal Clinic challenged the following as unconstitutional: “(i) UDOT’s requirement that unfunded groups wishing to exercise their First Amendment rights to peaceably assemble and to freedom of speech must obtain expensive liability insurance policies; (ii) UDOT’s requirement that all event participants must sign waivers and releases, weeks in advance, as a pre-condition to exercising their First Amendment rights; and (iii) UDOT’s requirement that event organizers must certify, weeks in advance, that all participants have signed UDOT’s waivers and releases.”

In November, 2013, the Utah federal court struck down UDOT’s requirements on three grounds. First, the court found that the UDOT rules substantially burdened speech. Second, the rules were not narrowly tailored to balance the government’s interest and the interest of protecting free speech. Finally, UDOT failed to balance interests when it broadly applied requirements without taking into account other means to ensure the prevention of losses to UDOT or how to allow everyone to protest, despite their lack of financial resources. Importantly, the court concluded that there was a symbolic importance to being able to march down State Street. The State has initiated an appeal of the district court’s ruling.

More information about this case can be found at www.acluutah.org/legal-work/resolved-cases.

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“The state has reduced these unions to second-class marriages,” said Erik Strindberg of Strindberg & Scholnick. “It is imperative that these marriages be recognized now, so that these couples and their families can receive the protections given to all other legally married couples in this great state.”

“We’re back at square one, with no idea what’s going to happen to us if one of us is hospitalized,” says Stacia Ireland, a plaintiff in *Evans v. Utah*. Stacia and her spouse, JoNell Evans, noticed that JoNell received much better treatment from hospital staff caring for Stacia when Stacia was able to list JoNell as her spouse than when Stacia could not do so. “After 13 years together, we just want the security and peace of mind to know we can be there for each other in the hard times,” Stacia concluded.

Another plaintiff couple, Matt Barrrza and Tony Milner, welcomed their son, Jesse, into their lives four years ago. Under Utah law, however, only Matt was able to legally adopt Jesse.



Plaintiffs Marina Gomborg and Donald Johnson (above) explain the importance of their marriages.



Plaintiff JoNell Evans (tops) talks at the press conference. Attorney Erik Strindberg (above) explains a legal point.

Once they got married, Matt and Tony began adoption proceedings to make Tony Jesse’s second legal parent. But the state’s “hold” on recognition of Matt and Tony’s marriage has thrown these proceedings up in the air.

“These couples and their families are suffering real immediate harm as long as their marriages are placed on hold,” said Joshua Block, staff attorney with the ACLU LGBT Project. “These marriages were validly entered into under Utah law, and the state is legally obligated to recognize their marriages now instead of placing these couples in limbo.”

The State recently removed the case to the federal U.S. District Court for the District of Utah. On February 4, 2014, the plaintiffs filed a motion for a preliminary injunction, asking the court to force Utah to immediately recognize the marriages of same-sex couples married in Utah while the lawsuit winds its way through the litigation process.

We think that the heart of this the case is best summed up by the words of plaintiffs Marina Gomborg and Elenor Heyborne, both born and raised in Utah: “We want to be married to strengthen and protect our bond and commitment to one another, especially to be able to create a safe environment to raise a child (or maybe two). And we don’t want to have to leave Utah to do that. Our lives are here, our friends are here, our jobs are here, and we love this city. This is our home. We love where we live. We want to raise a family here.”

Portions of this article are excerpted from the blog post “Stripped of Recognition” by ACLU attorney Joshua Block www.aclu.org/blog/lgbt-rights/stripped-recognition

More information about this case *Evans v Utah*, including the complaint filed in court, can be found at www.acluutah.org/legal-work/current-cases

We are grateful for permission to use the photos in this article taken by Patrick Jennings.

Court Says Utah Ban On Same-Sex Marriage Unconstitutional

Kitchen v Herbert

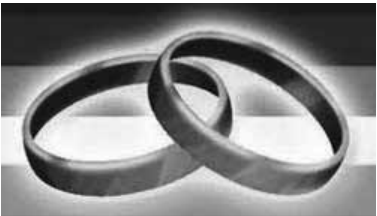
The ACLU and ACLU of Utah became involved in the emotional rollercoaster of a lawsuit, *Kitchen v. Herbert*, on October 17, 2013 when we submitted a “friend of the court” brief in support of the plaintiffs. In *Kitchen v. Herbert*, plaintiffs challenge Utah’s ban on same-sex marriage. The challenge to the Utah ban was brought by three Utah couples. These couples are Derek Kitchen and Moudi Sbeity; Karen Archer and Kate Call; and Laurie Wood and Kody Partridge and were represented by the law firm of Magleby & Greenwood. These couples were either married in Utah or were legally married somewhere else and wanted their home state to recognize their marriage.

In the brief written by the ACLU and ACLU of Utah, we argued that the *Kitchen v. Herbert* lawsuit called for a heightened level of scrutiny to be used when examining laws that discriminate against same-sex couples and their families. We argued that sexual orientation is a quasi-suspect classification that calls for scrutiny higher than rational-basis. Rational-basis is the lowest level of scrutiny that only requires a law to be reasonably related to serving a legitimate government interest.

On December 20th 2013, a federal court declared that Utah’s ban on same-sex marriage was unconstitutional. The federal court decided that the ban based on sexual identity discrimination, did not pass the rational-basis test and did not require the use of a heightened level of scrutiny. The court found that Utah’s prohibition of same-sex marriage violated the plaintiffs’ rights to equal protection and due process under the 14th Amendment. In addition, the court said that the ban perpetuates inequality by holding that same-sex couples are not and will not be worthy of recognition.

Utah attempted to offer several interests as their legitimate government interests that would allow them to deny same-sex couples’ rights. One interest was preserving the traditional definition of marriage. However, the court said that tradition alone does not make a rational basis for law. The court did not accept this or the other speculations and fears of the State of Utah, as sufficient to deny fundamental rights.

On January 4, 2014, the U.S. Supreme Court granted a request from Utah’s attorney general to temporarily halt marriages for same-sex couples; this is because the state is appealing the federal court’s ruling on the state’s ban on marriage for same-sex couples. In a move that far out stepped its authority, the state later announced that it placed recognition of marriages that took place after a federal court struck down the state ban and before the U.S. Supreme Court temporarily halted marriages, on hold indefinitely.





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2014 Bill of Rights Breakfast Celebration

Mark your calendar NOW for the 2014 Bill of Rights Breakfast Celebration, filled with exciting highlights of another amazing year of civil liberties challenges and victories by the ACLU of Utah!

Following up on last year’s wildly successful debut of our new annual celebration breakfast format, we’ll be coming together for a sunrise soiree at the **Rice Eccles Stadium Tower, at the University of Utah**, to share stories of Utah’s civil liberties stars and the winners of our Youth Activist Scholarship Awards.

You can begin to reserve seats for you, your friends, colleagues and family members on **MARCH 1**. Remember, in our new tradition, this event is FREE - as are the complimentary mimosas and Bloody Marys! - so seats get snapped up very quickly. Additional details will be available online at www.acluutah.org in March, and will be mailed directly to our supporters in April.

If you are interested in being a **TABLE CAPTAIN** or **EVENT SPONSOR**, please contact Anna Brower at abrower@acluutah.org or (801) 521-9862 ext 100 as quick as possible so we can reserve your table!

