

## ISSUES IN PERSPECTIVE

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### *Marriage and the Supreme Court*

Twenty-five years ago, same-sex marriage was a “thought experiment” in our culture. It was an idea promoted primarily by those on the left and other cultural radicals who saw few boundaries to personal freedom and behavior. But as the gay and lesbian movement re-framed human sexuality as a matter of personal freedom and liberty, not ethics, legitimizing same-sex marriage was not far behind. It was only 17 years ago that Congress passed the Defense of Marriage Act (DOMA) decisively. [The House by a 342 to 67 margin; the Senate by an 85 to 14 margin.] Only a year ago, President Obama still opposed same-sex marriage. But, today, all the national momentum is behind same-sex marriage. It is now legal in nine states and the District of Columbia. A new *Washington Post* poll shows that 56% of Americans support same-sex marriage; among those who are 18-29, that number is 81%! Former President Clinton has apologized for supporting and signing the DOMA into law. Given this cultural context, last week the US Supreme Court heard arguments on two legal challenges to the acceptance of same-sex marriage—California’s Proposition 8 and the 1996 Defense of Marriage Act. In effect, the definition of marriage is now on the line and legitimizing same-sex marriage seems imminent. How should we think about this momentous set of developments?

- First, a brief review of the salient issues in the two cases before the Court. The Supreme Court heard one case (*US v. Windsor*) that deals with the 1996 Defense of Marriage Act (DOMA). DOMA mandates that the federal government define marriage exclusively as the union of a man and a woman, and stipulates that no state in the union is obligated to legally recognize a same-sex marriage conducted in another state. Although President Obama had defended this law, as required by the Constitution, he has now ordered his Attorney General to no longer defend DOMA. Hence, when the Supreme Court heard the opposing sides on this case, attorneys representing the House of Representatives defended DOMA. The other case the Court heard last week (*Hollingsworth v. Perry*) dealt with Proposition 8 from California. In 2008 California voters adopted this Proposition, which in effect overturned the California Supreme Court’s efforts to legitimize same-sex marriage in that state. Not surprisingly, Proposition 8 was legally challenged and the federal district court in San Francisco declared it unconstitutional. The Ninth Circuit Court of Appeals agreed. Now the Supreme Court of the United States will decide the fate of Proposition 8. The claim of those bringing this suit against Proposition 8 is that the one woman, one man definition of marriage violates the 14th Amendment’s guarantee of equal protection. A similar claim is made in *US v. Windsor*. As the *Wall Street Journal* recently argued editorially, “Liberals do not merely contend that laws based on sexual orientation lack any ‘rational basis.’ They also claim the only motivation for such laws is prejudice against gays. They therefore want the Court to designate homosexuals as a legally protected group like minorities or women and apply to Proposition 8 the highest levels of constitutional protection, called strict or heightened scrutiny. The Court has not used the equal protection clause to create a new category of

people who need extra legal protection in three decades, largely because doing so disrupts the ebb and flow of the ordinary political process. Such caution is prudent, especially here. Homosexuals are not disenfranchised like blacks in the mid-20<sup>th</sup> century, as the very progress of the gay rights movement shows.” In my opinion, the Court must move very slowly here. Marriage as currently defined in the vast majority of the states in this union does have a “rational basis.” Marriage is the bedrock of any civilization and toying with it or declaring it irrational is absurd and dangerous. The *Wall Street Journal* is indeed correct in their judgment that “It would be an act of judicial imperialism to declare that the meaning of marriage that has prevailed across the Western world for millennia is suddenly unconstitutional because it is ‘irrational’ and force the new concept on everyone.” Few would argue that the Supreme Court has a good record on legislating cultural change. In fact, its record is dismal. The best evidence for this is its disastrous decision in *Roe v. Wade* in 1973. It imposed on the states and all of its citizens a decision that settled nothing and instead produced decades of “all-or-nothing” cultural combat on abortion that continues to rage. It would be a disaster if the Court did something similar in the *Hollingsworth* and *Windsor* cases. If DOMA is declared to be unconstitutional, a veritable avalanche of litigation in the states will ensue. In addition, as theologian Albert Mohler comments, “such a decision would put a host of threats to religious liberty into action, threatening the rights of churches, religious institutions, and citizens who are opposed to same-sex marriage on religious grounds.” A rights-driven ideology that has abandoned all concern for the ethical foundation of society is pushing America deeper into moral and ethical chaos. How the Court decides these cases is of immense importance.

- Second, for those of us committed to genuine biblical Christianity, marriage is far more than merely a legal or a constitutional matter. The Creation Ordinance of God stipulates unambiguously that marriage is between a man and a woman for life. There is no room for any kind of moral or cultural relativism on this issue. But as I have argued many times on *Issues in Perspective* and in my book *The Truth About Worldviews*, western civilization is now characterized by the radical relativism of Postmodernism. Personal autonomy trumps all ethical absolutes and “what works for me” is the new ethical standard. Void of all ethical absolutes, this passion for autonomy is the driving force and the ideology of the Postmodern world. Hence, same-sex marriage is deeply rooted in the ideology of Postmodernism. But, there is a more pernicious form of ethical relativism surfacing in America as well. Former Vice President Dick Cheney and more recently Senator Rob Portman of Ohio exemplify this “softer” form of ethical relativism. Both Cheney and Portman have children who are gay. Both had been staunch opponents of the gay lifestyle and of same-sex marriage. No longer. But, loving our children does not mean we must embrace their ethical choices. This is one of the most difficult and harsh dimensions of parenting—loving and accepting our children, even if they make sinful and unethical lifestyle choices. As Mohler observes, “This softer, non-ideological version of moral relativism presents persons of moral [and ethical] conviction with a clear challenge. Will we hold to our principles and moral [and ethical] convictions, even when a son or daughter is involved? If not, our convictions will be relativized and our moral credibility will be undermined.” We are witnessing one of the most massive ethical shifts in western civilization—and over a very short period of time! Indeed, the re-definition of marriage manifests powerfully a civilization anchored firmly in mid-air. Rather than the ethical standards clearly defined by our Creator, we rely on feelings, public

opinion and political expediency to define the ethical boundaries of life. What a recipe for cultural chaos and disaster! Mohler writes that “Evangelical Christians are now called upon to think strategically about what it means to speak truthfully to a society that increasingly sees us as moral outlaws. Clearly, we must watch our speech carefully, measuring every word for truth and tone and avoiding incendiary sound bites. We must also guard our hearts toward the persistent temptation towards self-righteousness. But, at the same time, even the most humble statement of biblical truth can now be turned into a sound bite described as hate speech, and a refusal to affirm the normalization of homosexuality is turned into repulsive intolerance. We now face no shortage of arguments for capitulation, but abandoning the truth of God’s Word is not an option. We deny the gospel if we deny the sinfulness of sin.” This includes sexual sin, indeed every sin we all commit before God. But the Gospel and its transforming power know no bounds and they are both offered to every human being, regardless of the nature or the depth of the sin. The challenge we now face is enormous but the grace of God and the transforming power of His Gospel remain our only hope!

See Matthew Cooper in [www.theatlantic.com](http://www.theatlantic.com) (26 March 2013); “Marriage and the Supreme Court” editorial in the *Wall Street Journal* (24 March 2013); [www.albertmohler.com](http://www.albertmohler.com) (26 March 2013, 18 March 2013); and Mohler’s “Tebow’s Big Fumble” in [www.christianitytoday.com](http://www.christianitytoday.com) (27 February 2013).