Legal Briefs' Show Homosexual Movement Aims At Reformulation Of Marriage

By FRANK MORRISS

Pro-"gay marriage" briefs arguing that recognition of "civil unions" won't meet the Massachusetts high court's demand for equal justice for same-sex couples reveal just what the homosexual activists really want. It isn't legal equality; it isn't equal benefits; it isn't civil rights; it isn't any arrangement for basic fairness regarding "sexual orientation."

Well, then, what is it? The Massachusetts Bar Association brief has it right — "This court's decision (*Goodridge v. Massachusetts Board of Health*) clearly reformulates the definition of marriage to include all couples who form a voluntary union to the exclusion of others." That complements the statements in the brief of Gay & Lesbian Advocates and Defenders, which sued Massachusetts on behalf of seven same-sex couples for the right to marry:

> "By creating a separate and unequal legal institution for gay people, S 2175 [providing for civil unions] would impose legally mandated segregation between otherwise equal citizens solely on the basis of sexual orientation. Finally, even if civil unions as described in S 2175 provided a one-to-one correspondence with marriage in every way, 'preserving the traditional, historic nature and meaning of the institution of civil marriage' is no basis for withholding the name and the institution [of] 'marriage' from same-sex couples.
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> "The plaintiffs in *Goodridge* sought marriage, and not only a bundle of legal rights precisely because the word and the institution represented by that word are meaningful. Attempts to withhold the name 'marriage' from legal commitments of same-sex couples underscores that the word has independent significance."

All who consider providing equal rights to same-sex couples a way of compromise, thereby keeping marriage to mean a union of man and woman, should take notice. The pro-homosexual deconstruction-of-marriage machine won't stop until it has done just that, made of marriage simply a decision to live together. In that case, "marriage" could be simply a housing arrangement, which the street term "shacking up" has always suggested, anyway. Nor will any purpose at all be necessary for "marriage." The bar association statement, above, would grant to two people living together to participate in murders or thefts or any other conspiracy the dignity of "marriage."

The two deadly Beltway snipers would qualify — they had agreed to share quarters with a mind to shooting as many victims as possible, and to the exclusion of any others in that enterprise.

The Gay & Lesbian Advocates and Defenders is right to a point. ". . . The word [marriage] has independent significance." That is why protection of property law won't allow margarine to be called butter, or cream "topping" be called whipped cream, or orange "drink" be called orange "juice." Words *are* meant to connote realities, to reveal the actual nature of things, and not cover-up or deceive regarding what is meant. But that is exactly what the homosexual activists want for gay "partnerships" and "relationships." They want any *ménage* (whether of two or three or more would make no logical or ontological difference) to enjoy the same respect and dignity as marriage, regardless of their inability and (often) disinclination to perform what has always been honored and legitimated as the "marital act." So appreciative of the nature of marriage itself have all past cultures been, that sex between husband and wife has been given its own term drawn from the root word for the state in which man and woman lawfully become one flesh.

The drive for wiping out absolutely any distinction between the relationship of gay couples and men and women in marriage is being driven by the wish to remove the least stigma from homosexual practice. Gays disparage "traditional and historic marriage," but then do their utmost to make such marriage and their own partnerships identical. They label as a foolish consistency regard for traditional marriage, but then (as in the bar association's brief) forbid recognition of their sort of arrangements as in any way different from the traditional. Thus the bar association calls anything but

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full recognition of gay marriage as unconstitutional for recognizing a difference in the two sorts of relationships.

But one must close both eyes against reality to claim they are not different. Men and women may generate children; homosexuals cannot without involving a third person of different sex. That is a difference of no little significance, to borrow the word the Gay & Lesbian Advocates utilize in making the word marriage special.

The notoriously pragmatic Harvard law school professor Laurence Tribe argued against civil unions on behalf of other law professors. In a brief written with two other lawyers, Tribe argued, "Time and time [again] throughout its opinion the SJC (Supreme Judicial Court] emphasizes its holding that Massachusetts must offer same-sex couples access to the civil institution of marriage on the same terms and conditions enjoyed by opposite-sex couples."

Surprise, surprise! The opinion referred to here was written by Chief Justice Margaret Marshall, who "time and time" before this case came before her court has supported marriage for homosexuals. It is hardly bringing either legal or logical support to the idea to point out she used the word marriage long before an opportunity appeared for her to say the same in a legal opinion. (Incidentally, such opinion — called *dictum* — has no judicial significance, and its weight is no greater than the argument itself deserves.)

