


September 17, 2015

AdChoices 

Featuring fresh takes and real-time analysis from  
HuffPost's signature lineup of contributors

HOT ON THE BLOG

[Sen. Dianne Feinstein](#)

[Kelly Carlin](#)

[Michael R. Bloomberg](#)

[Lucinda Franks](#)



**Mark Baer**

[Become a fan](#)

Family Law Attorney, Mediator, Collaborative Law Practitioner,  
Speaker, and Author

# The Same-Sex Marriage 'Debate' Is Based Upon Ignorance and Inaccurate Information

Posted: 09/11/2014 5:34 pm EDT | Updated: 11/11/2014 5:59 am EST

On September 3, 2014, Judge Martin L. C. Feldman of the Federal District Court for the Eastern District of Louisiana was the first federal judge to uphold a ban on same-sex marriage since the United States Supreme Court's decision in United States v. Windsor on June 26, 2013. Out of curiosity, I decided to read Judge Feldman's decision in order to understand the basis for it. The answer was readily available in black and white. In his decision, Judge Feldman referred to homosexuality as a "lifestyle choice." He then stated that "neither the Supreme Court nor the Fifth Circuit has ever before defined sexual orientation as a protected class, despite opportunities to do so. Although the United States Supreme Court invalidated laws prohibiting interracial marriage in Loving v. Virginia, 388 U.S. 1 (1967), he distinguished that case because "the Fourteenth Amendment expressly condemns racial discrimination as a constitutional evil; in short, the Constitution specifically bans differentiation based on race."

Judge Feldman also stated that "fundamental social change occurs by social consensus through democratic process." It appears that Judge Feldman is not familiar with Marbury v. Madison, 5 U.S. 137 (1803), which is "one of the most important Supreme Court cases in United States history, for it established the precedent of judicial review, thus granting the Judicial Branch certain powers over the Legislative and Executive branches. Judicial review would essentially employ the system of checks and balances, thus ensuring the democratic process and structure of the United States Government." If the judicial system is clearly part of the "democratic process" and if the Judicial Branch has clearly effectuated "fundamental societal change," Judge Feldman's analysis makes little sense. However, Judge Feldman also said the following:

[M]ust states permit or recognize a marriage between an aunt and niece? Aunt and nephew? Brother/Brother? Father and child? May minors marry? Must marriage be limited to only two people? What about a transgender spouse? Is such a union same-gender or male-female? All such unions would undeniably be equally committed to love and caring for one another, just like the plaintiffs.

It seems as though Judge Feldman allowed his own prejudices get in the way of his duties as a judicial officer. He showed his ignorance by making such comparisons and referring to homosexuality as a "lifestyle choice." Then, rather than referring to marriage itself as a "fundamental right," he stated, "there is simply no fundamental right, historically or traditionally, to same-sex marriage." Judge Feldman is essentially stating that since sexual orientation is not a protected class, discrimination against the gay and lesbian population is fair game, and he wants to be first in line.

As I mentioned earlier, with the exception of Judge Feldman, all of the federal decisions regarding this issue have unanimously found bans against same-sex marriage to be unconstitutional. In fact, one day later, the United States Court of Appeals for the Seventh Circuit made such a finding. While the opinion by Judge Richard Posner in Wolf v. Walker and Baskin v. Bogan is extremely entertaining to read, the reasoning behind the distinction is abundantly clear. You see, in his opinion, Judge Posner stated the following:

The American Psychological Association has said that 'most people experience little or no sense of choice about their sexual orientation.' APA, 'Answers to Your Questions: For a Better Understanding of Sexual Orientation & Homosexuality' 2 (2008), (visited Sept. 2, 2014, as were the other web sites cited in this opinion); see also Gregory M. Herek et al., 'Demographic, Psychological, and Social Characteristics of Self -- Identified Lesbian, Gay, and Bisexual Adults in a US Probability Sample,' 7 *Sexuality Research and Social Policy* 176, 188 (2010) ('combining respondents who said they'd had a small amount of choice with those reporting no choice, 95 percent of gay men and 84 percent of lesbians could be characterized as perceiving that they had little or no choice about their sexual orientation'). That homosexual orientation is not a choice is further suggested by the absence of evidence (despite extensive efforts to find it) that psychotherapy is effective in altering sexual orientation in general and homosexual orientation in particular. APA, 'Answers to Your Questions,' supra, at 3; Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation 35-41 (2009).

The prejudice against same-sex marriage and homosexuality in general is the result of ignorance or incorrect information. Generally speaking, those who oppose same-sex marriage wrongly believe that homosexuality is a "lifestyle choice." Let me be very clear, homosexuality is no more a "lifestyle choice" than is heterosexuality.

