



FACTS & OPINIONS

On Public Interest Issues

Quotes

Being powerful is like being a lady. If you have to tell people you are, you aren't.

– Margaret Thatcher

A lot of people mistake a clear conscience with a short memory.

– Doug Larson

There are no grades of vanity; there are only grades of ability in concealing it.

– Mark Twain

California Court's Judicial Activism Threatens the Institution of Marriage

Jennifer A. Marshall, Daniel Patrick Moloney, Ph.D.,
and Matthew Spalding, Ph.D.

On May 15, 2008, the California Supreme Court overturned California voters' 61 percent majority, expressed in 2000's Proposition 22, in favor of affirming marriage as the union of one man and one woman. The California court's decision is the latest in a series of judicial and legislative efforts to institutionalize a social experiment in its early stages by elevating it in law to the status of the oldest of institutions: marriage.

The legislature previously passed a domestic partnership law granting same-sex couples the benefits and privileges of marriage. What is happening now is no minor adjustment, nor 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. The court's decision does not expand marriage; it alters its core meaning. 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, remaking the institution into a mere contract between any two individuals.

Beyond the Competence of the Judiciary

The decision is a masterpiece of judicial activism. It is long on public policy preferences, and extremely short on law. Questions like what constitutes marriage are beyond the competence and expertise of judges. Decisions like these weaken the judicial system

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Dr. Don Racheter

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Focus on Iowa Wesleyan College

On May 3, Iowa Wesleyan College's commencement ceremony honored the 178 graduating seniors. The keynote address was given by Kathleen Kennedy Townsend, former Lieutenant Governor of Maryland. Townsend also spoke at the dedication of a statue honoring Arabella "Belle" Babb Mansfield, the first woman to be licensed to practice law in the U.S.

IWC sadly bid farewell to its President, Dr. William Johnston, and his wife Susan. A farewell reception was held in his honor at the Mount Pleasant Country Club. Dr. Johnston accepted the position of President of Wesley College in Dover, Delaware.

Joining IWC as its 28th President is Dr. Jay Simmons, who arrived in Mt. Pleasant on June 4. Dr. Simmons has a doctorate in political science from the University of Alabama. He was formerly Vice President for Academic Affairs and Dean at LaGrange College in Georgia. Public Interest Institute welcomes President Simmons!

*Call 800-582-2383
for more information on
Iowa Wesleyan College.*

What's New at Public Interest Institute?

Public Interest Institute is pleased to announce two new staff members. On July 1, Dr. Stephen M. King joined the Institute as Research Vice-President. Dr. King has taught many years in Christian higher education, most recently as an Associate Professor of Government at Patrick Henry College in Purcellville, Virginia. Dr. King earned an M.A. and Ph.D. in Political Science from the University of Missouri-Columbia, and a B.S. from the University of Nebraska-Kearney. Doug Stout recently joined the Institute as a Research Analyst. Doug has an M.A. in Political Science, a J.D. from the University of Iowa Law School, and an M.B.A. from Iowa State University's College of Business. Doug has taught business classes as an Adjunct Professor at William Penn College for Working Adults, and previously served on the staff of Iowa Senator Charles Grassley and former Representative Greg Ganske. Doug is replacing Research Analyst Jon Miltimore, who is now writing for the *Panama City News Herald*. Additionally, Justin Jenkins, a student from Patrick Henry College, is serving as an Intern for the Institute this summer.

Kidneys for Sale

Kerry Howley

"What can Iran teach us about good governance?" is not a question often posed in Washington. But according to Benjamin Hippen, a transplant nephrologist in North Carolina, the Iranians have managed to do something American policy makers have long thought impossible: They've found kidneys for every single citizen in need.

As Hippen explains in a March report for the Cato Institute, the Iranian government has been paying kidney donors since 1988. To avoid potential conflicts of interest, donors and recipients work through an independent organization known as the Dialysis and Transplant Patient Association. Donors approach

the association on their own; they cannot be recruited by physicians or referred by brokers with financial incentives. They receive \$1,200 and limited health coverage from the government, in addition to direct remuneration from the recipient — or, if the recipient is impoverished, from one of several charitable organizations. The combination of charitable and governmental payments ensures that poor recipients are treated as well as wealthy ones.

Critics of organ markets often claim that where payments are permitted, altruistic donation will drop off. Hippen found this is not the case in Iran. The country's deceased donor program, started in 2000, has grown steadily alongside paid donation. (Posthumous donations are not remunerated.) During the last eight years, deceased donations have increased tenfold.

