

“Justices cautious on gay marriage”

“Justices cautious on gay marriage” notes the WSJ (4/29/15) headline. SCUTUS members can avoid this caution by thinking out of the marriage box-by distinguishing between civil rights and marriage rites.

Civil Rights: apply equally to all who choose to live together. Thus, civil rights apply to two (or more) individuals whose relationship benefits possibly include, but are not necessarily limited to, sex. Equally in law, civil rights apply to such relationships as a grandmother raising minor children alone (no sex involved), and to, for example, two (or more) elderly persons, in which sex may or may not be involved. Examples abound. All such relationships should, must, be recognized by all government entities. No doubt a prudent attorney would recommend that any such relationship be formalized by legally-binding written contract, recognized in law (“full faith and credit”), whether or not sanctioned by religion.

Marriage Rites: in contrast to civil rights, marriage rites should be the exclusive province of religious ceremony. Thus, the doctrine of separation of church and state mandates that government should issue no license, in deed should have no role, in any relationship sanctioned by any religion. No doubt many, perhaps most, such relationships would consist of one man and one woman, as marriage is traditionally conceived. But no religious rite, even if called marriage, should be regarded as the business of government, be that relationship involving two (or more) gay individuals, or polygamy (whether polyandry, polygyny, or all of the above). There are numerous religions (“many mountains reach up to heaven; many paths up each mountain”). None should be the province of government: “... no law respecting an establishment of religion, or prohibiting the free exercise thereof;”

The Supreme Court, by making this distinction, can avoid caution and constitutional quandary. SCUTUS should consider making the civil rights/marriage rites distinction the law of the land.

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