



## The Federal Marriage Amendment: A Prudent Course of Action

by John Hendrickson

In April the Iowa Supreme Court issued a unanimous opinion (*Varnum v. Brien*) declaring that the defense of marriage law, which stated that “only a marriage between a male and female is valid,” violates the constitutional rights of gays and lesbians.<sup>1</sup> Iowa is now the third state that allows same-sex marriage. The other two states are Massachusetts and Connecticut. In addition, the Legislature in Vermont overrode Governor Jim Douglas’s veto and now the state has legalized gay marriage making it the fourth state to redefine marriage. Amending the Constitution should not be taken lightly, but a stand must be taken to protect traditional marriage. The only remedy to protect traditional marriage is to amend the Constitution by passing a constitutional amendment to protect marriage, that is, marriage between one man and one woman.

Judge Robert Bork noted that “it is arguable today that the American judiciary — the Supreme Court, abetted by the lower federal and many state courts — is the single most powerful force shaping our culture.”<sup>2</sup> Iowa’s Supreme Court decided that the defense of marriage provision in the Iowa code violated the equal protection rights of gay and lesbian couples to enter into marriage. The reasoning is that gay and lesbian couples should be allowed to participate in the institution of marriage on a full and equal basis as heterosexual couples. The debate over marriage does not just center on “protected classes” and judicial interpretation, but it also centers on national values and traditions. As constitutional scholar Matthew Spalding noted:

What is happening is no minor adjustment, a slight change in degree that just extends benefits or rights to a larger class, but a substantive change in the essence of the institution. It does not expand marriage; it alters its core meaning, for to redefine marriage so that it is not intrinsically related to the relationship between fathers, mothers, and children formally severs the institution from its nature and purpose.<sup>3</sup>

“Marriage is being challenged by a number of state and federal court decisions that seek to overthrow the customs, laws, and social norms of human experience.”<sup>4</sup> It is not just marriage that is being challenged by modern liberalism. “They (the gay rights movement) have taken advantage of a morally exhausted nation that tolerates so many things that used to be intolerable — from abortion, to easy divorce, to pornography,” wrote Cal Thomas.<sup>5</sup> Other elements of American society have also been under assault from the progressive view of the Constitution: the military, American history and identity, Christian heritage, among others. “Over the course of the 20th century, America’s principles have been attacked, undermined, and redefined by progressive liberalism — in our culture, in our universities, and in our politics,” noted Spalding.<sup>6</sup>

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A Publication of: **Public Interest Institute at Iowa Wesleyan College**

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Marriage is not just a legal contract between consenting adults, but rather an institution that is the building block of any society, that is, the family. “For thousands of years, on the basis of experience, tradition, and legal precedent, every society and every major religious faith have upheld marriage as a unique relationship by which a man and a woman are joined together for the primary purpose of forming and maintaining a family,” wrote Spalding.<sup>7</sup>

Not only has the Iowa Court redefined marriage in Iowa, it has usurped its role by deciding a fundamental moral issue for the entire state. As Judge Bork stated, courts are redefining our culture and have become “partisans in our culture war.”<sup>8</sup> Iowa is currently considering a constitutional amendment to the state Constitution to protect traditional marriage, but it is still bottled up in the Legislature and it is unlikely to receive any attention with the current Democrat majority. The decision to change the definition of marriage should be decided by the voters of Iowa and not the judicial system.

Changing the definition of marriage will not just alter the meaning of marriage, but have a drastic impact on law, religious liberty, education, association, among other elements of our society.<sup>9</sup> Traditionally, marriage has been left as a state issue, but marriage “is no mere policy issue.”<sup>10</sup> Iowans should continue to demand a vote on the state constitutional marriage amendment, but the Federal Marriage Amendment should also be enacted.

“The question of homosexual marriage is going to be decided at the national level; either there will be a constitutional right to such marriages, created out of whole cloth by judges, or there will be an amendment to block that development,” wrote Judge Bork.<sup>11</sup> The Iowa Court ruling has created a new standard for marriage, which must be reversed by an amendment to the state constitution, but to ensure that marriage is protected nationally, the Federal Marriage Amendment is a necessity.

#### Endnotes:

<sup>1</sup>Code of Iowa, 595.2, Section I, Volume IV, Code of Iowa, Chapters 505 to 915, Des Moines, Iowa, Legislative Service Bureau, 2000, p. 5949.

<sup>2</sup>Robert H. Bork, *Slouching Towards Gomorrah: Modern Liberalism and American Decline*, Regan Books, New York, 2003, p. 96.

<sup>3</sup>Matthew Spalding, “A Defining Moment: Marriage, the Courts, and the Constitution,” *Backgrounder*, The Heritage Foundation, No. 1759, May 17, 2004.

<sup>4</sup>Ibid.

<sup>5</sup>Cal Thomas, “Trouble in River City,” *Worldmag.com*, April 7, 2009, <<http://www.worldmag.com>> (April 8, 2009).

<sup>6</sup>Matthew Spalding, “A New American Fusionism: Recovering Principles in our Politics,” *Heritage Lectures*, The Heritage Foundation, No. 1114, February 5, 2009.

<sup>7</sup>Spalding, “A Defining Moment.”

<sup>8</sup>Bork, p. 376.

<sup>9</sup>For more information on the impact of a redefinition of marriage see Spalding’s “A Defining Moment,” and Thomas M. Messner’s, “Same-Sex Marriage and the Threat to Religious Liberty,” *Backgrounder*, The Heritage Foundation, No. 2201, October 30, 2008.

<sup>10</sup>Spalding, “A Defining Moment.”

<sup>11</sup>Bork, p. 376.

*John Hendrickson is a Research Analyst with Public Interest Institute, Mount Pleasant, Iowa.*

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