

Laws against polygamy flawed, rules federal judge

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A judge has struck down parts of Utah's laws criminalizing polygamy as unconstitutional in a case involving the Brown family, featured on the television reality series *Sister Wives*.

U.S. District Court judge Clark Waddoups's ruling attacks sections of Utah's law making cohabitation illegal, writing in his decision that the phrase "or cohabits with another person" is a violation of both the First and Fourteenth Amendments.

Waddoups said that while there is no "fundamental right" to practice polygamy, the issue really comes down to "religious cohabitation."

The judge's ruling does not say that Utah must recognize multiple marriages, said Brad Greenberg, a research scholar at Columbia Law School. The Supreme Court has repeatedly indicated that determining who can marry is almost exclusively the province of the states, he said.

"A ban on polygamous marriage does little to deter those who want to enter into multiple marriages, some illegally, and then live together," Greenberg said. "So Utah's criminal ban on cohabitation sought to address these practices with a broader ban."

That is what Judge Waddoups ruled unconstitutional, judging that it criminalizes conduct outside Utah's ability to define marriage and in doing so encroaches on First Amendment protections.

The Brown family filed a lawsuit in July 2011, saying that Utah's law violated their right to privacy, relying on the 2003 U.S. Supreme Court decision that struck down the Texas law banning sodomy.

Social conservatives who have argued for marriage solely between one man and one woman have long warned that allowing gay marriage would ultimately lead to

allowing polygamy—an argument that’s rejected by gay marriage proponents. Groups advocating for legalizing gay marriage say that legalizing polygamy is not part of their mandate.

Proponents of traditional marriage did a victory lap of sorts, saying their worst fears are starting to come true.

“Same-sex marriage advocates have told us that people ought to be able to ‘marry who they love’ but have also always downplayed the idea that this would lead to legalized polygamy, a practice that very often victimizes women and children,” said Tony Perkins, president of Family Research Council. “But if love and mutual consent become the definition of what the boundaries of marriage are, can we as a society any longer even define marriage coherently?”

In hearings for the case, according to the *Salt Lake Tribune*, Waddoups focused on the definition of a polygamous relationship, asking for the difference between a polygamous relationship and an unmarried man who chooses to have intimate relationships with three women.

Assistant Utah attorney general Jerrold Jensen argued that a polygamous relationship is different because it is defined by people representing themselves as married.

The Browns have entered into only one legally recognized marriage, so the Browns could have been prosecuted for calling their relationship a marriage, a decision they make based on their religion.

Attorney Jonathan Turley, who teaches law at George Washington University, represented the Browns. Turley said in a blog post that the decision “was a victory not for polygamy but privacy in America. Utah has achieved something equally important today: true equality of its citizens regardless of their personal faiths or practices.”

As same-sex marriage has acquired wider legal status, Turley noted in an e-mail to the *New York Times*, “homosexuals and polygamists do have a common interest: the right to be left alone as consenting adults. . . . there is just a right of privacy that protects all people so long as they do not harm others.”

Sister Wives, which entered its fourth season earlier this year, features Kody Brown and his four “wives.” Brown is legally married to one wife but is technically cohabiting with the other three.

“While we know that many people do not approve of plural families, it is our family and based on our beliefs,” Kody Brown said in a statement. “Just as we respect the personal and religious choices of other families, we hope that in time all of our neighbors and fellow citizens will come to respect our own choices.”

In his ruling, the judge took a narrow interpretation of the words *marry* and *purports to marry*, meaning that bigamy remains illegal in a literal sense, such as when someone fraudulently acquires multiple marriage licenses.

The Browns are members of a fundamentalist Mormon group, not part of the Church of Jesus Christ of Latter-day Saints, which officially renounced polygamy around 1890 as Utah was seeking statehood. —RNS/added sources