Data on the long-term health of Iranian kidney donors is mixed and inconclusive, so Hippen recommends that any U.S. system closely track donors and provide them with lifelong health care. Since many potential kidney recipients are currently surviving on vastly more expensive dialysis treatment (paid for by Medicare), providing donors with long-term health care is probably more cost-effective than the status quo.

American critics continue to lament that Iran failed to adopt the U.S. policy of banning payment for organs in the mid-1980s. "Carrying this reasoning to its conclusion," writes Hippen, "would entail admitting that in so doing, Iran would have also incurred our current shortage of organs, our waiting list mortality, and our consequent moral complicity in generating a state of affairs that sustains an international market in illegal organ trafficking." No other country has managed to eliminate its kidney waiting list; the U.S. has a list 73,000 patients long. Who should be advising whom?

Kerry Howley is a senior editor at Reason magazine and Reason.com.

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Facts & Opinions

Question of the Quarter:

Heading into the November presidential election, what is the number one issue facing the United States?

Send your thoughts on this issue to us at public.interest.institute@limitedgovernment.org. We may publish some of your ideas in the next issue of *Facts & Opinions* in October 2008 and on our website at: www.limitedgovernment.org.

**California Court's
Judicial Activism
Threatens the
Institution of Marriage**

*Jennifer Marshall,
Daniel Moloney, and
Matthew Spalding*

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by causing the electorate to question the legitimacy of judicial decision-making.

As with *Roe v. Wade*, this decision is troubling from three angles: on the process, on the reasoning, and on the substance.

- It was an instance of the judiciary usurping the political process.
- It was poorly reasoned, abandoning the original meaning of California's constitution in order to invent a right to same-sex "marriage."
- It was wrong on the substance, comparing support for traditional marriage to racism, disregarding the nature and purpose of marriage, and ignoring the reasons for which the state has always set marriage apart from other household forms.

The California court's decision treats the push for same-sex "marriage" as the latest wave of the civil rights movement. The decision repeatedly declares that sexual orientation is just like race or

ethnicity, and traditional views about marriage are the new racism. If the other branches of government aren't moving fast enough to enshrine this new "civil right" and combat this new "discrimination," then the courts will have to do it for them.

The first court faced with this argument made the obvious point: "in commonsense and in a constitutional sense, there is a clear distinction between a marital restriction based merely upon race and one based upon the fundamental difference in sex" [*Baker v. Nelson*, 191 N.W.2d 185 (Minn., 1971)].

Overthrowing Cultural Norms

The decision isn't about "fairness." It isn't about health care benefits. It's about officially elevating homosexual relationships to the unique status of marriage. Across America, proponents of official recognition of same-sex relationships appealed to tolerance and fairness. But the California decision reveals that the push for same-sex "marriage" is not about giving same-sex couples the same healthcare benefits and hospital visitation rights that married couples have. The state of California already gave same-sex couples all that. Instead, the California decision reveals that the push for same-sex "marriage" is about overthrowing cultural

norms that have properly set traditional marriage apart from other household forms on the basis of tradition, legal precedent, and social-science evidence.

Government's interest in marriage has been based primarily on its interest in the welfare of the next generation. Among the many types of social relationships, marriage has always had a special place in all legal traditions, our own included, because it is the essential foundation of the intact family — a father, a mother, and children — and no other family form has been able to provide a commensurate level of social security.

During the 1990s, a serious public policy debate resulted when social science data showed the consequences of several decades of experimentation with family forms. Out of this increased awareness grew a movement for policy and cultural changes to reinforce and restore marriage in America.

By contrast, the current debate over same-sex "marriage" is not anchored in sound research, and data on the consequences of children being brought up by same-sex couples remains scarce. Same-sex "marriage" advocates propose that we institutionalize a social experiment in its early stages by elevating it in law to the status of the oldest of institutions.

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Government Solving Its Own Crises

Alvaro Vargas Llosa

The federal reserve recently announced new measures to tackle the current financial crisis. They include helping J.P. Morgan Chase acquire Bear Stearns, lowering the discount rate, and offering short-term loans to about 20 investment banks — and they came only days after the government said it would inject \$200 billion into the financial system.

These are the latest steps taken by the U.S. government to solve a problem created in large measure by the government itself. We have seen this movie before. As a reaction to the bursting of the dot-com and telecom bubbles at the end of the 1990s, the Fed inflated the currency through the actions of its Open Market Committee. By June 2003, the policy of easy money was reflected in the drop of the federal funds rate to 1 percent. The loose monetary policy was maintained, with variations, for almost five years. The result was a fiction economy in which millions of people borrowed and consumed too much. The fact that mortgage loans were turned into sophisticated securities traded internationally made the fiction global.

