Rabid Judiciary Bites Again

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The judicial supremacists have struck again. Amid claptrap from the liberals about a need for an independent judiciary, a federal judge in Nebraska repudiated 70 percent of Nebraskans who voted to keep marriage as the union of a man and a woman.

Like a rabid dog that attacks again and again, the federal judiciary knows no restraint. Bite us once, shame on the dog; bite us repeatedly, shame on us for allowing it.

Here is the language that U.S. District Judge Joseph Bataillon said is unconstitutional: "Only marriage between a man and a woman shall be valid or recognized in Nebraska. The uniting of two persons of the same sex in a civil union, domestic partnership or other similar same-sex relationship shall not be valid or recognized in Nebraska."

Appointed by President Clinton, Judge Bataillon's salient credential was his service as the Nebraska Democratic Party State Chairman from 1993-95. As a former party activist, he understands very well that same-sex-marriage advocates cannot achieve their goal by vote of the people or their elected representatives, so their undemocratic game plan is to use supremacist judges.

As our government takes democracy to unlikely places all over the world, how about a decent respect for self-government at home!

Bataillon's argument that the Nebraska law violates the First Amendment because it "chills or inhibits advocacy" of same-sex marriages is a legal embarrassment. That argument is absurd; gays can continue to advocate their agenda all they want.

Bataillon's argument that the Nebraska law unfairly prohibits people from "entering into numerous relationships or living arrangements" is just as far-fetched. Under the Nebraska law, gays can have any relationships they want, but they don't have the right to force the government or the people of Nebraska to recognize those relationships or accord them special privileges.

Those who assert that any outrageous judicial decision becomes the law of the land will now claim that Bataillon's decision is the new law. They will claim that despite the overwhelming rejection of same-sex marriage licenses by voters nationwide, we must respect this new rule invented by this Democratic-Party-Chairman-turned-judge.

How long will Congress sit idly by, watching representative government disintegrate in the face of judges determined to rewrite our laws and remake our culture? Senator Bill Frist (R-TN) had declared his support for traditional marriage and Senator Rick Santorum (R-PA) had chimed in that "the future of our country hangs in the balance," but they gave us only words without action.

Last year, Senators avoided action by pleading that no federal court had yet ruled against state marriage laws or the federal Defense of Marriage Act. That excuse no longer holds; Congress is now faced with judicial supremacy in flagrante delicto.

Judge Stanley Birch must be chuckling to himself about how he lectured congressmen in the Terri Schiavo case as though they were mere schoolchildren. Birch implicitly ordered Congress to shut up and let independent judges make the important decisions without accountability.

Congress should not wait for a higher federal court to act on Judge Bataillon's impudence, a process that might take years. Congress should immediately take this issue away from the federal courts by denying jurisdiction over any claim that the definition of marriage in federal or state law violates the U.S. Constitution.

It's also time for Congress to use its Fourteenth Amendment, Section 5 power to clarify the meaning of "equal protection of the laws" in Section 1. It certainly does not mean, for example, that everybody must pay the same taxes or receive the same welfare benefits.

We have no assurance that higher federal courts will overturn Bataillon's ruling. It will be argued, wrongly I believe, that his decision is the logical progeny of two Supreme Court decisions, Romer v. Evans and Lawrence v. Texas, which are striking examples of the Supreme Court's willingness to twist the Constitution to attack Judeo-Christian values.

Both those decisions were written by Justice Anthony Kennedy, who is fond of citing foreign sources. The mischief of those decisions is becoming increasingly apparent and should stimulate renewed calls to consider impeachment.

Will Congress just grumble but do nothing to stop out-of-control judges from replacing self-government with the Imperial Judiciary? If Congress fails to act, we can expect similar atrocities to continue as supremacist judges remake America into a society that rejects traditional marriage and even banishes the Pledge of Allegiance, the Ten Commandments, and the Boy Scouts.