Truth Overruled:
The Future of Marriage & Religious Freedom

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I want to start as any good conservative should by turning back the clock 50 years. I would turn back the clock 50 years to the Moynihan Report. Senator Daniel Patrick Moynihan wrote a report on the state of the black family in the United States and he pointed out that births to single mothers in the general population were 5% but within the African American community they were 25%. His conclusion was something to this effect: “Something has gone wrong. Something has gone wrong within that community, something has gone wrong with that understanding of human sexuality, that understanding of marriage.” He was then roundly criticized for being a racist. They said Senator Moynihan was blaming the victims, Senator Moynihan was doing this because he had antagonism, animus, prejudice, bigotry against African Americans. The exact opposite was the case. Moynihan was a liberal professor of sociology at Harvard University, he was a Democrat senator from the state of New York. He wrote his report precisely because he cared about African Americans and he cared about the family and he saw that if the family broke down in that community, a whole host of other consequences in terms of poverty and social mobility and crime and education and employment would be the consequences and he cared about all of those things. He was a former Secretary of Labor; I think he was actually Secretary of Labor when he wrote the report. This is why he did this.

Fast forward to today. Remember the statistics I mentioned was 5% general population and 25% African American population. Today it is 40% of all American children born to single mothers, 50% of the Hispanic community, and it is over 70% of the African American community. Gays and lesbians aren’t to blame for this. Those realities are consequences of heterosexuals who bought into a liberal ideology about sex and marriage and then failed to live out the truth about marriage. The reason I open this way is that the redefinition of marriage by five unelected judges this past June
simply takes the logic of that 50 year change from the Moynihan Report until today and enshrines it into our constitutional law. It is not that gays and lesbians are to blame for the breakdown of the family. It is that the breakdown of the family and the ideas that animated the breakdown of the family are the same vision of human sexuality and of marriage that was then adopted by those who were pushing to legally redefine marriage. Those ideas run all throughout Justice Kennedy’s majority opinion. When you read Justice Kennedy’s opinion, it’s as if you were reading one of the liberal ideologues from the sixties, from the sexual revolution. The phrase, “Love makes a family” is not something that gay rights activists came up with in the past decade as the various state marriage battles were taking place. That is something that activists in the sixties gave us as part of the sexual revolution. The idea that marriage should last as long as love lasts—again that is not something that the LGBT movement gave us, that is something that heterosexuals gave us, who had bought into a bad understanding of the human person and of the human family. Why this matters is that if you think the past 50 years have been a good thing for America’s children, for America’s women, mothers, wives, for society at large, then you can share the extension of that logic by the Supreme Court. If you think this past 50 years have been a bad thing, a bad thing for America’s children, for America’s wives and mothers, for society as a whole, then you might be more hesitant to see judges enshrining it into our Constitution because it is that vision of sexuality that gave us the normalization of premarital sex. The rise of cohabitation, the increase in non-marital childbearing, the introduction of no-fault divorce laws, the more than doubling in the rates of divorce. If you think those consequences aren’t good things, to put it mildly, you might be skeptical about locking that vision into the Constitution. I want to share some lessons about what we should do now. I want to suggest what we can do to try to prevent some of the logical and psychological consequences of the legal redefinition of marriage. What can we do practically to make a difference, to hopefully reform our marriage culture and our marriage laws to strengthen families? What I want to do is to draw lessons from the
pro-life movement.

It was around March 2015 that I started writing a book titled *Truth Overruled: The Future of Marriage and Religious Freedom*. Like most thinking people, I think we knew that Justice Kennedy was going to rule with the four liberal Supreme Court Justices in redefining marriage in Obergefell v. Hodges. I said, “Alright. If come June, we get the *Roe v. Wade* of marriage, what should we do in response?” In thinking through how to answer that question, I looked to, “What did the pro-life movement do successfully after *Roe v. Wade* to make it easy to be a pro-lifer today in the United States?”

Forty years ago when *Roe v. Wade* was decided, all the talking heads said that the Supreme Court has settled the abortion issue, that a generation from now, all of the young people will be pro-choice, that the last pro-lifers would be in nursing homes and inside of the Vatican. All of those talking heads got it wrong. Your generation is more pro-life than your parent’s generation. The reason is the work that your parent’s generation did.

Right now, all the talking heads are saying that the Supreme Court has settled the marriage debate. They are saying that a generation from now, all of the young people will be in favor of this new understanding of marriage and the last “traditionalists” will be inside of the Vatican, maybe inside of Salt Lake City, and in nursing homes.

What can we do to prove those talking heads wrong? The future isn’t a blind force, the future is something that we are active participants in shaping.

