

It's irresponsible to advocate absolute obedience

Iowa Governor Chet Culver says that he is required to enforce the Iowa Supreme Court opinion that Iowa's law limiting marriage to one man and one woman is unconstitutional.

Thus, the state Attorney General has ordered Iowa's 99 elected county recorders to issue marriage licenses to same-sex couples, having already ordered the modification of the state's marriage license form to comply with the court's new definition of marriage.

The Des Moines Register claims that the governor and the attorney general have no choice. Maintaining that the court's decision may be changed only by a constitutional amendment, the Register contends that any refusal to enforce the court ruling would be lawless — "to advocate anarchy."

But President Thomas Jefferson did not wait for a constitutional amendment before pardoning those convicted of violation of a sedition law that Jefferson found unconstitutional even though the courts had ruled to the contrary.

Nor did President Andrew Jackson refuse to veto, as unconstitutional, a law creating a national bank on the ground that the Constitution had not yet been changed to overturn a contrary Supreme Court decision.

Nor did President Abraham Lincoln seek a constitutional amendment to overturn the Dred Scot ruling that Congress had no power to prohibit slavery in the federal territories.

Jefferson, Jackson, and Lincoln knew that a constitutional amendment was not the only remedy to cure an erroneous judicial constitutional decision. Instead, they knew that absolute obedience to such a decision would, in Jefferson's words, "make the judiciary a despotic branch."

In his First Inaugural Address, Lincoln warned that "the people will have ceased to be their own rulers," if the Dred Scot ruling bound the "whole people" of the United States, rather than just the parties to the case.

In his veto message, Jackson emphasized that the "Constitution speaks to all public officials; and it is simply too important to be left entirely to the justices."

The Iowa Constitution is no different. Like the United States Constitution, the state constitution creates three "separate departments — the legislative, the executive, and the judicial," vesting the "legislative authority" in the General Assembly, the "supreme executive power" in the governor, and the judicial power "in a supreme court, district courts, and such other courts, inferior to the supreme court, as the General Assembly may ... establish."

Each officer in each branch independently executes an oath to exercise his respective powers in conformity to the Constitution.

As the state's chief executive officer, the Governor is charged "to take care that the laws are faithfully executed." The Supreme Court's jurisdiction, however, is confined to resolving "cases," the judicial power limited to "secure justice to parties." To that narrow end, the Supreme Court has "supervisory and administrative control" over inferior courts, not over the Governor. In short, the Iowa Supreme Court may tell the Polk County District Court what to do, but it cannot tell the Governor how to discharge his constitutional duty.

Alexander Hamilton wrote that the judiciary has no power to enforce its own decisions. In the 1950's, when the United States Supreme Court ordered the desegregation of schools in Little Rock, it was completely dependent upon the President to call out the National Guard to open the school house gate. President Eisenhower so acted, not because he had no choice, but because he believed the Court's ruling to be right.

Apparently, Governor Culver believes that he must enforce the Iowa Supreme Court's same-sex opinion — right or wrong. To hide behind the skirts of the justices, under the pretense of powerlessness, promotes judicial lawlessness, not the rule of law.

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