Written by **Selwyn Duke** on August 27, 2014

Big Brother to Farmers: Host Same-sex Wedding or Pay Fine

It gives new meaning to the term "shotgun wedding": Government officials in New York have told an upstate farming couple that they must host same-sex "weddings" on their property — and because they refused to do so they must pay a $13,000 fine.

The hapless farmers are Robert and Cynthia Gifford, who have owned Liberty Ridge Farm in Schaghticoke, New York, for more than a quarter century. During much of that time at least, writes *The Daily Signal's* Leslie Ford, they have opened "the farm to the public for events like berry picking, fall festivals, and pig racing" — and, sometimes, for weddings. This was never a problem until 2012, when, reports Ford, "Melissa Erwin and Jennie McCarthy contacted the Giffords [by telephone] to rent the family's barn for their same-sex wedding ceremony and reception. Cynthia Gifford responded that she and her husband would have to decline their request as they felt they could not in good conscience host a same-sex wedding ceremony at their home."

Unbeknownst to the Giffords at the time, however, the phone call was being recorded.

What happened next was that Erwin and McCarthy filed a discrimination complaint with the government. On what basis? Ford explains, "New York's Human Right's [sic] law (Executive Law, art. 15) creates special privileges based on sexual orientation that trump the rights of business owners. Because the Giffords' family farm is open to the public for business, New York classifies it as a 'public accommodation' and then mandates that it not 'discriminate' on the basis of sexual orientation."

The Giffords were then found in violation of the law and were "ordered by DHR [Division of Human Rights] Judge Migdalia Pares and Commissioner Helen Diane Foster to pay $10,000 in fines to the state and an additional $3,000 in damages to the lesbian couple … for 'mental pain and suffering.' Additionally, the Giffords must provide sensitivity training to their staff, and prominently display a poster highlighting state anti-discrimination laws," reports Lifesite's Kirsten Andersen.

This issue strikes especially close to the Giffords' heart because "marriage ceremonies on the farm typically take place in and around the couple's home, where they live full-time and are raising their two children," writes Andersen. "They consider the farm their home," said the Giffords lawyer, Jim Trainor. "They live there, they work there, they raise their kids there." In fact, not only is the couple intimately

involved in planning weddings they host — providing catering, floral arrangements, and everything else save a wedding official — but they even allow part of their living quarters to be used as a bridal suite.

None of this mattered to the NYS DHR, however. This prompts Ford to ask, "Should the government be able to coerce a family farm into hosting a same-sex wedding?" She then answers, "In a free society, the answer is no" and explains, "Government shouldn't be able to fine citizens for acting in the market according to their own — rather than the government's — values, unless there is a compelling government interest being pursued in the least restrictive way possible." As many critics would point out, however, there's the rub. What constitutes a "compelling government interest"? And should the state have the power to use private property for its own interests in the first place?

Consider that we all — and this includes every business — discriminate, which merely means to choose one or some from among many. It may simply be "No shirt, no shoes, no service," a Florida retirement community prohibiting younger residents, or it could be something else. Of course, civil-rights lawyers say we must draw the line at discrimination that's "invidious," meaning "likely to create ill will." But every kind of discrimination is invidious to somebody. For example, in saying that you may not discriminate against protected groups but unprotected groups are fair game, is the state not creating ill will? Does it not evoke anger when the government says that homosexuals may refuse service to defenders of marriage, but defenders of marriage may not refuse service to homosexuals?

The reality is that the government isn't eliminating discrimination; it's simply discriminating among types of discrimination, decreeing what kind is "acceptable." But who should really make these decisions? The operative principle here is freedom of association. As I wrote in February:

> No one would deny me the right to include in or exclude from my home whomever I please. Why should I lose this right simply because I decide to erect extra tables and sell food?
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> It's still my private property, paid for with my own money and created by the sweat of my own brow. It's tyranny to give me a choice between relinquishing my rights — and starving.
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> Likewise, no one would force you to bake cakes for or take pictures of people with whom you didn't want to consort. Why should this change just because you decide to bake cakes or take pictures for money? The principle is simple: your home, your oven, your camera — your choice.

George Mason University professor Walter E. Williams has also defended freedom of association. For example, after mentioning older violations of the principle that people would today consider tyrannical — such as Virginia anti-miscegenation laws (prohibiting interracial marriage) and a Baltimore regulation forbidding whites and blacks from playing tennis together in public parks — he asked in his 2002 piece "Freedom of Association," "whether Virginia's laws would have been more acceptable if instead of banning interracial marriages, it mandated interracial marriages?" Would Baltimore's governmental intrusion have been any less "offensive if the regulation had required blacks and whites to play tennis with one another"? He then writes:

> While Americans would agree there should be freedom of association in the specific cases of marriage and tennis, what about freedom of association as a general principle?… Suppose I'm looking to hire an employee. You show up for the job, but I don't want to deal with you. My reasons might be that you're white, you're a Catholic, you're ugly, you're a woman or anything else about you that I find objectionable. Should I be forced to hire you? You say, "Williams, that's illegal employment discrimination." You're right, but it still has to do with freedom of association — and either you're for or against freedom of association as a general principle.

The point of freedom of association is the same as with freedom of speech: Do we really have the "freedom" at all if law "protects" only popular exercises of it? After all, such exercises' popularity is protection enough. As Williams points out, the true test of our commitment to freedom of association is not whether we allow people to associate in ways we approve, but whether we allow them the liberty even when they exercise it in ways we detest.