

# MISSOURI CATHOLIC CONFERENCE MESSENGER

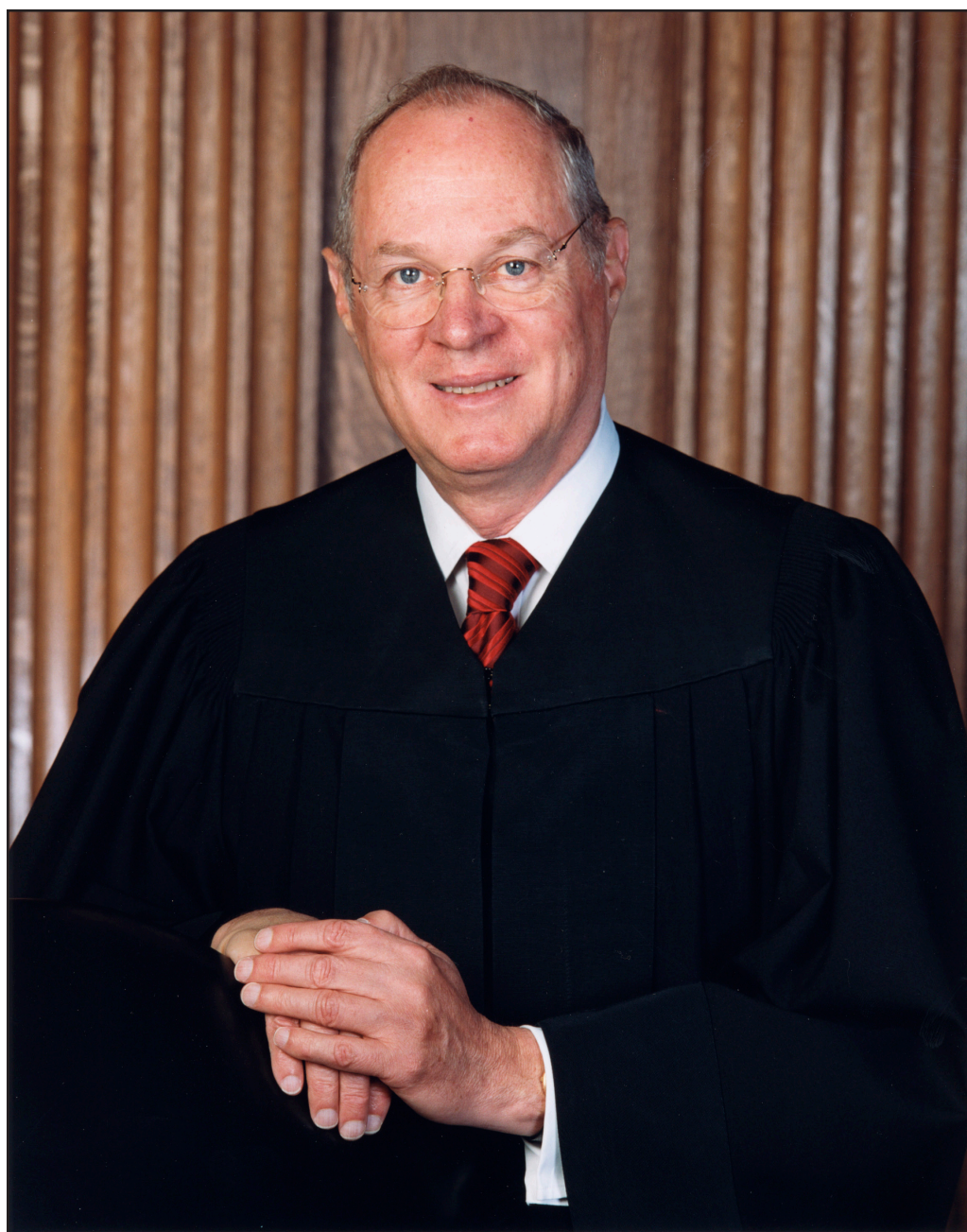
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## Will One Man Decide the Fate of Traditional Marriage?

