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# First Friday News & Views

## THE SANCTITY OF OUR MARRIAGES

by Jonathan Wilson

Perhaps it will cut down a bit on the phone calls if I discuss in this column the sanctity of same-gender marriages performed during the two or so years that they have been legal. The backlash, punctuated by the non-retention of three Iowa Supreme Court Justices who participated in the unanimous decision that concluded the constitutional guarantee of equal protection actually means equal, has generated considerable angst among those who thought the decision was binding and final.

Here's the fact: the decision was binding and is final. The decision made same-gender marriage the law of the land in the state of Iowa. The non-retention of three participating Justices doesn't change that. The decision was no less binding because it was called an "opinion;" that's what all such decisions of the Iowa Supreme Court are called. Such decisions are neither advisory nor casual. They do not require the Legislature to do anything. The Iowa Code does state the law, *but subject to the decisions of the Iowa Supreme Court regarding constitutionality*. And that's as it should be. If any statute, such as the one dating from 1998 that reserved the rights and privileges of marriage for straight couples to abuse, is declared a denial of equal protection by the Iowa Supreme Court, that's that. There's no appeal to the US Supreme Court, there's nothing a disgruntled Legislature can do to un-do it, there's nothing at all a single house of the Legislature can do, and no executive order of a Governor will prevail against it (the failure of Vander Plaats and his ilk to master fifth grade civics to the contrary notwithstanding). You could kick every participating Justice off the Court and it wouldn't reverse the Varnum decision. That would require another case, and that would be years away.

As a consequence of the Varnum decision, same-gender citizens of Iowa and other states have flocked to Iowa courthouses and churches to get legally hitched. More power to them. Not surprisingly, detractors have put up quite a fuss. Defining sexual morality as that which occurs within the bounds of matrimony, and clinging to the myth that gay people are uniquely promiscuous among human beings, they have resisted the law change and cast about for avenues to un-do it.

There are theoretical ways that can be accomplished. The most obvious, short-term approach would be to ignore the fact that this will ultimately be decided by the US Supreme Court interpreting the US Constitution, and to amend the Iowa Constitution to provide that -- in the future -- "marriage" must be limited to the proverbial one-man and one-woman. That approach first requires the concurrence of *both* houses of the Iowa Legislature *two years in a row*. Thanks to Senator Gronstal and the Democratic-controlled Iowa Senate, that's not going to happen this year, so the first of the required two years couldn't possibly happen until next year, the second in the following year, and a ballot initiative put on the ballot not until 2013. That's the "worst case" scenario.

Put that up against the fact that the most recent Iowa Poll found that the majority of Iowans - fair-minded as they are - already *favor* gay marriage. Give public opinion three more years of gay marriages not having a discernable, adverse impact on straight marriages or the welfare of our state, and our detractors definitely will have their work cut out for them.

Pretending for a moment that the worst case scenario were to materialize; the proposition to write discrimination against law-abiding, tax-paying, gay citizens as an exception to the Equal

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### CALENDAR

▼ The next FFBC meeting is 7:00 A.M., Friday, May 6, 2011 at Hoyt Sherman Place.

Our speaker will be Martha Willits.

▼ R.S.V.P. by Wednesday May 4 to [JonathanWilson@davisbrownlaw.com](mailto:JonathanWilson@davisbrownlaw.com) or 288-2500 by phone.

Protection Clause were to be put on the ballot; and it were to be adopted, what then for those legally married during the *five years* that same-gender marriage would then have been legal?

In my professional opinion, nothing would change for those marriages. They would remain legal and just as sacred as they were or weren't before such a misguided, short-sighted, and mean-spirited constitutional amendment. While such an opinion is admittedly somewhat speculative, the legal principle has been previously broached in California regarding gay marriages performed after the California Supreme Court legalized them and the ignorant passed Proposition 8 to amend the California constitution. While the battle rages over that decision, virtually no one is suggesting that the intervening marriages will be impacted by the outcome.

