

Marriage and Religious Freedom

I. Introduction

I am grateful for the opportunity to address you today and to express my warmest thanks for all the ways you bear witness to the Gospel of Life and to the role of the family in Church and society. I also appreciate all the ways you help married couples live their God-given vocation amid the challenges and pressures of our increasingly secular culture and for your stout defense of the very institution of marriage and family, especially in these days when it is under assault by our nation's highest court.

Even though I did a little homework to prepare my address for today, perhaps I am best prepared to come before you because I just spent a few days at my parents' home. Mom and Dad were married 66 years ago in New Albany, Indiana, and at age 93 and 92 are still going strong, living on their own, and still trying to keep the likes of me on track. In their married lives they have faced all kinds of challenges which, in God's grace, have become great blessings.

To give you just one example: My older brother has special needs and lives in a group home not too far from my parents' home. Every Wednesday my brother goes to my parents' house for lunch and the menu is always the same: chili, caffeine-free coke, and a cake with a single candle on it (which my brother blows out with great gusto). On weekends, Mom and Dad visit Frankie's home but no visit would really be complete unless they brought a cake. In ways big and small, Mom and Dad continue even now to teach me what it means to live a vocation with permanence and self-sacrificing love. You can see why my visiting them is my best preparation for being with you to reflect on the truth and beauty of the vocation of marriage and family and on our duty to defend that vocation in season and out of season.

II. The Fortnight for Freedom and the Supreme Court

The Church in our country recently celebrated a second Fortnight for Freedom. During this year's Fortnight, the Supreme Court issued two rulings which will have a great impact both on the future of marriage in the United States and also on the future of religious freedom. Let's review what the high court decided.

In *Hollingsworth v. Perry*, commonly known as “Proposition 8”, the Supreme Court considered the California referendum in which voters decided in favor of authentic or natural marriage. The majority opinion, written by Chief Justice John Roberts, found that the proponents of Proposition 8 lacked standing to defend the law from constitutional challenge on appeal. As a result the Court vacated the decision of the 9th Circuit Court of Appeals but did not decide the constitutionality of Proposition 8. Almost before the ink was dry, however, the State of California resumed so called “same-sex marriages”. Although there are appeals underway, the likely result is that “same-sex marriage” will prevail in California.

In *United States v. Windsor*, the Court struck down Section 3 of the Defense of Marriage Act, or DOMA, as that law applied to same-sex couples that are “married” under state law. DOMA, Section 3, defines marriage as the union of one man and one woman for purposes of federal law only. The Court found that it violated the Equal Protection principles of the 5th Amendment for same-sex couples that are legally married under state law not to have the same benefits of legal marriage under federal law that all other married couples in that same state would enjoy. The court found this exclusion from federal benefits impermissible because it read DOMA as an expression of hostility toward gay people and as targeting them for special disfavor . . . more on this in just a moment.

On the plus side, the Court did not find that the Constitution requires states to recognize so-called “same-sex marriage”; thus the Constitution does not require a nationwide redefinition of marriage. But this “plus side” is a narrow sliver indeed. On the whole, the Court has acted in a way that will further undermine marriage and, in the process, raise a host of religious liberty issues. It all but abandoned the obligation of government at every level to recognize the unique nature and role of marriage in society. In the disappointing majority opinion penned by Justice Anthony Kennedy, the procreative dimension of marriage was given short shrift, and the bad effects of such massive social engineering on children was hardly noticed.

What is perhaps most disturbing in the majority opinion is the view that those who uphold traditional marriage are guilty of discrimination and bigotry. The majority of the Court adopted the opinion not only of those who support the redefinition of marriage, but also of those who try to intimidate and silence supporters of marriage

by branding them as people who are against equality. In fact, Justice Antonin Scalia acknowledged as much when he wrote: "In the majority's telling, this story is black and white: 'hate your neighbor or come along with us.'" The majority treats supporters of traditional marriage, he wrote, as "unhinged members of a wild-eyed lynch mob." Such attacks on supporters of authentic marriage are patently unfair and false and ignore the central question of marriage. These attacks bode ill for the future of marriage and the future of religious freedom.