By Tyler McClay



The Collection of the Supreme Court of the United States.  
Associate Justice Anthony Kennedy, U.S. Supreme Court

Now that a federal judge has struck down California's Proposition 8, which states that only marriage between a man and a woman is valid in California, the issue of "same-sex marriage" is sure to end up before the U.S. Supreme Court within the next year or two. Some Supreme Court observers believe that Justice Anthony Kennedy will cast the deciding vote on this issue. Carl Tobias, law professor at the University of Richmond, recently noted that "on close cases, [Kennedy] tends to be in the middle." The upshot is that one man could decide the case that redefines an institution that has existed for centuries.

Of the nine present Supreme Court justices, conventional thinking says that four would rule in favor of "gay marriage" - Ginsburg, Breyer, Sotomayor, and Kagan while Justices Alito, Roberts, Thomas and Scalia would rule against it. No one knows how Justice Kennedy will vote on the issue. Because he was appointed by President Ronald Reagan and is a Catholic, the casual observer might suppose that he will support traditional marriage. Justice Kennedy, however, has authored two decisions in the last fifteen years that have effectively defended "gay rights," and proponents of traditional marriage are concerned he will rule unfavorably.

Born in Sacramento in 1936, Justice Anthony Kennedy attended Stanford University and Harvard Law School. He was appointed to the U.S. Supreme Court in 1987 after Congress rejected President Reagan's nomination of Robert Bork. He wrote the majority opinion in the *Gonzalez* (2007) case upholding legal bans on partial

birth abortion. On the other hand, he ruled with the majority in upholding a woman's right to an abortion in the *Planned Parenthood v. Casey* (1992) case.

On homosexual rights issues, he has written the opinion for the Court in two recent cases of note. In *Romer v. Evans* (1996), he wrote the decision for the majority striking down a Colorado Constitutional amendment that prohibited state agencies from giving protected legal status to homosexuals based upon their sexual orientation. Writing that the state of Colorado had no legitimate interest in the amendment, he ruled that it denied homosexuals equal protection of the law.

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More recently, in *Lawrence v. Texas* (2003), he struck down a Texas law that made it a crime for homosexuals to engage in sodomy. In his ruling, he stated that two adult men charged with engaging in consensual sodomy are entitled to respect for their private lives in matters of sexual intimacy, and that the Constitution “gives them the full right to engage in their conduct without government intervention.”

While neither of these cases addressed the broader social issue of marriage, Justice Kennedy’s willingness to expand personal liberties to include sodomy suggests he may find that the Constitution guarantees homosexual couples the right to marry. In the *Lawrence* decision, he noted that other countries no longer criminalize private homosexual conduct. With a number of traditionally Catholic countries passing same-sex marriage laws in recent years (e.g. Spain, Portugal, Mexico, and Argentina), will Justice Kennedy look for guidance from these countries in deciding the fate of traditional marriage in the United States?

Some argue there is no harm in allowing homosexual marriage. But at a March 2010 address on religious freedom at Brigham Young University, Cardinal Francis E. George, president of the United

The development of “gay rights” and the call for same-sex “marriage” pose real, not just conjectural threats to religious liberty in America.

States Conference of Catholic Bishops (USCCB), stated that the development of “gay rights” and the call for “same-sex marriage” pose real, not just conjectural threats to religious liberty in America.

When Massachusetts passed a law recognizing same-sex marriage, it was no longer acceptable to state officials for Catholic Charities to refuse to place adopted children with same-sex couples, because to do so would violate state laws, which prohibit “discrimination” against homosexuals. In order to exercise their religious freedom and preserve their faithfulness to Church teaching, Catholic Charities ceased performing adoption services in Massachusetts in 2006. Faced with the same dilemma, Catholic Charities in California and the District of Columbia have made similar decisions in 2006 and 2010, respectively.

This summer, Missouri governor Jay Nixon issued Executive Order 10-24, prohibiting the Executive Branch of state government from discriminating on the basis of sexual orientation in employment practices and in the provision of services and the operation of facilities. The governor has asked all local governments and “instrumentalities of government” in Missouri to cooperate with this order. It is not clear at this time if the governor’s Executive Order is intended to apply to governmental subcontractors like Catholic Charities.

