UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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October 17, 2014

Anthony Citro
254 SW 7TH ST
DANIA, FL 33004-3948

Appeal Number: 14-14061-AA ; 14-14066 -AA
Case Style: Sloan Grimsley, et al v. John Armstrong, et al
District Court Docket No: 4:14-cv-00138-RH-CAS

RETURNED UNFILED: Amicus brief filed by Anthony Citro is returned unfiled because a motion for leave to file an amicus brief is required. Please see FRAP 29 and 11th Cir. R. 29-1. The brief must be in green covers and comply fully with the requirements of 11th Cir. R. 29-2. (Copy of rules enclosed.) [14-14066, 14-14061]

Sincerely,

JOHN LEY, Clerk of Court

Reply to: David L. Thomas, AA/emd
Phone #: 404-335-6130

MOT-11 Motion or Document Returned

14-14066-AA

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UNITED STATES COURT OF APPEALS for the ELEVENTH CIRCUIT

In the Case of,

The State of Florida; Dr. John H. Armstrong, Secretary of the Florida Department of Health and Florida Surgeon General; and Craig J. Nichols, Secretary of the Florida Department of Management Services; and Harold Bazzel, Clerk of Court and Comptroller for Washington County, Florida et al.

PETITIONERS,

V.

James Domer Brenner and Charles D. Jones; Stephen Schlairet and Ozzie Russ et al.

RESPONDENTS

Case 4:14-cv-00197-RH-CAS

_____AND_____

In the Case of,

The State of Florida; Dr. John H. Armstrong, Secretary of the Florida Department of Health and Florida Surgeon General; and Craig J. Nichols, Secretary of the Florida Department of Management Services; et al.

PETITIONERS,

V.

Sloan Grimsley and Joyce Albu; Bob Collier and Chuck Hunziker; Lindsay Myers and Sarah Humlie; Robert Loupo and John Fitzgerald; Denise Hueso and Sandra Newson; Juan Del Hierro and Thomas Gantt, Jr.; Christian Ulvert and Carlos Andrade; Richard Milstein and Eric Hankin; and Save Foundation, Inc.,

RESPONDENTS

Case 4:14-cv-00138-RH-CAS

Amicus Curiae on the side of the Petitioners

Comes now Mr. C. Anthony Citro whom respectfully submits to this honorable court, *amicus curiae on the side of the petitioner* for the reasons stated as follows;

1. This case seems very long with a lot of complex issues. The respondents stated many times in their amended complaint the 14th Amendment due process clause and equal protection clause and the 4th and 5th Amendment as well, and at least one mention of the Preamble of the Constitution of the United States of America, was violated when they were denied marriage licenses, medical benefits, retirement benefits, property benefits, and related legal issues, based on the State of Florida's, State Constitutional and Statutory ban on Same Sex Marriage. Article I, § 27 of the Florida Constitution and § 741.212 and § 741.04(1) Fla. Statutes.
2. In response; the Courts Order is a Writ in Error. Nowhere in the United States Constitution is there any guarantee that same sex couples can get married. The fact is getting married is not a god given right, or a constitutional right, or constitutional guarantee, period. The truth is getting married is no more your right than getting a drivers license. A wide majority of people go out and do it and it seems like a right but it's not protected by Constitutional law.
3. I submit to this honorable court that the closest thing to constitutional law that I think applies in the instant case sits squarely on the side of the petitioners. Often referred to as States Rights, Amendment 10 states; The powers not delegated to the United States by the Constitution, not prohibited by it to the States, are reserved to the States respectively, or to the people. I submit to this Honorable Court that the State of Florida has complied with this Amendment.
4. According to the Tampa Bay Times in an article written by Joni James published 2-12-2005 a group named Florida4Marriage.org. (John Stemberger chairman), then filed a petition with the State Elections Division (Secretary of State 2-9-2005) "seek[ing] to amend the state Constitution (in 2006) to define marriage as a union between "only one man and one woman" and provides that no other kind of marriage or legal union is equivalent to marriage."

And as in compliance with Florida law on November 4th, 2008 this Amendment appeared on the ballot and the People voted 61.9% in favor and 38.1% opposed to this Amendment.

I believe that this is a qualified case of a right reserved to the states or to the people, being picked up by the people and lawfully channeled through the state and lawfully enacted into Florida law.

5. Our Fourth President James Madison whom is credited for writing the Tenth Amendment once said;

> "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation and foreign commerce. ... The powers reserved to the several States will extend to all the objects which in the ordinary course of affairs, concern the lives and liberties, and properties of the people, and the internal order, improvement and prosperity of the State."
>
> — James Madison 10th-amendment, government
>
> https://www.goodreads.com/author/quotes/63859.James_Madison

6. The State of Florida is a Sovereign State whose government has a right to exist, and whose Legislature enacts our laws governing Public Policy

7. The government has the right to enforce its own laws and its Officials and Officers have a Sworn and Fiduciary Duty to uphold the law and carry out the Public Policies of this State

8. 42 USC 1983: … except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

9. The High Court has held;

> "Marriage, as *creating the most important relation in life*, as having more to do with the *morals and civilization of a people than any other institution, has always been subject to the control of the legislature*. That body prescribes the age at which parties may contract to marry, the procedure or form essential to constitute marriage, the duties and obligations it creates, its effects upon the property rights of both, present and prospective, and the acts which may constitute grounds for its dissolution." See Maynard v. Hill - [125 U.S. 190, 205](1888) emphasis added.

> "As such, it is not so much the result of private agreement as of public ordination. In every enlightened government it is pre-eminently the basis of civil institutions, and *thus an object of the deepest public concern.* In this light, marriage is more than a contract. It *is not a mere matter of pecuniary consideration. It is a great*

public institution, giving character to our whole civil polity." Id. at 213 emphases added.

10. Webster's 1913 Dictionary defines Mar´riage

n. 1. The act of marrying, or the state of being married; legal union of a man and a woman for life, as husband and wife; wedlock; matrimony.
Marriage is honorable in all. - Heb. xiii. 4.
http://www.webster-dictionary.org/definition/Marriage

11. In another case concerning the legislative rights of Congress and the Legislator of the Territory of Utah to pass marriage laws against the practice of polygamy in Reynolds v. U. S. 98 US 145 [98 U.S. 145, 153] (1878)

MR.CHIEF JUSTICE WAITE delivered the opinion of the court;

[98 U.S. 145, 164] "Polygamy has always been odious among the northern and western nations of Europe, and, until the establishment of the Mormon Church, was almost exclusively a feature of the life of Asiatic and of African people. At common law, the second marriage was always void (2 Kent, Com. 79), and from the earliest history of England polygamy has been treated as an offence against society… By the statute of James I. (c. 11), the offence, if committed in England or Wales, was made punishable in the civil courts, and the penalty was death. As this statute was limited in its operation to England and Wales, it was at a very early period re-enacted, generally with some modifications, in all the colonies… From that day to this we think it may safely be said there never has been a time in any State of the Union when polygamy has not been an offence against society, cognizable by the civil courts and punishable with more or less severity. *In the face of all this evidence, it is impossible to believe that the constitutional guaranty of religious freedom was intended to prohibit legislation in respect to this most important feature of social life. Marriage*, while from its very nature a sacred obligation, is nevertheless, in most civilized nations, a civil contract, and usually regulated by law. emphasis added.

[98 U.S. 145, 166] [B]ut there cannot be a doubt that, unless restricted by some form of constitution, it is within the legitimate scope of the power of every civil

government to determine whether polygamy or monogamy shall be the law of social life under its dominion.

[98 U.S. 145, 166] [T]he only question which remains is, whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do, must be acquitted and go free.

[98 U.S. 145, 166] So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? [98 U.S. 145, 167] To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances. emphasis added.

[98 U.S. 145, 167] The passage complained of (in the Trial Court) is as follows:

'I think it not improper, in the discharge of your duties in this case, that you should consider what are to be the consequences to the innocent victims of this delusion. As this contest goes on, they multiply, [98 U.S. 145, 168] and there are pure-minded women and there are innocent children,-innocent in a sense even beyond the degree of the innocence of childhood itself. These are to be the sufferers; and as jurors fail to do their duty, and as these cases come up in the Territory of Utah, *just so do these victims multiply and spread themselves over the land*.' emphasis added.

