

No papering over same-sex marriage standoff

Marty Trillhaase/Lewiston Tribune

At first blush, it seems like one obvious solution.

Allow the six same-sex couples caught in the standoff between Latah County and the Idaho Bureau of Vital Records and Health Statistics the option of renewing their vows with an affidavit that doesn't insult them.

After all, the couples operated in good faith when, on Oct. 10, they followed the advice of county officials and obtained marriage licenses. Nobody told them every other county in Idaho waited another five days until the 9th U.S. Circuit Court of Appeals issued its final order lifting the state's ban on same-sex marriages. Nobody told them the state would refuse to file their marriage certificates.

Which leaves them the choice of completing a new license application.

There's just one problem: How do you fill out an affidavit that asks you to deny you're already married without lying and facing possible legal penalties?

At least state and county officials got rid of that impediment. The purpose for such a question is to prevent bigamy - but it's not a crime to remarry the same spouse. So they struck a bargain, altering the document. For the purposes of the six couples, the affidavit offers the option of listing their marital status as already married.

Problem solved?

Not necessarily.

None of the same-sex couples have taken out the paperwork.

Among them are Jeff Dodge and Mark McLaughlin.

As associate clinical professor of law at the University of Idaho and associate dean for students, Dodge told the Associated Press he won't get another marriage license.

"Do I have 100 percent confidence that this is clearly legal? No," he told the AP. "But I do feel that we now have enough on record with the county that if we were challenged, we do have documentation from the county that we acted in reliance on."

Can you blame him or any of the other couples?

Imagine if your marriage of seven months instantly disappeared?

What happens to the real estate purchase you made during that time? Rights to survivorship are different for a married couple than for two people jointly buying property.

Or what about health insurance? Would you be required to repay any benefits? What about premiums?

Don't forget rights of inheritance.

Plus there's the message woven throughout all of this - a remnant of Idaho's shameful constitutional amendment declaring gays and lesbians second-class citizens. Why play by those rules?

But that leaves the couples caught in the middle.

Ask Latah County attorneys and they'll tell you the licenses are valid and filed in the courthouse.

Ask the attorney general and that office will tell you the licenses could be challenged down the road if a divorce action is filed.

Ultimately, the courts are going to decide one way or the other. But that's the most galling part of this.

The state and the county created this mess. But because neither has been injured by it, they lack the legal standing to take the question to a judge.

It remains for innocent third parties to spend the money and take the time to fix a problem they did not create.

Where do you find that kind of logic?

Government. - M.T.