As I was researching the book, I drew three large lessons from the pro-life movement. The first lesson from the pro-life movement is that they rejected *Roe v. Wade*. They did not accept *Roe v. Wade* as the last word. They said that *Roe v. Wade* tells a lie both about the U.S. Constitution and a lie about unborn human life. They said that there is nothing in the actual text or logic or structure of the U.S. Constitution that guarantees a right to an abortion. There isn’t anything properly understood that says—in this case it was seven unelected judges—they could simply rewrite the abortion laws in all 50 states. The reason I say that is if we lost 5–4, the pro-lifers lost 7–2. At least we have a closer ruling. We also got four magnificent dissenting opinions. If you noticed at Justice Scalia’s funeral all the commentators were saying, “He was writing his dissent for you,
for students, for future law students, for generations of law students to come.” His dissent will still be read in the Obergefell decision in a way that Justice Kennedy’s will not. Law professors find it embarrassing to try to teach and defend Justice Kennedy’s opinion. They say, “We agree with the outcome, but the logic and the reasoning is embarrassing.” Scalia and Roberts and Alito and Thomas, all four of them wrote their own dissenting opinions, pointing out various aspects of the flaws. They have given us some ammunition here to explain why the court got this case wrong, why it got the Constitution wrong, why it got marriage wrong. What is important from the pro-life movement here is that they said, “This isn’t an issue that is the domain of the eminent tribunal of the courts.”

Every year for the past 42 years, 43 years now, hundreds of thousands of Americans come to Washington, DC, on January 22, and they don’t come because that is when the cherry blossoms are blooming. They don’t come in the middle of January because the weather is great, because airfare is cheap, they come then because that is the anniversary of Roe v. Wade. They frequently come in the middle of blizzards as they did this past year, and they are there to bear witness to the truth. They are there to bear witness that the court got this wrong, it is continuing to perpetuate an injustice against the unborn Americans who are denied the law’s equal protection, and they are there to send a signal. Little by little the pro-life movement has made progress in undoing that court precedent, first with the Born-Alive Infant Protection Act and then with banning partial-birth abortion, and it took them two attempts to do that. The first time they banned partial-birth abortion, the Supreme Court struck it down as unconstitutional. They did it a second time, they went back to the Supreme Court and it was upheld as constitutional. Right now, you are seeing states that are banning abortion at 20 weeks, the federal government is about halfway there, the House has passed it, and the Senate hasn’t taken it up yet. You are seeing states that are saying abortion clinics need to meet the same surgical standards and ambulatory standards as other medical centers, there is a variety of ways to slowly back up the abortion license of Roe. We need to learn from the pro-life movement how to do that on the marriage case,
how to deny the ability of the court to say it gets the last word, and how, particularly as a teaching function, not to allow the court to shape the opinions, the beliefs, and the self-understanding of future Americans. You will see right after Roe, opinion changes—the court taught something about abortion, that it was a constitutional right and therefore a moral right, and the generation who came of age during the time of Roe v. Wade, they are the ones who are most pro-choice because of the law’s teaching function. We need to prevent that from happening here. We need to say that the court got it wrong.

The second lesson, the next thing that pro-life movement did was that they protected their freedom. The pro-life movement said the Supreme Court has just created a constitutional right to choose to have an abortion, but that needs to be balanced by a right to choose not to perform an abortion, not to have an abortion, not to pay for an abortion. Six months after the Roe v. Wade decision, a Congress pass that was known as the Church Amendment: the Church Amendment was not named for buildings made out of stone or brick with steeples and stain glass windows and bell towers. It was named for the Senator from Idaho, a Democrat, Frank Church. What took place in Congress in June of 1973 was that they said, “We are supposed to be a check and a balance on the Court. The reason we have three branches of government is so that we can check and balance each other. The Court has now issued its ruling on abortion, we are going to place one check on the Court by saying the federal government will never force someone to perform an abortion.” Later with the Hyde Amendment, named for Congressman Henry Hyde, it said that no taxpayer funds could be used to pay for an abortion. Later with the Weldon Amendment, named for Senator Weldon, it went beyond just doctors and nurses to any health care professional could never be forced to assist in an abortion or to be forced to learn about how to perform an abortion. So if you were a medical school student, you wouldn’t be forced into training to be an abortionist. This was vitally important for several reasons. One is that it was a bipartisan attempt. They were able to get both Democrats and Republicans to support this. They were able to get
pro-lifers and pro-choicers to agree to this. They were able to say, “Even if you are in favor of an abortion and you are pro-choice, do you need to coerce me into violating my beliefs about the dignity of unborn human life? What is it about your right to an abortion that says I have a duty to perform your abortion or to pay for your abortion?” They were able to win that argument. There has largely been a consensus about this for the past 40 years. What is so remarkable with the HHS Contraception Mandate (from the U.S. Department of Health and Human Services) is that in March 2016, the Supreme Court case involving the Little Sisters of the Poor was one of the first times since Roe v. Wade that that consensus has been violated. The Obama Administration, first in the assault on Hobby Lobby and now on Little Sisters, was actually going to force people to violate their core convictions about the sanctity of life. There is also a lawsuit right now from the ACLU suing one of the largest networks of Catholic hospitals because they don’t perform abortions.

