# Marriage Must Be Protected From The Judges

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President Bush has proclaimed the week of October 12-18 as Marriage Protection Week because it's becoming clearer all the time that the institution of marriage needs protection against battering by the courts. The gay lobbyists have made it clear that their aim is to litigate to get activist judges to accord the status of marriage to same-sex relationships.
A public not well informed about the U.S. Constitution, an acquiescent bar, and spineless Members of Congress have for years allowed activist judges to expand their powers at the expense of our elected representatives and in violation of the separation of powers. The threat of a ruling that pretends to legalize same-sex "marriages" should cause the American people to rise up and say "enough!"

Justice Anthony Kennedy opened the door to this travesty with his far-out reasoning this year in Lawrence v. Texas. Citing a European court ruling (since he couldn't cite the U.S. Constitution), he overturned a U.S. Supreme Court precedent of only 17 years earlier (Bowers v. Hardwick, 1986). This is the same Justice Kennedy who wrote Casey v. Planned Parenthood in 1992 upholding legalized abortion on the ground that the Court's legitimacy depends on sticking with the Roe v. Wade ruling of 19 years earlier.

This is also the same Justice Kennedy who thumbed his nose at the votes of the majority of Coloradans in Romer v. Evans in 1996. He exemplified judicial activism by invalidating an approved referendum because he personally disapproved of the voters' "animus toward the class it affects."

Protecting marriage against activist judges started in 1996 with the Defense of Marriage Act (DOMA), which was overwhelmingly passed by Congress and was so popular that it was signed by President Clinton. Our first task should be to make sure that activist judges can't tamper with it.

DOMA does two things: (a) In everything that is touched by federal law or regulation, "the word `marriage' means only a legal union between one man and one woman as husband and wife, and the word `spouse' refers only to a person of the opposite sex who is a husband or a wife." (b) Congress used its power under the "full faith and credit" provision of the Constitution to legislate that no state can be forced to give effect to any other state's recognition of same-sex relationships.

DOMA is a splendid, well-written law. But, alas, pressure groups are threatening to file suit to persuade some activist judge to declare it unconstitutional, and no one can assure us that this won't happen.

Therefore, Congress should immediately add a third section to DOMA withdrawing jurisdiction from all federal courts to hear any challenge to DOMA. Don't let anybody tell you that Congress can't tell the federal courts what cases they can and cannot hear.

Article III, Section 2 states: "The Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make." Thus, Congress can make "exceptions" to the types of cases the Supreme Court can decide.

Article III, Section 1 states: "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish." Article I, Section 8 states: "The Congress shall have power ... to constitute tribunals inferior to the Supreme Court."

Thus, all federal courts except the Supreme Court were created by Congress. Congress defined their powers and prescribed what kinds of cases they can hear, and so Congress can redefine, re-prescribe, uncreate, limit, regulate, and even abolish those federal courts.

The accusation will be made that withdrawing jurisdiction from the federal courts is an attack on their power and indicates we don't trust their decisions. That's exactly right, we don't, especially after Casey, Romer and Lawrence, plus the lower court decisions on the Pledge of Allegiance and the Ten Commandments.

Withdrawing jurisdiction from the federal courts won't prevent activist state court judges from legalizating same-sex marriages, as courts in Massachusetts and New Jersey are now considering. That will require a constitutional amendment.

But DOMA could be dealt with immediately, by a simple majority vote, and would send a clear message to the courts that the American people are not going to submit to rule by unelected judges instead of by our elected representatives.

As a practical matter, it should be easiest for Congress to move rapidly before adjournment to pass Rep. Todd Akin's (R-MO) bill (H.R. 2028) to strip the federal courts of power to rule on cases involving the Pledge of Allegiance. Akin already has 221 co-sponsors in the House, and Senate Judiciary Committee Chairman Orrin Hatch is the sponsor of the companion bill (S.1297).

Tell your Members of Congress to act now. We cannot let activist federal judges get by with cooperating with the pressure groups that are waging war on our most sacred institutions.