And regarding the probable outcome, assuming that the Prop 8 case gets to the US Supreme Court on its merits, the prognosis remains remarkably positive. Remember, it was a conservative US Supreme Court that surprised me and many others during the Clinton Administration by striking down Colorado's [state constitutional] Amendment 2 that had sought to discriminate against the civil rights of GLBT citizens.

Folks who are afraid of water don't get agitated until they find themselves in the path of a rising tide. Then they get quite vocal, but nothing they do has any impact on the tide. We are seeing, as are our detractors, the crest of a wave of history in favor of making the gay thing a non-issue. In the lifetime of the Baby Boomer Generation, the current struggle is going to be old news -- so "last century." If you're out and don't believe me, call home. Almost no matter who answers the phone -- mom, dad, brother, sister, uncle, aunt, niece, nephew, whomever -- they're straight and allies every one. We live in a representative democracy; you do the math.

If you want to preserve your marriage, spend less time worrying about what the government will or won't do and more time working on your marriage.

## When the Ordinary Becomes Extraordinarily Compelling

by Bruce Carr

Our speaker on the First Friday of April was the famous Utube™ phenom Zach Wahls (when I Googled him that afternoon, I got over 350,000 hits....).

Zach is the young Iowan whose 3-minute testimony before a legislative forum that Republicans called at the end of last January to discuss *Iowa House Joint Resolution 6* made him famous worldwide, when the film went viral on the Internet. (The Joint Resolution, which later passed the House but went nowhere in the Senate, would end same-gender marriage in our State.) The testimony soon landed Zach on nationwide TV, including media personalities Ellen DeGeneres's show, Lawrence O'Donnell's **The Last Word**, Jonathan Turley, print outlets like **USA Today** and **The Economist**, to name only a

few.

Zach, who is 20 and a student at the University of Iowa, has been raised by his two mothers since he was five. His Tall Mom is Dr. Terry L. Wahls, an internal medicine physician at the University of Iowa, who gave birth to Zach and his younger sister with the aid of "Donor 1033" in the 1990s. His Short Mom is Jackie, whose commitment celebration with Terry in 1996 was but the first of three ceremonies on their way to becoming legally married in 2009.

Zach is no stranger to media attention, in fact: already in January 2010 he was quoted in a **New York Times** article on same-gender marriage: "At the end of the day," he said in an interview, "It's really about separate but equal. This isn't just about lesbian and gay, it's about tolerance and acceptance." And last September in an editorial for the **Daily Iowan** he went into more detail: "Last fall, I had the opportunity, courtesy of Iowa Public Radio's "The Exchange," to talk with a Tea Partier about this very topic. When I mentioned that two lesbian women raised me, her face turned to shock and then concern. She asked if I ever had yearning to meet my father — an anonymous sperm donor.

"My answer was — and remains — 'no.' And no, I don't feel damaged or that my childhood was somehow scarred. Maybe I have, in some way undetectable to me, been permanently harmed by having two moms. I guess I can't be sure. The truth is, though — we live pretty boring lives.

"It's just my life. We do chores. We play board games. We get bored. We celebrate Christmas. We mow our lawns and sweep our garages. We have fights, and we have catharsis. We have faith. And, as I pointed out to my Tall Mom the other day, the addition of a marriage certificate to our family doesn't really feel a whole lot different. (She agreed.)"

When it was time for Q&A, it was only natural that someone ask Zach if he thought his career might lead him into politics. Well yes, Zach said, he'd been asked that question before. But having thought about it, "I hope I never have to stoop to the level of being a politician."

## BRIEFS & SHORTS

Be sure to RSVP for the May 6 meeting no later than May 4. E-mail [JonathanWilson@davisbrownlaw.com](mailto:JonathanWilson@davisbrownlaw.com) or call him at 288-2500. Our speaker will be Martha Willits of the Greater Des Moines Partnership.

Thanks to Scott Kleinfelter for his introduction of our April Speaker, Zach Wahls of Iowa City.

**Save the Date:** Save the weekend of September 17-18, 2011, for a group excursion to visit picturesque Elkader, Iowa, where we'll be able to eat at Shera's Restaurant, and enjoy the tastes, sights, and sounds of that special, gay-friendly venue in northeast Iowa featuring North African and North American cuisine.

