How Congress Should Respond to Justice Kennedy

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Justice Kennedy’s opinion for a 5-4 majority of the Supreme Court has rightly been condemned for its lack of grounding in the Constitutional text he is sworn to uphold. Unable to find gay marriage in either the due process clause or the equal protection clause of the Fourteenth Amendment, Kennedy ultimately rests his case on what Justice Clarence Thomas sarcastically called the "dignity clause" of the Constitution.

There is no such clause, of course, although Kennedy’s majority opinion mentioned "dignity" nine times. But if dignity can be conferred by decisions of the Supreme Court, then Congress can do so, too.

Therein lies a first response: Congress should formally recognize the dignity of opposite-sex married couples and resolve to protect that dignity in our laws. A joint resolution should recite the many reasons why the special union of husband and wife has been honored for "millennia," as Justice Kennedy admitted.

Only the union of husband and wife was recognized in the foundational texts of Western Civilization, including the Book of Genesis as well as the classical writers of ancient Greece and Rome. The union of husband and wife was singled out for special recognition in the words of Jesus, as recorded in the gospels of the New Testament.

Only the union of husband and wife is honored in our cultural heritage – depicted in thousands of works of art and chronicled in thousands of works of literature – which have inspired and ennobled people over millennia. Only the union of husband and wife can provide the biological connection that attaches a child to its parents and, through them, to other members of the human family.

The union of husband and wife is the only means of tracing history over generations. Royal dynasties, such as the family that has ruled Great Britain since 1066 – the same family that chartered the North American colonies beginning in 1607 -- would have been impossible without it.

Only the union of husband and wife can provide a stable home, as a self-supporting economic unit suitable for rearing and educating children. That is why Karl

Marx, in his Communist Manifesto of 1848, called for "abolition of the family" as a necessary step towards a revolutionary communist utopia.

Only the union of husband and wife has the potential to address concerns about increasing inequality, which is driven primarily by the collapse of the family among persons of low income and low education. Those people are often called "under-privileged," but the most important privilege they lack is the privilege of a stable home formed by a husband and wife who are legally married to each other and jointly responsible for rearing the children they bring into the world.

A crash program to rebuild the traditional American nuclear family is urgently necessary for continuing our nation’s political and economic success in this century. This won’t happen if we transform marriage into a means of giving "dignity" to mostly childless homosexuals.

Once Congress is on a roll to confer dignity, it should confer an extra measure of dignity on the single-earner family, where a provider-husband is the principal breadwinner and his wife is dedicated to the job of homemaker, a role more socially beneficial than working in the paid labor force.

Congress should affirm the many studies that report the singular advantages of husband-wife marriage for all measures of social and economic success. It should reject the politicized studies purporting to show that family structures make no difference in child outcomes.

Congress should reaffirm the factual foundation of the 1996 Defense of Marriage Act, which Justice Kennedy knocked out two years ago in the Windsor case. It is simply a fact, which cannot be reasonably denied, that the 1,138 federal laws that refer to marriage (such as the joint income tax return, tax deductions and credits, homemaker and other dependent benefits in Social Security, and veterans’ benefits) were intended by Congress to apply only to the union of husband and wife.

After reciting the foregoing reasons and many others, Congress should conclude its resolution by formally resolving that the traditional family, founded on a married husband and wife, carries special dignity and deserves special recognition because it provides unique benefits to society.

This is not to deny that every human person has value and dignity, or that other domestic relationships may have some value in limited circumstances. But Congress should respond to Justice Kennedy with a ringing affirmation of the unique dignity that should be accorded to society’s foundational unit, the marriage of husband and wife.

Naysayers will scoff that the foregoing resolution doesn’t change the Supreme Court decision, and you can imagine a late-night comedian comparing it to the medal of courage which the Wizard of Oz presented to the Cowardly Lion. But movie fans will recall how that gesture inspired Dorothy and her companions toward achieving their goal.

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