

**Andrew Torrez** **David Smalley** You're just wrong about this. CM does not offer "straight dating services" -- that would be a violation of the Unruh Act, too. CM offers "dating services," period, and (until this settlement kicks in) they offer them in a way that plainly violates the Unruh Act. See my above comments to [Eric Brewer](#).

David, what I'd like to know from you is: (1) where was your outrage when Christian-backed dating site e-Harmony entered into this EXACT SAME SETTLEMENT 6 years ago; and (2) given that your parade of bizarre slippery-slope horrors hasn't happened in the six years since the e-Harmony settlement, isn't it possible that you're just engaged in hyperbole now?

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**David Smalley** Wow **Andrew Torrez**. Your arrogance is unprecedented.

For starters, this is a highly nuanced topic that can have multiple opinions & interpretations. No one has to be "just wrong." That's a childish way of looking at it.

Secondly, I did rage about this 6 years ago. Why would you assume something never happened just because you didn't hear it? I wonder how many fallacies that falls under.

Finally, CM is a private company that offers Christian dating, how they believe dating should be. Well we may disagree with it, that is their right.

Allowing our government to step in and determine that what services they offer as a private company, puts us all at risk for government overreach.

You're fighting for something that will eventually lead to every secular company being in violation of this interpretation of the law, and being forced to have Christian options and hiring Christian people.

Be careful what you wish for.

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**Andrew Torrez** **David Smalley** Okay, in order:

1. I'm sorry if I'm coming across as "arrogant" to you; this is what I do for a living, and sometimes it's painful when amateurs get on and start offering extremely confident (and extremely wrong) opinions about the law, particularly those that begin with just gross misconceptions about what the law is. I'm sorry if that hurts your feelings, but you're repeatedly describing a SETTLEMENT as if it were a JUDICIAL OPINION, and that's kind of like if I came on your podcast and started describing podcasts as if they were some kind of kangaroo.

2. This is NOT a "highly nuanced topic," just because you happen to have a contrary opinion. Go ahead and talk to a dozen other lawyers, and I promise you that none of them will agree with you.

3. I ASKED you if you raged about e-Harmony six years ago; I didn't "assume" you didn't. So, given that you apparently did, and GIVEN THAT NOTHING LIKE WHAT YOU SAID WOULD HAPPEN has happened in the past six years, why would you double down and say it's going to happen now?

4. "Allowing our government to step in and determine what services they offer as a private company, puts us all at risk for government overreach." Congratulations; you've just argued against the Civil Rights Act of 1964. Seriously. Robert Bork said this in 1987, and it's why he was deemed unfit to serve on the Supreme Court.

5. "You're fighting for...." No, no I'm not. You could go read the Unruh Act for yourself; it's only one sentence long and the Wikipedia article on it is pretty good for a lay person. I've already explained at great length in multiple threads here AND in a short comment on your website that your slippery slope arguments are ill-founded. You haven't engaged with any of the substance of what I've said.

I don't know why you're digging in your heels, here. You've screwed up legal analysis. That's not a big deal -- you're not a lawyer. Why not just say "oops, I didn't realize this was a settlement, and now that I look at the Act, I get that this is limited in scope?" Lots of other people have done that on this thread already, including [Eric Brewer](#), and I was a lot more sarcastic to him than I was to you.

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**David Smalley** Armature? Fuck you. Being an attorney doesn't make you right 100% of the time. You clearly have no idea what I do for a living to call me an amateur.

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**Andrew Torrez** [David Smalley](#) Wow, that escalated quickly.

Dude: "Amateur" just means "not a professional." You're not a lawyer, so when you're analyzing legal documents, you're doing so as an amateur. That's NOT AN INSULT. That's FACT.

I'm really kind of surprised that you're reacting this way. We're the skeptical community. You're not supposed to dig in your heels and put your fingers in your ears and refuse to listen just because you're wrong; you're supposed to engage with the evidence and figure out why.