These issues now are being re-litigated and I think it is partly because it is a proxy war for the religious liberty on the marriage issue. That is where I think the rubber actually is hitting the road here. Where you are no longer seeing the bipartisan consensus on religious liberty is, What is the status of Brigham Young University’s law school when it comes to its accreditation? What is the status of a Catholic hospital that won’t do in vitro fertilization for a same-sex couple? What is the status of an evangelical school like Gordon College that has a campus policy about sexual activity that says, “No sex outside of marriage. Marriage is understood as the union of a husband and a wife”? What is the status of a Catholic charity adoption agencies that won’t do same-sex adoptions and only do mother-father adoptions? What is the status of the baker, the florist, the photographer, the marriage counselor, that can’t help celebrate or affirm a same-sex wedding? Those are the religious liberty cases where now we see voices on the Left who otherwise have been in favor of religious liberty, coming out against it. It was this week last year that Indiana passed its Religious Freedom Restoration Act. This was a bill that was sponsored in the House of Representatives by then Representative Chuck Schumer, now Senator Schumer. It was sponsored in
the Senate by Senator Ted Kennedy. It was passed unanimously in the house; it passed with 97 votes in the Senate. Bill Clinton signed it in the law, with the ACLU and the Roman Catholic bishops both praising it, and then 20 something years later when Indiana passes the exact same law at the state level, now Senator Schumer was sending out tweets saying how bad the law is. Hilary Clinton, the wife of the President who signed in the law, was saying how we should be boycotting Indiana. The NCAA said, "We might have to pull out the Final Four from Indiana." Georgia has passed a similar law and right now the NFL is saying it might have to change the location of the Super Bowl if the governor doesn’t veto it. Various groups from Hollywood, including Disney, are saying, "We might boycott the state of Georgia and the city of Atlanta unless you veto this bill." What had been a broad consensus, "the government shouldn’t coerce sincere religious beliefs unless it is doing so for a compelling state interest in the least restrictive way possible”—that is the legal test here. It is not an absolute rule, it is a balancing test. A common-sense religious liberty law is now being demagogued by the left because they want to say on this issue, on the issue of the redefinition of marriage, "No dissent should be tolerated." Let me just talk a little bit more in depth about what some of those cases look like.

The first religious liberty violation that gained public prominence was Catholic Charities’ adoption agencies in Boston. Catholic Charities have been taking care of widows and orphans for about 2,000 years, for longer than the nation-state has existed. But the state of Massachusetts said, "We have now redefined marriage. We have an anti-discrimination statute that elevates sexual orientation to a protected class, like race. You are discriminating, you are violating our anti-discrimination ordinance if you don’t treat same-sex couples the same way as you treat married moms and dads." Catholic Charities says, "Look, we have social science that show that moms and dads aren’t interchangeable so that two moms and two dads aren’t the same thing as a mom and a dad and we think we should do what is in the best interest of the children who are entrusted to our care. We also have religious liberty in this country." The government said, "No, you don’t have
a ‘right to discriminate.’” They were denied an adoption license. In this country, you can’t run an adoption clinic without an adoption license, so they were forced to shut down. This does nothing to help children find homes. Catholic Charities wasn’t trying to prevent same-sex couples from adopting from the government-run adoption agency, they weren’t trying to prevent same-sex couples from adopting from the secular humanist adoption agency. All they said was that “for the children who have been entrusted to us, we want to be free from government coercion, to find them homes with married moms and dads.” And the state said, “No.” What is particularly remarkable here is that whether you chalk this up to grace or to Catholic guilt, so whether you are a believer or a skeptic, however you account for this phenomenon, Catholic Charities had the most successful track record at placing the hardest to place children into homes. Everyone wants to adopt the newborn baby. Cute, cuddly. Not many people want to adopt the 7- or 8-year-old boy with behavioral problems, the kid who has been bouncing around from foster home to foster home, who has been kicked out of school for behavioral problems. Yet Catholic Charities was able to get people to be more generous, to open up their hearts and their homes, to be more loving, more welcoming than other agencies were able to. Again, chalk it up either to grace or to Catholic guilt. They are no longer able to do that in Massachusetts, in Illinois, in San Francisco, and in Washington, DC, where I live. In all four jurisdictions, the government has said, “That is illegal discrimination.”

