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State Bar of Nevada
Nevada Lawyer
Attention: Jennifer Smith
Via E-Mail to jennifers@nvbar.org and nvlawyer@nvbar.org

Re: President's Message in May Edition

Dear Editor:

This letter responds to the "Message from the President" in your May edition, the fundamental flaw of which is the author's substitution of his personal interpretation of the Law of Deseret in the place of guiding principles of U.S. and Nevada law. How ironic that he violates the tenant of separating church and state while complaining that no one is defending the Constitution. That, combined with his uninformed statement that "[s]exual preferences...are about behavior," lays the foundation for an editorial that is profoundly disrespectful and dismissive of the fundamental rights that same-sex couples should be afforded. Religious beliefs are sacred, but they are also personalized and subjective, which is why they may not be invoked to deprive people of their personal liberties.

First, sexual orientation is an indelible and immutable characteristic. Did Mr. Lefebvre at some point decide to be a heterosexual, and does he believe he has the same propensity to fall in love and pair bond with a man or a woman, depending on how he chooses to behave on a given day?

Second, contrary to the author's assertion that the present judicial trend toward enforcing marriage equality is the result of lucky breaks divorced from the merits, literally millions of dollars are being spent to litigate this issue. In the California trial, opponents of marriage equality were invited to bring everything they had, only to see their evidence collapse pathetically under cross-examination. There are over 1,000 Federal rights afforded to those who can legally marry. There is no legal basis under which they may be withheld, whether the analysis flows from an equal protection or fundamental rights analysis. Mr. Lefebvre's cavalier dismissal of this effort demonstrates a lack of education on the subject.

Third, there is generally wide latitude for an attorney general to exercise discretion when deciding whether to defend a statute, especially where it violates the state or U.S.

Constitution. State attorneys have refused to enforce laws that impermissibly restrict the right to bear arms or access abortions. Marriage equality is not an isolated example. Every day, the momentum for recognizing the basic rights of LGBT people builds. To ignore that is to be on the wrong side of history.

Fourth, as any eighth grade government student can explain, our nation's checks and balances are designed to intervene and protect the rights of those in the minority, because the majority cannot always be depended upon to do so. Even if a majority of Nevadans did not support same-sex marriage, which they do, the will of the majority would not be justification for depriving the minority of fundamental equality.

Mr. Lefebvre is right that an apology is due, but it should be directed to the law-abiding, loving couples who are deprived of their rights merely because of who they love. He also owes members of the Bar an apology for a "message" that is disrespectful, uninformed, and outside the chartered scope of someone speaking under the auspices of leadership for our State Bar.

Sincerely,



Jeffery A. Garofalo