<http://www.dictionary.com/browse/amateur?s=t>



## the definition of amateur

Amateur definition, a person who engages in a study, sport, or other activity for pleasure...

DICTIONARY.COM

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**David Smalley** [Andrew Torrez](#) Yea, no shit. I debate for a living. So that would make you the amateur in this discussion.

[Like](#) · [Reply](#) · 1 · July 2 at 11:03pm



**Eric Brewer** [David Smalley](#) ... Don't let emotion get the best of you. [Andrew Torrez](#) is very knowledgeable and has a lot to offer.

Step back... Take a breath... and consider his well informed opinion. He's not an ass any more than you are... He's passionate about what he does - as are you - and he has a lot to offer.

Sleep on it.

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**Andrew Torrez** [David Smalley](#) Actually, I'm a subscriber and regular listener to the Dogma Debate podcast, which I enjoy, so this has been real weird for me. Feel free to hit me up if you ever want to engage with the actual arguments.

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**David Smalley** And I don't mind getting into the legal argument with you either, because I believe you're wrong about that. You do realize that attorneys disagree about the interpretation of the law all the time, right? Hell, SCOTUS rarely has a 9-0 decision, so obviously having a fucking law degree doesn't give you automatic victory with your opinion.

So let's break this down, because I believe the judge in this instance grossly misinterprets the Unruh Civil Rights Act.

It states: that all persons "are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

1) A website is not "in a business establishment." It's online.

2) Gays are permitted to create accounts on said website, and have equal access to all the same things straight subscribers do. They are not "blocked" or "turned away." i.e.: "all patrons are permitted full and equal access"

3) Same sex connections are not permitted to ANY customers of CM. Therefore, gays aren't being discriminated against. They are treated equally - like all patrons.

Unruh was designed to prevent people from being discriminated against INSIDE BUSINESS ESTABLISHMENTS or being DENIED ACCESS TO FACILITIES OR BENEFITS that other customers had.

This does not, and should not fall under Unruh. But that's just my amateur opinion.

I know the difference between a settlement and a judicial opinion. But the judge in this case approved the settlement, and he shouldn't have, because this doesn't fall under Unruh.

You don't have to be so damn condescending, Jesus.

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**Eric Brewer** David Smalley invite him on. Hash it out. The discussion will be appreciated and enlightening.

[Like](#) · [Reply](#) · July 2 at 11:27pm



**Eric Brewer** David Smalley Jesus? Funny.

[Like](#) · [Reply](#) · July 2 at 11:27pm



**Eli Bosnick** David Smalley I definitely recommend Andrew as a guest. He's one of my favorite guests on Thomas's show, knowledgeable personable and really good at communicating hard ideas

Heck he changed my mind and I've been told that's impossible.

[Like](#) · [Reply](#) · 3 · July 2 at 11:50pm



**Andrew Torrez** David Smalley A few initial points before I dive into the line-by-line:

A. You still don't seem to understand that this involves a SETTLEMENT, and not a judicial opinion; for example, where you say in your previous post that "I believe the judge in this instance grossly misinterprets the Unruh Civil Rights Act," and where you say in your initial blog post that "The first problem is the judge's interpretation of Unruh."

THESE STATEMENTS ARE SIMPLY NOT CORRECT AS A MATTER OF LAW. The judge in this case isn't doing ANY interpreting; he's just approving a voluntary settlement between attorneys for the class of plaintiffs and Christian Mingle as the defendant, and he does so not based on his view of the Unruh Act, but on the terms of Rule 23(e) of the Federal Rules of Civil Procedure, which requires primarily that the judge determine that the settlement is "fair, reasonable, and adequate" to the settling class members. Let me say this again: the judge, in settling the lawsuit against CM, does not evaluate the Unruh Act, he does not care whether that Unruh Act does or does not prohibit the behavior challenged in the lawsuit, and he does not opine as to the merits of the lawsuit. All he's doing is approving a settlement as fair to all of the class plaintiffs.