[98 U.S. 145, 168] Congress, in 1862 (12 Stat. 501), saw fit to make bigamy a crime in the Territories. This was done because of the evil consequences that were supposed to flow from plural marriages."

[98 U.S. 145, 168] Upon a careful consideration of the whole case, we are satisfied that no error was committed by the court below.

Judgment affirmed.

12. Clearly the High Court has opened the door for the Congress and the States to pass laws concerning this most important feature of social life, marriage.

13. In their amended complaint the respondents cited 388 U.S. 1 Loving v. Virginia (No. 395) where

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court, among which he said,

> "The clear and central purpose of the Fourteenth Amendment was to eliminate all official state sources of invidious racial discrimination in the States."…
>
> "Virginia is now one of 16 States which prohibit and punish marriages on the basis of racial classifications.[n5] Penalties for miscegenation arose as an incident to slavery, and have been common in Virginia since the colonial period"…
>
> "In June, 1958, two residents of Virginia, Mildred Jeter, a Negro woman, and Richard Loving, a white man, were married …"
>
> [The law they violated reads]
>
> *Punishment for marriage.* -- If any white person intermarry with a colored person, or any colored person intermarry with a white person, he shall be guilty of a felony and shall be punished by confinement in the penitentiary for not less than one nor more than five years.
>
> [This law]
>
> "[a]utomatically voids all marriages between "a white person and a colored person" without any judicial proceeding"
>
> [This law also]
>
> "[d]efine[s] "white persons" and "colored persons and Indians" for purposes of the statutory prohibitions"
>
> [The Court also said],
>
> "Penalties for miscegenation *arose as an incident to slavery*, and have been common in Virginia since the colonial period" emphasis added.

"[T]he clear and central purpose of the Fourteenth Amendment was to eliminate all official state sources of *invidious racial discrimination* in the States. *Slaughter-House Cases,* 16 Wall. 36, 71 (1873);" emphasis added.

"The court also reasoned that marriage has traditionally been subject to state regulation without federal intervention, and, consequently, *the regulation of marriage* should be left to *exclusive state control by the Tenth Amendment."* emphasis added.

"[T]he state court is no doubt correct in asserting that marriage is a social relation subject to the State's police power, *Maynard v. Hill,* 125 U.S. 190 (1888),"

"The clear and central purpose of the Fourteenth Amendment was to eliminate all official state sources of *invidious racial discrimination* in the States." *Slaughter-House Cases,* 16 Wall. 36, 71 (1873);" emphasis added.

"Over the years, this Court has consistently repudiated "[d]istinctions between citizens solely because of their ancestry" as being "odious to a free people whose institutions are founded upon the doctrine of equality." *Hirabayashi v. United States,* 320 U.S. 81, 100 (1943). *At the very least*, the Equal Protection Clause demands that *racial classifications*, especially suspect in criminal statutes, be subjected to the "most rigid scrutiny," *Korematsu v. United States,* 323 U.S. 214, 216 (1944), and, if they are ever to be upheld, they must be shown to be necessary to the accomplishment of some permissible state objective, independent of the *racial discrimination* which it was the *object of the Fourteenth Amendment to eliminate*..." emphasis added.

"We have consistently denied **[p12]** the constitutionality of measures which restrict the rights of citizens on account of race. *There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause.*" emphasis added.

"The Fourteenth Amendment requires that the *freedom of choice* to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to

marry, or not marry, a *person of another race* resides with the *individual*, and cannot be infringed by the State." emphasis added.

"MR. JUSTICE STEWART, concurring.

"I have previously expressed the belief that "it is simply not possible for a state law to be valid under our Constitution which makes the criminality of an act depend upon the race of the actor." *McLaughlin v. Florida,* 379 U.S. 184, 198 (concurring opinion). Because I adhere to that belief, I concur in the judgment of the Court."

But there's nothing here that clearly describes the Respondents in this case. . They clearly choose their sexual orientation. They did not inherit it such as if their parents were Chinese for instance.

14. In their amended complaint to the lower court the respondents made many references to the 14th Amendment and how they claim it applies to them. In order to shed more light on the issue I have included some excerpts from an article *By GERARD N. MAGLIOCCA* Dated September 17, 2013 called

The Father of the 14th Amendment

John Bingham

John Bingham was among the first group of Republicans elected to the House of Representatives. [H]e established himself as one of the leading congressional voices against slavery. [He served his first term in Congress] from 1861 to 1863. [He lost in the] 1862 elections. [About that time] He told Treasury Secretary Salmon P. Chase that the "limitations of the Constitution upon the States in favor of the personal liberty of all of the citizens of [the] Republic black & white [are] soon to become a great question before the people." Three years later, he was back in the House. . . Once there, Bingham went to work. He took the lead in framing the 14th Amendment of the Constitution, and he authored its guarantee that no state shall "deny to any person within its jurisdiction the equal protection of the laws." … In a series of speeches over the next few years, Bingham laid out his view that the Constitution was "based upon the equality of the human race. Its primal object must be to protect each human being within its jurisdiction in the free and full enjoyment of his natural rights." In a different speech, he said: "You will search in vain in the Constitution of the United States … for that word white, it is not there . . . The omission of this word — this phrase of caste — from our national charter, was

not accidental, but intentional." He added, "Black men … helped to make the Constitution, as well as to achieve the independence of the country by the terrible trial of battle." [He also once said], " The only injustice that could justify a revolt was that "wrong which dooms four million men and their descendants forever to abject servitude." He made an impassioned plea for the successful abolition of slavery in the District of Columbia, commenting that the legislation "illustrates the great principle that this day shakes the throne of every despot upon the globe,. . . While Bingham was a civil libertarian who argued after the war that the entire Bill of Rights should be extended to the acts of state governments, during the war he argued that the First Amendment did not protect any man who "encourages armed rebellion against the Constitution and laws of the Republic." Likewise, he said that the Fifth Amendment's guarantee that "no person shall be deprived of life, liberty, and property, without due process of law" was the "law of peace, not of war. In peace, that wise provision of the Constitution must be, and is, enforced by the civil courts; in war, it must be, and is, to a great extent, inoperative and disregarded."

http://opinionator.blogs.nytimes.com/2013/09/17/the-father-of-the-14th-amendment/?_php=true&_type=blogs&_r=0

15. Here are more selections in another article about John Binghan entitled

Historical Analysis of the Meaning of the 14th Amendment's First Section

By P.A. Madison Last updated on August 2, 2010

[ ] Bingham again appears to have removed all doubt to exactly what the privileges and immunities would encompass during the debates for the adoption of the Fourteenth Amendment when he said on February 28, 1866:

"The gentleman will pardon me. The amendment is exactly in the language of the Constitution; that is to say, it secures to the citizens of each of the States all the privileges and immunities of citizens of the several States. It is not to transfer the laws of one State to another State at all. It is to secure to the citizens of each State all the privileges and immunities of ***citizens of the United States*** *in the several States. If the State laws do not interfere, those immunities follow under the Constitution.*[19]

Notice Bingham makes clear immunities of citizens of the United States do not shield them against the laws of a State. Following the same construction along the lines of Joseph Story in his Commentaries in that *the phrase only applied to personal rights in which an out–of–state citizen would be entitled under like circumstances under State law for its own resident citizens*.

16. Dred Scott v. Sandford 60 U.S. 393 (1856)

566*566 . Whether the decision of the Circuit Court on a plea to the jurisdiction be against the plaintiff, or against the defendant, the losing party may have any alleged error in law, in ruling such a plea, examined in this court on a writ of error

428*428 And the appellate court therefore exercises the power for which alone appellate courts are constituted, by reversing the judgment of the court below for this error. It exercises its proper and appropriate jurisdiction over the judgment and proceedings of the Circuit Court, as they appear upon the record brought up by the writ of error.

428*428 The correction of one error in the court below does not deprive the appellate court of the power of examining further into the record, and correcting any other material errors which may have been committed by the inferior court. There is certainly no rule of law — nor any practice — nor any decision of a 429*429 court — which even questions this power in the appellate tribunal. On the contrary, it is the daily practice of this court, and of all appellate courts where they reverse the judgment of an inferior court for error, to correct by its opinions whatever errors may appear on the record material to the case; and they have always held it to be their duty to do so where the silence of the court might lead to misconstruction or future controversy, and the point has been relied on by either side, and argued before the court.

