



# Does DOMA's Demise Spell Doom For Traditional Marriage in Missouri?

By: Tyler McClay

On August 3, 2004, Missouri passed a constitutional marriage amendment with 71 percent approval of the electorate, a strong vote of confidence in traditional marriage.

On June 26, 2013, the U.S. Supreme Court struck down section 3 of the federal Defense of Marriage Act (DOMA), which defined marriage for purposes of federal law as the union of one man and one woman. How did we get here, and what now?

DOMA was passed in 1996 with the approval of 342 members of the U.S. House of Representatives and 85 U.S. Senators, and the signature of President Bill Clinton. At the time it passed, there were no states that had redefined marriage to include the union of two persons of the same sex.

Then along came Edith Windsor, a woman who had entered a same-sex marriage in Canada while living in New York State. When her partner died, she had to pay estate taxes because federal law did not recognize her same-sex marriage. She sued to recover those taxes, which would not have been due had she been married to a man.

The lower courts struck down section 3 of



DOMA, and the Supreme Court affirmed that ruling. Writing for the majority, Justice Anthony Kennedy wrote that section 3 of DOMA violated Ms. Windsor's due process right to equal protection of the law under the Fifth Amendment to the U.S. Constitution. Kennedy reasoned that because New York has now re-defined marriage, DOMA unconstitutionally fails to recognize and uphold what the sovereign State of New York has decreed worthy of protection.

Justice Kennedy was careful to note that he was confining the majority ruling on DOMA to those "lawful marriages" already recognized by the states. The ruling does not create a constitutional right to same-sex marriage under the Fourteenth Amendment Equal Protection Clause, as many marriage redefinition advocates had hoped. Such a ruling would have singlehandedly voided every state constitutional amendment defining marriage as the union of one man and one woman.

Missouri's Constitutional Amendment defining marriage as the union of one man and one woman is therefore still good law ... for now. Writing in his dissenting opinion, Chief Justice John Roberts rightly predicts that "[w]e may in the future have to resolve challenges to state marriage definitions affecting same-sex couples. That issue is not before us in this case..."

Justice Kennedy's majority opinion leaves to the states the power to define for themselves what marriage will be.

The Missouri Catholic Conference for its part will continue to speak out in support of traditional marriage and against re-defining what marriage has always been understood to be. It



The U.S. Supreme Court.

seems in our modern times, however, that there is much confusion about what marriage is and whether it should be re-defined.

As Catholics we know that marriage is the only institution that unites a man and a woman with each other and any children born from their union. No other human relationship is marriage. No other relationship by its very nature unites two people physically in such a way that their union can create new human life representing the fruit of their intrinsic complementarity.

It falls to each of us - laity, clergy, religious, Catholics of every stripe - to proclaim this truth. Some will criticize us for doing so; some will call us haters, others bigots. But proclaiming the truth about marriage doesn't make one a bigot, it makes one a Catholic!

We do not speak out in support of what marriage is to "harm" or to "injure" those who disagree with us. We speak out in support of what marriage is to affirm it and to bear witness to the truth about it. May each of us have the courage to do so!

*Tyler McClay is the general counsel for the MCC.*

# Redefinition of Marriage in the Land of Lincoln: Why Aren't Civil Unions Enough for Illinois?

By: Robert Gilligan

Equality. Fairness. Civil rights.

Those buzz words popped up regularly during Illinois' spring legislative session, as activists pushed legislation seeking to change the state's legal definition of marriage from "between a man and a woman" to "between two persons."

We heard the same buzz words two years before when those same activists sought passage of civil unions. We were told then the measure was not a stepping stone to same-sex marriage and were assured during the Senate floor debate that the legislation would not affect the mission of faith-based social service organizations.

But within six months of civil unions becoming law, all Catholic Charities in the state were pushed out of their longtime mission of caring for abused, abandoned and neglected children. The state refused to renew contracts for foster care and adoption services because of Charities' practice of not placing children with unmarried couples, be they heterosexual or homosexual.

And within 18 months of civil unions becoming law, activists initiated a full-on public relations and legislative push for redefinition of marriage.

The Catholic Conference of Illinois pushed back through a groundswell of grassroots advocacy, prompting the sponsor of the leg-

islation to refrain from calling the bill for a vote out of fear of a potential loss. The bill is expected to resurface later this year.