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*"...real faith is when you no longer hold onto anything..." ~Alan Watts*

# Creating Jobs and Growing Small Business

by Senator Matt McCoy

In my work in the Iowa Senate, I've stayed focused this session on jobs. So far, the Senate has approved eight pieces of our 2011 pro-jobs legislation. The most recent piece is a plan to jumpstart small-scale renewable energy at homes and businesses.

Iowa leads the nation in the production of ethanol and biodiesel, and we're number two in wind energy production. These industries have helped create jobs across the state with the opening of new businesses and the expansion of existing operations.

But Iowa still has room to grow when it comes to small wind and solar energy systems that help property owners meet their own energy needs. Small solar and small wind refers to the on-site production of electricity and heat at homes and businesses.

Senate File 516, which passed on a bipartisan vote of 49-1, seeks to create jobs by providing thousands of consumers with rebates of as much as \$3,000 for homeowners and up to \$15,000 for businesses. This is in addition to federal tax credits.

Jumpstarting this part of Iowa's renewable energy economy means jobs for local construction firms, plumbers, and electrical, heating and air conditioning contractors, who install and service smaller renewable energy systems. These smaller systems will also help lower utility bills, saving homeowners money and making businesses more profitable.

The bill now goes to the House for consideration.

Other pro-jobs legislation that has passed the Senate and is now before the House and the Governor includes: SF209, which provides \$148 million tax break to working Iowans and businesses; SF260, which removes penalties on certain businesses seeking to incorporate in Iowa; SF301, which expands the "Save Our Small Business" loan fund; SF328, which helps Iowans earn industry-approved certificates and provides businesses with skilled workers; SF471, which establishes a formal review of state red tape affecting small businesses and workers to make sure benefits outweigh costs; SF506, which will benefit 60,000 Iowa businesses with 10 or fewer employees by providing a tax credit to defray the cost of employee health insurance; and SF514, which provides \$5 million in existing tax credits to make it easier for communities to clean-up and revitalize their business and industrial parks.

Putting our energy behind the passage of these initiatives will create jobs and make Iowa a better place for all of us.

*As the church has condemned gay children of God, it has done so with this remarkable "moral lesson:" whether you are in a committed, monogamous, same-gender relationship for a lifetime, or utterly promiscuous with people of the same gender until you drop dead of exhaustion or worse, it's a moral equivalent. Imagine giving that guidance to straight folks who, as it is, brought us role models like Casa Nova and Don Juan, and examples of decadence like Mardi Gras.*

# Changing One Heart and One Mind at a Time

by David Twombly

Long before I became a plaintiff in the Varnum case, I was an instrumental music teacher for 37 years; mostly in Osceola, Iowa, until my 'retirement' in 2000. During my career, I had the opportunity to instruct and work with many students. As any teacher can attest, a few students in my experience stand out, for many reasons.

One such student was Joel Fry who still lives in Osceola. I had the pleasure of working with him from his 7th grade year until his graduation from Clarke Community High School. Joel was a bright, talented, funny, and caring individual, far more mature than the average junior high student, and I was privileged to have been able to work with him. Last fall Joel was elected as a Republican to the Iowa House of Representatives for the first time. In that capacity, he was one of those who voted to start the process of amending Iowa's Constitution to prohibit same-gender marriage as well as civil unions. I sent him an e-mail, asking if we could meet and discuss his position on this matter, and he agreed to meet.

Joel was gracious, and seemed sincere in his greeting. We had a nice 'catch up' with each other and he told me again how much I had meant to him as his band teacher. He also said that he knew I was the same person that he had so respected, and how torn he was when I came out to him nearly 10 years ago, because he couldn't understand why I had 'chosen that path.'

At this point we turned to a more serious discussion of the whole issue. I told him, of course, that I no more chose my orientation than my eye color. His response was that whether or not a person is born gay or 'chooses' it is an unresolved discussion, but he admitted that he is beginning to change his beliefs on the subject. He bases his opposition to marriage equality on his very conservative religious beliefs; my insistence that this is a civil matter, not a religious one, appeared to fall on deaf ears.