583*583 To what citizens the elective franchise shall be confided, is a question to be determined by each State, in accordance with its own views of the necessities or expediencies of its condition. What civil rights shall be enjoyed by its citizens, and whether all shall enjoy the same, or how they may be gained or lost, are to be determined in the same way.

615*615, the rules and regulations must be needful. But undoubtedly the question whether a particular rule or regulation be needful, must be finally determined by Congress itself. Whether a law be needful, is a legislative or political, 615*615 not a judicial, question. Whatever Congress deems needful is so, under the grant of power.

405*405 It is not the province of the court to decide upon the justice or injustice, the policy or impolicy, of these laws. The decision of that question belonged to the political or law-making power; to those who formed the sovereignty and framed the Constitution. The duty of the court is, to interpret the instrument they have framed, with the best lights we can obtain on the subject, and to administer it as we find it, according to its true intent and meaning when it was adopted.

405*405. For, previous to the adoption of the Constitution of the United States, every State had the undoubted right to confer on whomsoever it pleased the character of citizen, and to endow him with all its rights

Nor have the several States surrendered the power of conferring these rights and privileges by adopting the Constitution of the Untied States.

410*410 Yet the men who framed this declaration were great men — high in literary acquirements — high in their sense of honor, and incapable of asserting principles inconsistent with those on which they were acting. They perfectly understood the meaning of the language they used, and how it would be understood by others emphasis added.

410*410 The brief preamble sets forth by whom it was formed, for what purposes, and for whose benefit and protection. It declares 411*411 that it is formed by the people of the United States; that is to say, by those who were members of the different political communities in the several States; and its great object is declared to be to secure the blessings of liberty to themselves and their posterity. It speaks in general terms

of the people of the United States, and of citizens of the several States, when it is providing for the exercise of the powers granted or the privileges secured to the citizen. It does not define what description of persons are intended to be included under these terms, or who shall be regarded as a citizen and one of the people. It uses them as terms so well understood, that no further description or definition was necessary.

426*426 If any of its provisions are deemed unjust, there is a mode prescribed in the instrument itself by which it may be amended; but while it remains unaltered, it must be construed now as it was understood at the time of its adoption. It is not only the same in words, but the same in meaning, and delegates the same powers to the Government, and reserves and secures the same rights and privileges to the citizen; and as long as it continues to exist in its present form, it speaks not only in the same words, but with the same meaning and intent with which it spoke when it came from the hands of its framers, and was voted on and adopted by the people of the United States. Any other rule of construction would abrogate the judicial character of this court, and make it the mere reflex of the popular opinion or passion of the day. This court was not created by the Constitution for such purposes. Higher and graver trusts have been confided to it, and it must not falter in the path of duty. emphasis added.

408*408 The other colonial law to which we refer was passed by Massachusetts in 1705, (chap. 6.) It is entitled "An act for the better preventing of a spurious and mixed issue," &c.; and it provides, 409*409 that intermarriages between white persons and negroes or mulattoes were regarded as unnatural and immoral

17. Here is the first major case decided by the high court addressing the 14th Amendment after it was ratified and how it applies to law.
In the Slaughter-house cases 83 U.S. 36 (1872)
[83 U.S. 36, 57]

On , April 14th, 1873, Mr. Justice MILLER, now delivered the opinion of the court.

[83 U.S. 36, 72] […] And so if other rights are assailed by the States which properly and necessarily fall within the protection of these articles, that protection will apply, though the party interested may not be of African descent. But what we do say, and what we wish to be understood is, that in any fair and just construction of any section or phrase of these amendments [13th, 14th, 15th.], it is necessary to look to the purpose which we have said was the pervading spirit of them all, the evil which they were designed to remedy, and the process of continued addition to the Constitution, until that purpose was supposed to be accomplished, as far as constitutional law can accomplish it.

[83 U.S. 36, 74] We think this distinction and its explicit recognition in this amendment of great weight in this argument, because the next paragraph of this same section, which is the one mainly relied on by the plaintiffs in error, speaks only of privileges and immunities of citizens of the United States, and does not speak of those of citizens of the several States. The argument, however, in favor of the plaintiffs rests wholly on the assumption that the citizenship is the same, and the privileges and immunities guaranteed by the clause are the same.

[83 U.S. 36, 74] The language is, 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.' *It is a little remarkable, if this clause was intended as a protection to the citizen of a State against the legislative power of his own State*, that the word citizen of the State should be left

out when it is so carefully used, and used in contradistinction to citizens of the United States, in the very sentence which precedes it. It is too clear for argument that the change in phraseology was adopted understandingly and with a purpose. emphasis added.

[83 U.S. 36, 74]Of the privileges and immunities of the citizen of the United States, and of the privileges and immunities of the citizen of the State, and what they respectively are, we will presently consider; but we wish to state here that it is only the former which are placed by this clause under the protection of the Federal Constitution, *and that the latter*, whatever they may be, *are not intended to have any additional protection by this paragraph of the amendment*. [83 U.S. 36, 75] If, then, there is a difference between the privileges and immunities belonging to a citizen of the United States as such, and those belonging to the citizen of the State as such the latter must rest for their security and protection where they have heretofore rested; *for they are not embraced by this paragraph of the amendment*. emphasis added.

[83 U.S. 36, 75] Fortunately we are not without judicial construction of this clause of the Constitution. The first and the leading case on the subject is that of Corfield v. Coryell, decided by Mr. Justice Washington in the Circuit Court for the District of Pennsylvania in 1823.22 [83 U.S. 36, 76] 'The inquiry,' he says, 'is, what are the privileges and immunities of citizens of the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are fundamental; which belong of right to the citizens of all free governments, and *which have at all times been enjoyed by citizens of the several States* which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would be more tedious than difficult to enumerate. They may all, however, be comprehended under the following general heads: protection by the government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, *subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole*.' emphasis added.

[83 U.S. 36, 76] In the case of Paul v. Virginia,24 the court, in expounding this clause of the Constitution, says that 'the privileges and immunities secured to citizens of each State in the several States, by the provision in question, are those privileges and immunities which are common to the citizens in the latter [83 U.S. 36, 77] States under their constitution and laws by virtue of their being citizens.'

[83 U.S. 36, 77] The constitutional provision there alluded to did not create those rights, which it called privileges and immunities of citizens of the States. It threw around them in that clause no security for the citizen of the State in which they were claimed or exercised. *Nor did it profess to control the power of the State governments over the rights of its own citizens*. emphasis added.

[83 U.S. 36, 77] Its sole purpose was to declare to the several States, that whatever those rights, as you grant or establish them to your own citizens, *or as you limit or*

qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction. emphasis added.

[83 U.S. 36, 77] It would be the vainest show of learning to attempt to prove by citations of authority, that up to the adoption of the recent amendments, no claim or pretence was set up that those rights depended on the Federal government for their existence or protection, beyond the very few express limitations which the Federal Constitution imposed upon the States-such, for instance, as the prohibition against ex post facto laws, bills of attainder, and laws impairing the obligation of contracts. But with the exception of these and a few other restrictions, the entire domain of the privileges and immunities of citizens of the States, as above defined, lay within the constitutional and legislative power of the States, and without that of the Federal government. Was it the purpose of the fourteenth amendment, by the simple declaration that no State should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all the civil rights which we have mentioned, from the States to the Federal government? And where it is declared that Congress shall have the power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States?

[83 U.S. 36, 81] We doubt very much whether any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview of this provision. *It is so clearly a provision for that race and that emergency, that a strong case would be necessary for its application to any other*. But as it is a State that is to be dealt with, and not alone the validity of its laws, we may safely leave that matter until Congress shall have exercised its power, or some case of State oppression, by denial of equal justice in its courts, shall have claimed a decision at our hands. We find no such case in the one before us, and do not deem it necessary to go over the argument again, as it may have relation to this particular clause of the amendment. emphasis added

[83 U.S. 36, 82] But, however pervading this sentiment, and however it may have contributed to the adoption of the amendments we have been considering, *we do not see in those amendments any purpose to destroy the main features of the general system*. Under the pressure of all the excited feeling growing out of the war, our statemen have still believed that the existence of the State with powers for domestic and local government, *including the regulation of civil rights-the rights of person and of property-was essentia*l to the perfect working of our complex form of government, though they have thought proper to impose additional limitations on the States, and to confer additional power on that of the Nation. emphasis added.