Those are some of the charity examples. Next involve universities, schools, including law schools. During oral arguments, Justice Alito said to the Solicitor General of the United States, Don Verrilli, “What is going to happen to Christian schools who continue to teach and have policies based on marriage being the union of husband and wife? Will they lose their non-profit tax status, the way that Bob Jones University did?” Bob Jones University is an evangelical school that had a ban on interracial dating, the IRS revoked their non-profit tax status saying, “We don’t give non-profit tax status to racists, to bigots. You are not serving the purpose of non-profit classification, which is helping to serve the common
good. You are actually detracting from it. We are denying you the non-profit status.” Bob Jones sued, it went all the way up to the Supreme Court, and the Supreme Court said, “No, you don’t have a religious liberty right to be a racist.” He says, “Is that going to happen to Orthodox Jewish, Roman Catholic, Evangelical, Latter-day Saint schools?” The answer from the solicitor general was pretty chilling. I was in the courtroom and you could almost sense that people were not quite expecting that answer, but what he said was, “I don’t deny it, Justice Alito. That is going to be an issue. I don’t deny it. It is going to be an issue.” What he could have said is, “Of course not, Justice Alito. We would never treat all of these Abrahamic faith traditions that believe we are created male and female and that male and female are created for each other, we would never treat them as if they were racists. Obviously that belief about sexual complementarity, about male/female, husband/wife, mother/father, is radically different from racism. So we would never instruct the IRS or any other government agency to treat religious schools that way.” He could have said that. That is not what he said. What he said was, “We are going to cross that bridge when we get there. We are going to play that card when and if it is convenient.” Whether that is the remaining 10 months of the current administration, whether that is the next four or eight years of a Hillary Clinton or Bernie Sanders administration, who knows. They want to hold on to that possibility.

The American Bar Association is currently investigating the law school at Brigham Young University (BYU), as to whether or not it deserves to retain its accreditation. A complaint has been filed with the Bar Administration saying that because BYU has certain beliefs about marriage and it has certain expectations from faculty, staff, and students with respect to marriage that it is discriminating against gay and lesbian students and staff members, and therefore shouldn’t be an accredited law school. If you don’t go to an ABA-accredited law school, you can’t sit for the bar exam. You can see how there are various ways, whether it is your non-profit tax status, your accreditation, or your funding. There are only three colleges in the United States that don’t accept any government funding. They are Hillsdale, Grove City,
Christendom, and there is actually a fourth: Wyoming Catholic College. All four of them are small liberal arts schools. Not all of the universities can because the way that the government has structured the financing of higher education—it is virtually impossible to engage in university-level education without receiving government funding. To try to run a science lab, to try to do graduate school, to try to do fundamental research is rather expensive, so they structure the tax code so they overtax us and then give us back some of our tax money with strings attached. The question now will be, “Will some of those strings that are attached be your beliefs about marriage and about human sexuality?”

Even there, take the example of Hillsdale, they don’t take government money, but they could lose their non-profit tax status. What would happen if all of the alumni giving to Hillsdale was now taxable income? What would happen to your campus if you had to pay property taxes? Just think of all of the financial regulatory pressures the government can bring to bear on you because you have incorrect views about marriage.

The last example that I want to talk about are the professionals: the bakers, the florists, the photographers, wedding counselors, people who say, “Look, my religion isn’t just about what I do Sunday morning inside of church. It is not just what I do in a charity or in a school. It is what I do Monday through Friday as well. My religion affects every aspect of my life. I am called to discipleship, I am called to stewardship of my God-given gifts and talents and how I use these gifts and talents. How I live out my life every day of the week matters. I am accountable to God with how I use these gifts and talents every day of the week.” To give you two examples, while the 71-year-old grandmother, Barronelle Stutzman, has no problem baking a “Happy Birthday” cake—well she is a florist, let me use the floral example—doing “Happy Birthday” flowers or “Get Well Soon” flowers for same-sex customers, she had an objection to doing wedding flowers for same-sex customers. What is interesting about Barronelle’s story is that she has employed gay employees in her floral studio. She had no problem hiring gay people. She was selling flowers to this particular gay couple for a decade. She had no problem selling flowers to them for other occasions. It was only after
Washington State redefined marriage that one of the partners came in and said, “Barronelle, we are getting married. Can you do our wedding flowers?” She sat down with him and said, “Roger, you know how much I love you guys, but I can’t do a same-sex wedding. Because of my relationship with Jesus, I am accountable with my gifts and talents and I can’t use God-given gifts to help celebrate what I believe undermines and isn’t in accord with God’s intentions for what marriage is.” She was then sued by the state attorney general saying that she had violated the rights of the same-sex couple who wanted her to make these flowers. She has lost all of her cases so far. It has been appealed to the state supreme court and the state supreme court has announced that they would review it. Sherif Girgis, my co-author, and I filed an amicus brief in that case and we were finalizing that brief to be submitted there, showing why this isn’t like racism. She has been sued in both her personal and her professional capacity. At age 71, she can lose both her business and her home. That is what is at stake here.