As we prepare for the ongoing challenge, we wonder, "What happened to civil unions? Why aren't civil unions good enough anymore?"

Civil unions in Illinois grant participants all the legal benefits of marriage – "the same obligations, responsibilities, protections and benefits as are afforded or recognized by the law of Illinois to spouses, whether they derive from statute, administrative rule, policy, common law or any other source of civil or criminal law."

Same-sex marriage activists claim civil union couples are missing out on more than 1,138 benefits, protections and obligations that married couples receive, such as Social Security survivor benefits, family leave and veterans' benefits. But those benefits are governed by federal law – not state law. The proper venue to get those benefits is not through an Illinois marriage license, but through legislation in the U.S. Congress.

Activists also claim civil union couples have been barred from visiting loved ones in the hospital. But Illinois' civil union law gives those partners the same substantive rights as spouses – and that includes hospital visits.

Additionally, President Barack Obama in 2010 signed an executive order calling for any hospital that accepts Medicaid or Medicare – practically every hospital – to respect the

rights of patients to designate visitors. And those same hospitals may not deny visitation based on race, color, national origin, sexual orientation, gender identity or disability.

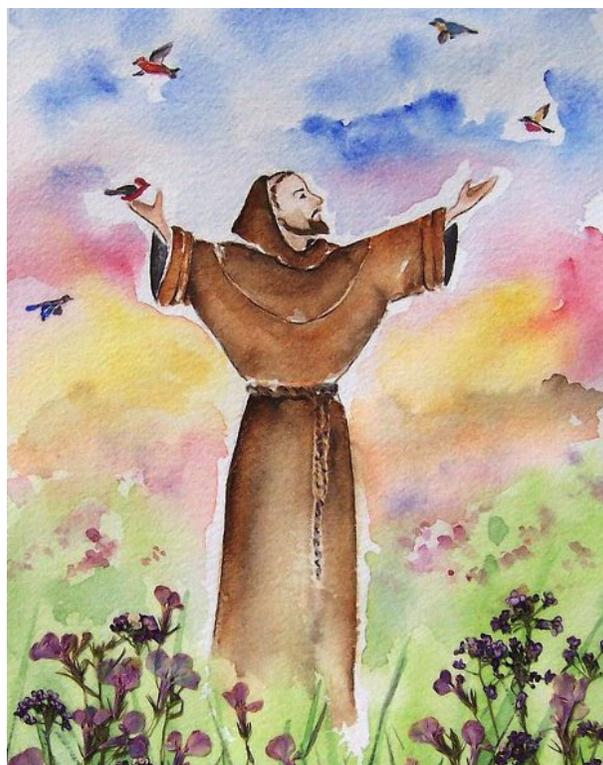
Finally, proponents of redefinition of marriage legislation claim they want to "feel" married. Feelings are not facts. The Illinois legislature deals with facts.

Here is one fact that stands out. From June 1, 2011 – when civil unions became law in Illinois – through the end of 2012, 5,200 civil unions were reported. The population of Illinois tallies nearly 13 million.

If there has been no rush to enter into a civil union, why the push for marriage, especially when we have yet to feel the full impact of civil unions on society? Why tamper with the institution that serves as the foundation of the family, when civil unions already offer every legal benefit of marriage in Illinois?

Preserve marriage – those are our buzz words.

*Robert Gilligan is the executive director for the Catholic Conference of Illinois.*



## “Francis, Rebuild My Church”

“Francis, Rebuild My Church,” is the theme for the Missouri Catholic Conference's 2013 Annual Assembly. The event will take place on Saturday, September 28 at the State Capitol in Jefferson City.

Our new pope has taken his name from St. Francis of Assisi. He has said: “For me, he is the man of poverty, the man of peace, the man who loves and protects creation ...”

This year the annual assembly will feature Bishop Richard Pates of Des Moines, Iowa, as the keynote speaker. In November, 2011, he was elected to be the chair of the U.S. Conference of Catholic Bishops Committee on International Justice and Peace.

There will be both morning and afternoon workshops covering topics like marriage, is the Missouri General Assembly broken, meet St. Francis of Assisi, alternatives to abortion, soup kitchens, evangelization, disaster preparedness and more. There are also activities for children ages five and up, including a mock legislature for teens.

