

AlbertMohler.com

A New Turn in the Same-Sex Marriage Battle?

Developments in Massachusetts and Kentucky point to the probable shape of things to come in the same-sex marriage debate in America. As momentum towards homosexual marriage builds, defenders of traditional marriage are forming resistance movements to counter the tide, but with mixed success.

Wednesday, March 31, 2004

Developments in Massachusetts and Kentucky point to the probable shape of things to come in the same-sex marriage debate in America. As momentum towards homosexual marriage builds, defenders of traditional marriage are forming resistance movements to counter the tide, but with mixed success.

As the proposed Federal Marriage Amendment slowly winds its way through the legislative process, the real action is now in the states, with over twenty of the states currently considering constitutional amendments to prevent legalization of same-sex marriages.

A turning point in the Massachusetts battle came on Monday, when the Massachusetts legislature voted 105-to-92 to propose a constitutional amendment which would eventually be presented to the state's voters in 2006. The proposal will disappoint defenders of traditional marriage.

The Massachusetts vote came after weeks of wrangling and turmoil, and the actual amendment adopted by the special constitutional convention may satisfy no one in the end. As finally adopted, the proposed amendment is worded to protect the term "marriage," but grants to civil unions all the legal rights previously restricted to marriage.

In its final wording, the proposed amendment states: "It being the public policy of this commonwealth to protect the unique relationship of marriage, only the union of one man and one woman shall be valid or recognized as a marriage in the commonwealth. Two persons of the same sex shall have the right to form a civil union if they otherwise meet the requirements set forth by law for marriage. Civil unions for same sex persons are established by this Article and shall provide entirely the same benefits, protections, rights, privileges and obligations that are afforded to persons married under the law of the commonwealth."

Is this the shape of the future? The battle in Massachusetts portends a pattern in which "marriage" may be legally restricted to heterosexual couples, but civil unions will be granted full marital rights. The Massachusetts compromise means that homosexuals walk away with civil unions as the legal equivalent of marriage. Will this really matter in the end?

The Massachusetts amendment is, both sides claimed, the best that could be negotiated by the legislators. Supporters of traditional marriage object that the proposed amendment concedes far too much, and in mandating civil unions effectively undercuts the definition of marriage itself. "This amendment stinks," Representative James H. Fagan told The New York Times. "But at least it gives the people a chance to vote for something. It's a lousy amendment."

Governor Mitt Romney agreed with Fagan, and was reported by lawmakers to have told them, "it was the only amendment on the table and therefore should be supported." Representative Viriato Manuel deMacedo accused his fellow legislators of duplicity in claiming to defend marriage while establishing civil unions. "Is that honest? You know it's not." According to the Times, a group of about seventy-five legislators supporting gay marriage played a sophisticated political game, voting repeatedly for the amendment that eventually passed in order to prevent more conservative amendments from ever reaching the floor. At the last moment, these legislators then opposed the amendment, seeking to intimidate the

members of the constitutional convention from actually passing the proposal.

Governor Romney announced Monday night his intention to ask the Massachusetts Supreme Judicial Court to delay implementation of its decision mandating homosexual marriage in the state by May 17. No sooner had the governor acted than the attorney general, a Democrat, opposed the governor's action. "It was very clear to me as attorney general that the majority of the Supreme Judicial Court had made up their minds," said Attorney General Thomas F. Reilly.

Even as observers of the court conceded that a delay is unlikely, Governor Romney said: "The legislature has now passed an amendment in opposition to the court's decision, creating a conflict between the two branches. Given this conflict, I believe the Supreme Judicial Court should delay the imposition of its decision until the people have a chance to be heard."

Of course, that's exactly what the Supreme Judicial Court has not done in the past. There is no question that the vast majority of Massachusetts citizens oppose same-sex marriage, and only a fraction over fifty percent indicate support for civil unions. Massachusetts' highest court is imposing its own worldview and values on the state, and it is unlikely to have its ambition thwarted by a warning from the Governor.

