



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC
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April 15, 2005

Mr. Sam Ray
Principal, Provo High School
1125 North University Ave.
Provo, Utah 84601

Via U.S. Mail and Facsimile (801) 374-4880

Dear Principal Ray:

Concerned students who wish to participate in Provo High School's prom and promenade with same-sex dates recently contacted us. This peaked our attention, in part because of a formal complaint we received in April 2003, stating that officials of Provo High School told the complainants, a same-sex couple, that they were not allowed to participate in the promenade or prom. Based on current concerns and past difficulties, we write to inform you that prohibiting same-sex couples from participating in these activities violates students' constitutional rights. We write also to request your written assurances before this year's prom that any same-sex couples that wish to attend prom and to participate in the promenade will be allowed to do so.

Any policy prohibiting the participation of same-sex couples violates the Utah Administrative Code, which, as you are 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 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). Provo High School has no grounds on which to prohibit same-sex couples from participating in prom and the promenade. Upholding tradition is not a sufficient reason to violate an individual's constitutional rights.

In your written confirmation stating that Provo High School is in compliance with the law, and will allow co-ed and same-sex couples to participate in prom and promenade, we also ask for your assurance that you have informed any teachers or other officials who will be at the prom of the law. This will work to ensure that they are aware of students' rights and that no couple will be inappropriately denied the right to participate. Additionally, if you have a written policy about this, please include it in your correspondence. Because prom and the promenade are imminent, we request your response immediately.

Should we receive any complaints this year about students being denied participation, we will take any necessary legal action to protect the students' constitutional rights. Thank you for your prompt attention to this matter.

Respectfully,

Margaret Plane
Staff Attorney

cc: Randall Merrill
Provo District Superintendent