Justice Kennedy is one of six Catholics on the Supreme Court. The others are Alito, Thomas, Scalia, Roberts, and Sotomayor. There is a way in which these Justices can remain faithful to Catholic teaching and uphold the Constitution at the same time. They could rule that the state has a legitimate interest in promoting and regulating naturally pro-creative relationships between men and women for the nurture and upbringing of the next generation. Affirming traditional marriage increases the likelihood that a child will have a legally recognized mother and father to raise the child. Finally, they could rule that affirming traditional marriage will assure continued accommodation of the First Amendment religious liberties of those who oppose same-sex marriage. The Catholic Church has spoken clearly

on this issue. In 2003, Pope Benedict XVI, then Prefect for the Congregation for the Doctrine of the Faith, stated that upholding traditional marriage is essential to the promotion of the common good of society. If homosexual unions become an institution in the legal structure of

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society, it “would result in changes to the entire organization of society,” and would “obscure certain basic moral values and cause a devaluation of the institution of marriage.” The State cannot, he stated, grant legal recognition to such unions “without failing in its duty to promote and defend marriage as an institution essential to the common good.”

Catholics need to be engaged in this debate while they still can. The *Catechism of the Catholic Church* states that Catholics should treat homosexual persons with “respect, compassion, and sensitivity”. Yet, as Pope Benedict stated, “respect for homosexual persons cannot lead in any way to approval of homosexual behavior or to legal recognition of homosexual unions”. If same-sex marriage is constitutionally protected, greater social and political pressure will be asserted against those who oppose it. For those who hold dear traditional notions of marriage and family, the stakes couldn’t be higher.

Tyler McClay is the General Counsel for the Missouri Catholic Conference.



# The Divine Pattern of Human Love

By Rev. Edward James Richard

It is not surprising that some people would have a propensity to same-sex attractions, as the noted philosopher Janet Smith says, because it seems that individuals have many tendencies, both good and bad. Some are prone to good, to be generous, patient, or benevolent. At the same time, most of us are subject to disordered tendencies like inordinate anger, irritability, or alcoholism which must be overcome by growth in authentic freedom. Very rarely in human history has any society tried to build social institutions around human disorders.

natural forces; it is the wise institution of the Creator to realize in mankind His design of love.”

Human love has a Divine pattern based upon God Himself, a communion of persons. The scriptures reveal the complementarity of the two human persons, male and female, and their special communion in marriage. The blending of life into “one flesh” emphasizes the role of the expression of love between man and woman in the definition of marriage.

as the means to continue the work of creation and, in particular, raising up new images of Himself.

The natural bond of marriage is fortified by the sacrament of Holy Matrimony. The spouses receive the grace of Christ to be the faithful image of the community of persons which is the Blessed Trinity. The capacity and openness to procreation demonstrate that the union of the husband and wife is the basic human community that is radically capable of revealing the truth about God as a

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EDUCATORS AND  
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consider using this  
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for classes and  
group discussion  
on issues relating  
to marriage and  
homosexuality.

On the other hand, the institution of marriage between a man and woman is essential to the good of society.

The basis for the traditional meaning of marriage is found in the rational assessment of the meaning of the human body, male and female. The biblical accounts of creation in the book of Genesis clarify and strengthen our rational conviction that the creation of the complementary genders, male and female, is the single, rational, and incontrovertible basis for marriage as a social institution. As His Holiness, Paul VI, stated in *Humanae Vitae* (#8), “Marriage is not ... the effect of chance or the product of evolution of unconscious

The communion of the spouses is established upon love expressed in and through the natural gifts of their male and female bodies. Authentically human love, which forms the bond of communion, is self-giving and fruitful, like God. This is the kind of love that truly expresses God’s gift and intention in creating man and woman and then blessing marriage.

As images of God, who reigns supreme over creation, man and woman have been endowed with the capacity to act as His royal representatives in the work of creation. This capacity is oriented to the gift of human procreation. God chose procreation in the love of a family, husband and wife united in marriage,

communion of persons, Father, Son, Holy Spirit.

These points demonstrate the lack of rational or religious foundation for legally sanctioned homosexual unions. Such unions cannot express love in the married state as was intended in the creation of man and woman and which is discernible by reason.

