

# IN DEFENSE OF SENATOR SANTORUM

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Senator Rick Santorum has been accused of many things lately, all of them false. He is a decent and honorable man who is not afraid to challenge the conventional wisdom on sexuality. More than that, he is not about to check his religion (Catholicism) at the Senate's door. Nor should he.

On April 7, Senator Santorum gave an interview to the Associated Press; his remarks were published April 22. In the course of the interview he was asked about the scandal in the Catholic Church and then about the laws on homosexuality. Santorum stated standard Catholic teaching: having a homosexual orientation is not sinful, homosexual acts are. He then said that if the Supreme Court were to legalize homosexuality, it would mean that the laws on bigamy, incest and adultery would similarly fall. He specifically cited the constitutional creation of a right to privacy as established in the *Griswold v. Connecticut* decision as the legal basis upon which these laws might be stricken.

Santorum's position may be challenged but it is sheer demagoguery for *Washington Post* columnist Richard Cohen to brand him a "moron." Gay activist David Smith of the Human Rights Campaign is similarly unfair when he labels Santorum's remarks "egregiously anti-gay." Father Robert Drinan, the former congressman from Massachusetts, made a particularly incredulous remark when he said, "Catholics have no right to impose their views on others" (excuse me, Father, but all laws impose someone's views).

Let's begin with Santorum's legal reasoning.

The *Griswold* decision he referred to is important. In the late

19th century, Connecticut passed a law banning the sale and use of contraceptives. In 1965, the Supreme Court found the law unconstitutional. On what basis? On the basis of a right to privacy.

Let's assume, for the sake of argument, that the Connecticut law was flawed. Keep in mind that Santorum never defended the law; he simply understands that the remedy for a flawed state law is for the state lawmakers to repeal it. The problem for him, and for many of the finest legal minds in the nation, is whether the Supreme Court had the right to tell the people of Connecticut that they could not have this law. At the heart of Santorum's objections is the fact that in this ruling the judges literally made up a right to privacy.

Nowhere in the Constitution is such a right stated. So on what basis did the judges make their decision? They said, with creative genius, that the specific guarantees of the Bill of Rights "have penumbras, formed of emanations from those guarantees that help give them life and substance." In simpler language this means the judges declared that they had found a right to privacy flowing in the shadows of the Bill of Rights. It is not hard to understand why some see such inventions as a form of judicial imperialism. (Recall that in the infamous *Roe v. Wade* case, the high court legalized abortion by citing a right to privacy that had been discovered in *Griswold*.)

What concerns Santorum today is the chance that the high court may play fast and loose with the Constitution again by knocking down state sodomy laws on the slippery grounds of privacy rights. What business is it of the federal judiciary, he asks, to strike down state laws prohibiting certain kinds of sexual activity? One can agree or disagree with Santorum on this, but there is nothing moronic about his position.

Nor is there anything anti-gay about his comments. The slippery slope argument he invokes is powerful and deserves an honest riposte. To be specific, if the Supreme Court finds it

within its powers to invalidate laws against homosexuality, what would stop it from invalidating laws on polygamy, incest, adultery and other forms of sexual expression?

Another way to look at this is to ask whether our society has a vested interest in treating monogamous heterosexual relations in the institution of marriage in a special way. If marriage is special, then attempts to relativize it must be rejected. This means we cannot confer upon cohabiting men and women the identical privileges we confer on the institution of marriage anymore than we can extend these privileges to sexual unions of the same sex.

Finally, it is strange to read that Father Drinan actually believes that Catholics have no right to impose their views on others. It is strange because in 1997 Father Drinan urged the Congress not to overturn President Clinton's veto of a law banning partial-birth abortion (after being pressured, Drinan had to retract his position). Was he not imposing his views- which were anything but Catholic-on children 80 percent born? And if it was okay for him to advocate the legalization of infanticide, why would it not be okay for a practicing Catholic to oppose such legislation?

When Bill Press introduced me on MSNBC as the person "leading the charge to defend him [Santorum]," I smiled. I'm still smiling. Go Rick!