The reason I mention both the personal and the professional capacity is because in the neighboring state of Oregon, there is a young Evangelical family, they are in their early forties, Aaron and Alyssa Klein. They have four or five kids. I have lost track in the past couple of years. They were supporting their growing family with a little cake shop. It was called Sweet Cakes by Melissa. They would bake custom-ordered cakes for a variety of occasions. They were asked to do a same-sex wedding cake. They had to decline, they were sued, and they were ordered to pay a $135,000 fine. In addition to that, they had social media boycotts and they were being harassed and picketed and protested. They were forced to shut down their cake shop. Aaron is now supporting the family as a trash collector, making half of what they used to make when they were running their bakery. Lives and livelihoods and vocations are at stake here. What we need to do is we need to form alliances with people who disagree with us about marriage. To say, “Look, even if you are in favor of same-sex marriage, what justifies the government in saying that this baker or this florist, this photographer, has to violate their beliefs about marriage. If your argument for the past decade was about freedom to love and the right to marry, isn’t there also a
corollary right of freedom to operate your business in accordance with your beliefs? Freedom to not be coerced into violating your beliefs about marriage? Is freedom a two-way street here or is it a one-way ratchet?" I am not delusional. I know the activists, the ideologues on the left are going to answer the way they are going to answer, which is, “No ‘right to discriminate.’” But reasonable liberals, reasonable people in favor of same-sex marriage are horrified when they hear about Catholic charities being shut down, when they hear about the harassment of Gordon College and BYU’s law school. When they hear about the baker, the florist, the photographer, they say, “I thought I was voting in favor of pluralism, diversity, and tolerance, and living and letting live.” What we need is to appeal to those people to form alliances with us and to say, “Even while we disagree about marriage, we can agree about freedom, we can agree about religious freedom in particular.”

Two weeks ago I spoke at CPAC, which is the large Conservative Political Action Conference each year, and it was a panel where it was me and a Lutheran, both of us in favor of marriage understood as a union of man and woman. Then it was a gay conservative, obviously in favor of gay marriage, and then a libertarian also in favor of gay marriage. The four of us, we disagree about marriage—all of us agree about marriage—on this issue. It was powerful when a gay conservative saying, “I hope one day to get married, but I don’t want to force a particular baker or florist who disagrees with me into catering my wedding. I don’t want to force Catholic Charities into placing a child with us. I don’t want to force Catholic schools or Evangelical schools or Mormon schools, into changing their teaching or changing their campus policies. Freedom needs to go in both directions on this issue.” We need to form those types of strategic alliances in the way that the pro-life movement did with pro-choicers, which leads to the third lesson from the pro-life movement.

We have to make the case for marriage, just like the pro-life movement made the case for life. The pro-life movement didn’t rest content saying, “Alright, we have protested Roe v. Wade, we have said the Supreme Court got it wrong, we have now protected our rights not to have to perform abortions, and now we are done.” The pro-life movement
said, “Those were just kind of the preliminary steps to do the real work, which is rebuilding a culture of life, which is bearing witness to the truth about life, both in law and in culture.” This particularly important because I actually think you can’t do those first two steps without doing this latter step. My average classmates at Princeton are secular, liberal, progressive, in favor of abortion rights, pro-choice individual, but they are mainly not in favor of forcing Catholic hospitals to perform abortions, or forcing an Evangelical nurse to assist in an abortion. The reason why is that even though they disagree with me and Professor George about abortion, they understand why we believe what we believe about abortion. They could say, “I think Professor George is wrong about unborn human life, but I understand his argument and I could see how if I believe what he believes about that unborn child, I wouldn’t want the government forcing me to perform an abortion.” Now, despite the best of my efforts and Professor George's efforts, my average classmate at Princeton still doesn’t understand what I believe about marriage. They think the Westboro Baptist church speaks for me. If you have never gone to church in your life, you have never read the Bible, if all you know on Christian beliefs on marriage is “God hates fags,” how are you going to respond to the adoption agency, to the school, to the baker, the florist, and photographer? You are much more likely to say, “These people are evil, these people are crazy, and the government has to stop it. The government has to eliminate it. What is being taught at your university is Westboro Baptist Church theology.” At a cultural level, you have to remember that religious liberty debates—there is going to be a legal battle: “sincere religious beliefs,” “compelling state interests,” “least restrictive way possible,” all of the legal jargon—but there is also a court of public opinion battle that takes place. At the court of public opinion, most people say that if you are evil, if you are crazy, if you are delusional, if you are causing harm to other people the way the Westboro Baptist Church is, you don’t deserve to have your religious freedom rights protected. That is what the cultural message was in the Bob Jones University case. One of the challenges for us is going to be, “Can we bear witness to the truth
about marriage in a way that even our neighbors who don’t share all aspects of our worldview can understand? Are we going to be able to explain why both the Westboro Baptist Church is wrong—they are engaged in formal heresy because God hates no one, so their placard at funerals is a formal, heretical statement—and also Anthony Kennedy is wrong. Each of them are getting marriage and the family wrong in various ways and here is what the truth is.” I want to go through a couple of concrete examples in this third lesson from the pro-life movement.

