



AT LAW

Stop Courts From Imposing Gay Marriage

Why we need a constitutional amendment.

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Of all the contested terrain in the culture war, the subject of homosexual rights is the most awkward to discuss. Almost all of us know homosexuals who are decent, intelligent and compassionate people, and we have no inclination to wound them.

Yet "gay rights" have come to the fore and we must have a discussion, free of ad hominem accusations, about whether homosexual acts and relationships are to be regarded as on a par with the marital relationship of a man and a woman. The immediate problem is the homosexual activists' drive for same-sex marriage.

The activists want it as an expression of moral approbation of homosexual conduct. Many Americans have no desire to impose criminal sanctions on homosexual sodomy. Nevertheless, it is clear that most Americans do not want to create special rights for homosexuals or to consider their behavior morally neutral.

For that reason, the activists have concentrated their efforts on courts, knowing that judges have pushed, and continue to push, the culture to the left. One of the last obstacles to the complete normalization of homosexuality in our society is the understanding that marriage is the union of a man and a woman.

The activists breached that line when the supreme courts of Hawaii and Vermont, purporting to interpret their state constitutions, held that those states must recognize same-sex marriage. The Hawaiian electorate quickly amended their constitution to override that decision. The Vermont Constitution was extremely difficult to amend, and so the Legislature capitulated and enacted a civil-unions law, marriage in all but name, as the less repugnant of the alternatives the court allowed. More state courts are sure to follow.

Many court watchers believe that within five to 10 years the U.S. Supreme Court will hold that there is a constitutional right to homosexual marriage, just as that court invented a right to abortion. The chosen instrument will be the Equal Protection Clause of the 14th Amendment. After all, if state law forbids Fred to marry Henry, aren't they denied equal protection when the law permits Tom and Jane to marry? The argument is simplistic, but then the argument for the result in *Roe v. Wade* was nonexistent.

To head off the seemingly inexorable march of the courts toward the radical redefinition of marriage, the Alliance for Marriage has put forward the proposed Federal Marriage Amendment: "Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution or the constitution of any state, nor state or federal law, shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups."

The first sentence means that no legislature may confer the name of marriage on same-sex unions and no court may recognize a same-sex marriage contracted in another country. We would hope that if people understand the principle behind the amendment, they would not try to contrive counterfeit