[83 U.S. 36, 82] But whatever fluctuations may be seen in the history of public opinion on this subject during the period of our national existence, we think it will be found that this court, so far as its functions required, has always held with a steady and an even hand the balance between State and Federal power, and we trust that such

may continue to be the history of its relation to that subject so long as it shall have duties to perform which demand of it a construction of the Constitution, or of any of its parts. [83 U.S. 36, 83] The judgments of the Supreme Court of Louisiana in these cases are

AFFIRMED. .

18. The respondents said in their amended complaint that Florida's laws are unfairly directed at them and that they are not constitutionally sound law. For some historical background addressing the laws by some of the very people responsible for them, I submit to this honorable court the following;

In an article called What The Founding Fathers Believed About Homosexuality Tim Brown March 28, 2013

Under the British common law, the term sodomy was used to identify same-sex relations and was a capital crime. Understand that the founders referenced Sir William Blackstone's Commentaries on the Laws of England extensively. He was a British attorney, jurist, law professor, author, and political philosopher.

Blackstone's commentaries were the premiere legal source used by the Founding Fathers in America. So this should carry some weight with those who claim they know what the Founding Fathers knew and wanted concerning the issue of homosexuality[…]. In Blackstone's Book the Fourth.: of Public Wrongs in his book titled *Of Offences against the Persons of Individuals*, Chapter Fifteen, he writes the following on pages 215-216 (emphasis added):

*IV. WHAT has been here observed..., which ought to be the more clear in proportion **as the crime is the more detestable**, may be applied to another offence, of **a still deeper malignity**; **the infamous crime against nature**, committed either with man or beast.... But it is **an offence of so dark a nature**...that the accusation should be clearly made out....*

*I WILL not act so disagreeable part, to my readers as well as myself, as to dwell any longer upon a subject, **the very mention of which is a disgrace to human nature**. It will be more eligible to imitate in this respect the delicacy of our English law, which treats it, in it's very indictments, as a crime not fit to be named; peccatum illud horribile, inter chriftianos non nominandum ["that horrible sin not to be named among Christians"—DM]. A taciturnity observed likewise by the edict of Constantius and Constans: ubi fcelus eft id, quod non proficit fcire, jubemus infurgere leges,*

armari jura gladio ultore, ut exquifitis poenis fubdantur infames, qui funt, vel qui futuri funt, rei ["When that crime is found, which is not profitable to know, we order the law to bring forth, to provide justice by force of arms with an avenging sword, that the infamous men be subjected to the due punishment, those who are found, or those who future will be found, in the deed"—DM]. Which leads me to add a word concerning its punishment.

THIS the voice of nature and of reason, and the express law of God, determine to be ***capital****. Of which we have a signal instance, long before the Jewish dispensation, by the destruction of two cities by fire from heaven: so that this is an universal, not merely a provincial, precept. And our ancient law in some degree imitated this punishment, by* ***commanding such miscreants to be burnt to death****; though Fleta says they should be* ***buried alive****: either of which punishments was indifferently used for this crime among the ancient Goths. But now the general punishment of all felonies is the fame, namely,* ***by hanging****: and this offence (being in the times of popery only subject to ecclesiastical censures) was made single felony by the statute 25 Hen. VIII. c. 6. and felony without benefit of clergy by statute 5 Eliz. c. 17. And the rule of law herein is, that, if both are arrived at years of discretion, agentes et confentientes pari poena plectantur*

Most Americans are completely unaware that the "Father of our country," George Washington, who would also be considered this country's first "Commander-in-Chief" approved the dismissal from the service at Valley Forge in 1778 of Lt. Frederick Gotthold Enslin. Why did he do this? According to the orders, which are held at the Library of Congress, Enslin was "attempting to commit sodomy" with another soldier. Under the title of "Head Quarters, V. Forge, Saturday, March 14, 1778" there is the following entry:

At a General Court Martial whereof Colo. Tupper was President (10th March 1778) Lieutt. Enslin of Colo. Malcom's Regiment tried for attempting to commit sodomy, with John Monhort a soldier; Secondly, For Perjury in swearing to false Accounts, found guilty of the charges exhibited against him, being breaches of 5th. Article 18th. Section of the Articles of War and do sentence him to be dismiss'd the service with Infamy. ***His Excellency the Commander in Chief approves the sentence and with Abhorrence and Detestation of such Infamous Crimes*** *orders Lieutt. Enslin to be drummed out of Camp tomorrow morning by all the Drummers and Fifers in the Army never to return; The Drummers and Fifers to attend on the Grand Parade at Guard mounting for that Purpose.*

Note that **our first President viewed "sodomy" or homosexual relations with "Abhorrence and Detestation**

. In all thirteen colonies homosexuality was treated as a criminal offense and eventually that grew to encompass each and every one of the fifty states. By the way, that fell under "equal treatment under the law."

The law was based upon Leviticus 20:13:

"If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death."

This verse was "adopted into legislation and enforced by the colonies of Massachusetts, New Hampshire, New York, New Jersey, Pennsylvania and Connecticut.

Here are just a few of the states and the punishments they executed for sodomy.

That the detestable and abominable vice of buggery [sodomy] . . . shall be from henceforth adjudged felony . . . and that every person being thereof convicted by verdict, confession, or outlawry [unlawful flight to avoid prosecution], shall be hanged by the neck until he or she shall be dead. NEW YORK

That if any man shall lie with mankind as he lieth with womankind, both of them have committed abomination; they both shall be put to death. CONNECTICUT

Sodomy . . . shall be punished by imprisonment at hard labour in the penitentiary during the natural life or lives of the person or persons convicted of th[is] detestable crime. GEORGIA

That if any man shall commit the crime against nature with a man or male child . . . every such offender, being duly convicted thereof in the Supreme Judicial Court, shall be punished by solitary imprisonment for such term not exceeding one year and by confinement afterwards to hard labor for such term not exceeding ten years. MAINE

That if any person or persons shall commit sodomy . . . he or they so offending or committing any of the said crimes within this province, their counsellors, aiders, comforters, and abettors, being convicted thereof as above said, shall suffer as felons. [13] *[And] shall forfeit to the Commonwealth all and singular the lands and tenements, goods and chattels, whereof he or she was seized or possessed at the time . . . at the discretion of the court passing the sentence, not exceeding ten years, in the public gaol or house of correction of the county or city in which the offence shall have been committed and be kept at such labor. PENNSYLVANIA*

> *[T]he detestable and abominable vice of buggery [sodomy] . . . be from henceforth adjudged felony . . . and that the offenders being hereof convicted by verdict, confession, or outlawry [unlawful flight to avoid prosecution], shall suffer such pains of death and losses and penalties of their goods. SOUTH CAROLINA*
>
> *That if any man lieth with mankind as he lieth with a woman, they both shall suffer death. VERMONT*
>
> [Also] "Thomas Jefferson would have never stood for this. He wanted liberty and equal rights for homosexuals to get married." Not according to the record he didn't. In *Notes on the State of Virginia* by Matthew Carey (1794) Jefferson indicated that in his home state of Virginia, "dismemberment" of the offensive organ was the penalty for sodomy. I'm guessing there weren't too many sodomites wanting that to take place. You might say that is Jefferson's home state, but not Jefferson's thoughts on the issue. Not so fast. Jefferson actually authored a bill penalizing sodomy by castration (*The Writings of Thomas Jefferson,* Andrew A. Lipscomb, editor (Washington, D. C.: Thomas Jefferson Memorial Association, 1904), Vol. I, pp. 226-227, from Jefferson's "For Proportioning Crimes and Punishments))
>
> http://freedomoutpost.com 3-7-2014

On the same subject in another article is an excerpt from a bill that Thomas Jefferson submitted to the Virginia Legislature right around the time of the Constitutional Convention. It said;

> "Whosoever shall be guilty of Rape, Polygamy, or Sodomy with man or woman shall be punished, if a man, by castration, if a woman, by cutting thro' the cartilage of her nose a hole of one half inch diameter at the least.
> But no one shall be punished for Polygamy who shall have married after probable information of the death of his or her husband or wife, or after his or her husband or wife hath absented him or herself, so that no notice of his or her being alive hath reached such person for 7. years together, or hath suffered the punishments before prescribed for rape, polygamy or sodomy."
>
> *The Papers of Thomas Jefferson*. Edited by Julian P. Boyd et al. Princeton: Princeton University Press, 1950--. (1778 *Papers 2:492—504)*
> http://press-pubs.uchicago.edu/founders/documents/amendVills10.html

This bill was passed over for another bill calling for the death penalty

19. In another case of interest that I think is on point with the instant case addresses women's suffrage. In this case Mrs. Minor sued a public official, Happersett in her home State under the color of the 14th Amendment to effectively change the law and allow women to vote. This case was so intense that with *emphasis added*, I included the decision as I found it.