We talked for nearly 45 minutes. Did I expect a sudden epiphany on his part? Of course not. I do feel, though, that putting a human face on this issue, and reconnecting with me as a former teacher and friend when he was growing up.

One of the most wonderful things for me in my coming out has been the fact that I can be honest about who I am, how my God made me, for whatever reason, and that I AM still the 'David Twombly' he knew. Is Joel bigoted on this issue? Of course he is. Is he a 'bad' person? Of course, he is not. Joel and his wife have 4 young children. I asked him how he would feel if one of them were gay. He had no response. I am sure he thinks that their 'Christian' upbringing would prevent this – now he knows that didn't work for me.

We all have the power to be who we are, to live our lives with dignity and honor, regardless of sexual orientation. We can make a difference by being honest with ourselves and with all others with whom we come in contact. History and enlightenment are on our side; we have to continue the 'good fight' at every opportunity, and the truth will set us free.

*Those who fail to fear the underdog will not survive.*

# FFBC

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News & Views  
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*MAY 2011*

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## My M.O. (Monthly Observation)

By Steve Person

The final weekend in March, I made a visit to the Twin Cities. While there, a friend and I went to the lovely town of Stillwater, Minnesota, along the St. Croix River that separates Minnesota from Wisconsin. Stillwater reminds me of McGregor, Iowa, along the Mississippi in northeastern Iowa. A town of numerous art galleries, restaurants, and antique shops, Stillwater came to life after noon on a sunny, Sunday, early spring day. The St. Croix River, though frozen, was already beginning to flood, and I fear the elegant little town nestled between the bluffs and the river will be in for some major flooding once the warmer weather moves in. Still, the water and ice had not yet shut down the town, and we had a delicious brunch at Charlie's Restaurant at the Water Street Inn, an 1890s building hugging the river's shoreline.

The stroll along the town's main street revealed shopping pleasures as varied as expensive handmade furniture, fine art glass and pottery galleries, and a delightful independent bookstore, the kind of place I love to support. The store clerk, a middle-aged woman, commented on my friend's purchase of a book about the Kennedy assassination, insisting that the killing of the President was a conspiracy and the Warren Commission's findings entirely rigged. She was a delight to talk to. I bought a few books, too, and hoped the light and airy store would not soon be inundated by the waters of the St. Croix River.

Speaking of bookstores, I was distressed to learn the upcoming closing of the Borders store in West Des Moines. While I did not make a habit of going there regularly, I have been there many times and regret the decision to close it. I regret the closing of any bookstore, especially the independent book sellers. That is why I purchase most of my books and magazines from The Book Store in the Equitable Building in downtown Des Moines. Ostensibly, the reason for the closing of the Borders store here and in hundreds of other locations is the popularity of books on portable electronic devices. While I applaud reading in any form, I doubt very much that I will ever own such a contraption. Why? Because I like to write in the books I own. Also, most of the kinds of books I like to read are not available on these devices. Perhaps I am a Luddite, but give me a book with paper pages any day!

When I made my purchase at the store in Stillwater, a bookmark was stuffed into my bag. It said, "The buck really does stop here! For every \$100 a consumer spends, local businesses give back \$68 to their local economy. Chain stores give back only \$43. The flipside of the bookmark asked four questions: How many in-store author appearances did Amazon stage in your town last year? How many people did Amazon employ in your town last year? How much did Amazon donate to your local community organizations last year? How much did Amazon collect in sales tax and pay to support schools, social services, and public agencies last year?" The obvious answer to all four questions is zero, so I would urge you to think twice before buying products from such organizations.

From Stillwater, we drove across the St. Croix River to the equally quaint town of Hudson, Wisconsin—another artists' colony. The town used to have a toll bridge and causeway that connected it with Minnesota. The bridge is gone, but the causeway is now a pedestrian walkway. The 1930s gangster John Dillinger used the bridge and highway to escape from St. Paul across to Wisconsin. The I 94 Bridge now connects the two states.

It was a delightful and relaxing way to spend a Sunday afternoon and just not that far from Central Iowa.