

NC Same-Sex Marriage Case May Endanger Religious Liberty

Gay marriage could be back in the Supreme Court in the next two years, particularly to determine whether the Fourteenth Amendment of the U.S. Constitution includes a right to **redefine marriage** to include homosexual couples. A decision supporting that premise would strike down traditional marriage laws in all 37 states that have them and forever forbid the American people from voting again on the issue.

In 2012, the people of North Carolina exercised their democratic right to amend the North Carolina Constitution. By a result of 61 percent to 39 percent, the voters reaffirmed that marriage is the union of one man and one woman. That simply reinforced the laws already on the books in North Carolina, a state that does not recognize homosexual or polygamous marriage.

The American Civil Liberties Union (ACLU) is trying to change that through a lawsuit that would silence the voters of North Carolina and force new forms of marriage on that state through judicial fiat. The ACLU currently has a gay-marriage lawsuit underway in the U.S. District Court for the Middle District of North Carolina; it is now amending the civil complaint in that lawsuit to argue that the marriage provision of the North Carolina Constitution violates the Fourteenth Amendment of the U.S. Constitution (which does not say a word about marriage one way or the other).

The ACLU is trying to create a constitutional right to **gay marriage** under which the people of the 50 states could no longer vote on the issue or decide it on a state-by-state basis. The ACLU also endorses a constitutional right to **polygamy** (marriage of three or more persons), which became prominent when then-ACLU President Nadine Strossen

debated Justice Antonin Scalia in 2006. But the ACLU is not presenting that argument in this lawsuit, possibly planning to build on a **gay marriage** constitutional win to file a follow-up lawsuit to create a right to polygamous marriage.

It is also worth noting that President Obama's controversial appointee to the Equal Employment Opportunity Commission (EEOC), Chai Feldblum, who has said that whenever **religious liberty** and gay marriage conflict, gay marriage should always win over religious liberty, has also endorsed a right to marriage of more than two people.

A decision is likely by early next year in the district court, and so by the end of 2014 there could be a decision by the U.S. Court of Appeals for the Fourth Circuit. This could mean that by 2015 the Supreme Court could yet again be faced with an opportunity to declare that the Federal Constitution—which nowhere mentions marriage—somehow bars the American people from deciding marriage laws in their states and instead declares that any two (or more?) consenting adults have the right to marry anyone they want.

Those in the new forms of marriage could demand all public, legal and taxpayer rights for any marriage unit they choose to create. This could pose profound dangers to religious organizations (such as churches) and individuals (especially business owners) who refuse to recognize or participate in same-sex marriage.

Already, this issue is moving again through the court system, where its fate is uncertain.

Ken Klukowski is director of the Center for Religious Liberty at Family Research Council. This article appeared in on July 10, 2013.