As the debate over same-sex marriage takes the national stage this spring, three Pacificans have played lead roles in a legal battle that’s been called the “Case of the Decade.” The two lead attorneys arguing California’s Proposition 8 case are Pacific alumni; a Supreme Court justice who is also a Pacific McGeorge law professor is considered to be a swing vote in the landmark decision.
At issue is the constitutionality of Prop 8, which defined marriage as being only between a man and a woman and was passed by a majority of Californians in 2005. After both the California Supreme Court and the federal Appeals Court struck down the proposition, the case went before the U.S. Supreme Court in March. Their decision is expected in late June.

**THE PLAINTIFF**

Theodore B. Olson
’62 College of the Pacific

Olson, a well-known conservative attorney who once represented President George W. Bush in *Bush v. Gore*, is one of two lead attorneys who successfully convinced a federal judge to overturn Proposition 8.

To many conservatives’ surprise, in 2009 Olson teamed up with David Boies, who had been the opposing attorney representing Al Gore in the *Bush v. Gore* case, to challenge the recently passed Proposition 8.

Olson, a former U.S. assistant attorney general and Solicitor General, went on to write an op-ed piece for *Newsweek* magazine arguing in part that “true conservatives” would support same-sex marriage because it supports commitment to families and it is an equal rights issue established in the U.S. Constitution.

“Marriage is one of the basic building blocks of our neighborhoods and our nation,” he wrote. “The fact that individuals who happen to be gay want to share in this vital social institution is evidence that conservative ideals enjoy widespread acceptance. Conservatives should celebrate this, rather than lament it.”

“Legalizing same-sex marriage would also be a recognition of basic American principles, and would represent the culmination of our nation’s commitment to equal rights,” he said in the *Newsweek* piece.

Olson shared similar sentiments with a Pacific audience when he was the 2012 commencement speaker.

**THE DEFENSE**

Andy Pugno ’99
Pacific McGeorge School of Law

As the author of Proposition 8 and the attorney for ProtectMarriage.com (the main proponents for the proposition), Pugno has defended the law before the courts.

In 2000, Pugno served as the chief attorney for Proposition 22, a law that defined marriage as being between one man and one woman. It passed, but was invalidated by the state Supreme Court in 2008. One month after the court overturned Proposition 22, signatures were being gathered for Proposition 8.

“Simply put, defining marriage to include same-sex couples is not required by the U.S. Constitution, and Prop 8 doesn’t violate it,” said Pugno in a statement issued by ProtectMarriage.com earlier this year. “By passing Prop 8, the people of California only exercised their reserved sovereign power to amend their Constitution.”

After it was announced that the Supreme Court would hear the case, Pugno said in a statement, “We are delighted that the nation’s highest court will decide whether to uphold the will of more than seven million Californians who voted to preserve the unique definition of marriage as only between one man and one woman.”

“Marriage between a man and a woman has been the cornerstone of our society for millenniums,” he has said. “Prop 8 simply continues what every society has known and practiced: children and society are far better off when traditional marriage is maintained.”

**THE JUSTICE**

Pacific McGeorge Professor
Anthony Kennedy

Many pundits believe that the Supreme Court’s decision on this case will be split along ideological lines, with only one justice as the “swing” or deciding vote on the case. There’s been speculation that the swing vote will come from Kennedy, who has been a faculty member at Pacific McGeorge since 1965 and still teaches an annual summer course on constitutional law.

Kennedy, a Sacramento native, practiced law in Northern California until 1975, when he was appointed to the United States Court of Appeals Ninth Circuit by President Ford. He was appointed to the U.S. Supreme Court in 1988 by President Reagan.

Analysts have said that on the issue of homosexual rights, Kennedy could rule either way. In the 1996 case *Romer v. Evans*, Kennedy voted to overturn a Colorado law that prohibited homosexuals from filing discrimination lawsuits. In the 2003 case *Lawrence v. Texas*, Kennedy authored the majority opinion that struck down Texas’ anti-homosexual sodomy laws.

However, in the 2000 case *Boy Scouts of America v. Dale*, Kennedy voted with the conservative justices to allow the Boy Scouts of America to ban homosexuals from being scout masters.