The Right of Self-Governance

We hope we have demonstrated how far-reaching and fundamental the question of marriage is. For advocates on either side, its status carries profound moral significance; indeed, they seem to find it impossible to overstate the importance of their case. The stakes are high not just rhetorically but socially.

In matters like these, extra care is required. Executive and legislative authorities should exercise this care by upholding their commitment to the democratic process. If that commitment were a cop-out, as has lately been claimed, we would have to fault this country's founders for the great cop-out of our Constitution. Harvard legal theorist John Hart Ely wrote,

> "the original Constitution is devoted almost entirely to structure, explaining who among the various [governing] factors…has authority to do what, and going on to fill in a good bit of detail about how these persons are to be selected and to conduct their business."

This was not a cop-out; it was a wise avoidance of the temptation to import transient political righteousness into substantive questions of the day. Democratic legislative leaders have resisted this temptation less effectively, claiming a moral obligation to keep the fate of marriage to themselves.

For moral obligations, the constitution set up an independent court system, not an independent legislature. Princeton University's McCormick Professor of Jurisprudence, Robert George, writes,

> "In a regime of self-government and republican liberty, we resolve [fundamental] debates at the level of public policy by the constitutionally prescribed procedures of democratic deliberation. We deliberate as a people—either acting directly through the referendum process or indirectly through our elected representatives—and then we vote. There is no other way that is consistent with our shared fundamental commitment to republican democracy. After all, what are the alternatives? In the very first Federalist paper, Alexander Hamilton laid them out. We can let great questions of public significance be resolved by 'accident and force' or we can insist that they be resolved by 'reflection and choice.'"

In most cases nationally where the homosexual agenda has advanced, it has moved at the bidding of elites who were willing to circumvent due process of law. In Maine, voters repealed a hastily-passed same-sex "marriage" law a few years later. In Iowa, where judicial fiat created same-sex "marriage," voters answered by ousting three of their Supreme Court justices from the bench.

California's fight between voters and the judiciary is headed to the U.S. Supreme Court—and the 9th Circuit Court of Appeals Justice who lately ignored binding precedent to invent a right to same-sex "marriage" is the most overturned Justice in United States history.

The ramifications of flouting due process are real. Some argue that basic rights should not be subjected to majoritarian politics. We agree. But this proposal concerns special rights, not civil rights, as we have noted. Again, Professor Robert George writes,

> "What is critical…is that everyone, without discrimination, be permitted to participate fully in the process of deciding whether marriage is…a conjugal partnership uniting husband and wife, or whether we should revise the historical understanding and opt for marriage defined as a romantic domestic partnership in which reproductive complementarity is of no relevance."

Republican liberty is the real civil right. Will it be upheld over the cry of special interests? We are facing a matter of procedural justice. In this most fundamental of our institutions, the people have and should be granted their right to vote. Let them decide the definition of marriage in Illinois. ■

P.O. Box 88848 | Carol Stream, Illinois 60188
708-781-9328 | ContactUs@illinoisfamily.org | www.illinoisfamily.org