Marriage Matrix
In the Making

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A report on the impact of the June 26, 2003 Supreme Court ruling over Lawerence vs. Texas, and its potential impact on marriage in the states

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When the United States Supreme Court ruled on June 26 of this year that a Texas anti-sodomy law was unconstitutional, the public responded instantly – some in celebration, others in protest. The hubbub has still not died down, and may not for quite some time. Nor should it. This ruling will probably go down in history books as one that ignited one more of our nation's defining moments by causing all Americans to pause and ask themselves once again, just what is at stake here? More precisely, what *do* we believe about marriage, and about family, and do those beliefs have enough merit and truth to help carry us into the future?

The first real rumblings of this current debate emerged in April of this year, when Senator Rick Santorum, R-Pa., made some remarks about the pending Supreme Court case regarding the Texas sodomy law. Santorum stated that if the Supreme Court ruled against the Texas sodomy law, that ruling could be used to legitimize any sexual act, including bigamy, incest, adultery, and others – in essence, equating those sexual acts with sodomy, or 'homosexual sex.'[i] Santorum also stated that "all of those things are antithetical to a healthy, stable, traditional family."1 While most conservative, and even some liberal, Americans would agree with this statement, Santorum's remarks enraged the homosexual lobby, which continues to insist that homosexuality be equated with the traditional, heterosexual, two-parent family.

Barely had the storm surrounding Santorum's comments begun to subside when, in May, a Canadian court ruling rocked the North American continent – and drew world-wide attention. Canadian justices in Ontario ruled that Canada's federal law, defining marriage as between one man and one woman, was "unconstitutional."2 In a suit brought about by seven gay and lesbian couples, Canada joined the Netherlands (which became the first country in the world to legalize same-sex "marriages" on April Fools' Day in 2001) and Belgium in legalizing same-sex unions. A CBS news story called Canada's approval of gay "marriage," "a breakthrough in itself."3 By mid-July, legislation had been introduced in Canada by Prime Minister Jean Chretien to "standardize same-sex unions throughout the country."4 Additional concerns about the Canadian legislation include no "geographic proximity and the lack of a residency requirement."5 In other words, American homosexual couples could go to Canada, apply for a license and get it finalized, and return home the same day.

There is also concern that some of these returning "married" couples may attempt to force American states, especially those states without Defense of Marriage Acts (DOMA) to legally recognize their Canadian "marriage" licenses.

In late June, a storm broke loose here in the United States when the U.S. Supreme Court ruled that a Texas anti-sodomy law was unconstitutional. Citing a right to "privacy" which the Supreme Court "discovered" in a 1965 case titled *Griswold vs. Connecticut*, but which later became better known through it's use in the *Roe vs. Wade* decision,6 the Supreme Court ruled that citizens are entitled to a right to "privacy," and that states have no right to ban certain types of sexual behavior. Nationally syndicated columnist George Will asked an important question in response to this latest ruling; "Once the court has said that some such acts are constitutional rights, by what principle are any of the myriad possible permutations of consensual adult sexual activities denied the same standing?"7 Will's question is accurate, to say the least. Based on the Supreme Court's ruling, North Dakota's cohabitation ban, which was narrowly upheld once more this past legislative session, could be legally challenged and overturned by individuals who believe they have the "private" right to cohabit. This ruling essentially deems state legislatures mute in regards to legislation concerning sexual behavior, as the court has now decided that an individual's right to have sex at any time and in any way they chose supercedes a state's right to determine what laws and policies will govern that state, even when the health and structure of our families and our children are stake. Justice Antonin Scalia, one of the three dissenting justices in the 6-3 decision, stated this concern as well in his opinion; "State laws against bigamy, same-sex marriage, adult incest, prostitution, masturbation, adultery, fornication, bestiality and obscenity are likewise sustainable only in light of *Bowers*' validation of laws based on moral choices."8 *Bowers vs. Hardwick* was a Georgia case decided in 1986, when the Supreme Court upheld Georgia's anti-sodomy law.9 Given the about-face in the Supreme Court's ruling over the Texas law, a statement made by Ken Connor, late president of Family Research Council, and published in USA Today seems hardly stretched; "The majority simply raised a dampened finger to see which way the cultural breezes are blowing."[viii] Justice Scalia made a similar statement concerning his colleaues in his dissenting opinion, stating they had "taken sides in the culture war."10

