

CNSNews.com

Catholic Obama Campaign Adviser Wants to Replace All Legal 'Marriages' with 'Civil Licenses'

Wednesday, May 27, 2009

By Pete Winn, Senior Writer/Editor

(CNSNews.com) – A top constitutional law professor who served as a surrogate for then-presidential candidate Barack Obama told CNSNews.com that he would like to see “marriage” replaced in the legal sense with a neutral “civil license.”

“As awkward as it may be, I think the way to untie the state from this problem is to create a new terminology that they would apply to everyone--straight or gay--call it a ‘civil license,’ said Douglas Kmiec, a law professor at Pepperdine University and author of “Can a Catholic Support Him?”

“The net effect of that, would be to turn over--quite appropriately, it seems to me, the concept of marriage to churches and a church understanding,” Kmiec said.

Kmiec said that one of the things that motivated the passage of California’s Proposition 8, which defines marriage as between one man and one woman, “was a genuine concern on the part of religious believers--including myself--that the previous California ruling was not addressing what that would mean for religious practice.”

“After the state of California acknowledged same-sex marriage, would that mean, for example, that churches like the Catholic Church and the Mormon Church, which don’t acknowledge those relationships as a marriage by virtue of their scriptural and theological teaching--would they be subject to penalty? Would they lose public benefits? Would they be subject to lawsuits based upon some theory of discrimination?”

Kmiec said his idea would address those questions.

“One of the possible outcomes that would be good in this case, would be if the state got out of the marriage business, did their licensing under a different name--which, of course, would satisfy the state’s interests for purposes of distribution of taxation and property, but then the question of who can and cannot be married would be entirely determined in your voluntarily chosen faith community.

“We know that religions differ as to how they see that question,” Kmiec said. “But it seems to me that would be a nice way to reaffirm the significance of marriage as a religious concept--because that is a much fuller concept than just civil marriage.”

“Because, as we all know, from a standpoint of religious belief, the couple is not just making a promise to themselves, or even to their local community or their state, but they are making a covenant between themselves and their Creator. That’s something that is differently expressed in different religious traditions, but we shouldn’t lose the value of that, and this is an opportunity to heighten the value of that in order to help the State of

California out of the corner it has worked itself into.”

But Princeton University law professor Robert George, who is also a top constitutional scholar--and a Catholic academic--said that Kmiec's idea would do away with the public role of marriage--and banish it to the religious “ghetto.”

“That is a terrible idea,” George said. “The idea that the state would abandon its concern for the institution of marriage, that it would treat marriage as a purely religious matter, is I think a very bad one.”

Marriage is more than merely a religious institution, George told CNSNews.com.

“It's not like baptisms and bar mitzvahs,” he said. “It has profound social significance, public significance; it's a pre-political institution. It exists even apart from religion, even apart from politics. It's the coming together of a husband and wife, creating the institution of family in which children are nurtured.”

“The family is the original and best Department of Health, Education and Welfare,” George said.

“No government agency can ever surpass it, ever has surpassed it,” he added. “Governments and economies and systems of law all rely upon the family to produce something they need, but that they themselves cannot produce, and that is, basically honest, decent, law abiding people of goodwill--citizens--who can take their rightful place in society.

“Family is built on marriage, and government--the state--has a profound interest in the integrity and well-being of marriage, and to write it off as if it were a purely a religiously significant action and not an institution and action that has a profound public significance, would be a terrible mistake,” George said.

“I don't know where Professor Kmiec is getting his idea, but it's a very, very bad one.”

[Like this story? Then sign up to receive our free daily E-Brief newsletter](#)

All original CNSNews.com material, copyright 1998-2009 Cybercast News Service.