

## SPECIAL REPORT

# Two Branches Of Government?

*A federal judge in Nebraska has ruled that the state's constitutional amendment protecting marriage is unconstitutional.*

### **ACLU And Liberal Federal Judges**

Federal District Judge Joseph Bataillon ruled on May 12, 2005 that Nebraska's constitutional amendment protecting marriage as a one-man, one-woman union is "unconstitutional."

The Nebraska marriage protection amendment was passed in 2000 by 70% of the voters of that state. The amendment was challenged in court by the ACLU, representing homosexual clients.

In his decision, Bataillon claimed that the Nebraska amendment violated the First Amendment to the U.S. Constitution because it impaired the formation of groups or associations to lobby for changes in legislation to benefit homosexual couples.

He also ruled that the amendment violated the Equal Protection clause of the Constitution. Judge Bataillon decided that the amendment inflicted unconstitutional "punishment" on same-sex couples.

This decision is radical and should be overturned on appeal. Traditional Values Coalition Chairman Rev. Louis P. Sheldon has responded to this outrageous and irrational decision:

"It appears that we now only have two branches of government in this nation: The ACLU and leftist federal judges who impose their undemocratic views upon an unwilling public. This decision is a dangerous one and it cannot stand. Our Founding Fathers carefully devised a system of checks and balances for the federal government--and no federal judge should have the legal authority to overturn a voter-passed amendment to a state constitution."

Rev. Sheldon asks: "Are the American people now

forbidden to amend their own state constitutions unless the ACLU or a leftist federal judge approves? Will a federal judge rule that Congress can't amend the U.S. Constitution to protect marriage? How far will this insanity be allowed to go?"

### **Judge Sets Stage For Imposing Homosexual Marriage On Every State**

Same-sex marriage expert Stanley Kurtz, a contributing editor for National Review Online responded on May 13, 2005 to the federal judge's arrogant decision.

Kurtz has written extensively on how same-sex marriage in Scandinavian nations is degrading the entire institution of marriage in those countries.

In analyzing the ramifications of Judge Bataillon's decision, Kurtz observes: "If this particular decision is reversed on appeal, that's cold comfort. It's all-too-obvious that the folks who think the way this judge does are not going to give away after a single reversal. They rightly believe that, over time, the courts have been shifting in their direction." He concludes that Congress must pass a marriage protection amendment as quickly as possible to stop this trend.

In his analysis, Kurtz references a lengthy analysis of the Bataillon decision by blogger Eugene Volokh who is a libertarian-leaning professor who is not only sympathetic to same-sex marriage but also opposes a marriage protection amendment.

Professor Volokh, however, sees the wrongness of Judge Bataillon's decision on several points--and warns that if this decision is allowed to stand, it will have the effect of imposing homosexual marriage

on the entire nation--even though opposed by the majority of Americans.

On Volokh's web site, he points out the following:

\* Judge Bataillon's claim that the Nebraska marriage protection amendment violates the First Amendment's right to advocate for changes in legislation to protect same-sex relationships is wrong. Volokh observes that all constitutional amendments or laws put restraints on individuals but this does not violate any First Amendment rights to continue advocating a position.

\* Judge Bataillon's claim that this amendment is based on "animus" against a class of individuals is also wrong. According to Volokh, "Most laws reflect the notion that some conduct is better than other conduct." He says the judge's view that having marriage be opposite sex only in Nebraska is not animus against another group.

\* Judge Bataillon is also wrong to claim that the Nebraska amendment is an unconstitutional "bill of attainder" because it "inflicts punishment" upon homosexuals and transgenders who wish to effect change opposed by the majority. Volokh notes that many laws block groups from achieving what they want. Laws against polygamy prohibit polygamists from marrying numerous wives. Laws against lotteries prohibit lottery advocates from achieving what they want.

According to Professor Volokh, the judge's decision, if unchallenged, "necessarily means that states are constitutionally required to recognize same-sex marriage (or, under the bill of attainder analysis, at least are required to let any locality recognize same-sex marriage).

"So, this isn't just a battle over state constitutional amendments, and what voters can do and what they must leave to the state legislature. The court's decision, if upheld, would be a Massachusetts *Goodridge* (or at least its Vermont civil-union cousin, *Baker*) for the whole nation."

Professor Volokh is fairly certain that this decision will be overturned by the Eighth Circuit Court of Appeals. If this court doesn't, the next step is the U.S. Supreme Court. Volokh thinks the Supreme Court will overturn this decision, but that outcome is unlikely given the court's pro-homosexual ruling

in *Lawrence v. Texas* that legalized sodomy in all 50 states. *Lawrence* is now being used by pornographers and polygamists to argue that private consensual behavior should be protected--even when downloading child pornography from the Internet.

### **Congress Must Act On A Constitutional Amendment To Fully Protect Marriage.**

Congress must work swiftly on three important issues:

1. Passage of a constitutional amendment that fully protects marriage and bans civil unions or any other arrangement that provides marriage benefits to homosexuals.

2. Passage of legislation restricting federal judges from interfering with state amendments protecting marriage and from overruling state Defense of Marriage Acts (DOMA). The federal DOMA says that no state must recognize a same-sex marriage license issued in another state. *The federal courts must be stripped of the power to undermine and redefine marriage on behalf of homosexuals.*

3. **It is clear that legislation now needs to be passed that will prohibit any federal court from overturning voter-passed constitutional amendments at the state level.**

The voters in each state should have the right to amend their own constitutions to protect marriage as a one-man, one-woman union. They should not have this right taken from them by renegade federal judges who are clearly intent upon imposing homosexual marriage upon our entire nation--against the majority will. It is obvious that marriage is too important to be left to the ACLU or to federal judges.

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