What does all this mean for our nation's respective states? How much of an impact will this Supreme Court ruling really have on our marriages? Speculation abounds, of course, but real examples are already occurring. In Arizona this month, following the Supreme Court ruling, two homosexual men filed suit in the Arizona Court of Appeals against the Arizona Defense of Marriage Act, claiming that the right to "privacy" cited in the Supreme Court's recent ruling entitles them to the "private" right to obtain a marriage license.11 What these men, and in fact our entire society, seem to be forgetting, is the fact that any marital and/or sexual union has more than merely "private" implications; they have public implications, as well. Marriage is a public institution, and as such, has traditionally been awarded public recognition, rights, and privileges, for its role in creating and maintaining a healthy and stable society. The spread of sexually transmitted diseases, the increase in out-of-wedlock births, and the continual rise in the decline of marriages all point to more than merely a "private" interest in marital and sexual relationships. The question our nation faces today is, will our nation's courts affirm the institution of marriage as a long-standing *public* institution between one man and one woman, or begin to grant homosexuals "marital" privileges, based on this newly discovered "privacy" right? In addition to the Arizona suit, two more cases have been pending in New Jersey and Massachusetts courts, where homosexuals are "seeking to radically redefine marriage by allowing men to marry men and women to marry women."12 The action does not stop there; California is currently seeking to become the second state in the union to legalize same-sex unions by introducing AB 205, which would grant homosexual couples all the rights, privileges, benefits, and recognition of traditional marriages. The bill comes as a direct affront to the voters of California, who in 2000 voted to approve a proposition by an almost two-thirds majority to limit marriage rights to one man and one woman.13

Today, the traditional institution of marriage continues to struggle under the greatest assault it has ever faced. Americans are faced with a critical question, and their answer will define our future as a nation. The question is simply; what is marriage? While homosexual activists continue to use the courts as a means to legitimize and gain rights for themselves, bypassing the legislative procedure and the expressed will of the people, Americans must chose how they will respond. A Federal Marriage Amendment has been proposed which would define, for our

courts, for our statehouses, and for our nation, the meaning of marriage. The Federal Marriage Amendment states:

Marriage in the United States shall consist only of the union of a man and a woman. Neither this constitution or the constitution of any State, nor state or federal law, shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups.

There are some organizations within the pro-life, pro-family conservative movement that disagree that such a federal amendment is the correct response to our courts' judicial activism in creating new "rights" and threatening the foundations of marriage and family here in the United States. However, support for this amendment is far-reaching, crossing cultural, religious, and partisan boundaries, and many supporters believe it may actually have a chance at passage and national ratification, given the fact that 37 states currently have Defense of Marriage Acts (DOMA), including North Dakota. Only 38 states are needed to pass a constitutional amendment. Considering the states' DOMAs and the Federal Marriage Amendment are virtually the same in intent and language, which is to define marriage as between one man and one woman, proponents of the amendment already believe there is a good chance that the Federal Marriage Amendment could be passed.

A federal amendment clarifying the meaning of marriage may seem a huge – and sad – undertaking for our nation in response to the "marriage mayhem" our courts have helped to create. However, as stated by Rep. Marilyn Musgrave, R-Col., and sponsor of the amendment, "You're responding to liberal judges. The activists have not chosen to go through the legislative process. Now this is how we have to respond."14 Just last week, three members of the House of Representatives sent a letter to their colleagues, in hopes of providing an "excuse" for Republicans to vote against the Federal Marriage Amendment. Ironically, the letter, written by Representatives Barney Frank, D-Mass., Tammy Baldwin, D-Wis., and Jim Kolbe, R-Ariz., stated in part that "(T)he amendment, if adopted, would prevent states by (sic) acting through their state legislatures, referenda, or any combination thereof with regard to same-sex unions."15 Not only are the writers of the letter openly gay, but in their letter, they ignore the fact that states have been passing legislation to express the will of their voters in

regards to marriage and homosexuality issues, and the courts and homosexual activists have continued to either ignore or overturn those laws. The proposed federal amendment would serve to protect states' rights in passing legislation to limit homosexuals and activist judges from mandating that states provide legal recognition to same-sex unions or 'marriages.' (For more information on the Federal Marriage Amendment, go to our web page at www.ndfa.org.)

(Endnotes)

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8 Ken Connor, "Right to Privacy Goes too Far" USA Today 30 June 2003: www.usatoday.com/news/opinion/editorials/2003-06-26-oppose_x.htm
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