MINOR v. HAPPERSETT
SUPREME COURT OF THE UNITED STATES
88 U.S. 162; 21 Wall. 162
OCTOBER, 1874, Term
[*Unanimous decision of the Supreme Court holding that the Constitution of the United States does not guarantee to women the right to vote in federal elections.*]

ERROR to the Supreme Court of Missouri; the case being thus:

The fourteenth amendment to the Constitution of the United States, in its first section, thus ordains;

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction, the equal protection of the laws."

And the constitution of the State of Missouri thus ordains:

"Every male citizen of the United States shall be entitled to vote."

Under a statute of the State all persons wishing to vote at any election, must previously have been registered in the manner pointed out by the statute, this being a condition precedent to the exercise of the elective franchise.

In this state of things, on the 15th of October, 1872 (one of the days fixed by law for the registration of voters), Mrs. Virginia Minor, a *native born, free, white citizen of the United States, and of the State of Missouri, over the age of twenty-one years*, wishing to vote for electors for President and Vice-President of the United States, and for a representative in Congress, and for other officers, at the general election held in November, 1872, applied to one Happersett, the registrar of voters, to register her as a lawful voter, which he refused to do, *assigning for cause that she was not a "male citizen of the United States," but a woman*. She thereupon sued him in one of the inferior State courts of Missouri, for wilfully refusing to place her name upon the list of registered voters, by which refusal *she was deprived of her right to vote*. emphasis added.

The registrar demurred, and the court in which the suit was brought sustained the demurrer, and gave judgment in his favor; a judgment which the [State] Supreme Court affirmed. Mrs. Minor now brought the case here on error.

CHIEF JUSTICE WAITE delivered the opinion of the court.

The question is presented in this case, whether, *since the adoption of the fourteenth amendment, a woman, who is a citizen of the United States and of the State of Missouri, is a voter in that State, notwithstanding the provision of the constitution and laws of the State, which confine the right of suffrage to men alone*. We might, perhaps, decide the case upon other grounds, but this question is fairly made. From the opinion we find that it was the only one decided in the court below, and it is the only one which has been argued here. The case was undoubtedly brought to this court for the sole purpose of having that question decided by us, and in view of the evident propriety there is of having it settled, so far as it can be by such a decision, we have concluded to waive all other considerations and proceed at once to its determination.

It is *contended* that the provisions of the constitution and laws of the State of Missouri which confine the right of suffrage and registration therefor to men, are in violation of the Constitution of the United States, and therefore void. The argument is, that as a woman, born or naturalized in the United States and subject to the jurisdiction thereof, is a citizen of the United States and of the State in which she resides, *she has the right of suffrage as one of the privileges and immunities of her citizenship*, which the State cannot by its laws or constitution abridge. emphasis added.

There is no doubt that women may be citizens. They are persons, and by the fourteenth amendment "all persons born or naturalized in the United States and subject to the jurisdiction thereof" are expressly declared to be "citizens of the United States and of the State wherein they reside." *But, in our opinion, it did not need this amendment to give them that position.* Before its adoption the Constitution of the United States did not in terms prescribe who should be citizens of the United States or of the several States, yet there were necessarily such citizens without such provision. There cannot be a nation without a people. The very idea of a political community, such as a nation is, implies an association of persons for the promotion of their general welfare. Each one of the persons associated becomes a member of the nation formed by the association. He owes it allegiance and is entitled to its protection. Allegiance and protection are, in this connection, reciprocal obligations. The one is a compensation for the other; allegiance for protection and protection for allegiance. emphasis added.

For convenience it has been found necessary to give a name to this membership. The object is to designate by a title the person and the relation he bears to the nation. For this purpose the words "subject," "inhabitant," and "citizen" have been used, and the choice between them is sometimes made to depend upon the form of the government. Citizen is now more commonly employed, however, and as it has been considered better suited to the description of one living under a republican government, it was adopted by nearly all of the States upon their separation from Great Britain, and was afterwards adopted in the Articles of Confederation and in the Constitution of the United States. *When used in this sense it is understood as conveying the idea of membership of a nation, and nothing more.* emphasis added.

To determine, then, who were citizens of the United States before the adoption of the amendment it is necessary to ascertain what persons originally associated themselves together to form the nation, and what were afterwards admitted to membership.

Looking at the Constitution itself we find that it was ordained and established by "the people of the United States," and then going further back, we find that these were the people of the several States that had before dissolved the political bands which connected them with Great Britain, and assumed a separate and equal station among the powers of the earth, and that had by Articles of Confederation and Perpetual Union, in which they took the name of "the United States of America," entered into a firm league of friendship with each other for their common defence, the security of their liberties and their mutual and general welfare, binding themselves to assist each other against all force offered to or attack made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Whoever, then, was one of the people of either of these States when the Constitution of the United States was adopted, became ipso facto a citizen -- a member of the nation created by its adoption. He was one of the persons associating together to form the nation, and was, consequently, one of its original citizens. As to this there has never been a doubt. *Disputes have arisen as to whether or not certain persons or certain classes of persons were part of the people at the time, but never as to their citizenship if they were.* emphasis added.

Additions might always be made to the citizenship of the United States in two ways: first, by birth, and second, by naturalization. This is apparent from the Constitution itself, for it provides that "no person except a natural-born citizen, or a citizen of the United States at the time of the adoption of the Constitution, shall be eligible to the office of President," and that Congress shall have power "to establish a uniform rule of naturalization." Thus new citizens may be born or they may be created by naturalization.

The Constitution does not, in words, say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that. At common-law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives, or natural-born citizens, as distinguished from aliens or foreigners. Some authorities go further and include as citizens children born within the jurisdiction without reference to the citizenship of their parents. As to this class there have been doubts, but never as to the first. For the purposes of this case it is not necessary to solve these doubts. It is sufficient for everything we have now to consider that all children born of citizen parents within the jurisdiction are themselves citizens. The words "all children" are certainly as comprehensive, when used in this connection, as *"all persons," and if females are included in the last they must be in the first. That they are included in the last is not denied. In fact the whole argument of the plaintiffs proceeds upon that idea.* emphasis added.

Under the power to adopt a uniform system of naturalization Congress, as early as 1790, provided "that any alien, being a free white person," might be admitted as a citizen of the United States, and that the children of such persons so naturalized, dwelling within the United States, being under twenty-one years of age at the time of such naturalization, should also be considered citizens of the United States, and that the children of citizens of the United States that might be born beyond the sea, or out of the limits of the United States, should be considered as natural-born citizens. n8 These provisions thus enacted have, in substance, been retained in all the naturalization laws adopted since. In 1855, however, the last provision was somewhat extended, and all persons theretofore born or thereafter to be born out of the limits of the jurisdiction of the United States, whose fathers were, or should be at the time of their birth, citizens of the United States, were declared to be citizens also.

As early as 1804 it was enacted by Congress that when any alien who had declared his intention to become a citizen in the manner provided by law died before he was actually naturalized, his widow and children should be considered as citizens of the United States, and entitled to all rights and privileges as such upon taking the necessary oath; and in 1855 it was further provided that any woman who might lawfully be naturalized under the existing laws, married, or who should be married to a citizen of the United States, should be deemed and taken to be a citizen.

From this it is apparent that from the commencement of the legislation upon this subject alien women and alien minors could be made citizens by naturalization, and we think it will not be contended that this would have been done if it had not been supposed that native women and native minors were already citizens by birth.

