

THE OBA SHOULD TAKE RESPONSIBILITY AND APPEAL ON BEHALF OF THE PEOPLE OF BERMUDA

Preserve Marriage is a very diverse group of persons of all colors, socio-economic status, persons of faith and non-faith. Preserve Marriage is not affiliated with the OBA or PLP, but have persons who represent both political parties, but has a mandate to state the truth to the public regarding the most recent ruling. Due to the overwhelming request from the public to address this issue, it was necessary to release the following...

Preserve Marriage does not agree with the decision of the OBA Government not to appeal the same-sex marriage ruling. We wish to make it clear that the OBA Government cannot free itself from responsibility for the introduction of same-sex marriage in Bermuda and give the Bermuda people the conclusion, "Well, the courts did it.". We come to this conclusion based on the following facts:

First, it was the OBA that introduced "two words and a comma" [sexual orientation,] as the right thing to do for the community. However, it was seen as a hidden agenda by many to bring same-sex marriage to Bermuda. As a result, MP Wayne Furbert and MP Kim Wilson asked for an amendment in the Human Rights Act to ensure marriage would remain between a man and a woman in Bermuda. OBA Attorney General at the time, Mark Pettingill assured PLP MP Wayne Furbert, the entire House of Parliament and the Bermuda people that the Matrimonial Causes Act was sufficient to ensure marriage remained between a man and a woman. **He stated, "...it is not a valid fear or concern that someone can... sensibly, in law, run off and try and apply at the Registry to have a same-sex marriage... It would have to be "no" because the law is in place."** He is now the lawyer who represented the same-sex couple to introduce same-sex marriage to Bermuda, challenging the very law he stated was secure.

Secondly, the Supreme Court of Bermuda ruled in the Bermuda Bred Case, which allowed a non-Bermudian who was in a committed same-sex relationship with a Bermudian to reside and work in Bermuda "as a spouse". This ruling was not appealed nor challenged by the current Government.

Third, initially the OBA Government was against the referendum because Minister Gordon-Pamplin falsely stated the rights of the minority would be trampled upon by the rights of the majority, which was contrary to the European Court rulings. Eventually, the Premier called for a referendum in compliance with the European Court of Human Rights that our Human Rights Act falls under, which has stated **governments should weigh the prevailing community interest of its citizens**. [Oliari and Others vs. 2015 Paragraphs 76 and 175]. However, he not only told people how to vote, but then stated that the referendum would be non-binding. These two factors had an obvious impact on the number of persons who voted: the referendum, while overwhelmingly against civil unions and same-sex marriage in Bermuda, failed to reach the appropriate level of voter participation. This result factored into the Supreme Court's decision (Paragraph 134 of the ruling).

Fourth, when MP Wayne Furbert brought the Human Rights Act amendment to the House of Parliament to fortify marriage in Bermuda last year, it passed in Parliament, even though the Premier abstained from voting and it was voted against by the OBA Attorney General Trevor Moniz. However, the bill was then struck down by all but one of the OBA Senators. As reported, "Senator Michael Fahy, Senator Georgia Marshall, Senator Jeff Baron and Senator Lynne Woolridge of the One Bermuda Alliance... all voted against the bill, which they labelled regressive and an infringement on Bermuda's human rights laws." Senator Baron went as far to say it was an amendment of hate (that statement went unchallenged), which not only incites members of the LGBT community to misunderstand those who desire to preserve marriage, but such a statement is contrary to a 2016 ruling of the European Court. **"The European Court of Human Rights confirmed the decision of the French Supreme Court, affirming**

that there is no discrimination if a state denies the right to marry to two adults of the same-sex.”
[Summary ruling of Charpentier vs. France June 2016].

Fifth, the OBA Government has not held the Human Rights Commission accountable, which wrongly claimed that same-sex marriage is a human right. We must remember that Bermuda’s Human Rights Act falls under the European Convention. As a result the Human Rights Commission has a mandate to uphold the Convention, and not go against it. The European Court that has ruled over 6 times that same-sex marriage is not a human right. **“Article 12 (the right to marry) cannot be construed as imposing an obligation on the contracting states to grant access to marriage to same-sex couples.”** [Austria vs. Kopf 2010; Gas and Dubuis vs. France 2012; X and Others vs. Austria 2013; Hamalainen vs. Finland 2014; Oliari and Others vs. Italy 2015; Chapin and Charpentier vs. France 2016].

Finally, the OBA Government has made many missteps on the issue of preserving marriage in Bermuda, including: (i) stating that the Matrimonial Causes Act was sufficient to fortify marriage after introducing “two words and a comma”; (ii) failing to address or appeal the Bermuda Bred case; (iii) failing to address the misleading misstatements of its Ministers and Senators that same-sex marriage is a human right; (iv) failing to hold the Human Rights Commission accountable for not upholding the provisions of the European Convention of Human Rights and the decisions of the European Court of Human Rights; (v) informing the Bermuda people that the referendum would be non-binding; (vi) ignoring the will of the people of Bermuda who voted “no” in the referendum by failing to address the issue immediately following the referendum; and (vii) failing to appeal this current decision.

The matter of same-sex marriage should go back to Parliament as one judge should not decide the future culture for our children. The European Court understand that the redefinition of marriage has great cultural and social change on a country and its people, which will only be exponential on such a small island as Bermuda. The European Court that Bermuda’s Human Rights Act must adhere to stated, **“...As matters stand, the question whether or not to allow same-sex marriage is left to the regulation by the national law of the Contracting State [Bermuda]... The Court reiterates that it must not rush to substitute its own judgment in place of that of the national authorities [Parliament], who are best placed to assess and respond to the needs of society...”** [ECtHr, Schalk and Kopf v Austria, Application no 30141/41]. Bermuda is now the only country in the world to introduce same-sex marriage in which one person has decided for all. The reality is that although many who support traditional marriage do not affiliate themselves with a religion or a church, we cannot ignore the fact that they have a conviction that there is a God who created us and who created the sacred institution of marriage for mankind. Based on the ruling of the European Convention that we fall under, the will of the people of Bermuda and the deep rooted cultural, social and moral change that comes with the redefinition of marriage, the OBA should responsibly appeal the current ruling.