Dear friends, we are not *against* anyone...& don't let anyone convince you otherwise. We are *for* marriage, we are *for* children; we are *for* families; and we are *for* preserving the religious liberty that God has given us and that our Constitution guarantees us as Americans who are also people of faith.

III. Assaults on the Understanding of What Marriage Is

Even as we are renewed in our resolve, however, we recognize that we are in the midst of a cultural sea change regarding marriage and perhaps a host of other human relationships, a sea change that many younger Americans take for granted. While an increasing number of young people identify themselves as pro-life, fewer are convinced that marriage is a unique relationship of committed love between one man and one woman ordered toward the good of the spouses and the procreation and education of children. Rather, they see the redefinition of marriage simply as a matter of equality. If two people of the same sex love each other enough to commit to each other, so the reasoning goes, why shouldn't they be allowed to marry and why shouldn't they enjoy the benefits accorded all married couples? It's a matter of fairness, civil rights, they say... it's a matter of overcoming unjust discrimination, or so it goes.

Before assigning reasons for this state of affairs (that will come later), let's reflect on what it means to redefine marriage. For thousands of years, people of diverse cultures & religions have regarded marriage as a complementary relationship of love between one man and one woman, pledged to permanence, fidelity, and openness to the gift of new life. Marriage was regarded as an all-compassing relationship - not merely an emotional union and not merely a bodily union but indeed a union of mind, heart, soul, and body - a love so complete that, by its very nature, it is capable of bringing forth new life into the world; a love so complete that it leads to the

establishing of loving stable homes where children can grow and flourish toward maturity. It was further thought that the State had a legitimate interest in this unique relationship called marriage and family, because it is from loving parents and stable homes that well-adjusted, educated, skilled, and virtuous citizens would come. Because of its immense contribution to the common good, the State afforded marriage special protections and benefits.

And there's more. Even though marriage was valued because of its benefits to society, it was also regarded as an *inherently* valuable state of life, not merely as a way of securing good outcomes. Marriage was thought to have intrinsic value because the good of procreating human life in a relationship of committed, permanent, faithful love was thought to be inherently valuable.

In the main this view of marriage is not particularly religious. It is not expressive of any particular theology but rather was broadly shared in Western culture and in many other cultures as well. It is found in the writings of philosophers such as Aristotle and Socrates and in many faiths, biblical and non-biblical. Nor did this understanding of marriage emerge out of a desire to discriminate against any group or class of persons such as those with a same-sex attraction. Rather, the truth about marriage made sense to a very wide swath of people representing many races, cultures, and epochs. In a word, these notions of marriage have something to do with the natural law, that law 'written on the human heart' to which St. Paul makes reference. They represent fundamental human goods toward which the human intellect and will tends, even though the human spirit has been darkened and weakened by sin.

There is another reason why marriage was thought to be unique and to have intrinsic value. This reason has to do with the in-built link between the human person and the human body. Growing up, we were taught at home and at school to respect our bodies not just because they are ingenious compilations of cells which, when combined properly and functioning normally, can do wonderful things. Rather, we were taught that the body is a part of our personhood. Respect for one's body was part of respect for one's person. The body was an integral part one's personhood with in-built meaning and dignity.

This too seems to have changed, or so many observers seem to think. Now the body is regarded less as an integral part of one's personhood and more as the instrument of one's will. What's more, nowadays the relationship between will and intellect is sometimes understood differently than was previously the case. If, before, reason was thought to guide the will in choosing the good, today, reason is seen more as the servant of the will, guiding the will to find ways to obtain and enjoy what it wants. The interior of the person is seen less as a spiritual core of contemplation and virtue and more as a bundle of wants, needs, and desires, often styled as "rights", "rights" that have little to do with the fundamental freedoms of the human person. If the intellect is the servant of the will, the body is the instrument of the will, the means by which the will's desires are fulfilled. The body's value lies in its instrumentality. To be sure, in this view of things, the body should be taken care of as if it were a fine instrument, but only an instrument, and not a sign or symbol of anything deeper. The foregoing, of course, is only a "Cliffs Notes" version of philosophical problems that Blessed John Paul II addressed in his "the theology of the body".