First, pro-lifers were able to make both the sacred and the secular argument about life, both the philosophical and the theological argument about life. We need to be able to do the same. It is important that you know your theology of marriage. It is important that you know what the Bible says about marriage. It is also important that you know what human reason says about marriage, that you can respond to someone who doesn’t share any of your theological commitments with an argument on the basis of reason as to why marriage is a union of husband and wife. The pro-life movement, they developed all sorts of training modules and various programs to teach people how to make the case for life in a way that is accessible to people who don’t share our theological convictions. We need to do the same on marriage. Some graduates of BYU have actually done this. They have taken the arguments that Robby George, Sherif, and I made in What is Marriage? and created a website, DiscussingMarriage.org, and very helpfully put it into a point, counter-point format. We need these things to blossom in many different ways. We also need to be able to make not just a response to the same-sex marriage part, but to the marriage part. Remember I opened by telling about the Moynihan Report. I opened by talking about premarital sex and cohabitation and non-marital childbearing and the high rates of adultery and divorce. It is only after 50 years of heterosexuals making a mess of this, that it was even logically plausible for five judges to legally redefine marriage. They say, “Well, if you are not taking monogamy seriously, if you are not taking permanence seriously, if you are not taking exclusivity seriously, why should we take complementarity seriously?” Part of the task is going to be a holistic
response to the sexual revolution. This is why groups like Fidelio at BYU, the Love and Fidelity Network and various groups, Anscombe societies, are responding not just to same-sex marriage, but to the hook-up culture, to the pornography epidemic, to various ways in which love and the family have broken down. That is one thing that Professor Budziszewski talks about: what are the laws of sex, not just with respect to same-sex marriage, but with respect to the 97% of the population that identifies as straight? What are the various ways that we are getting love and family and marriage wrong?

The second lesson from pro-life movement in this subsection is that science is our friend. The pro-life movement, they relied on the science of embryology, developmental biology, ultrasound. We need not be fearful of the best of secular disciplines like science. The same thing is going to be true on marriage. In the long run, social scientists like Dr. Regnerus at the University of Texas at Austin and like Dr. Paul Sullins at CUA, Jason Carroll, Jo Price, some of the professors at BYU, they will be vindicated because all of the best social science that we have to date, the ones that use large, random, representative samples, show that the best place for a child to develop is in a relationship with their biological married mother and father. We had 40 years of science like this before the question of same-sex marriage took place and they tested every permutation, every alternative family structure, and all of the best social science showed children do best with their married mother and father. Then the question of same-sex marriage came up. They started changing what the standards were for social science. They weren’t using large, random, representative samples; they certainly weren’t doing longitudinal studies; they were doing snowball samplings, convenience sampling techniques, and then the media headlines were, “There is no difference between mother-fathering and same-sex parenting, and that if anything, lesbians tend to actually parent better than mothers and fathers.” Those were what the headlines were showing. Then Mark Regnerus at the University of Texas, Austin, was the first social scientist to say, “Wait, let’s actually use a large, random, representative sample, and see what the outcomes are.” Then Paul Sullins
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at Catholic University of America and various other social scientists using Canadian census data and American data, including faculty members at BYU, what their conclusions are so far is that, compared to same-sex parenting, children still do best with their married biological mothers and fathers. The reasons why tend to be three causal vectors: biology matters, gender matters, and stability matters. Having a double biological connection with a child matters, having gender complementary parenting matters. There is no such thing as parenting. There is mothering and there is fathering and mothers and fathers interact with kids in different ways. Then, stability matters. Why is it that cohabitation, divorce, and remarriage don’t actually reproduce the same outcome as marriage? Because it is not a particularly stable environment. We need to know how to respond when our friend says, “Well, the APA says there is no difference.” Can we explain, “Actually, that is not the best science. This is what the best science shows.” I should mention that the first two chapters of Truth Overruled have the philosophical argument, and chapter seven is a nice summary of the social science.

