WorldNetDaily™

Wednesday, December 3, 2003

JOSEPH FARAH
BETWEEN THE LINES

Polygamy a new legal right?

Posted: December 3, 2003
1:00 a.m. Eastern

By Joseph Farah

When the U.S. Supreme Court struck down Texas' sodomy law, dissenting Justice Antonin Scalia warned the court and the public where the decision would lead.

He predicted that polygamists organizing around the same legal language employed by the homosexual activists would make the case they, too, have civil rights to do what they wish in the privacy of their own homes.

It didn't take long for his legal prophecy to be fulfilled.

A lawyer for a Utah man with five wives argued this week that his bigamy convictions should be thrown out because of the Supreme Court decision in the sodomy case.

There is no compelling state interest in discouraging polygamy, argued Tom Green's attorney, John Bucher, to the Utah Supreme Court. Therefore, polygamists should be permitted to practice their beliefs without interference from the government.

It's hard to argue with the logic given the U.S. Supreme Court's unfortunate ruling last summer.

In fact, all Utah could muster as an argument in response was that the court should reject the appeal because Green failed to raise the issue during his trial more than two years ago or anywhere else along the judicial path since then. Of course he didn't. The legal argument was as preposterous then as it is now.

But while I oppose polygamy, it's hard to understand why Tom Green should sit in prison while the U.S. Supreme Court strikes down sodomy laws.

Green, who is not affiliated with any church, was convicted of four counts of bigamy. Besides his 5-year sentence, he faces up to life in prison after being convicted of child rape for having sex with one of his five wives when she was 13.

But consent laws are on their way out, too. In fact, some states have already lowered the age of consent to 13. And aren't such laws just archaic hand-me-downs from an earlier era of outdated religious scruples?

If it's a matter of demand, as some homosexual activists have argued, it should be pointed out that polygamy has an estimated 30,000 practitioners in the West.

This is the trouble you have when unelected men and women in black robes think they are wiser than the people – wiser than

the legislatures that are specifically charged with making laws in our republican system of limited, representative government.

The U.S. Supreme Court determined, by a 6-3 vote, that we don't live under the rule of law in America. Instead, we have a "living Constitution" that can only be interpreted by the all-knowing, all-seeing, semi-divine arbiters of right and wrong. It determined that lawmakers and representative government are irrelevant.

That's what the court did when, for all intents and purposes, it found hidden in the Constitution a new right – a right to practice homosexual sex.

The author of the majority opinion, Justice Anthony M. Kennedy, said the Texas law struck down by the court "demeans the lives of homosexual persons."

"The state cannot demean their existence or control their destiny by making their private sexual conduct a crime," he wrote.

Oh, no? It may not have been the most sensibly crafted state law on the books, but to say laws about private sexual conduct are unconstitutional, the court, in effect, opened a sexual Pandora's box.

If there is a constitutional right to have homosexual sex, how can one deny there is a constitutional right to group sex? How can one deny there is a constitutional right to consensual incest? How can one deny there is a right to have sex with animals? How can one deny there is a constitutional right to polygamy?

You can't. There is no difference. And that's why there is no constitutional right to homosexual sex – or any other kind of sex for that matter. The word sex doesn't appear in the Constitution. It is a subject not addressed – which is, under the Constitution, precisely why it is a matter left to the various states.

But that's not the way it will be in America in the future. As of last week, we have a new reigning Politburo governing all of America. We have nine infallible, lifetime, unaccountable rulers who know better than the people, better than the states, better than the legislators.

Just 17 years ago, the Supreme Court ruled quite differently on the matter. Then, Chief Justice Warren Burger, hardly a social conservative, wrote "in constitutional terms there is no such thing as a fundamental right to commit homosexual sodomy."

"Decisions of individuals relating to homosexual conduct have been subject to state intervention throughout the history of Western Civilization," Burger wrote. "Condemnation of those practices is firmly rooted in Judeo-Christian moral and ethical standards."

He noted that Sir William Blackstone "described 'the infamous crime against nature' as an offense of 'deeper malignity' than rape, a heinous act 'the very mention of which is a disgrace to human nature,' and 'a crime not fit to be named.' To hold that the act of homosexual sodomy is somehow protected as a fundamental right would be to cast aside millennia of moral teaching."

That's right. And that's just what Burger's successors on the court did. They substituted political correctness for the Constitution. They substituted their feelings for the rule of law.

And, as a result, America may never be the same again.

Be sure to sign up for Joseph Farah's free e-mail list solely designed as an organizing tool of his bid to impeach the Supreme Court majority.

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