Visit [www.MOcatholic.org](http://www.MOcatholic.org), for more information.



# Who Do You Listen to When You Have 108 Friends?

By: Tyler McClay

The U.S. Supreme Court has lots of friends. In *Hollingsworth v. Perry*, the case involving California's Proposition 8, which defined marriage as the union of one man and one woman, the Court had 108 friends to be exact.

These friends are called *amici curiae*, or *friends of the court*. They are organizations, individuals, and advocacy groups that file briefs with the court in cases involving questions of major public interest.

None of the *friends* that filed briefs represented an actual party in the case. The briefs were filed to advocate either in defense of marriage and maintaining the status quo, or to re-define marriage and allow same-sex couples to marry. Let's look at parts of three of these briefs.

The brief filed on behalf of the United States argued for the re-definition of marriage. U.S. Solicitor General Donald Verilli argued that Prop 8 violates the Equal Protection Clause in the Fourteenth Amendment to the U.S. Constitution. In California, he argued, same-sex couples are granted through domestic partnership law all the rights of married couples only they aren't allowed to "marry." This singles them out for unfair treatment, he argued.

Mr. Verilli stated that there is no longer a rational reason for California to maintain the tradition definition of marriage on the grounds that it promotes responsible pro-creation and child rearing, since same-sex couples in California can already become parents and raise children there. Denying same-sex couples marriage licenses, he claims, denies them equal protection of the law.

In contrast, the United States Conference of Catholic Bishops (USCCB) argued against re-defining marriage, stating "it is reasonable for government to view the union of one man and one woman united in marriage as the *preferred* environment for the bearing and upbringing of children, even if, as it happens, some children are raised in non-marital contexts as well."

Maintaining the traditional definition of marriage and encouraging stable families is a compelling government interest, the USCCB argued, an interest "of the highest order."

"No institution other than marriage," the USCCB brief asserted, "joins a man and a woman together in a permanent and exclusive

way and unites them to any children born of their union. No other institution ensures that children will have the opportunity to be raised by both a mother and a father."

A third brief filed by Dr. Leon Kass, Dr. Harvey Mansfield and the Institute of Marriage and Public Policy also addressed the well-being of children and, in turn, society as a whole. They argued that there are no reliable expert opinions upon which to base the court's decision on whether to extend to same-sex couples the right to marry, because much of the present research in this area is colored by ideology. "The simple fact is," they point out, "that nobody knows, or could possibly know, what the effects of legalizing same-sex marriage will be."

Dr. Leon Kass, an MD and PhD, and Dr. Harvey Mansfield, a political scientist, are individuals who have "devoted significant scholarly attention to the modern scientific project and to issues relevant to the appropriate structure of family." They advised the Justices to proceed with caution.

"There could conceivably come a time," they observe, "when supporters of traditional marriage are compelled to acknowledge that same-sex marriage is not harmful to children or to society at large. That day is not here, and there is not the slightest reason to think that it is imminent."

"It is no less possible," they continue, "that scientific evidence will eventually show that redefining marriage to encompass unions of same-sex couples does have harmful effects on our society and its children. That day is also not yet here, but there is no basis for this or any other court to conclude that it will never arrive."

Ultimately, the Supreme Court chose not to address the merits of the Prop 8 case, choosing instead to find that the supporters of the law did not have legal standing to appeal. Thus the federal trial court ruling striking down Prop 8 will stand, meaning same-sex marriages will resume in California.

Each state will ultimately have to decide for itself whether to extend to same-sex couples the right to marry.

The impact same-sex marriages will have on children and society is unknown. If marriage is

to be re-defined as the union of any two adults, what does that mean for children born and raised in that environment? If two men have the right marry, and to "sire" children (with the assistance of a third party, since they can't biologically do so themselves), who would serve as the child's mother?

Some would argue that a man can "mother" a child just as well as a woman. Even if that were true, doesn't a child have the right to know and to be raised by his or her biological mother? Isn't that a fundamental human right that overrides all else for the common good?

Supporters of the *La Manif pour Tous* movement that opposed re-defining marriage in France raised these very questions. While the movement wasn't ultimately successful in defeating the law, Ludovine de la Rochere, the leader of the group, recently stated that while the movement was painted as a political movement, a faith-based movement, and a "coalition of hateful homophobes," it is actually one that is "open to all who worry about the rights and well-being of children."