Greedy investors and profligate consumers are but a symptom of the real problem, which is monetary policy. The history of the boom-bust cycle since the creation of the Federal Reserve in 1913 has been the deliberate increase of the money supply, the misallocation of resources due to the perverse incentives of inflation, and eventually the bursting of the bubble. It is the consequence of the Federal Reserve system, a central bank that confers upon a chosen elite — the Federal Reserve governors — the monopoly of money creation and the power to decide what amount of money is appropriate for an economy in which millions of people are making decisions they cannot anticipate.

The Fed was created as a response to the periodic bank runs of the late 19th and early 20th centuries. Some of the greatest economists have explained that part of that instability was caused not because private banks were free to issue currency (even as late as 1907) but because the government maintained a policy of rewarding irresponsible behavior by rescuing financial institutions when they reached the verge of collapse. In any case, as Milton Friedman wrote, the instability of the pre-Federal Reserve years was nothing compared to the booms and busts caused by the monetary authorities after 1913.

Nobel laureate Friedrich Hayek, whose free-market ideas triumphed with the collapse of the Soviet Union, frequently denounced the connection between central banks and the boom-bust cycle. In an interview conducted in 1977, he said, “If it were not for government interference with the monetary system, we would have no industrial fluctuations and no periods of depression.... The mistake is the creation of a semi-monopoly where the basic money is controlled by the government. Since all the banks issue secondary money (in the form of loans based on deposits), which is redeemable in the basic money, you have a system which nobody can control.”

In many countries, money used to be in private hands (think House of Rothschild). The fact that money was issued by private institutions in part accounts for the extraordinary prosperity that Argentina enjoyed in the 19th century.

In a system of free banking, institutions that do not protect the value of the currency simply collapse — and their collapse does not wreck the entire economy. Under a rule of law that punishes fraud and counterfeiting, the risk of failure without bailouts is enough to guarantee a more stable system. And in such a system, it would be harder for the government to spend as

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Florida's Health Insurance Reform: Fewer Mandates = More Affordable Coverage

Amy K. Frantz

In trying to help those Americans who do not have health insurance, is the answer more government involvement or getting the government out of the way? The state of Florida is implementing a plan that will test the latter theory — by allowing Floridians to purchase health insurance exempt from the many government-imposed coverage mandates that have driven up the cost of health insurance.

This spring the “Cover Florida” plan was approved unanimously by the Florida State Senate, approved by a vote of 118-1 in the Florida House, and was signed into law by Governor Charlie Crist.¹ The “Cover Florida” plan allows insurance companies to sell “no frills” health insurance policies that are exempt from many of the nearly 50 mandates the state would otherwise impose.

The “Cover Florida” policies will be designed to cost \$150 or less per month, and will be available to any Floridian age 19-64 who has been without coverage for 6 months, or who lost coverage because of job loss. While “Cover Florida” policies

would not cover all areas that the state currently requires of insurance policies, “all benefit plans would include, at the very least, coverage for preventive services, screenings, office visits, outpatient and inpatient surgery, urgent care, prescription drugs, durable medical equipment, and diabetic supplies.”² The “Cover Florida” plan will be implemented beginning next year.

Health insurance mandates require insurance policies to cover certain types of care or providers of care. Overall, state governments have imposed 1,961 mandates on insurers in the states.³ Florida has 48 health insurance mandates; only 12 states have more mandates than Florida.⁴ While every health insurance mandate has supporters and consumers who benefit from that particular coverage, I am sure not every Floridian needs or wants coverage for hair prostheses, acupuncture, or marriage therapy. However, these and 45 other mandates are “required coverage on every single health insurance policy sold in the state of Florida, regardless of desire or potential need.”⁵ Insurance companies are setting health insurance premium rates

to cover all mandates on all policies, whether or not the policy holder ever uses the services, which drives up the cost of health insurance for all consumers. The Council for Affordable Health Insurance estimates that “mandated benefits currently increase the cost of basic health coverage from a little less than 20% to more than 50%, depending on the state and its mandates.”⁶

When it comes to mandates, Iowa is better off than Florida. Iowans are subject to 25 health insurance mandates; two other states also have 25 mandates, while only five states have fewer than 25 mandates.⁷ This may explain, in part, why 21% of Florida’s population is uninsured,⁸ while Governor Culver reports that only 9% of Iowans do not have health insurance coverage.⁹

Without the “Cover Florida” plan, Florida consumers’ only choices were to purchase “Cadillac coverage” with all the bells and whistles or go without health insurance. “Cover Florida” will give Floridians another option, providing more choice and lower-cost options to those who wish to purchase health insurance, but could not afford to do so until now.