Third subsection point: personal stories matter. The pro-life movement did a great job by finding the right spokespeople. We don’t want to have old, angry, gray-haired white males being the only people who talk about abortion. You get groups that have been founded, like Women Speak for Themselves, Helen Alvare’s group. You look at activists like Lila Rose. It is very hard to say that Lila Rose is waging a war on women. You have young, articulate, attractive young women explaining why abortion is harmful to women and harmful for children. You have groups like Feminists for Life, groups like Silent No More, talking about the consequences of women who had abortions and regret their abortions; fathers who lost their paternity, lost their children, and lost the opportunity to be parents. That was all revolutionary for the pro-life movement because it changed the narrative. You can argue about statistics, you can argue about philosophy, it is hard to discount someone’s story. That is why the left always tried to say that Barbara Boxer and Nancy Pelosi speaks for all women. That is why Helen Alvaré needed a group, Women Speak for Themselves, because the media wanted to say it
was these elected officials who were fully in the pro-abortion camp who are speaking for all women. Not true. Same thing on the marriage question. The media wants to say that Andrew Sullivan speaks for all gay people and that Zach Wall speaks for all children of gay couples. Neither of those things are true, and in one of the chapters—I forget which chapter it is—I tell some of the stories of gay people who have now come out against gay marriage and children of same-sex couples who say, “We love our two moms or two dads, but we wish we would have had both a mom and a dad.” I want to share at least one of those stories with you in the time that we have here. It is of Heather Barwick. Heather is probably now in her late thirties, maybe early forties. She was raised by two mothers. When you think about the book title *Heather Has Two Mommies*, that was her reality. She loves her two moms. She was in favor of same-sex marriage. She wanted her two mothers to have the legal right to get married. It was only after she got married to a man and saw how her husband was fathering their children that she was able to articulate what she had missed out on by not having a father. It was the first time in her own life that she fully understood what it was she missed out—she has two great moms, but she says, “I loved my mom’s partner, but another mom could never have replaced the father I lost.” She then changed her position on same-sex marriage. She went from being in favor of it to being against it and she wrote a public essay about this. She wrote an essay explaining why she was no longer in favor of gay marriage. She suffered for it. She has gotten lots of hate mail, lots of attacks in the same way that Mark Regnerus has, and in the same way that anyone who speaks the truth in our culture will. She came up with a phrase that I thought was very clarifying. It helped my own thinking on this. She says, “Redefining marriage creates an institution for missing parents. The law teaches and the law would now be incentivizing two mothers and two fathers as if it is the same thing as a mother and a father.” She compared it to single parenting and to divorced parenting. She says, “No one incentivizes and encourages and promotes single parenting or divorced parenting. We don’t have programs out there that are trying to get people to be single parents or divorced parents. No one says, ‘Well,
when I grow up, I hope my kid. I hope she will be a single mom. I hope he will be a divorced dad.” We don’t have institutions for missing parents like that in those respects, with the exception of some bad welfare programs. There are unfortunate consequences to some of our policies, but no one intended that. Her message was, “Redefining marriage actually creates an institution for these missing parents, and then what it does is it stigmatizes the child.”

Bobby Lopez, a bisexual man, was one of the first to say after Mark Regnerus published his report, “His data tells the story of my life.” He wrote an essay titled, “Growing Up with Two Moms: The Untold Child’s Story.” He has done studies showing that second-generation children of same-sex couples are now being told by therapists and mental health professionals that they are the problem if they express a desire for the missing parent. He says, “A generation ago, if you were being raised by two mothers and you said, ‘Well, I kind of miss a father,’ they would sympathize with you and would try to make arrangements, they would empathize with you. Today, if you are being raised by two mothers and you are a child and you say, ‘Well, I am missing a father,’ the therapist, the counselor would say, ‘You have internalized homophobia. The problem is not with your family structure, the problem is with you and that your two moms or your two dads is the same thing as a mom and a dad.’”

Bobby Lopez filed an amicus brief with the Supreme Court reporting on this, that one of the things that redefining marriage will do, will stigmatize children, in addition to creating the institution for the missing parent. We need to learn these stories. We need to be able to share these stories. Doug Mainwaring is another story you should know. He is a gay man who came out against gay marriage saying that, “Just because I am attracted to other men is no reason to deny my children a relationship with a mother.” These personal narratives can help shift the way that this is framed.

