

Defining Marriage Debate

Katine v. Morse

(2-7-12)

Appeals court finds California ban on same-sex marriages unconstitutional

Prominent GLBT lawyer and founder of institute that defends traditional marriage react to overturning of Prop 8 in debate held at UH Law Center.

Feb. 7, 2012 – Mitchell Katine, local counsel in *Lawrence v. Texas*, the U.S. Supreme Court case that overturned sodomy laws in the United States, said he was “thrilled” with today’s finding by a federal appeals court that California’s ban on same-sex marriages was unconstitutional. He cautioned students at the University of Houston Law Center, however, that the case will ultimately be decided by the U.S. Supreme Court, and that might take a year or two.

Katine and Dr. Jennifer Roback Morse, founder of the Ruth Institute, a project of the National Organization for Marriage Education Fund, were debating the issue of “Defining Marriage” as a three-judge panel of the U.S. 9th Circuit Court of Appeals announced its decision. “I’m sorry, but not surprised,” Morse said of the court’s ruling. “I think we have a good chance at the Supreme Court,” she added, noting that Katine had mentioned earlier in the debate that he had lost the sodomy case “at every level” before finally prevailing at the Supreme Court.

The appeals court panel ruled 2-1 that California’s ban on same-sex marriages violated the civil rights of gays and lesbians. “Proposition 8 serves no purpose, and has no effect, other than to lessen the status and human dignity of gays and lesbians in California, and to officially reclassify their relationships and families as inferior to those of opposite-sex couples,” states the opinion written by Judge Stephen Reinhardt, one of the court's most liberal judges. The ruling applies only to California and will not go into effect pending a likely appeal to the full 9th Circuit.

The Law Center debate was sponsored by The Federalist Society and Outlaw, an organization devoted to the issues of Gay, Lesbian, Bisexual, and Transgender students.

The two veterans of the same-sex marriage debate argued the perceived benefits and drawbacks of legalizing gay marriage on society, participants and, specifically, children of such unions.

Morse pointed out “as a cautionary tale,” how no-fault divorce was presented in 1968 as a simple way to lower the cost of divorce for a relatively small number of people. But, she said, it turned out to have a far-reaching effect on society as a whole and undermined the perceived permanence of marriage. Similarly, she argued, legalization of same-sex marriage would undermine basic principles, especially concerning child-rearing. The significance of marriage as an institution between a man and woman, she said, is how it connects children to their parents and vice versa. Children are “entitled” to a stable

relationship with their parents, she said, and mothers and fathers are not interchangeable. Biology is the natural “default mode” of determining parentage, she argued, and legalizing same-sex marriage would be replacing a naturally occurring fact with something created by the state. “The state has no right to interfere.”

Katine countered by saying he and his longtime partner are successfully raising two happy, well adjusted, adopted children. When he asked them what marriage means to them, he said his son answered “family,” and his daughter added that it makes that relationship “permanent.” Katine said, “Gay and lesbian people are not trying to change marriage. We are trying to join marriage.”

He said the procreation argument is specious because many married heterosexual couples choose not to have children, yet enjoy thousands of civil rights and benefits that same-sex couples do not. Citing the First and Fourteenth Amendments, he said the United States was founded on freedom from government intrusion. And, though religion often plays a large part in debates over same-sex marriage, Katine said, “Advocates are not trying to force civil rights on religions.” Morse later argued that scripture aside, same-sex marriage would affect religious institutions in areas such as employment, benefits, and pre-marital counseling.

Katine said any discussion of gay and lesbian rights, including comments from the Supreme Court bench in his landmark sodomy case, always comes down to the bottom line questions, “Who cares?” and “What’s the harm?” As *Lawrence v. Texas*, was winding its way through the courts, he said then-President George W. Bush and then-senator Rick Santorum, R-Pennsylvania, predicted “the sky would fall” if the nation’s sodomy laws were struck down. “None of it happened,” Katine said. He predicted same-sex marriage will prevail before the Supreme Court and “ultimately it will show that gay and lesbian parents are good people, and the sky will not fall. I believe I will see in my lifetime same-sex marriage legal and my son will be proud of his family and my daughter will feel it is permanent.”

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