I mention these philosophical problems because they have a lot to do with the redefinition of marriage that is now underway in much of the world. In 1968, when Pope Paul VI issued his encyclical, *Humanae Vitae*, it was widely rejected by many, both within the Church and the wider culture. A principal critique focused on the encyclical's supposed "physicalism" or "biologism", i.e. its analysis of the in-built meaning of conjugal love in its physical dimensions. This critique claims the encyclical "absolutized" the physical dimension of the act and identified it with the truly human and moral aspect of the act. What has come to pass is that the human and moral aspect of the conjugal act has been very nearly divorced from its physical dimension. The body is merely an instrument to be used as a person wishes, even sexually, so long as everyone consents, and is of age, and nobody gets hurt. It is easy to see how this view of the human body opens the door not only for "same-sex marriage" but for many other types of sexual arrangements. It is also not surprising that many who dissented from *Humanae Vitae* now dissent from the Church's teaching on marriage as between one man and one woman.

Ideas, of course, have consequences and this set of ideas is no exception. While the fundamental notion of marriage has been under assault philosophically, the institution of marriage and family have been under assault in popular culture,

through contraception, abortion, no-fault divorce, through governmental overreach, and unrelentingly negative portrayals of marriage and family in the media and in popular entertainment. The onus for this bundle of cultural problems does not rest on any one particular group of people – it is a responsibility we all share. But this “bundle” has helped prepare the ground for the wholesale redefinition of marriage now underway, a redefinition which I would submit aims toward the abolition of marriage. How this is so will become more apparent as we look at how marriage is being redefined.

IV. Redefining Marriage

It is increasingly apparent that the redefinition of marriage means more than merely expanding who might be eligible to enter into it. It’s more than saying – ‘whereas formerly only two members of the opposite sex could marry, now two members of the same sex can marry.’ Rather, redefining marriage represents a profound change in what society understands marriage to be. If, before, it was widely regarded as the bodily union of man and woman ordered to new life with at least some expectation of permanence and fidelity, now, marriage is increasingly understood as a legally sanctioned emotional bond, more or less permanent, more or less exclusive, between any two consenting adults.

We can readily see that this notion of marriage jettisons what is in fact unique to marriage as the one-flesh union of a man and woman open to new life and ordered toward permanence, fidelity, and stable family life. If marriage really is a mere emotional bond among consenting adults who want to have their relationship legally formalized, a relationship with no inherent link to the procreation of children, some would say that there is no reason to limit it only to two individuals.

And let us not lose sight of this. Those who hold for same-sex monogamy are regarded in some quarters as regressive. In the view some contemporary thinkers the very institution of marriage, however it is conceived of, is repressive and unjust. There is advocacy for reorganizing human relationships in ways other than marriage and in thinking of families as almost anything other than mom, dad, and the kids. Once marriage has been loosened from its conjugal moorings, it is on the path to extinction, it’s on the path of being replaced entirely. The redefinition of marriage will lead to the abolition of marriage as a state of life worthy of special recognition

and protection in both culture and law.

V. Redefining Marriage and Religious Freedom

In the minds of many, however, redefining marriage is harmless. As noted earlier, this redefinition is seen simply as a matter of equality and fairness. It's simply expanding the universe of those eligible to marry with no religious freedom implications. After all, in states where "same sex marriage" is legal, religious folks are told that no minister with conscientious objections will ever be forced by the law to preside over a so-called "same-sex marriage". This is said to be sufficient to protect religious liberty. I note in passing that conscientious justices of the peace and notaries are not so lucky. In some states where "same-sex marriage" is legal a number of these individuals were told either to conform to the law or resign.

On a few occasions I testified before congressional committees with regard to challenges to religious freedom in the United States, most especially the now infamous H.H.S. mandate. During those sessions, I was questioned about so-called "same-sex marriage". The premise of at least some of the members' questions was that DOMA is comparable to "Jim Crow" laws and those who hold on to the traditional notion of marriage are bigoted, a view which, as we have seen, was repeated in Justice Kennedy's flawed majority opinion on DOMA. I take this view to be a "mainspring" of all the other religious freedom problems which the broad legalization of "same-sex marriage" will produce. What the Church teaches regarding marriage and sexuality will be regarded not merely as old-fashioned and culturally irrelevant, but rather as a form of hate-speech which deserves to be punished. Professor Eugene Volokh of UCLA, a supporter of same-sex marriage, says that after the gay rights movement ends repressive laws against gays and enacts laws securing equal treatment, its next goal (and I quote), "...has to do with delegitimizing and legally punishing private behavior that discriminates against or condemns homosexuals."