Fourth idea in this subsection. The pro-life movement created grassroots support centers, crisis pregnancy centers, Project Rachel, various things to help women who were facing unplanned pregnancies. You look at the Sisters of Life, look at various groups that are out there, providing tangible support to women
who are contemplating abortions. If we are not in favor of same-sex marriage for people with same-sex attraction, what are we in favor of? What does that look like? What does our response look like to people who have same-sex attractions? This is another area where I think the Church of Jesus Christ of Latter-day Saints (LDS church) is doing a great job. The website MormonsandGays.org is providing a forum for these sorts of conversations to take place. Within my own church it is called the ministry Courage. Justice Scalia’s son, Father Paul Scalia, is a chaplain within that organization. This is meant to provide people with the courage to live out the truth of their sexuality, even when doing so may be challenging. It is going to be important that we have formal institutions and programs to help minister to people with same-sex attractions. It is also important that we do things like this. We can’t just outsource it to a monthly meeting at our church, or to a program with a professional. There is a universal human desire for meaningful relationships, for friendships, for companionship. For people who are not going to marry, for whatever reason, possibly because of same-sex attraction, possibly because of other things that prevent it, what are we doing to help welcome them into our own families? When Thanksgiving and Christmas come around, are we inviting people to celebrate the holidays at our dining room table? I don’t know if Mormons have godmothers and godfathers, but Catholics, we do. Are we inviting someone who may not have a child of their own to be a godparent to our children? Are we finding ways of helping to create meaningful relationships in the community without redefining what marriage is? We need to be thinking creatively about what we can do on that answer. The reason I opened by turning back the clock 50 years was to say that it is only because of our misbehavior, our bad example, our failure to live out the truth about marriage for two generations, that we could now be in a position that marriage would be legally redefined. One of the things that we have to do is simply support, encourage, and develop programs to help people form the right moral imagination about their sexual lives, their familial lives, so they can live out the truth, even in a culture that is going to be stigmatizing that. We are
going to be living in the hostile culture for the foreseeable future. What can we do to form our own children, our own communities to be able to live out the truth about marriage? And obviously here, the LDS community has a lot to teach the rest of us. When you look at the rates of marriage within the LDS community, they are the highest, they are the strongest. You get some of Utah’s rates on family structure, dependency, non-marital childbearing, those are some of the best statistics on this. You look at the programs that the LDS church is doing inside of its church communities. The rest of us have a lot to learn from the LDS people. I mention this for two reasons. First, as a Catholic, I have to quote popes, so let me mention two and then I will be done. Pope Benedict XVI, a world-class theologian and a world-class intellectual, says that it is not the arguments of the intellectuals that win converts: it is the lives of the saints and it is the beauty of the artists. It is all the more powerful coming from Pope Benedict because he is a world-class intellectual. He knows it is necessary to do that part of the puzzle and that is obviously the part of the puzzle that I can make contributions to. You wouldn’t want to listen to my music, and hopefully I can live out this and be a saint—lowercase s, if not a capital S. What Pope Benedict is getting at here is that all of us have a vocation to holiness, and it is going to be our own families, our own lived holiness that will be the best apologetic, the best defense, for marriage going forward. I think that we can all make that contribution. Lastly, John Paul II. John Paul did a diagnosis of the twentieth century. He says that what has gone wrong in the twentieth century is that we have a bad understanding of the human person. Whereas earlier times in the church, a focus might have been on Trinitarian theology or ecclesiology, things like that, today’s big debates focus on anthropology. Today’s debates focus on the nature of the human person. Obviously that has implications for theology and theology has implications for that. He said that as we have eclipsed God, we have denigrated man. The twentieth century with the death of God, the eclipse of God, meant a diminishment of that creature who is made in the image and likeness of God. That is what gave us the two world wars, the Holocaust, the Gulag, the Killing
Fields, the totalitarian regimes. It is also what gave us abortion on demand, and embryo-destructive research, and the redefinition of marriage, and the rise of transgender ideology. What all of those phenomena do is they get three central truths wrong, three central truths right from the beginning of the book of Genesis: one, that we are created in the image and likeness of God. Two, that we are created male and female. Three, that male and female are created for each other. If you look at the challenges of our generation, it is going to be those three truths in particular that are going to need defending. They are going to need defending at the intellectual level—philosophy, theology, social science, psychology, psychiatry—and they will need defending at the practical level, simply living them out, being a witness. That is where I think the lives of holiness will be our long-term best defense.

Notes


3. Little Sisters of the Poor Home for the Aged v. Burwell.