[I]t needs to be understood that there is no scientific debate about whether homosexuality is a choice. The professional mental health and scientific organizations uniformly reject the idea. Many of them make even stronger statements about these issues.

Judge Martin L. C. Feldman has sworn to uphold both the Louisiana Constitution and the United States Constitution. Through his ignorance in believing that homosexuality is a "lifestyle choice," he has convinced himself that he has done just that in reaching his decision, when he has actually done quite the opposite.

It should be noted that the south has the highest percentage of gay and lesbian parents, according to the most recent U.S. Census. This interesting phenomenon exists because gays and lesbians are essentially shamed into entering into heterosexual marriages in the south. In other words, straight men and women are unknowingly marrying homosexuals and procreating with them before the homosexual eventually comes out because they can no longer deny their sexual orientation.

In addition, "research suggests that gay men, lesbians, and bisexual persons have higher rates of suicidal ideation, suicide attempts, and completed suicides than do heterosexual individuals... Some risk factors were specific to being gay or bisexual in a hostile environment." It should also be noted that

despite some improvements in public attitudes toward gay marriages and greater acceptance of homosexuality, disparities in suicide ideation and attempts between LGBT and heterosexual youth persist. New research indicates that few LGB people sought help prior to attempting suicide and when LGB people did seek help it was not effective in preventing suicide attempts. Further, counseling from a religious or spiritual advisor was associated with worse outcomes. Compared with individuals who did not seek help at all, those who sought help from a religious or spiritual advisor were more likely later to attempt suicide. Black LGBs were also more likely than White or Latino LGBs to seek treatment in religious or spiritual settings prior to a suicide attempt.

The other source of confusion lies in the distinction between a religious marriage and a civil marriage. In 2009, the New York Times determined that the lifetime value of civil benefits received by married couples ranged from \$41,196 to \$467,562. The discrimination against same-sex marriage essentially causes the gay and lesbian community to pay higher taxes because the taxes that they do pay are used in part to provide such civil benefits to the heterosexual community and they are simultaneously denied access to those benefits. As I keep saying, outcomes are determined by the way in which the game is designed. People are entitled to their beliefs. However, a line must be drawn when the beliefs of one person or a group of people harm another person or group of people.

Calling laws against same-sex marriage the last vestige of widespread discrimination in America, Kentucky Attorney General Jack Conway told TIME [on March 4, 2014] he refused to continue defending his state's ban on gay marriage because he feared he'd regret it for the rest of his life... 'From a legal standpoint I draw the line at discrimination,' Conway said in an extensive interview shortly after he announced that he would not appeal a judge's order that Kentucky recognize same-sex marriages... 'I knew what I was being asked to do,' he says. 'I am sworn to uphold the Kentucky Constitution and I am sworn to uphold the U.S. Constitution... [T]here is also a separate ethical canon for prosecutors and elected officers... Yes, you must provide zealous representation for your client. But you have a higher duty to see that justice is done. Seeing that justice is done is important to me.'

Unfortunately, Judge Feldman was unwilling to do the same. The denial of marriage to same-sex couples and prejudice against the gay and lesbian community has created far more problems than people seem to realize and it must stop.

**Follow Mark Baer on Twitter: [www.twitter.com/MarkBBaerEsq](http://www.twitter.com/MarkBBaerEsq)**

MORE: [Marriage Gay Homosexual Lesbian Sexual Orientation Discrimination Sexual Orientation LGBT VOICES Gay Marriage Marriage Gay Discrimination Gay Rights LGBT VOICES Discrimination LGBT VOICES Lesbian Moms Same Sex Parents Suicide Prevention Lesbian Mothers Fundamental Rights Suicide Religious Marriage Lesbian Parents Gay Gay Parents Marriage Equality Homosexuality Same Sex Marriage Gay Gay Marriage LGBT VOICES](#)

*This Blogger's Books and Other Items from...*

[amazon.com](http://amazon.com)



**Strategies for Family Law in California, 2013 ed.: Leading Lawyers on Understanding Developments in California Family Law (Inside the Minds)**  
by Multiple Authors



[Huffington Post Search](#)

[Advertise](#) | [Log In](#) | [Make HuffPost Your Home Page](#) | [RSS](#) | [Careers](#) | [FAQ](#)

[User Agreement](#) | [Privacy](#) | [Comment Policy](#) | [About Us](#) | [About Our Ads](#) | [Contact Us](#)

[Archive](#)

Copyright ©2015 TheHuffingtonPost.com, Inc. | "The Huffington Post" is a registered trademark of TheHuffingtonPost.com, Inc. All rights reserved. 2015©

Part of HPMG News