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Endnotes:

¹Josh Hafenbrack, “Legislature passes health plan pushed by Gov. Crist to cover uninsured,” *South Florida Sun-Sentinel*, May 3, 2008, <<http://www.sun-sentinel.com/business/sfl-flfhealth0503sbmay03,0,1207424.story>> (June 12, 2008).

²“Governor Crist Signs Cover Florida Legislation to Provide Health Insurance Options to Florida’s 3.8 Million Uninsured,” press release, May 21, 2008, <<http://www.flgov.com/release/10024>> (June 11, 2008).

³Victoria Craig Bunce and J.P. Wieske, “Health Insurance Mandates in the States 2008,” Council for Affordable Health Insurance, <http://www.cahi.org/cahi_contents/resources/pdf/HealthInsuranceMandates2008.pdf> (June 13, 2008).

⁴Ibid.

⁵Dan Miller, “Research & Commentary: Health Insurance Mandates,” e-mail newsletter from The Heartland Institute, June 24, 2008.

⁶Bunce and Wieske.

⁷Ibid.

⁸“The Florida Revelation...,” *The Wall Street Journal*, May 29, 2008, p. A16.

⁹“Statement from Governor Culver on New Census Numbers,” press release, August 28, 2007, <http://www.governor.iowa.gov/news/2007/08/28_1.php> (June 24, 2008).

Amy K. Frantz is Senior Research Analyst with the Public Interest Institute.

California Court's Judicial Activism Threatens the Institution of Marriage

Jennifer Marshall, Daniel Moloney, and Matthew Spalding

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Changing the definition of marriage has vast cultural consequences, including religious liberty implications. When the Massachusetts Supreme Judicial Court invented a version of same-sex “marriage,” the decision had a ripple effect that significantly affected Massachusetts civil society — including forcing Catholic Charities out of the adoption business because of its religious objections to placing children with same-sex couples. Because the California court changed the legal norm to make same-sex “marriage” a fundamental right that the state is obligated to protect and enforce, it will be illegal, a violation of people’s rights, to treat same-sex “marriages” as different from traditional marriages. This will alter daily life from dozens of angles.

Conclusion

The activist California Supreme Court’s decision creating a constitutional right to same-sex “marriage” was a bad decision. Though supporters of same-sex “marriage”

may like the outcome, by usurping the question from the political branches — which in California had been willing to compromise concerning domestic partnership for same-sex couples — the Court creates an all-or-nothing question that can no longer be answered by ordinary political means. The decision makes it all the more likely that California will ban same-sex “marriage” by means of a state constitutional amendment in November 2008 in order to take the issue back from the judiciary. California already had a law defining marriage as the union between one man and one woman, but the state Supreme Court brushed it aside, claiming that the law violated the state constitution. The California decision shows that a state constitutional amendment is vital to the protection of marriage.

Jennifer A. Marshall is Director of the Richard and Helen DeVos Center for Religion and Civil Society at The Heritage Foundation. Daniel Patrick Moloney, Ph.D., is Senior Policy Analyst in the DeVos Center. Matthew Spalding, Ph.D., is Director of the B. Kenneth Simon Center for American Studies at The Heritage Foundation.

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**Public Interest Institute
at Iowa Wesleyan College
600 North Jackson Street
Mt. Pleasant, IA 52641-1328**

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Government Solving Its Own Crises

Alvaro Vargas Llosa

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much money as it does now — a major factor in the devaluation of the dollar — because it could not create money, only tax and borrow. Advocating the abolition of the Federal Reserve, an institution people take for granted, seems too radical for most people, who think financial crises are the result of too little, not too much, government regulation.

So the knee-jerk reaction, as exemplified in so many editorials and statements on the campaign trail nowadays, is to

scream in favor of government intervention — the reason why bank rescues and the pumping of new money is the government's sacrosanct policy.

It is time to think more boldly. If abolishing the Federal Reserve is politically inconceivable right now, there are less dramatic measures that can be taken on the road toward a definitive solution.

The most obvious one is to simply stop using the Federal Reserve to inflate the currency.

If a crisis in which at least \$400 billion has already been lost and millions of people have been badly hurt is not enough to set minds thinking audaciously, nothing will.

Alvaro Vargas Llosa is Senior Fellow and Director of the Center on Global Prosperity at the Independent Institute and the author of Liberty for Latin America: How to Undo Five Hundred Years of State Oppression.

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