But if more is necessary to show that *women have always been considered as citizens the same as men*, abundant proof is to be found in the legislative and judicial history of the country. Thus, by the Constitution, the judicial power of the United States is made to extend to controversies between citizens of different States. Under this it has been uniformly held that the *citizenship necessary to give the courts of the United States jurisdiction of a cause must be affirmatively shown on the record.* Its existence as a fact may be put in issue and tried. *If found not to exist the case must be dismissed.* Notwithstanding this the records of the courts are full of cases in which the jurisdiction depends upon the citizenship of women, and not one can be found, we think, in which objection was made on that account. Certainly none can be found in which it has been held *that women could not sue or be sued in the courts of the United States.* Again, at the time of the adoption of the Constitution, in many of the States (and in some probably now) aliens could not inherit or transmit inheritance. There are a multitude of cases to be found in which the question has been presented whether a woman was or was not an alien, and as such capable or incapable of inheritance, but *in no one has it been insisted that she was not a citizen because she was a woman.* On the contrary, *her right to citizenship has been in all cases assumed.* The only question has been whether, in the particular case under consideration, she had availed herself of the right. emphasis added.

In the legislative department of the government similar proof will be found. Thus, in the pre-emption laws, a widow, "being a citizen of the United States," is allowed to make settlement on the public lands and purchase upon the terms specified, and women, "being citizens of the United States," are permitted to avail themselves of the benefit of the homestead law.

Other proof of like character might be found, but certainly more cannot be necessary to establish the fact that *sex has never been made one of the elements of citizenship in the United States*. In this respect men have never had an advantage over women. The same laws precisely apply to both. The fourteenth amendment did not affect the citizenship of women any more than it did of men. *In this particular, therefore, the rights of Mrs. Minor do not depend upon the amendment. She has always been a citizen from her birth, and entitled to all the privileges and immunities of citizenship*. The amendment prohibited the State, of which she is a citizen, from abridging any of her privileges and immunities as a citizen of the United States; but *it did not confer citizenship on her*. That she had before its adoption. emphasis added.

If the right of suffrage is one of the necessary privileges of a citizen of the United States, then the constitution and laws of Missouri confining it to men are in violation of the Constitution of the United States, as amended, and consequently void. The direct question is, therefore, presented whether all citizens are necessarily voters. emphasis added.

The Constitution does not define the privileges and immunities of citizens. For that definition we must look elsewhere. In this case we need not determine what they are, but only whether suffrage is necessarily one of them.

It certainly is nowhere made so in express terms. The United States has no voters in the States of its own creation. The elective officers of the United States are all elected directly or indirectly by State voters. The members of the House of Representatives are to be chosen by the people of the States, and the electors in each State must have the qualifications requisite for electors of the most numerous branch of the State legislature. Senators are to be chosen by the legislatures of the States, and necessarily the members of the legislature required to make the choice are elected by the voters of the State. Each State must appoint in such manner, as the legislature thereof may direct, the electors to elect the President and Vice-President. The times, places, and manner of holding elections for Senators and Representatives are to be prescribed in each State by the legislature thereof; but Congress may at any time, by law, make or alter such regulations, except as to the place of choosing Senators. It is not necessary to inquire whether this power of supervision thus given to Congress is sufficient to authorize any interference with the State laws prescribing the qualifications of voters, for no such interference has ever been attempted. The power of the State in this particular is certainly supreme until Congress acts.

The amendment did not add to the privileges and immunities of a citizen. *It simply furnished an additional guaranty for the protection of such as he already had.* No new

voters were necessarily made by it. Indirectly it may have had that effect, because it may have increased the number of citizens entitled to suffrage under the constitution and laws of the States, but it operates for this purpose, if at all, *through the States and the State laws, and not directly upon the citizen.* emphasis added.

It is clear, therefore, *we think, that the Constitution has not added the right of suffrage to the privileges and immunities of citizenship as they existed at the time it was adopted.* This makes it proper to inquire whether suffrage was coextensive with the citizenship of the States at the time of its adoption. If it was, then it may with force be argued that suffrage was one of the rights which belonged to citizenship, and in the enjoyment of which every citizen must be protected. *But if it was not, the contrary may with propriety be assumed.* emphasis added.

When the Federal Constitution was adopted, all the States, with the exception of Rhode Island and Connecticut, had constitutions of their own. These two continued to act under their charters from the Crown. Upon an examination of those constitutions we find that in no State were all citizens permitted to vote. Each State determined for itself who should have that power. Thus, in New Hampshire, "every male inhabitant of each town and parish with town privileges, and places unincorporated in the State, of twentyone years of age and upwards, excepting paupers and persons excused from paying taxes at their own request," were its voters; in Massachusetts "every male inhabitant of twenty-one years of age and upwards, having a freehold estate within the commonwealth of the annual income of three pounds, or any estate of the value of sixty pounds;" in Rhode Island "such as are admitted free of the company and society" of the colony; in Connecticut such persons as had "maturity in years, quiet and peaceable behavior, a civil conversation, and forty shillings freehold or forty pounds personal estate," if so certified by the selectmen; in New York "every male inhabitant of full age who shall have personally resided within one of the counties of the State for six months immediately preceding the day of election . . . if during the time aforesaid he shall have been a freeholder, possessing a freehold of the value of twenty pounds within the county, or have rented a tenement therein of the yearly value of forty shillings, and been rated and actually paid taxes to the State;" in New Jersey "all inhabitants . . . of full age who are worth fifty pounds, proclamation-money, clear estate in the same, and have resided in the county in which they claim a vote for twelve months immediately preceding the election;" in Pennsylvania "every freeman of the age of twenty-one years, having resided in the State two years next before the election, and within that time paid a State or county tax which shall have been assessed at least six months before the election;" in Delaware and Virginia "as exercised by law at present;" in Maryland "all freemen above twenty-one years of age having a freehold of fifty acres of land in the county in which they offer to vote and residing therein, and all freemen having property in the State above the value of thirty pounds current money, and having resided in the county in which they offer to vote one whole year next preceding the election;" in North Carolina, for senators, "all freemen of the age of twenty-one years who have been inhabitants of any one county within the State twelve months immediately preceding the day of election, and possessed of a freehold within the same county of fifty acres of land for six months next before and at the day of election," and for members of the house of commons "all freemen of the age of twenty-one years

who have been inhabitants in any one county within the State twelve months immediately preceding the day of any election, and shall have paid public taxes;" in South Carolina "every free white man of the age of twenty-one years, being a citizen of the State and having resided therein two years previous to the day of election, and who hath a freehold of fifty acres of land, or a town lot of which he hath been legally seized and possessed at least six months before such election, or (not having such freehold or town lot), hath been a resident within the election district in which he offers to give his vote six months before said election, and hath paid a tax the preceding year of three shillings sterling towards the support of the government;" and in Georgia such "citizens and inhabitants of the State as shall have attained to the age of twenty-one years, and shall have paid tax for the year next preceding the election, and shall have resided six months within the county."

In this condition of the law in respect to suffrage in the several States it cannot for a moment be doubted that if it had been intended to make all citizens of the United States voters, the framers of the Constitution would not have left it to implication. *So important a change in the condition of citizenship as it actually existed, if intended, would have been expressly declared*. emphasis added.

But if further proof is necessary to show that no such change was intended, it can easily be found both in and out of the Constitution. By Article 4, section 2, it is provided that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." If suffrage is necessarily a part of citizenship, then the citizens of each State must be entitled to vote in the several States precisely as their citizens are. This is more than asserting that they may change their residence and become citizens of the State and thus be voters. It goes to the extent of insisting that while retaining their original citizenship they may vote in any State. This, we think, has never been claimed. And again, by the very terms of the amendment we have been considering (the fourteenth), "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in the rebellion, or other crimes, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State." Why this, if it was not in the power of the legislature to deny the right of suffrage to some male inhabitants? *And if suffrage was necessarily one of the absolute rights of citizenship, why confine the operation of the limitation to male inhabitants?* Women and children are, as we have seen, "persons." They are counted in the enumeration upon which the apportionment is to be made, but if they were necessarily voters because of their citizenship unless clearly excluded, why inflict the penalty for the exclusion of males alone? *Clearly, no such form of words would have been selected to express the idea here indicated if suffrage was the absolute right of all citizens*. emphasis added.