The Massachusetts proposal points to the quandary faced by cultural conservatives who are determined to defend marriage as a union of a man and a woman. In state after state, supporters of homosexual marriage have used the concept of civil unions to force conservatives to face a difficult choice—accept civil unions or give up hope for an amendment outlawing same-sex marriage.

Christian conservatives in Massachusetts recognized the impossibility of their situation. As Ronald A. Crews, president of the Massachusetts Family Institute, told *The New York Times*, "That civil-unions language is still there. We didn't want it there. But at least, it does preserve the definition of marriage."

The legislative debate left scars and revealed that the most basic fault-line in the legislature is over issues of cultural warfare. Thomas M. Finneran, the Democratic Speaker of the House, said that the debate was unprecedented in his experience. Asking his colleagues if they had ever remembered a constitutional convention like this one, Finneran reported: "They said they had not and hope to never go through another one of this magnitude, controversy, exhaustion and emotion again." Well, get ready for the future—it's likely to include a whole series of similar battles.

In Kentucky, the situation was both similar and different. The battle in Kentucky has taken place in the state's House of Representatives, still controlled by Democrats. The Republican-led Senate has already passed a proposed constitutional amendment outlawing same-sex marriage. Democrats have attempted a series of stalling maneuvers, and then proposed an amendment that would disallow homosexual marriages but recognize civil unions. Homosexual marriage and civil unions are both currently illegal in the state, which passed a Defense of Marriage Act several years ago.

The Democrats also added what might be a "poisoned pill" to the proposed amendment. They added language dealing with the rights of courts to contravene legislative intent, claiming to have strengthened the amendment. Nevertheless, the Kentucky state constitution forbids proposed amendments from dealing with more than one issue at a time. Republicans charged that the Democrats had intentionally sabotaged the proposed amendment, knowing that a judge would be likely to rule the amendment unconstitutional, leaving them nonetheless able to claim to have voted against same-sex marriage.

In disgust, Republican representatives staged an organized walkout on March 26. As of Monday, the House was still in a deadlock over the issue.

Republicans now face an awkward choice. They must either support the Democratic proposal, knowing that it is likely to be ruled unconstitutional—or surrender all hope for an amendment to be put on the fall ballot. Once again, the issue of civil unions is central to the debate, since the Democratic version explicitly allows recognition of civil unions, while the Republicans pushed for a simple amendment that would establish marriage as the union of a man and a woman and disallow any equivalent institution.

A recent USA/CNN/Gallup poll found that sixty-one percent of those surveyed opposed gay marriage, while fifty-four percent favored civil unions. This represents a massive shift towards civil unions after just a few months of concentrated national debate. Looking for middle ground, a good number of Americans are apparently willing to settle the

question in favor of civil unions, while attempting to preserve “marriage” for heterosexual couples.

In the end, both sides must know that this is an unsustainable posture. Once civil unions are recognized, they will effectively be considered equal to marriage and, though the word “marriage” may be reserved for heterosexual couples, the institution of marriage will have been displaced as the central organizing stackpole of human society.

At the same time, there is some real value in protecting the word, even as the social definition of marriage is radically revised. Moral conviction and prudential judgment are almost certain to collide as thoughtful legislators do the best they can to fight in defense of marriage.

Ardent supporters of homosexual marriage in Massachusetts are now virtually certain that they have won. They expect their Supreme Judicial Court to deflect any calls for a stay in its decision. Regardless of the proposed constitutional amendment, the Court demands full legal marriage—not civil unions—for same sex couples in the state. As one advocate explained, once that happens, there will be little chance of reversing the precedent.

Those pushing for same-sex marriage must have looked to generally liberal Massachusetts as the perfect place to launch their Blitzkrieg. But Kentucky? Kentucky is bread-and-butter America. The cracks in our civilization grow larger and larger by the day.

Content Copyright © 2002-2010, R. Albert Mohler, Jr.