This has three implications: first, CM agreed to this settlement voluntarily, so there's no coercion of the sort you describe in your initial blog post; second (and more importantly), the terms of voluntary settlements have no interpretive precedential value on future litigants; and third, to prove this -- as I pointed out previously -- e-Harmony engaged in exactly the same kind of behavior six years ago, and none of the parade of horrors that you described in your initial blog post ever happened, because again, that was a settlement.

I know you're continuing to rail against my "arrogance" and being "condescending," but until you understand this first point, I don't think you're really going to understand why you're wrong about this. I'm trying to be as kind and as gentle as I can.

B. I'm pleased that you seem to have abandoned your earlier argument that "Allowing our government to step in and determine what services they offer as a private company, puts us all at risk for government overreach," or, as you put it in your blog post: "Since when can the government tell us what products or services we must offer to future customers?"

I hope you've abandoned this argument because you realize just how bad it is; if true, it would allow restaurants to place the "No Coloreds" signs back in their windows, and I don't think you really want that. We don't live in a libertarian paradise, and I think that's an unabashed good thing; we live in a society that can pass laws like the Civil Rights Act of 1964 (and the Unruh Act).

C. Finally, you say that attorneys "disagree about the interpretation of the law all the time" and that SCOTUS cases are rarely 9-0. That's sort of true, but misleading in this instance, because there are a great many basic legal principles about which no sane attorneys ever disagree. One of those principles that is applicable here is that voluntary settlements have zero precedential value in terms of how statutes like the Unruh Act are to be interpreted in the future. You can poll 100,000 lawyers, and you won't get any informed disagreement over that proposition. Seriously.

So with those preliminary points in mind, let's look at your arguments, which fall under the category of how the Unruh Act SHOULD be interpreted. I disagree with those, too, but let me be clear: even if you were right (you're not), it still wouldn't lead to the parade of horrors you suggest in your blog post with statements like "This settlement opens the flood gates for frivolous law suits all over California, and potentially, the country." THAT'S JUST NOT TRUE, and it wouldn't be true even if you were right on the Unruh Act.

Any way, after quoting part of the Unruh Act, you argue that any attempt to apply it to CM would be overreaching for three reasons:

1) That "a website is not 'in a business establishment.' It's online." You REALLY don't want to be making this argument, because if true, what you're saying is that it would be perfectly valid for Amazon to, say, offer a 50% "white people discount" for products purchased online, or to refuse to sell products to Mexicans or whatever. Do you understand how awful an interpretation of the law this would be? Fortunately, the California courts haven't adopted your interpretation of the Unruh Act and have consistently held that its terms apply to online businesses that conduct business in the State of California; see, e.g., *Surrey v. TrueBeginnings, LLC*, 168 Cal.App.4th 414 (2008); see also *Cullen v. Netflix, Inc.*, 880 F.Supp.2d 1017, 1023-25 (2012) (distinguishing between the ADA, which requires a physical place of public accommodation, and the Unruh Act, which does not). So this point is a) wrong factually and b) severely misguided in principle.

2) Next, you argue that gays "have equal access to all the same things straight subscribers do" on CM. Not true. As a straight man, I can sign up on CM and the site's algorithms will match me with women, give me their contact information, etc. If a woman signs up for CM, however, she CANNOT GET THE SAME SERVICE I JUST GOT, which is precisely the kind of discrimination the Unruh Act was meant to prevent. See *Koire v. Metro Car Wash*, 707 P.2d 195 (1985) ("[C]lassifications based on sex are considered 'suspect' for purposes of equal protection analysis under the California Constitution.")

3) Finally, you argue that "Same sex connections are not permitted to ANY customers of CM. Therefore, gays aren't being discriminated against. They are treated equally - like all patrons." You need to realize that this is the argument raised by SCALIA'S DISSENT in *Obergefell v. Hodges* (the gay marriage case), and is fortunately not the prevailing interpretation of how equal protection works. The question is: does CM provide a different service to one set of customers (men) than it does to another set (women), and the answer to that is "yes" -- it lets men connect with women, but doesn't allow a similarly-situated woman to do the same. That's textbook discrimination post-*Obergefell*.

