

## Should Polygamy Be Illegal?



Meet the Browns. *Photo: Frederick M. Brown/Getty Images*

A Utah man and his four wives have decided to sue Utah over its anti-polygamy laws. This isn't just any family, though — they're the stars of *Sister Wives*, part of TLC's "cake and enormous families" lineup. Kody Brown, the family's patriarch, is technically married to only one woman, while his other three wives are merely unofficial "spiritual wives." Nevertheless, Utah law makes it a crime "[if a married person purports to marry or cohabits with another person](#)." This is the statute the family is hoping to overturn, [as the Times explains](#):

The lawsuit is not demanding that states recognize polygamous marriage. Instead, the lawsuit builds on a 2003 United States Supreme Court decision, *Lawrence v. Texas*, which struck down state sodomy laws as unconstitutional intrusions on the "intimate conduct" of consenting adults. It will ask the federal courts to tell states that they cannot punish polygamists for their own "intimate conduct" so long as they are not breaking other laws, like those regarding child abuse, incest or seeking multiple marriage licenses ....

Making polygamous unions illegal, they argue, violates the due process and equal protection clauses of the 14th Amendment, as well as the free exercise, establishment, free speech and freedom of association clauses of the First Amendment.

“We only wish to live our private lives according to our beliefs,” Mr. Brown said in a statement provided by his lead attorney, Jonathan Turley, who is a law professor at George Washington University.

Because this family is famous, and because this case intertwines with the ongoing debates over the redefinition of marriage and the role of government, as well as the current fascination with Mormonism (the Browns belong to a "fundamentalist offshoot of the Mormon Church"), you should be prepared for this to become something of a brief, national conversation. (Sorry, Mitt Romney and Jon Huntsman. Someone is probably going to ask you about this.) So let's start it right now.

Polygamy certainly has a stigma in the United States. Most people probably find it bizarre. But is there a compelling legal reason that it should be outlawed? As Brown argues, this is about the private lives of consenting adults. If that sounds familiar, it's pretty much the libertarian case for gay marriage. In [his dissent in the \*Lawrence v. Texas\* case](#), Justice Antonin Scalia warned that the court's no-government-in-your-bedroom decision could lead to the acceptance of polygamy. Now it looks like his fears could be realized. But ... is that a bad thing? Personally, it would allow us to finally pursue our dream of marrying Minka Kelly and Natalie Portman and Heidi Klum at the same time, so we're all for it. Tell us what you think in the comments.



[Enlarge](#) Frederick M. Brown/Getty Images

Last summer, members of the Brown family — Meri (from left), Janelle, Kody, Christine and Robyn — spoke to the media as they prepared for the debut of their reality TV show, *Sister Wives*.

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The latest episode in *Sister Wives* is playing out in the courtroom, not on cable. On Wednesday, the Brown family — the husband, four wives, and 16 children who star in the [reality TV show](#) — plans to file a lawsuit in federal court in Utah. The family members say the state's anti-bigamy law is unconstitutional and that Supreme Court precedent backs them up.

Kody Brown and his family made their television debut on Sept. 26, 2010. "I'm a polygamist," said Brown. "But we're not the polygamists you think you know."

Brown and his four wives knew they were taking a risk when they signed the deal with the network TLC. But Robyn Brown, wife No. 4, told viewers they wanted to make a point.

"It's OK for us to live this way, honestly," she said. "I'm sorry — but this is a nation of freedom of choice. We should have this choice, and I want my kids to know that."

Well, it's actually *not* OK, under Utah law. Kody Brown is legally married to only one wife; the three others are his "spiritual wives." But the law says it's a crime if a married person purports to marry or cohabits with another person. Prosecutors say they'll decide whether to bring charges against the Browns in the next two or three weeks.

In the meantime, the Browns have moved to Nevada and are suing in federal court. Their lawyer, Jonathan Turley, says the state is persecuting model citizens for living out their religious values.

"There is no allegation of child abuse, no allegation of child brides, no allegations of so-called collateral crimes," says Turley, a constitutional law professor at George Washington University Law School. "But prosecutors have stated publicly that they believe the family is committing a felony every night on television."

Turley says prosecutors look the other way when it comes to nonpolygamous relationships.

"You can have multiple lovers; you can have adulterous affairs and not be subject to prosecution," he says. "But the minute you refer to her as your spiritual wife, you become a potential criminal defendant."

This isn't about personal rights, says Marci Hamilton. It's about a state's ability to regulate marital relationships. Hamilton, an expert on polygamy law and a professor at Cardozo School of Law, says there is a mountain of evidence that polygamy is bad for women and children. Just do the math, she says: A man who has multiple wives will have to marry younger — often underage — brides as he runs out of women his age.

"This isn't a lifestyle choice," she says. "This is a culture in which men must rule and women are not equal. Three women are equal to one man, nine women are equal to one man — and the children are second-class citizens."

Hamilton says there have been more than 100 challenges to polygamy laws, including in Utah, and all have failed.

But Turley may have powerful ammunition: the Supreme Court's 2003 decision in *Lawrence v. Texas*. In that case, the majority ruled that the state could not prosecute people for engaging in private, consensual sexual behavior — in this case, gay sex.

Turley's case is exactly what some have feared — and Justice Antonin Scalia predicted. In his scathing dissent in the *Lawrence* decision, Scalia said the ruling calls into question any law trying to rein in "immoral and unacceptable" sexual behavior, including "fornication, bigamy, adultery, adult incest, bestiality and obscenity."

"Under this principle, it really is anything goes," says Robert George, who teaches constitutional law at Princeton University.

"State laws to protect public morality by prohibiting what have been regarded as immoral sexual conduct just can't stand constitutional scrutiny," George says. "So, if they accept the logic of their own principles, then Turley is going to win this in a knockdown."

Not so, Hamilton says. Sure, the Supreme Court ruled that private sexual conduct between consenting adults is protected. But, she says, "The court does not say that every activity involving sex is now immune from regulation."

Hamilton doesn't think this case will go very far. But a ruling in Turley's favor would affect tens of thousands of people in polygamous families.