It's Time To Rebuke The Judicial Oligarchy

Dec. 3, 2003

Google Ads are provided by Google and are not selected or endorsed by Eagle Forum
Will Massachusetts, the cradle of American liberty, let four lawyers don the robes of oligarchy, override the wishes of the majority of the people, usurp the powers of their elected representatives, and sabotage the institution of marriage? Where is the fight that manifested itself in Massachusetts men at the battles of Bunker Hill, Lexington and Concord?

The Massachusetts Supreme Judicial Court ruled 4-to-3 to legalize same-sex marriages. With elitist arrogance, the four-person majority bragged: "Certainly our decision today marks a significant change in the definition of marriage as it has been inherited from the common law, and understood by many societies for centuries."

Indeed, it does. Traditional marriage of husband and wife is fortified by a network of legal rights and duties spelled out in over a thousand federal and 400 state laws. The four judges gave the governor and the legislature 180 days to overturn nearly 400 years of Massachusetts history.

Those judges had no authority to change the definition of marriage. They contemplated their navels and convinced themselves that they alone could change social policy and make new law, and even contemptuously opined that belief in traditional marriage is without a "rational basis."

The people of Massachusetts should tell the judges to stuff their arrogance. "We the people" should rise up and say we are not going to kowtow to judicial tyranny.

Regrettably, the response by Massachusetts public officials has been pusillanimous. They are groveling before the four judges, wiggling around in the hope the court might be appeased by a parallel system of civil unions.

Governor Mitt Romney is trying to walk a tight rope of compromise. While supporting a constitutional amendment to protect traditional marriage, he said: "We obviously have to follow the law as provided by the Supreme Judicial Court, even if we don't agree with it," and we need to decide "what kind of statute we can fashion which is consistent with the law."

But what "law"? There is no law that requires or even allows same-sex marriages. The judges enunciated only special-interest advocacy masquerading as legal reasoning.

Attorney General Thomas F. Reilly said the judges overstepped in trying to shape social policy, but he wants to test an alternative solution and then seek "an advisory opinion of the court." Au contraire; we don't want any more advice from those judges.

State Representative Philip Travis, the lead sponsor of an amendment to preserve the definition of marriage, has the right response. He said that if the legislature doesn't act within the 180 days, the court can't force clerks to issue marriage licenses to gay couples.

"When we pass 180 days, what are you going to do to the Legislature?" said Travis. "With all due respect to the Supreme Court . . . you've given us a decision and given it to us to enforce. Therefore, if we don't enforce it, there is no remedy under the law of Massachusetts."

This Massachusetts court decision isn't just about same-sex marriage. It has posed the question whether Americans are willing to submit to what Thomas Jefferson predicted would be "the despotism of an oligarchy" if judges are allowed to be "the ultimate arbiters of all constitutional questions."

All over the nation, special-interest advocacy groups are "forum shopping" to find friendly judges willing to bypass the Constitution and write their own social and sexual preferences into the law. Plaintiffs are seeking out judges who are willing to cooperate in deconstructing our culture by abolishing the Pledge of Allegiance and the Ten Commandments to make the nation comfortable for atheists, and to abolish marriage requirements to make the nation comfortable for unrestricted sex.

Gay rights activists have a nationwide strategy to make same-sex marriage a constitutional right. The legal advocacy firm called Freedom to Marry is joined in this effort by the Gay & Lesbian Advocates & Defenders, the American Civil Liberties Union, Lambda Legal, NOW Legal Defense and Education Fund, and Human Rights Watch.

They plan to accomplish in the courts what they cannot win in elected legislatures. The gay lawyers will litigate to get other state courts to use Massachusetts as a model, and the gays who marry in Massachusetts will seek legal recognition in other states, challenging their marriage laws and state Defense of Marriage Acts (DOMA).

The same-sex-marriage activists know that the legal profession is predisposed to redefine marriage. The dissenting justices in Lawrence v. Texas warned that the Supreme Court is imbued with the "law profession's anti-anti-homosexual culture."

The dissenting judges in the Massachusetts same-sex marriage case laid it on the line: "What is at stake in this case is not the unequal treatment of individuals or whether individual rights have been impermissibly burdened, but the power of the Legislature to effectuate social change without interference from the courts. ... The power to regulate marriage lies with the Legislature, not with the judiciary."

Massachusetts citizens should slap down their high court as the citizens of Hawaii and Alaska did when confronted with the same judicial impudence, and a nationwide backlash against judicial activism should start to roll.