Again, I apologize if I've come across as "condescending," but I feel like I'm trying to correct some very basic errors you've made and you're not really listening. Some of these are understandable; I don't really expect amateurs to know FRCP 23(e), for example, but you also took offense when I tried to point that out, and I just don't get it. I hope this helps.

[Unlike · Reply · 11 · July 3 at 12:25am](#)



**Alisha Ann** It's hard to listen to you because you come off immediately condescending. There IS a way to state your arguments in a way that doesn't make you seem superior, and the other seem like an "amateur." As a lawyer, you REALLY ought to work on that.

[Like · Reply · July 3 at 7:40am](#)



**Eli Bosnick** Sorry . Gotta side with Andrew. Maybe it's all the times I've heard him on AS and I'm biased to understand his tone but reading this he was just nothing but informative and sweet

We all know how the Internet can be but he provided "I'm a big fun but..." Caviats

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**Alisha Ann** Fair. We don't know him from the fictional Adam. Which only means he should take even more care with how he comes off, IMO.

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**Eli Bosnick** [Alisha Ann](#) possible. That said. If you want to love him like I do (sexually) check out any of his appearances on atheistically speaking about scalia's legacy and free speech laws.

[Andrew](#) if you write a blog let me know we're almost certainly gonna cover this on SA this week and it would be good to have both sides to link.

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**Andrew Torrez** [Alisha Ann](#) go back and read David's original post . Unlike Eli, he did not wade in with a "hey , here's this issue I'd like to chat about ." He very specifically, confidently -- some might even say arrogantly -- expressed an opinion about a legal document .

His post ends with this rather draconian prediction: "This settlement opens the flood gates for frivolous law suits all over California, and potentially, the country. It also makes every business owner vulnerable, and threatens our freedoms to operate our businesses according to our values."

Now, if you write something that definitive, that -- some might say -- arrogant, shouldn't your skin be thick enough to handle criticism from the people who actually do this for a living?

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**Alisha Ann** If someone is going to come at you in a way that seems nasty, shouldn't that someone also have thick enough skin to accept their own attitude returned to them?

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**Eli Bosnick** I really didn't read that in Andrews tone. I love David. He's a scrapper and that's why when I finally get my hands on him were gonna make fiery passionate love but TONALLY he was far more aggressive

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**Eli Bosnick** He should have Andrew on DD. They'd have SUCH A good time

[Like](#) · [Reply](#) · July 3 at 8:59am



**Alisha Ann** Define "good time." ☹️

[Like](#) · [Reply](#) · July 3 at 9:01am



**Alisha Ann** I really did read it in his tone. And since I know David, I felt like he was matching Andrew's tone.

[Like](#) · [Reply](#) · July 3 at 9:01am



**Eli Bosnick** Hm. I think I'm biased having heard him on AS so many times. Then again. I'm biased towards David. Like I read "fuck you dude" as much more chummy than it probably came off.

That or he REALLY didn't enjoy my appearance on his show

[Like](#) · [Reply](#) · July 3 at 9:03am



**Andrew Torrez** [Alisha Ann](#) I for one can say I definitely did NOT read "Fuck you" as chummy or "matching" my tone or anything. I like to think that I'm one of the first people who are willing to admit that tone often does not convey over the internet, so I do apologize if I came off as overly arrogant.

Let me say: I really thought I was being fair. Sometimes I'm a little bit sarcastic, but I read a VERY confident blog post that -- and again, I'm not trying to be a jerk here -- stated as fact things that are basic errors of law. So I tried to correct those errors. If I've offended anyone, I really am sorry about that. This is my life -- and (god help me!) sometimes my passion, for some of the reasons we've discussed below.