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# Reproductive Technology's Threat to Marriage

By Tyler McClay

One of God's primary plans for the institution of marriage is for husband and wife, through the reciprocal gift of themselves to the other, to cooperate with God in the procreation and raising of new lives. For many couples pregnancy and childbirth is a much anticipated and joyous occasion. Infertile couples longing for children, however, often experience tremendous suffering as their longing goes unfulfilled.

The Church is sympathetic to the plight of the childless couple. Catholic teaching supports medical treatments to remove obstacles to natural fertilization such as hormonal therapy, and surgery for endometriosis or to unblock fallopian tubes. Techniques that substitute for the conjugal act, however, like artificial insemination and *in vitro* fertilization (IVF) are considered morally illicit because they interfere with the conjugal act, "which alone is worthy of truly responsible procreation."

While our secular culture may argue this Church teaching is too harsh, consider the moral quandary created by *in vitro* fertilization. IVF typically requires the creation of more embryos than will be implanted into the mother's womb. Only the healthiest of the embryos are implanted, leaving the others in a state of "limbo" for which, as Pope John Paul II stated, there is "no morally licit solution." Cold storage of these embryos, for example, denies them maternal reception and gestation, it exposes them to death and physical harm, and makes them susceptible to abuse and manipulation. Donation of the extra embryos to science is also morally objectionable, because these embryos are treated as commodities, valued only for their parts (stem cells, for example), rather than for the human lives they represent.

Over the years, IVF has resulted in the creation of over 400,000 extra embryos. These embryos are highly prized by researchers who want to use them to seek medical cures for diseases like Parkinson's and diabetes. Since 1996, however, federal funds have not been available for such embryonic stem cell experiments. That year Congress passed a law that prohibits the use of federal funds to create human embryos for research purposes, or to conduct research in which human embryos are destroyed. This law, known as the Dickey-Wicker Amendment,

has been added to Health and Human Services appropriations since that time.

In a surprising move on August 9, 2001, President George W. Bush issued an Executive Order permitting federal funding for embryonic stem cell research on sixty stem cell lines that had already been created using private funds. He reasoned that since the embryos had already been destroyed, and the stem cell lines created, it would be morally acceptable to use federal money to pay for this research. His Order did not allow federal dollars to be spent on new stem cell lines, which would have required the



destruction of additional embryos.

On March 9, 2009, President Obama reversed President Bush's policy. He signed an Executive Order which allows federal funds to be used to pay for new stem cell lines created by the destruction of additional embryos. The National Institute of Health (NIH) then published guidelines permitting research using stem cells derived from excess human embryos created by *in vitro* fertilization that have been donated to science.

A coalition including the Christian Medical Association and several doctors filed suit seeking to block the NIH guidelines from going into effect. They argued the guidelines violate the Dickey-Wicker Amendment. On August 23, 2010, Judge Royce Lamberth, a federal judge in D.C., agreed and granted a preliminary injunction banning federal funding of the research. On September 29, 2010, however, a federal appeals court reversed course, allowing funding for ongoing experiments to continue until they could consider all the evidence in the case.

The United States Conference of Catholic Bishops issued a statement in 2009 entitled "Life-Giving Love in an Age of Technology." In it they state that our modern secular culture with its emphasis on contraception and the pursuit of pleasure tends to separate the unitive aspects of sex from the procreative. "This separation weakens marriage," they state. "The effect of a contraceptive mentality has been to sever sexual relations from permanent commitment, allowing the pursuit of pleasure to become an overriding goal."

In the same way, using reproductive technology to "produce" a child can separate the conjugal act from the creation of offspring. With technologies like IVF, it is no longer necessary for the couple to come together as "one flesh" to create a child. The husband and wife donate their sperm and egg for union in a laboratory. The child becomes a product of our technology, rather than the fruit of the couples' reciprocal gift of themselves to one another.

The painful truth for some couples is that there is no guarantee that they will be successful in achieving pregnancy through morally acceptable means. For those couples Pope John Paul II would call them to redirect their openness to life in other ways that are badly needed today. "You are no less loved by God;" he stated, "your love for each other is complete and fruitful when it is open to others, to the needs of the apostolate, to the needs of the poor, to the needs of orphans, to the needs of the world."

Tyler McClay is the General Counsel for the Missouri Catholic Conference.