These opinions accompanying the majority vote are usually written by the main advocate of the conclusion reached by the court's majority, Thus Marshall seems to have led the court into this dubious misadventure into redefining marriage. The vote by Marshall is described this way by *Boston Globe* reporter Kathleen Burge: "Without Marshall, the court would have deadlocked 3-3, argued attorney J. Edward Pawlick," who represented Massachusetts Citizens for Marriage, which wants the Supreme Judicial Court decision voided on the grounds Chief Justice Marshall should have recused herself. But the point here is that Tribe is being both disingenuous and tendentious in trying to promote some significance to the SJC *dicta* that so often refer to the right to "gay marriage," when the writer of the opinion is a known proponent of just that.

Lawyers more astute (or objective) than Tribe, another proponent of gay marriage, should bring up the legal concepts of "usage" and "custom" in defending reservation of "marriage" the permanent union of one man and one woman, only. There is no other historic reality boasting of more constant definition through usage and custom than that of marriage. To redefine marriage as something other than this historic understanding is to flout common law, the wisdom of centuries and millennia, and the appreciation of the reality by generations recorded from the beginning in both tradition and written record.

And on what basis is this towering exercise of arrogance advanced? That those preferring the affection of those of their own kind are being demeaned by not having "access" to marriage. That argument itself rests on the notion that it has just been discovered that marriage has no identifiable nature, so that any coupling, no matter how sterile in its working, should suffice for qualification as marriage because those engaging in it want it so considered.

The idea involved in the old adage, "If wishes were horses beggars would ride," is applicable. "If wishes were marriage, homosexual marriage would be between husband and husband, or wife and wife." Basically, this is the assertion that wishing can make a thing so. And we are finding this getting judicial approval at least in some cases because some jurists, such as Chief Justice Marshall, are joining in this wishing.

The tragedy is that citizens of Massachusetts and every other state could very properly intervene to bring an end to this dismissal of reality at the behest of those who don't like the reality about marriage. That can be accomplished by support for a constitutional amendment that simply recognizes the fact that marriage, because of immemorial definition and understanding, is the voluntary permanent union of man and woman only. If as President Bush said in the recent State of the Union address, judges who want to direct culture and define its most basic elements won't defend the reality of marriage, then the only protection for marriage will be such an amendment to the U.S. Constitution.

Unfortunately, some "conservatives" who are strong on states' rights will be critics of this as an attempt to develop an imperial federal government. However, they should realize this proposal does not come even close to such unwanted federal supremacy as do the plans of proponents of gay marriage to get their way in every state via the legal contrivance of "full faith and credit."

Find Massachusetts citizens willing to submit to jurists who want gay marriage, then apply full faith and credit demanding it, be recognized by all other states, and you have a judicial imperialism with no means to defend what a majority of Americans want — that is, the traditional understanding of the nature of marriage.

Once the anti-marriage institution of marriage as indiscriminate coupling by any humans for any purpose, noble or depraved, finds "legality" in any state for even a relatively short period of time, it is then certain that support for only genuine marriage will wane, and gay "marriage" will become a fait accompli. Those who keep on defending homosexuals being "out of the closet" will eventually find heterosexual marriage being put into a closet of its own. Let the clowns run the circus, and it will be all a big laugh, since there are not many clowns who can do a high-wire act or ride standing on horses circling the ring at a swift trot. Thus, it will demean and embarrass the clowns unless the word circus is redefined to mean a place of jokes and tricks.

Quite seriously, when marriage is redefined, it will be on the way to being refined out of existence. Many modern young Americans already find marriage an outdated imposition on their enjoying themselves without restraint at all, with what marriage implies about permanency and exclusivity of male-female relationships.

There seems to be little Catholic opposition to these goings-on in Massachusetts, though that state's Catholic Conference has a few fairly mild words of protest, some of which grant exclusive jurisdiction "over matters concerning marriage" to the legislature and executive. There also has been a relatively tame reaction against "gay marriage" from the hierarchy.

It isn't that the Christian Gospel lacks a strong message concerning the nature of marriage. In condemning divorce, which Jewish law countenanced, Christ clearly put the nature of marriage on the creation by God, "who from the beginning made them male and female." Unfortunately, in this age of irenicism, that which this age finds difficult about the Gospel is whispered by many pastors, teachers, and theologians, when it is presented at all.

Things whispered soon become things not mentioned at all. Christians had better learn to shout again when truths are put in the docket, summoned there by enemies of the Gospel. Those enemies are counting on Christians losing not only their nerve but their voice as well.