



CATO Gay Marriage Forum: Optimism? “Yes”

By: Luca Gattoni-Celli – March 28, 2013

Early Wednesday afternoon, the Cato Institute hosted a forum titled “Law, Politics, and Same-Sex Marriage.” The consensus among the four legal and political experts was that however the Supreme Court rules on Proposition 8 and DOMA, public opinion is steadily, generationally shifting toward support for gay marriage on the basis of legal equality, including a full 64% of evangelical millennials.

Cato’s Walter Olson moderated a wide-ranging discussion with colleague and legal whiz Ilya Shapiro, Freedom to Marry’s Evan Wolfson, and former RNC Chair Ken Mehlman, who publicly came out in August 2010 to advocate for gay marriage. The participants were essentially united on this point, spending half the allotted time dissecting SCOTUS and splitting the rest between a broad cultural, political discussion and audience questions.

Shapiro predicted a 4-1-4 decision on the DOMA without a controlling opinion: “the four so-called liberal justices would probably strike it down on equal protection grounds” and the mercurial Justice Kennedy seems primed to reject the crucial Section 3, which defines marriage as between a man and a woman, on federalism grounds. Like yesterday’s Proposition 8 case, there were some questions about the respondent’s standing (the State of California and Federal Government have refused to defend Prop 8 and DOMA respectively), but Prop 8 is much more likely to be sent back to federal appeals without a decision on this procedural issue.

Mehlman followed up with the declaration that “history is on our side,” saying that the best way to influence the high court is to continue winning new states and new hearts and minds. All agreed that distinctions between individuals, not the nature of the individuals themselves, was the key legal question. “The whole reason we have a constitution and courts is that some things are not polled and some things are not put up to a vote,” said Wolfson, offering the example of interracial marriage bans struck down in the face of staunch public support. However, Shapiro noted the overwhelming popularity of gay marriage on the basis of the equality argument he favors as a constitutional lawyer, including the surprising statistic about young evangelicals.

After the event was over, I asked Mehlman if he feels optimistic. “Yeah, I am optimistic, but the thing is that I am an optimistic guy and ...” he stopped, smiled, and said simply, “the answer is yes.”