And still again, after the adoption of the fourteenth amendment, it was deemed necessary to adopt a fifteenth, as follows: "The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude." The fourteenth amendment had already provided that no State should make or enforce any law which should abridge the privileges or immunities of citizens of the United States. If suffrage was one of these privileges or immunities, why amend the Constitution to prevent its being denied on account of race, &c.? Nothing is more evident than that the greater must include the less, *and if all were already protected why go through with the form of amending the Constitution to protect a part?* emphasis added.

It is true that the United States guarantees to every State a republican form of government. It is also true that no State can pass a bill of attainder, and that no person can be deprived of life, liberty, or property without due process of law. All these several provisions of the Constitution must be construed in connection with the other parts of the instrument, and in the light of the surrounding circumstances.

The guaranty is of a republican form of government. No particular government is designated as republican, neither is the exact form to be guaranteed, in any manner especially designated. Here, as in other parts of the instrument, we are compelled to resort elsewhere to ascertain what was intended.

The guaranty necessarily implies a duty on the part of the States themselves to provide such a government. All the States had governments when the Constitution was adopted. In all the people participated to some extent, through their representatives elected in the manner specially provided. These governments the Constitution did not change. They were accepted precisely as they were, and it is, therefore, to be presumed that they were such as it was the duty of the States to provide. Thus we have unmistakable evidence of what was republican in form, within the meaning of that term as employed in the Constitution.

As has been seen, all the citizens of the States were not invested with the right of suffrage. In all, save perhaps New Jersey, this right was only bestowed upon men and not upon all of them. Under these circumstances it is certainly now too late to contend that a government is not republican, within the meaning of this guaranty in the Constitution, *because women are not made voters*. emphasis added.

The same may be said of the other provisions just quoted.Women were excluded from suffrage in nearly all the States by the express provision of their constitutions and laws. If that had been equivalent to a bill of attainder, certainly its abrogation would not have been left to implication. *Nothing less than express language would have been employed to effect so radical a change*. So also of the amendment which declares that no person shall be deprived of life, liberty, or property without due process of law, adopted as it was as early as 1791. *If suffrage was intended to be included within its obligations, language better adapted to express that intent would most certainly have been employed.* The right of suffrage, when granted, will be protected. He who has it can only be deprived of it by

due process of law, *but in order to claim protection he must first show that he has the right*. emphasis added.

But we have already sufficiently considered the proof found upon the inside of the Constitution. That upon the outside is equally effective.

The Constitution was submitted to the States for adoption in 1787, and was ratified by nine States in 1788, and finally by the thirteen original States in 1790. Vermont was the first new State admitted to the Union, and it came in under a constitution which conferred the right of suffrage only upon men of the full age of twenty-one years, having resided in the State for the space of one whole year next before the election, and who were of quiet and peaceable behavior. This was in 1791. The next year, 1792, Kentucky followed with a constitution confining the right of suffrage to free male citizens of the age of twenty-one years who had resided in the State two years or in the county in which they offered to vote one year next before the election. Then followed Tennessee, in 1796, with voters of freemen of the age of twenty-one years and upwards, possessing a freehold in the county wherein they may vote, and being inhabitants of the State or freemen being inhabitants of any one county in the State six months immediately preceding the day of election. But we need not particularize further. No new State has ever been admitted to the Union which has conferred the right of suffrage upon women, and *this has never been considered a valid objection to her admission*. On the contrary, as is claimed in the argument, the right of suffrage was withdrawn from women as early as 1807 in the State of New Jersey, *without any attempt to obtain the interference of the United States to prevent it*. Since then the governments of the insurgent States have been reorganized under a requirement that before their representatives could be admitted to seats in Congress they must have adopted new constitutions, republican in form. *In no one of these constitutions was suffrage conferred upon women*, and yet the States have all been restored to their original position as States in the Union. emphasis added.

Besides this, citizenship has not in all cases been made a condition precedent to the enjoyment of the right of suffrage. Thus, in Missouri, persons of foreign birth, who have declared their intention to become citizens of the United States, may under certain circumstances vote. The same provision is to be found in the constitutions of Alabama, Arkansas, Florida, Georgia, Indiana, Kansas, Minnesota, and Texas.

Certainly, if the courts can consider any question settled, this is one. For nearly ninety years the people have acted upon the idea that the Constitution, when it conferred citizenship, *did not necessarily confer the right of suffrage*. If uniform practice long continued can settle the construction of so important an instrument as the Constitution of the United States confessedly is, most certainly it has been done here. *Our province is to decide what the law is, not to declare what it should be*. emphasis added.

We have given this case the careful consideration its importance demands. If the law is wrong, it ought to be changed; but the power for that is not with us. *The arguments addressed to us bearing upon such a view of the subject may perhaps be sufficient to induce those having the power, to make the alteration, but they ought not to be permitted*

to influence our judgment in determining the present rights of the parties now litigating before us. No argument as to woman's need of suffrage can be considered. *We can only act upon her rights as they exist*. It is not for us to look at the hardship of withholding. *Our duty is at an end if we find it is within the power of a State to withhold*. emphasis added.

Being unanimously of the opinion that the Constitution of the United States does not confer the right of suffrage upon any one, and that the constitutions and laws of the several States which commit that important trust to men alone are not necessarily void, we affirm the judgment.

http://law2.umkc.edu/faculty/projects/ftrials/conlaw/minorvhapp.html

The women's suffrage movement started around 1848. The above ruling was among the many events that eventually led up to the passage of the 19th Amendment, ratified 8-26-1920

But the main point of this ruling as I interpret it is that the 14th Amendment does not create any new rights for any citizen whose rights were not already in existence when it was ratified. And the Respondents in the instant case could not have gotten married before the enactment of the 14th Amendment. And I submit to this Honorable Court that we should agree with Chief Justice Waite's Decision and see it the same way again, today.

20. I raised the women suffrage issue for good reason. First is the above cited ruling Minor v. Happersett id., and second is the passage of the 19th Amendment, that legalized the women's vote. Then that led to the proposed Equal Rights Amendment that has never been ratified into law. For some background I have included some excerpts from two stories about the ERA as follows;

A Brief History of the ERA from 1923 to Present

GROUP 1/WEEK 1

Research compiled by Nichola Weiss, Jazmin Martinez, Heidi Jones & Mary Grace Baldo

[On] July 20, 1923, three years after women won the right to vote, the head of the National Women's Party, Alice Paul, took the next step in the women's movement by authoring the Equal Rights Amendment (ERA) — presented as the "Lucretia Mott

Amendment" — at the 75th Anniversary celebration of the 1848 Seneca Falls Convention. Paul's proposed amendment would constitutionally recognize women, affirming that men and women have equal rights under the law.

[…] The ERA passed in both houses of Congress in 1972; it then went to the country's fifty state legislatures for ratification. The imposed seven-year deadline demanded 38 states ratify the ERA by 1979.

[…] The deadline fast approaching, Representative Elizabeth Holtzman successfully argued to extend the ERA's ratification deadline to June 30, 1982…

[…]When the deadline arrived in 1982 the ERA was still three states short of ratification. [It wasn't ratified]

http://erauniversity.com/blogs/a-brief-history-of-the-equal-rights-amendment/

The History Behind the Equal Rights Amendment

by Roberta W. Francis,
Chair, ERA Task Force
National Council of Women's Organizations

[The ERA Amendment]

- Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.
- Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.
- Section 3. This amendment shall take effect two years after the date of ratification.

Arguments by ERA opponents such as Phyllis Schlafly […] played on the same fears that had generated female opposition to woman suffrage. Anti-ERA organizers claimed that the ERA would deny woman's right to be supported by her husband, privacy rights would be overturned, women would be sent into combat, and abortion rights and ***homosexual marriages would be upheld***. […]Opposition to the ERA was also organized by fundamentalist religious groups.

http://www.equalrightsamendment.org/history.htm

So this lady Alice Paul who helped pass the 19th Amendment, wrote the ERA in 1923. It wasn't until after 1972 before anti-ERA organizers publicly claimed that the wording of the ERA was just too broad and too vague and would or could be used to uphold homosexual marriages. That campaign largely contributed to the fact that they could not ratify those last three states they needed to ratify the ERA into law. I can't say if Alice Paul intended for the ERA to include Homosexual Marriage, but they (the sponsors) have not made any revisions to the ERA that would address this issue and they've tried to get it passed through Congress as is again. If I could do it I would get Florida's Amendment passed by Congress and ratified by the States. But the real issue here is once the public became aware of the fact that the ERA could be used to legalize Homosexual Marriage, the voters just changed their minds and didn't vote for it. As a political issue this attempt to use the Federal Constitution to change the law in a way that would be favorable to the *respondents* just didn't work.

