

AlbertMohler.com

“Rights Talk” in California — Confusing the Same-Sex Marriage Issue

Monday, August 11, 2008

The fact that *The Los Angeles Times* favors same-sex marriage is not a new revelation. To the contrary, the paper has positioned itself in support of same-sex marriage for some time. Furthermore, no informed reader will be surprised to find that the paper’s editorial position is quite liberal. Given our cherished commitment to the freedom of the press, the paper has every right to position itself this way. Intelligent readers are responsible to be aware of this fact, and take this editorial posture into account when considering the paper’s coverage of controversial issues — like same-sex marriage and “Proposition 8.”



Proposition 8 will appear on the November ballot in California. The proposition — put on the ballot by public support — is an attempt to return the state’s marriage law to where it stood earlier this year, with marriage defined as the union of a man and a woman.

California’s state constitution does not mention same-sex marriage. On March 7, 2000 the people of California voted by an overwhelming margin to pass “Proposition 22” which stated: “Only marriage between a man and a woman is valid or recognized in California.”

That is where the matter stood until May 15 of this year, when California’s Supreme Court ruled by a vote of 4 to 3 that same-sex marriages must be legalized and recognized in the state. Thus, Proposition 22 and all similar laws were struck down by the court, and the court ordered that the state must allow and recognize same-sex marriages effective June 17, 2008.

Proposition 8 is a citizen-initiated response to that Supreme Court decision and an effort to return marriage in California to the legal definition effective as recently as May 14 of this year. The language of Proposition 8 mirrors that of Proposition 22, but differs in that it would amend the state constitution to define marriage.

The editors of *The Los Angeles Times* want voters to defeat Proposition 8 and, in effect, to confirm the action of California’s Supreme Court that overturned the will of voters expressed in 2000. The fact that the paper wants to see Proposition 8 defeated is not surprising, but the arguments employed by the paper’s editors are nothing less than breathtaking.

The paper speaks to the issue in an [editorial](#) published on August 8. The editors began their arguments with this introductory paragraph:

It’s the same sentence as in 2000: “Only marriage between a man and a woman is valid or recognized in California.” Yet the issue that will be put before voters Nov. 4 is radically different. This time, the wording would be used to rescind an existing constitutional right to marry. We fervently hope that voters, whatever their personal or religious convictions, will shudder at such a step and vote no on Proposition 8.

The editors argue that Proposition 8 would “rescind an existing constitutional right to marry.” The California constitution still does not mention same-sex marriage. No such right existed before May 15. The right exists now only by judicial action, not by any amendment to the constitution.

But, even after referring to the marriage of same-sex couples as “an existing constitutional right,” the editors went even further to declare same-sex marriage a “fundamental right.”

In their words:

The state of same-sex marriage shifted in May, when the California Supreme Court overturned Proposition 22, the ban on gay marriage that voters approved eight years ago, and ruled that marriage was a fundamental right under the state Constitution. As such, it could not be denied to a protected group — in this case, gay and lesbian couples.

What voters must consider about Proposition 8 is that, unlike Proposition 22, this is no longer about refining existing California law. In the wake of the court’s ruling, the only way to deny marriage to gay and lesbian couples is by revising constitutional rights themselves. Proposition 8 seeks to embed wording in the Constitution that would eliminate the fundamental right to same-sex marriage.

Indeed, the court did rule that the right of same-sex couples to marry is a “fundamental right” — a right that is either enshrined within the constitution, drawn from the notion of natural rights, or a necessary implication of the constitution. The court also defined homosexuals as a protected group and thus deserving of a special attention in questions of rights.

But the California Supreme Court is not the final authority in such matters — the people are. The court and its decisions are ultimately accountable to the people, who can, when motivated by great concern or outrage, change the court’s composition or amend the constitution itself.

The editors of the paper write as if the May 15, 2008 decision of the California Supreme Court is unassailable, unchangeable, and irreversible. None of these things is true. The court did declare same-sex marriage to be a fundamental right, but that decision is now, by definition, tentative and potentially temporary. California’s voters must keep this firmly in mind. The voters of California now have the opportunity to define and defend marriage and to return the state’s definition of marriage to where it stood just three months ago.

This entire controversy, illustrated by the paper’s editorial, is an illustration of the legal, cultural, and moral breakdown described by Harvard law professor Mary Ann Glendon as “rights talk.” In her 1991 book, *Rights Talk: The Impoverishment of Political Discourse*, Glendon defined the problem as “our increasing tendency to speak of what is most important to us in terms of rights, and to frame nearly every social controversy as a clash of rights.”

Further:

The most distinctive features of our American rights dialect are the very ones that are most conspicuously in tension with what we require in order to give a reasonably full and coherent account of what kind of society we are and what kind of polity we are trying to create: its penchant for absolute, extravagant formulations, its near-aphasia concerning responsibility, its excessive homage to individual independence and self-sufficiency, its habitual concentration on the individual and the state at the expense of the intermediate groups of civil society, and its unapologetic insularity. Not only does each of these traits make it difficult to give voice to common sense or moral intuitions, they also impede development of the sort of rational political discourse that is appropriate to the needs of a mature, complex, liberal, pluralistic development.

“Rights talk” is what remains when deeper questions of right and wrong are taken off the table. The most important right at stake in Proposition 8 is the right — and the responsibility — of California voters to define and defend marriage as the union of a man and a woman.

