Written by **Selwyn Duke** on February 10, 2017

Texas Trying to Limit Federal Same-sex "Marriage" Ruling

The Supreme Court's same-sex "marriage" opinion in 2015 struck a blow against states' powers. Now Texas is striking back, challenging the limits of that unconstitutional decision.

The *Los Angeles Times* reported on the story yesterday:

> The Texas Supreme Court will hear oral arguments this year on a case out of Houston, a trial that will decide whether same-sex couples in the Lone Star State are entitled to the same marriage benefits as heterosexual couples. Although the court passed on it in September, the case has been a favorite of Lt. Gov. Dan Patrick, who repeatedly lobbied for the judges to reconsider hearing it.
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> … Justice John Devine, the most far-right member of the Texas Supreme Court, already has stated his opposition to providing spousal benefits to same-sex couples, which he believes are not guaranteed under existing law. "Marriage is a fundamental right," wrote Devine in September, when the court voted 8-1 not to try the case. "Spousal benefits are not."

The court's reversal, occurring January 20, "followed a slew of separate briefs signed by dozens of other state elected officials, conservative activists and religious leaders who asked the state Supreme Court to defend religious liberty and take a stand on social issues. They argued that Texas should challenge not only the U.S. Supreme Court's legalization of gay marriage but also its striking down this past July of many of the state's tough abortion restrictions," reported Fox News at the time.

Fox continued, "'This court has the opportunity to diminish federal tyranny and re-establish Texas sovereignty,' the conservatives argued."

Yet as evidenced (again) by the unconstitutional court rulings against President Trump's temporary immigration halt, judicial tyranny also requires opposition. This is where Texas could do our nation an invaluable service going far beyond even the noble goal of defending marriage.

The state could simply nullify the 2015 *Obergefell v. Hodges* opinion and, perhaps, thereby jump-start an anti-judicial supremacy movement.

Nullification is, as Thomas Jefferson put it, the "rightful remedy" for all federal usurpation of power. Yet it could also facilitate Trump's ignoring of the immigration opinions; after all, not having to strike the first blow against the courts would diminish the chances of an unjust but successful impeachment proceeding being launched against him.

Like the immigration opinion, *Obergefell* was "lacking even a thin veneer of law," as late Justice Antonin Scalia put it in his dissent. Moreover, the reality is that virtually no one on either side of the issue reasoned the matter out properly.

Obergefell was supposed to be about "rights," but right thinking reveals this as fallacy. Consider: What if I said that homosexuals always had the right to marry — that is, to enter into a matrimonial union between a man and woman, as per marriage's definition?

Of course, the other side will say, "That's *your* definition. We don't agree!" And that's the point: This issue isn't about rights.

It's about *definitions*.

For how can you claim there's a right to a thing before defining what that thing is? Were the judges to say that there's a right to we know not what?

Thus, conservatives hurled a false accusation when they charged the Left with redefining marriage. Leftists attempted no such thing.

They are working to "undefine" it.

This wouldn't be the case if liberals actually had put forth a hard-and-fast alternative definition, saying, for example, "Marriage is the union between any two adults." They didn't do this not only because they're confused, but because it would deny them that cudgel with which they've hammered traditionalists: "You're exclusionary and discriminatory!"

For by definition, definitions define — they exclude what doesn't meet them. But why be reasoned and reasonable when you can just scream "Equality!" and get your way?

Of course, some could say the above doesn't apply because faux marriage is a separate institution unto itself. This argument also fails, however, because activists claim a right to it based on the 14th Amendment's equal-protection clause. The problem?

People get equal protection under the law.

Institutions don't.

Saying otherwise would be lunacy, providing protection for every institution, from slavery to prostitution.

This is why it was nonsense when faux-marriage advocates claimed their efforts couldn't lead to the recognition of other conceptions of "marriage." An "undefinition" excludes nothing.

This was evident in the majority *Obergefell* opinion's "reasoning" and wording, which made clear that the majority was applying "good ideaism," the notion that an opinion can be based on what's "best" for society (according to five unelected judges). Written by Justice Anthony Kennedy, a man who has accomplished the amazing feat of being retired while still on the job, the opinion stated:

> The marriage laws at issue are in essence unequal: Same-sex couples are denied benefits afforded opposite-sex couples and are barred from exercising a fundamental right. Especially against a long history of disapproval of their relationships, this denial works a grave and continuing harm, serving to disrespect and subordinate gays and lesbians.

Now consider the same statement with different parties as the focus:

> The marriage laws at issue are in essence unequal: Polyamorous groups are denied benefits

> afforded couples and are barred from exercising a fundamental right. Especially against a long history of disapproval of their relationships, this denial works a grave and continuing harm, serving to disrespect and subordinate polyamorous groups.

That works, too, doesn't it?

Then, given that there's a movement to normalize bestiality, that Denmark already has "animal bordellos," and people also have claimed to have married beasts, ponder the following:

> The marriage laws at issue are in essence unequal: People involved in different-species couplings are denied benefits afforded same-species couples and are barred from exercising a fundamental right. Especially against a long history of disapproval of their relationships, this denial works a grave and continuing harm, serving to disrespect and zoophiles and different-species couples.

So being exclusionary isn't so bad, is it? Instead, a tyrannical judicial oligarchy has worked to undefine an institution central to civilization.

It's said that Hell is a place where there is no reason. Unfortunately, so are today's courts.