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Contact: Julaine Appling, President, Vote Yes for Marriage
Phone: 608-268-5074/866-849-2536 (toll-free)

Constitutional Law 101
Bar presidents need refresher course

Madison— Last week current, future and past presidents of the State Bar of Wisconsin issued a statement of opposition to the Wisconsin Marriage Protection Amendment, citing three main reasons for opposition.

"I find the distortion of facts on this amendment to be greatly disturbing," said Julaine Appling, president of Vote Yes for Marriage. "These lawyers are missing the point."

"Claiming the constitution grants rights is flat out wrong," Appling said. "The purpose of the Wisconsin constitution, like the U.S. Constitution, is to limit the power of government."

The lawyers also pointed to current Wisconsin law, calling the amendment unnecessary.

"We are one law suit and one judge's vote away from a total redefinition of marriage in our state," Appling said. "One only has to look at Massachusetts as proof. The Massachusetts statues were nearly identical to Wisconsin's, referencing a 'husband' and 'wife.' However, in a 4-3 ruling the Massachusetts Supreme Court redefined marriage in that state by judicial fiat."

First Freedoms Foundation general counsel Michael Dean responded to the bar presidents' arguments by saying, "It is profoundly disturbing that they believe rights are granted by our constitution — it's as if they're unaware that Thomas Jefferson said we are entitled to those rights by the laws of Nature and of Nature's God. Constitutions do not grant rights — they prohibit governments from taking them."

Dean added, "Of course Wisconsin law already restricts marriage. The very reason for the marriage amendment is to protect the people's most fundamental right of all — to be governed by their own representatives rather than by a judicial elite. It's hardly surprising that one group of lawyers who run the state bar like the idea of leaving another group of lawyers who sit on the state supreme court the flexibility to ignore the legislature and read into the the constitution their own policy preferences that are nowhere in the text and were inconceivable when it was written. If Wisconsin voters believe our court might do what the Massachusetts and Vermont courts have done already, the amendment is the best way to prevent that."

Dean also said, "Claiming the marriage amendment would deny health care and protections to children and battered women is beyond desperate. It is just plain silly. Whether you are a parent is a different question from whether you are married. And if they think the purpose of marriage laws is to protect people from assaulting each other, then they should favor an amendment declaring that everyone is married to everybody. A lawyer who can't figure out how to prosecute a battery case without the perpetrator and victim being married should turn in his law license."

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