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# A Courageous Court Decision — Moral Clarity and Legal Restraint in New York

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The decision against same-sex marriage handed down July 6 by the [New York Court of Appeals](#) (that state's highest court) continues to send shock waves across the nation. The first wave of media coverage focused on the fact that the court found no basic constitutional right to same-sex marriage and declared that any change in the state's marital law would have to come from the legislative branch.

The second wave of media attention has focused on the actual argument put forth by the court's majority. The majority opinion, written by Associate Judge R. S. Smith, Jr., is a legal landmark.

Consider these statements from his [written opinion](#):

*We hold that the New York Constitution does not compel recognition of marriages between members of the same sex. Whether such marriages should be recognized is a question to be addressed by the Legislature.*

Then, this rather remarkable passage:

*First, the Legislature could rationally decide that, for the welfare of children, it is more important to promote stability, and to avoid instability, in opposite-sex than in same-sex relationships. Heterosexual intercourse has a natural tendency to lead to the birth of children; homosexual intercourse does not. Despite the advances of science, it remains true that the vast majority of children are born as a result of a sexual relationship between a man and a woman, and the Legislature could find that this will continue to be true. The Legislature could also find that such relationships are all too often casual or temporary. It could find that an important function of marriage is to create more stability and permanence in the relationships that cause children to be born. It thus could choose to offer an inducement — in the form of marriage and its attendant benefits — to opposite-sex couples who make a solemn, long-term commitment to each other.*

*The Legislature could find that this rationale for marriage does not apply with comparable force to same-sex couples. These couples can become parents by adoption, or by artificial insemination or other technological marvels, but they do not become parents as a result of accident or impulse. The Legislature could find that unstable relationships between people of the opposite sex present a greater danger that children will be born into or grow up in unstable homes than is the case with same-sex couples, and thus that promoting stability in opposite-sex relationships will help children more. This is one reason why the Legislature could rationally offer the benefits of marriage to opposite-sex couples only.*

That passage is filled with moral wisdom known to all previous generations of humanity — but a wisdom all too often rejected in today's context.

But the next section of the decision is a real blockbuster:

*There is a second reason: The Legislature could rationally believe that it is better, other things being equal, for children to grow up with both a mother and a father. Intuition and experience suggest that a child benefits from having before his or her eyes, every day, living models of what both a man and a woman are like. It is obvious that there are exceptions to this general rule — some children who never know their fathers, or their mothers, do far better than some*

*who grow up with parents of both sexes — but the Legislature could find that the general rule will usually hold.*

This statement is highly significant and powerful. The judges who joined in this decision found that the legislature might well find a rational basis for limiting marriage to opposite-sex couples — and the judges then suggested that the need of children for both a mother and a father would constitute such a rational basis.

Further, the judges also allowed that exceptions to the general rule exist, but they rightly argued that the law should be based on the general rule rather than on the exceptions.

Judge Smith's language in this sentence is particularly striking:

*Intuition and experience suggest that a child benefits from having before his or her eyes, every day, living models of what both a man and a woman are like.*

Given the long span of human history, that is hardly a revolutionary statement. Nevertheless, in our current cultural context, those words are truly remarkable — and remarkably perceptive.

Finally, take a look at this summary statement offered by the judges:

*The idea that same-sex marriage is even possible is a relatively new one. Until a few decades ago, it was an accepted truth for almost everyone who ever lived, in any society in which marriage existed, that there could be marriages only between participants of different sex. A court should not lightly conclude that everyone who held this belief was irrational, ignorant or bigoted. We do not so conclude.*

We can only hope that other courts — and the U.S. Supreme Court in particular — will honor this same argument.

NOTE: We discussed this issue on Thursday's edition of *The Albert Mohler Program* [[listen here](#)]. [Oral arguments](#) for the case can be heard at the court's [Web site](#).