The Church's teaching itself clearly and wholly condemns discriminating against and condemning people with a homosexual inclination but also strongly upholds the truth about human sexuality and marriage. Indeed, the Catechism of the Catholic Church (cf. no. 2358) speaks of the respect, compassion, and sensitivity we should have towards all, including those of a homosexual inclination, adding that every sign

of unjust discrimination in their regard should be avoided. But not content with that, Professor Volokh, and many like him, seek to delegitimize and chill those parts of the Church's teaching he finds discriminatory. And this is not imaginary. Not long ago efforts were made to bar a Catholic campus chaplain from a prestigious university in Washington, D.C. because, in a Catholic parish church where university students attend Holy Mass, that priest defended marriage as between one man and one woman.

There are other efforts to "chill" the conversation about marriage and sexuality, such as local and state anti-discrimination legislation and laws. On the surface, it might appear that such laws are in accord with Catholic teaching on respecting the human dignity of persons that experience same-sex attraction. Yet, if one looks further it will readily become apparent that such laws, which usually include virtually no religious liberty protections, could be used to put a damper on the free expression of the Church's teaching on marriage in the public square and force the Church to employ and provide benefits for those involved in "same-sex marriages". In many states anti-bullying bills have been introduced and enacted. No one wants to be on record opposing bills that ban bullying yet if one looks below the surface of such laws one sees a different agenda. It isn't merely a matter of teaching children to treat others with respect, something every Catholic school and parish religious education program fosters. It's a mandate to include in public school curricula content and activities that promote the L.G.B.T. agenda. Nor should we imagine that public school textbooks and curricula are "religion-neutral" when it comes to matters such as this. It is hard to imagine that young people who are taught such lessons at school and who have those lessons reinforced at home, in popular culture, and in the media will be open to the Church's teaching on sexuality and marriage, though, indeed, 'nothing is impossible for God!'

It is also the case that the very notion of marriage is pervasive throughout federal and state law. The redefinition of marriage is therefore not a small, isolated change confined only to those laws that regulate marriage as such. Rather, it includes many matters such as hiring, benefits, licensure, use of facilities, and school curricula. To repeat, in most jurisdictions where marriage has been redefined there are few if any meaningful religious and conscience exemptions either for religious institutions or for private employers.

As you know, the Church employs a lot of people; many, if not most of us in this room, are church employees. Fortunately, as the result of another Supreme Court decision, *Hosanna-Tabor*, the Court upheld the “ministerial exception” which acknowledges the right of churches to designate who will serve as leaders and ministers. Catholic dioceses and parishes still enjoy great latitude in this regard yet if so-called “same-sex marriage” becomes the law of the land, the question will arise about non-discrimination in hiring those involved in “same-sex marriages” and about providing benefits for these individuals.

Moving into the area of licensure - many Catholic Charities operations offer adoption and foster care services, often under contract with state government but almost always with additional funds from private donors. For good reason, adoption and foster care is licensed and regulated by the state yet sometimes state and local government overreaches. In the District of Columbia the City Council declared that Catholic Charities, which does an enormous amount of good in the community, was not a fit agency for the city to do business with because it refuses to place children with same-sex couples, in a word, because they say it is “discriminatory”. In various states, such as Massachusetts and Illinois, Catholic Charities was forced to close down their adoption services for much the same reasons.

Let me touch for a moment on the use of church facilities. One might think that church halls constructed through the generosity of parishioners could be used only for those purposes that are in keeping with their faith. Largely that is still true yet even here there are challenges. When a same-sex couple wants to hold its wedding reception in a church hall which otherwise accommodates the public in order to raise funds, such a parish (and a diocese) might find itself in court. Sadly, similar challenges are faced also by private businesses. Such was the case for owners of a bed and breakfast in Vermont. Because the owners refused to host a “same-sex wedding” reception, they were dragged through the courts and ended up paying tens of thousands of dollars to settle the matter. These are but a few of the religious freedom challenges we will face if and when, God forbid, so-called “same-sex marriage” becomes the law of the land.

