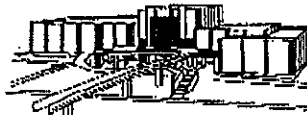


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FACSIMILE COVER SHEET AND COVER LETTER
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FROM: LYNN D. WARDLE, 518 JRCB, BYU, Provo, UT 84602 fax 801-378-5893 or -3595 *fyw*
DATE: October 19, 1998
RE: *A Proposal to Amend the U.S. Constitution to Prohibit Same-Sex Marriage*

I recently attended a meeting of leaders of various groups opposing same-sex marriage where a proposal was discussed that I think that the SGM Committee might begin to think about and to which you may need to be prepared to respond.

On Saturday, October 17, 1998, I attended a strategic consultation about same-sex marriage sponsored by the Marriage Law Project in Scottsdale, Arizona. Also attending were responsible lawyer-leaders or -representatives of some of the national organizations involved in organizations opposing same-sex marriage, including the National Conference of Catholic Bishops (Mike Moses), Alliance Defense Fund (Alan Sears), Christian Legal Society (Sam Casey), National Coalition to Protect Marriage (Steve Fritschcn), Independent Women (Anita K. Blair), Northstar Foundation (Jordan Lorence), and American Center for Law and Justice (Kevin Theriot), and a handful of law professors including Bob Destro (Catholic University), John Tuskey (Regents), Rick Duncan (Nebraska), and myself.

We heard very informative reports about the current situation in Hawaii (from Fritz Rohlfling), Alaska (from Kevin Clarkson), Vermont (from Tom McCormick), and California (from Andy Pugno), and a summary of the pending lawsuit in New York (from Bill Duncan). There were repeated expressions of appreciation from these persons for the leadership, support and efforts of the LDS Church in responding to the threat of same-sex marriage in those states.

Dave Coolidge of the Marriage Law Project led a stimulating discussion of "what do we do if we lose somewhere" -- that is, if same-sex marriage is legalized in some state (presumably by judicial decree). In some situations, there does not appear to be any "safety net," -- no promising method of immediate or timely recourse within the particular state if we lose there.

A couple of people proposed and several others expressed enthusiastic support for drafting an amendment to the United States Constitution that would abolish same-sex marriage in

the entire country. Advocates of that proposal noted that there would likely be a moment of strong reaction against the legalization of same-sex marriage when it happened, and they thought that would be the golden moment to introduce and get passed a constitutional amendment to outlaw same-sex marriage. They thought Congress could be persuaded to quickly (within 9 months or so) propose such an amendment, and that 38 states would ratify.

I expressed respectful, tentative personal opposition to that proposal. I told them that I believe that we (pro-family and socially conservative lawyers and groups) would rue the day we passed an amendment that could not help but have the effect of giving the federal government and federal courts greater authority to directly regulate domestic relations. I said that the last thing we want is for family policy to be dictated for the states from "inside the beltway," or by federal judges. I believe that the founders wisely intended for the states, not the federal government, to have the virtually exclusive authority to directly regulate family policy, and that on this and similar issues, the principles of federalism worked to our advantage. Advocates of radical proposals like same-sex marriage must now convince 50 courts or legal systems (one in each state) to legalize same-sex marriage; if the issue is constitutionalized, they will have to convince only one court system. I suggested that the best way to respond to any state legalizing same-sex marriage is on a state-by-state rejection basis. That requires a lot of work, 50 diverse state efforts rather than just one national effort, but the process of working state-by-state will be educational for the citizenry, strengthen local family values, and I believe that family policy should reflect local mores. The desire to deliver a once-for-all knockout-punch, get it over in one decisive endgame victory abolishing same-sex marriages seems very appealing, but it is illusory. Our strength is at the grassroots and we must win this issue from the ground up, not try to impose victory from the top down. Our method must be appropriate for our message. The authoritarian-dictatorial approach may be fine for advocates of radicalism like same-sex marriage, but the sovereign-people-grassroots approach is the one best suited for our position. I also think that the shelf-life of any widespread outrage may not be long enough and deep enough to pass a constitutional amendment, and that there are ways in which even widely- and strongly-supported family policy proposals can be effectively thwarted by a small, determined group of opponents. While a proposal for a constitutional amendment may help to show how serious the situation is, and might even be considered a last-resort measure, I think it would be divisive, cloud the issue, divert attention, and would be at best premature as the first-response.

I was listened to politely, but little support (only from Andy Pugno) was expressed for my position. The two or three most active voices in the discussion favored proposing and working for adoption of a constitutional amendment. However, many (probably most) people did not express any viewpoint on the matter, but only listened.

If there is bad news in November in Alaska (where things look very favorable at present, thanks largely to the Church's financial support) or Hawaii (where the matter was described as being very close), or later in Vermont when the state supreme court rules, or if same-sex marriage is legalized in any other state, some of our allies who oppose same-sex marriage may immediately call for a U.S. constitutional amendment to prohibit same-sex marriage. I thought that you should be aware of that and begin thinking about how the affected agencies and representatives of the Church might respond to that kind of a proposal.

-Lynn

cc: Elder Dallin H. Oaks, Quorum of the Twelve Apostles, 47 E. South Temple, Salt Lake City, UT 84150