

Wall Street Journal

A Citizen's Guide To Protecting Marriage

By Mitt Romney

2/5/04

No matter how you feel about gay marriage, we should be able to agree that the citizens and their elected representatives must not be excluded from a decision as fundamental to society as the definition of marriage. There are lessons from my state's experience that may help other states preserve the rightful participation of their legislatures and citizens, and avoid the confusion now facing Massachusetts.

In a decision handed down in November, a divided Supreme Judicial Court of Massachusetts detected a previously unrecognized right in our 200-year-old state constitution that permits same-sex couples to wed. I believe that 4-3 decision was wrongly decided and is deeply mistaken.

Contrary to the court's opinion, marriage is not "an evolving paradigm." It is deeply rooted in the history, culture and tradition of civil society. It predates our Constitution and our nation by millennia. The institution of marriage was not created by government and it should not be redefined by government.

Marriage is a fundamental and universal social institution. It encompasses many obligations and benefits affecting husband and wife, father and mother, son and daughter. It is the foundation of a harmonious family life. It is the basic building block of society: The development, productivity and happiness of new generations are bound inextricably to the family unit. As a result, marriage bears a real relation to the well-being, health and enduring strength of society.

Because of marriage's pivotal role, nations and states have chosen to provide unique benefits and incentives to those who choose to be married. These benefits are not given to single citizens, groups of friends, or couples of the same sex. That benefits are given to married couples and not to singles or gay couples has nothing to do with discrimination; it has everything to do with building a stable new generation and nation.

It is important that the defense of marriage not become an attack on gays, on singles or on nontraditional couples. We must recognize the right of every citizen to live in the manner of his or her own choosing. In fact, it makes sense to ensure that essential civil rights, protection from violence and appropriate societal benefits are afforded to all citizens, be they single or combined in nontraditional relationships.

So, what to do?

• *Act now to protect marriage in your state.* Thirty-seven states—38 with recent actions by Ohio—have a Defense of Marriage Act. Twelve states, including Massachusetts, do not. I urge my fellow governors and all state legislators to review and, if necessary, strengthen the laws concerning marriage. Look to carefully delineate in the acts themselves the underlying, compelling state purposes. Explore, as well, amendments to the state constitution. In Massachusetts, gay rights advocates in years past successfully thwarted attempts to call a vote on a proposed constitutional amendment banning gay marriage. This cannot happen again. It is imperative that we proceed with the legitimate process of amending our state constitution.



Abraham Lincoln

• *Beware of activist judges.* The Legislature is our lawmaking body, and it is the Legislature's job to pass laws. As governor, it is *my* job to carry out the laws. The Supreme Judicial Court decides cases where there is a dispute as to the meaning of the laws or the constitution. This is not simply a separation of the branches of government, it is also a balance of powers: One branch is not to do the work of the other. It is not the job of judges to make laws, the job of legislators to command the National Guard, or my job to resolve litigation between citizens. If the powers were not separated this way, an official could make the laws, enforce them, and stop court challenges to them. No one branch or person should have that kind of power. It is inconsistent with a constitutional democracy that guarantees to the people the ultimate power to control their government.

With the *Dred Scott* case, decided four years before he took office, President Lincoln faced a judicial decision that he believed was terribly wrong and badly misinterpreted the U.S. Constitution. Here is what Lincoln said: "If the policy of the government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made in ordinary litigation between parties in personal actions the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal." By its decision, the Supreme Judicial Court of Massachusetts circumvented the Legislature and the executive, and assumed to itself the power of legislating. That's wrong.

• *Act at the federal level.* In 1996, President Clinton signed the Defense of Marriage Act. While the law protects states from being forced to recognize gay marriage, activist state courts could reach a different conclusion, just as ours did. It would be disruptive and confusing to have a patchwork of inconsistent marriage laws between states. Amending the Constitution may be the best and most reliable way to prevent such confusion and preserve the institution of marriage. Sometimes we forget that the ultimate power in our democracy is not in the Supreme Court but rather in the voice of the people. And the people have the exclusive right to protect their nation and constitution from judicial overreaching.

People of differing views must remember that real lives and real people are deeply affected by this issue: traditional couples, gay couples and children. We should conduct our discourse with decency and respect for those with different opinions. The definition of marriage is not a matter of semantics; it will have lasting impact on society however it is ultimately resolved. This issue was seized by a one-vote majority of the Massachusetts Supreme Judicial Court. We must now act to preserve the voice of the people and the representatives they elect.

Mr. Romney is governor of Massachusetts.