VI. Your Service As Family Life Ministers

The point of telling you all these cheery stories and raising all these lighthearted

points about the law is not merely to describe the cultural and political challenges we are facing. It has much to do with the valuable ministry which you render the Church in your services as Directors of Family Ministry in your respective dioceses. Your ministry is more important than ever.

Speaking recently to the bishops of the United States John Garvey, President of the Catholic University of America, challenged us. He said if people want to defend religious liberty they must love God more. If we want to defend marriage and family, then we and those we serve must be led to know, love, and understand the Church's prophetic teaching on marriage and family - not in a defensive or edgy way - but rather as part of the Good News they've been waiting all their lives to hear. To repeat, we are not against anyone or anything. We are *for* marriage, *for* married couples and family life, we are *for children* and their future, we are *for* the common good of Church & society.

One of the reasons why so many young people support "same-sex marriage" is because they have not yet really heard the Church's teaching, including the courageous teaching of *Humanae Vitae* of Pope Paul VI and *Familiaris Consortio* and *Evangelium Vitae* of Blessed John Paul II. In his new encyclical on faith, Pope Francis revisits that teaching which is eminently reasonable but also shines forth so clearly in the Church's teaching. He says that 'the first setting in which faith enlightens the human city is the family.' He goes on to say (and I quote): "I think first and foremost of the stable union of man and woman in marriage. This union is born of their love, as a sign and presence of God's own love, and of the acknowledgment and acceptance of the goodness of sexual differentiation, whereby spouses can become one flesh and are enabled to give birth to a new life, a manifestation of the Creator's goodness, wisdom, and loving plan . . ." (L.F., no. 52). Pope Francis further teaches that it is possible for us to pledge permanence in love when we perceive "a plan bigger than our own ideas and undertakings, a plan which sustains us and enables us to surrender our future entirely to the one we love" (ibid). He adds that it is faith which helps us grasp in all its depth and richness the begetting of children as a sign of the love of the Creator who entrusts us with the mystery of a new person . . ." (ibid). The Pope further reminds us how the family is the privileged setting where the faith is handed on from generation to generation.

Marriage and family form a prime sector where the New Evangelization and the defense of religious freedom converges. You know, far better than I do, that the challenge before us is to open minds and hearts to Christ: to engage them in the great wedding feast that is the very life of the Church, the marriage of Christ the Bridegroom to His beloved Bride, the Church; to allow them to experience the joy of that true love in moments of prayer, adoration, catechesis, and service to those in need; to invite them to share in that love which makes sense of their lives (cf. RH, no. 10), that love which sheds the rays of its glory on every other love – purifying it, elevating it, making it worthy of our humanity made in His image. How necessary that programs of catechesis aimed at the young, at families, at those preparing for marriage or at couples trying to make a go of their marriages – how necessary that these programs be transformed by the spirit of the New Evangelization – the *Holy Spirit* by which we encounter the Christ ‘in whose light we see light’, in whose love, we find love . . . in whose love we discover afresh the truth about human sexuality . . . the truth about marriage, the beauty & challenge of bringing children into the world! In the light of Christ’s love for the Church does the true nature of marriage and family shine forth most clearly, and then only through the witness of couples living this beautiful vocation to the hilt.

Central to the New Evangelization is the need to recover the beauty and truth of the Church’s teaching on the Sacrament of Matrimony as the source by which couples receive the light and strength they need to live their particular vocation to love and to create and sustain truly Christian families in an increasingly hostile society. This challenge is at the heart of your work and at the heart of so many efforts to defend religious freedom.

Pray, teach, witness – live the vocation of marriage and family joyfully and robustly! That is what opens minds and hearts to the need to defend marriage against all the onslaughts it currently faces, that is what opens minds and hearts to the urgent need to defend religious liberty so that our children and our children’s children may be free, not only ‘to worship without fear’, but to build homes based on faith and rooted in love, geared toward virtue and service, to the glory of God, for the salvation of souls, and for the good of our society. May God bless marriage and family and help us protect our God-given liberties. And may God bless these United States of America! God bless you and thank you!