"We want a better world, not a brave new one," she exclaimed, in reference no doubt to Aldous Huxley's 1932 novel *Brave New World*, in which Huxley describes a world where sex is a social activity, rather than a means of reproduction, and children are produced through technology.

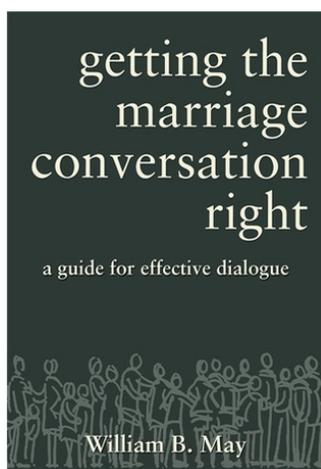
In her speech, she lamented the undemocratic manner in which the law was passed, the lack of a true debate of the concerns her movement raised, and what the law's passage will mean going forward. She promised continued opposition to it, stating "the hour of resistance beckons us. This is a question of humanity, its future, the future of man and woman, our children, and their freedoms."

She is correct. Re-defining marriage threatens the institution of marriage itself, threatens the notion that children have a basic human right to know and to be raised by their biological mother and father, and threatens the religious and civil liberties of those who oppose it.

We are not France ...yet, but the hour for deciding this issue is now upon us. Whose voice will we listen to?

*Tyler McClay is the general counsel for the MCC.*

# “Getting the Marriage Conversation Right”



Frequently Asked Questions about *Redefining Marriage and Related Issues*.

Q-2: *What is the difference between opposing “same-sex marriage” and opposing redefining marriage?*

A: Marriage between a man and a woman is an institution that not only unites them with each other but with any children born from their union. To accommodate the demands of the “gay rights” movement, marriage would have to be redefined as merely the legal recognition of a committed relationship for the fulfillment of adults. Removing marriage between a man and a woman from the law eliminates the only institution that unites children with their moms and dads.

Q-18: *When you say the only public interest in marriage is that it is the only institution that unites children with their moms and dads, doesn't that ignore many other benefits of marriage?*

A: Yes, there are many benefits and goods of marriage, but the fact that it unites a man and a woman with each other and any children born from their union is the sole reason that marriage has been recognized as a reality by every culture, every society, and every religion – each

in their own way. United families are the first and fundamental cell of society – the first school of love, peace and justice. Marriage, their foundation, must be supported by laws and school curricula. In fact, every institution in society must be evaluated by how well it supports marriage and the family. (*Catechism of the Catholic Church, pt. 3 chap. 2 art. 1; Blessed John Paul II, Letter to Families, no. 7,17; Blessed John XXIII, Pacem in Terris, no. 16*).

Q-23: *Why is the Catholic Church trying to impose its beliefs about marriage on society?*

A: Catholics must never try to impose an article of faith on others. That would be a violation of dignity of the person and the right to religious freedom. However, the Church is right to provide moral guidance in the defense of the dignity of the person, marriage as the foundation of the family, and the fundamental human right of children to be born into a family with a married mother and father. (*Donum Vitae, A1*). The organization of secular society is not the work of the Church, but of politics. Participation in this work is the role of the laity using reasoning purified by faith. This reasoning can be known to all independent of faith or belief in God. (*Deus Caritas Est, no. 28*).

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## Marriage in the United States

### States Upholding Marriage:

#### Through Constitutional Amendment:

Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin

#### Through Statute:

Hawaii, Illinois, Indiana, Pennsylvania, West Virginia, Wyoming

### States Recognizing Same-Sex Relationships:

“Same-Sex Marriage”:  
California, Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Rhode Island, Vermont, Washington, District of Columbia

Domestic Partnership:  
Nevada, Oregon

Civil Unions:  
Colorado, Hawaii, Illinois, New Jersey

In 2004, Missouri voters solidly endorsed a state constitutional amendment affirming marriage as the union of one man and one woman, a decision that was closely watched by national groups on both sides of the battle. This was the first vote of its kind after Massachusetts legalized same-sex marriage in 2003.

Source: *National Conference of State Legislatures*