

HON. RON PAUL OF TEXAS BEFORE THE US HOUSE OF REPRESENTATIVES July 22, 2004

Protecting Marriage from Judicial Tyranny

Mr. Speaker, as an original cosponsor of the Marriage Protection Act (HR 3313), I strongly urge my colleagues to support this bill. HR 3313 ensures federal courts will not undermine any state laws regulating marriage by forcing a state to recognize same-sex marriage licenses issued in another state. The Marriage Protection Act thus ensures that the authority to regulate marriage remains with individual states and communities, as the drafters of the Constitution intended.

The practice of judicial activism- legislating from the bench- is now standard procedure for many federal judges. They dismiss the doctrine of strict construction as outdated, instead treating the Constitution as fluid and malleable to create a desired outcome in any given case. For judges who see themselves as social activists, their vision of justice is more important than the letter of the law they are sworn to interpret and uphold. With the federal judiciary focused more on promoting a social agenda than on upholding the rule of law, Americans find themselves increasingly governed by judges they did not elect and cannot remove from office.

Consider the *Lawrence* case decided by the Supreme Court last June. The Court determined that Texas has no right to establish its own standards for private sexual conduct, because these laws violated the court's interpretation of the 14th Amendment. Regardless of the advisability of such laws, the Constitution does not give the federal government authority to overturn these laws. Under the Tenth Amendment, the state of Texas has the authority to pass laws concerning social matters, using its own local standards, without federal interference. But rather than adhering to the Constitution and declining jurisdiction over a state matter, the Court decided to stretch the "right to privacy" to justify imposing the justices' vision on the people of Texas.

Since the *Lawrence* decision, many Americans have expressed their concern that the Court may next "discover" that state laws defining marriage violate the Court's wrongheaded interpretation of the Constitution. After all, some judges simply may view this result as taking the

Lawrence decision to its logical conclusion.

One way federal courts may impose a redefinition of marriage on the states is by interpreting the full faith and credit clause to require all states, even those which do not grant legal standing to same-sex marriages, to treat as valid same-sex marriage licenses from the few states which give legal status to such unions. This would have the practical effect of nullifying state laws defining marriage as solely between a man and a woman, thus allowing a few states and a handful of federal judges to create marriage policy for the entire nation.

In 1996 Congress exercised its authority under the full faith and credit clause of Article IV of the Constitution by passing the Defense of Marriage Act. This ensured each state could set its own policy regarding marriage and not be forced to adopt the marriage policies of another state. Since the full faith and credit clause grants Congress the clear authority to “prescribe the effects” that state documents such as marriage licenses have on other states, the Defense of Marriage Act is unquestionably constitutional. However, the lack of respect federal judges show for the plain language of the Constitution necessitates congressional action so that state officials are not forced to recognize another states’ same-sex marriage licenses because of a flawed judicial interpretation. The drafters of the Constitution gave Congress the power to limit federal jurisdiction to provide a check on out-of-control federal judges. It is long past time we begin using our legitimate authority to protect the states and the people from judicial tyranny.

Since the Marriage Protection Act requires only a majority vote in both houses of Congress (and the president’s signature) to become law, it is a more practical way to deal with this issue than the time-consuming process of passing a constitutional amendment. In fact, since the Defense of Marriage Act overwhelmingly passed both houses, and the president supports protecting state marriage laws from judicial tyranny, there is no reason why the Marriage Protection Act cannot become law this year.

Some may argue that allowing federal judges to rewrite the definition of marriage can result in a victory for individual liberty. This claim is flawed. The best guarantor of true liberty is decentralized political institutions, while the greatest threat to liberty is concentrated power. This is why the Constitution carefully limits the power of the federal government over the states. Allowing federal judges unfettered discretion to strike down state laws, or force a state to conform to the laws of another state, leads to centralization and loss of liberty.

While marriage is licensed and otherwise regulated by the states, government did not create the institution of marriage. In fact, the institution of marriage most likely pre-dates the institution of government! Government regulation of marriage is based on state recognition of the practices and customs formulated by private individuals interacting in civil society. Many people associate their wedding day with completing the rituals and other requirements of their faith, thus being joined in the eyes of their church- not the day they received their marriage license from the state. Having federal officials, whether judges, bureaucrats, or congressmen, impose a new definition of marriage on the people is an act of social engineering profoundly hostile to liberty.

Mr. Speaker, Congress has a constitutional responsibility to stop rogue federal judges from using a flawed interpretation of the Constitution to rewrite the laws and traditions governing marriage. I urge my colleagues to stand against destructive judicial activism and for marriage by voting for the Marriage Protection Act.