

Guest column: Amend constitution to void lawless ruling

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In unanimously creating a "right" to "same-sex marriage," the seven justices of Iowa's Supreme Court substituted their own flexible and evolving notions of due process for the well-thought-out and constitutional judgment of Iowans. They abandoned the words and wisdom of centuries of natural, Roman, common and Iowa law.

The Iowa Constitution contains no reference to same-sex marriage. And, to protect against exactly this judicial activism, the Iowa Legislature passed into law the Defense of Marriage Act, which defined marriage as exclusively between one male and one female. Yet, seven justices decreed that the Iowa Constitution commands the very oxymoron that Iowans forbade.

The decision mandating same-sex marriage redefines the very foundation stone of our civilization. The court does so without even a pretext of constraint by the constitution, the law, the Legislature, or the people. Seven justices have created rights that were, according to them, "unimagined" by those of us who trusted the courts to abide by their oath to "administer justice according to the law." Like the U.S. Supreme Court's decision in *Roe v. Wade*, which honest liberal scholars now no longer defend in principle, this decision is an example of naked judicial willfulness that mocks, rather than defends, the rule of law. In short, this decision of Iowa's Supreme Court is lawless and outside its defined constitutional role.

How should Iowans respond to this decision? What recourse is there against a decision by the Supreme Court that is so far-reaching and outrageous that our constitution itself holds no provision allowing the people a timely rebuke of their courts? The governor and liberal Democrat leaders have blocked all legislative efforts to pass a marriage amendment to the Iowa Constitution to stop the damage, and each of them hopes that we Iowans will forget about his willful complicity.

Some have called for the county recorders to refuse to abide by the decision. Others have called for the governor to issue an executive order in an attempt to overrule the court. Some called upon the Legislature to pass a new statute. Others argue that the Defense of Marriage Act is still on the books and should prevail over the Supreme Court's decision. All of these arguments have the same

flaw: They contain no end game, no solution, and no resolution, while denying judicial review itself. Like a dog chasing its tail, all of these proposals end up before the same court again, producing likely the same result we have today.

The courts have the power to interpret the law to decide cases. Since 1803, in the case of *Marbury v. Madison*, the judicial branch has exercised the power of judicial review. But constitutionally there exists the right and the duty of the people to overrule the will of the court.

The best way to put a check on this power grab by the judicial branch is to amend the Iowa Constitution to protect marriage from the courts. Abiding by the amendment process of the Iowa Constitution may, at first, seem to hamstring believers in marriage (as traditionally and statutorily defined) and the rule of law. But using the rule of law to reverse the Iowa Supreme Court's decision by amending the Constitution is the only way to uphold it and confer legitimacy on the process - something the decision itself lacks.

Yet, organized pro-family Iowans have yet to unify, even though the call is clear. We need to pass a marriage amendment to the Iowa Constitution. Thirty states have been successful in their efforts to pass constitutional amendments protecting marriage between a man and a woman from the courts. We have real work ahead of us if we are to emerge on the other side of this great divide having preserved marriage and the rule of law.

We are called to defend the Iowa Constitution, the rule of law, and marriage for Iowans and the nation.

(King has, in separate cases, successfully sued both Governors Tom Vilsack and Chet Culver over constitutional principles.)