21. And as the last point in this writing I feel it is necessary to explore the effects on society if the respondents were to prevail and same sex marriage were made legal. To illustrate this I found this article about the Spartans of Ancient Greece. The following are some selected excerpts;

SPARTA: AN EXPERIMENT IN STATE-FOSTERED HOMOSEXUALITY

Spartan militarism and the well-being of the state depended on sexual love between men.

Stanley J Pacion

SPARTA.This article represents an historical essay which was originally published in the medical journal, *Medical Aspects of Human Sexuality,* Volume IV, August 1970, pp.28-32. The journal is now defunct, and its availability is severely circumscribed since it is usually found in the archive stacks of university, medical libraries where access to the general public is often denied.

Lycurgus, the legendary lawgiver and founder of Sparta, who lived somewhere between 700-630BC.

Constitutional law of ancient Sparta mandated homosexuality. The soldier-citizens were lovers. Sex and love were used to foster allegiance, man to man, so to foster, augment the fighting spirit.
. Yet in Plutarch's Sparta homosexuality formed the cornerstone of the commonwealth. Older men choose young male lovers. There was no real age of consent in ancient Sparta. Childhood innocence had no meaning in the warrior state. All aspects of the life cycle were subjoined to the aim of making soldiers fit for war and the preservation of the common weal. Its practice was such an integral part of Spartan life that Plutarch writes: "By the time they were come to this age (twelve years old) there was not any of the more hopeful boys who had not a lover to bear him company." Without a realization of the profound male love relations that animated it, no understanding of Spartan society is possible. Sparta was a homosexual state by law. As such Plutarch's account of its constitution represents a vital chapter in […] history.

Like other institutions in Plutarch's Sparta, homosexuality had as its end the preservation of the state. Lycurgus believed that love ties between men who were comrades-in-arms increased allegiance to their ranks. In a word, homosexual love promoted battlefield determination -- lovers joined in the battle field side-by-side, the lawgiver felt, made for better soldiering -- and all the better fostered the love of state.
Spartan marriage law reflected this belief. As we shall see, infrequent heterosexual relations permitted by the state and the sharing of wives were intended to break down familial attachments. The Spartan male developed no sense of responsibility toward either wife or child. Duty was directed to the commonwealth, to all its wives and children alike. By permitting male companionship to be the only source of permanent sexual gratification, Lycurgus guaranteed that love would remain in the service of the state.

Beside the communal meal, barrack or company life provided other opportunity for securing intimate male friendship. Its effect on marriage indicated its force in shaping Spartan life. A feeling of dread characterized the martial arrangement. The young husband, Plutarch reports, visited his bride "in fear and shame, and with circumspection." The possibility of incurring the anger of jealous, tough barrack-lovers was more than sufficient reason for the caution and apprehension of the Spartan bridegroom. Institutionalized homosexuality created a life under continuous surveillance. A watchful and ever-present lover policed every action. The life of the Spartan male, therefore, was one of constant dilemma. Though encouraged into homosexuality from youth and conditioned to it by the institutions in which he lived, the law nonetheless required him to marry…" The need for children as well as the preservation of duty to the state inspired this contradictory legislation for Sparta. A frustrating, anxious, unfulfilled life was its product. Lycurgus may well have created the psychological source of the violence on which Spartan militarism rested.

Lycurgus ordered maidens to exercise by calisthenics, wrestling, running, spear-throwing, and casting the dart. "And to the end he might take away their overgreat tenderness and fear of exposure to the air, and all acquired womanishness, he ordered that the young women should go naked in the processions, as well as the young men, and dance too in that condition at certain solemn feasts...

The wedding night also fell under the jurisdiction of Lycurgus' legislation. In a tender passage Plutarch describes the legally prescribed ritual of consummation in Spartan society: "… she who superintended the wedding comes and clips the hair of the bride close around her head, dresses her up in mans' clothes, and leaves her upon a mattress in the dark; afterwards comes the bridegroom, in his every-day clothes, sober and composed as having supped at the common table, and, entering privately into the room where the bride lies, unites her virgin zone, and takes her to himself; and after staying some time together, he returns composedly to his own apartment, *to sleep as usual with the other young men*."

> Lycurgus' reason for imposing this hardship on marriage was, again, the well-being of the commonwealth. Lycurgus viewed marriage as a delicate institution, easily ruined by too active an application. Human emotions, though hotly triggered, were apt to burn themselves out in any permanent relationship. Hence the good marriage, indeed the utopian one, brought together couples, "… with their bodies healthy and vigorous, and their affections fresh and lively, unsated and undulled by easy access and long continuance with each other; while their partings were always early enough to leave behind in each of them some remaining fire of longing and mutual delight."
>
> The whole idea of private relations, private property, was an anathema to the Spartan value system, and excluded under constitutional law.
>
> ." Neither adultery nor adulterers existed in Plutarch's Sparta, for the concept had no meaning. In a state whose very existence depends upon a high birth rate, fidelity was a sentiment of little consequence.
>
> http://stanley.pacion.googlepages.com/sexandhistory

22. From the article I gather that even in Ancient Sparta the term marriage is still an obligation between one husband and one wife for the purpose of procreation regardless of how unconventional this *marriage* would be seen here.

I think that it is important to point out that this is an example of the way the Spartans ran things about *600 years before the birth of Jesus Christ*.

23. I am not a historian but I believe just like in the above article that societies like the Spartans laid a very real foundation in the minds of our founding fathers when they framed our constitution. I was always taught that the framers based all our laws on Magna Carta and Natural Law. To them The Spartans (and people like them) practiced the unnatural sex act of Sodomy and it was a crime against Natural Law. So for them it was as plain as day that the Constitutional protections they wrote did not automatically apply to those that practice Sodomy. That's why it's so hard to find anything written about it from their time. And later, when Congressman John Bingham authored the Equal Protection Clause and the Due Processes Clause to the 14th Amendment that the general consensus concerning the practice of Sodomy hadn't changed and that it literally went without saying that the unnatural sex act

of Sodomy was a crime against Natural Law and was not protected by the Constitution or the 14th Amendment.

24. I submit to this honorable court that if we allow this 'experiment' to continue although not identical, American Society will mirror Ancient Spartan Society within two or three generations. . And if in the future as a nation we come to agree that we did the wrong thing, it may be impossible to put it back. And I submit to this Honorable Court that this fact alone far outweighs any claim of Invidious Discrimination Raised by the respondents in their original and amended complaints.

25. In a recent decision Judge MARTIN L. C. FELDMAN Case 2:13-cv-05090-MLCF-ALC Document 131 Filed 09/03/14 Page 32 held;

> The public contradictions and heated disputes among the community of social scientists, clergy, politicians, and thinkers about what is marriage confirms and clearly sends the message that the state has a legitimate interest, a rational basis, in addressing the meaning of marriage.

26. Procedural issues. I do not believe that I know any of the respondents in this case myself. I do not have the means to check their backgrounds. For this reason I have written this entire document on the assumption that the State and the Courts have already done this.

27. And for the afore mentioned reasons and for any reason as this Honorable Court shall deem proper, I ask this Honorable Court to decide for the petitioners in the above styled cases.

Respectfully Submitted
Mr. C. Anthony Citro
Concerned Citizen

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10-9-2014

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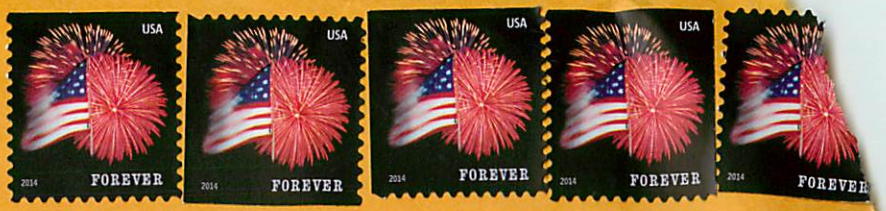

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