

MONDAY, JUNE 29, 2015

PERSPECTIVE

Victory for liberty, equality

By Theane Evangelis

“No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization’s oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.”

With those eloquent, profound and deeply moving words, Justice Anthony Kennedy and the U.S. Supreme Court have reaffirmed the entitlement of every American to liberty and equality under our Constitution. And through this historic decision, the justices have demonstrated the Supreme Court’s powerful and critical role in protecting the rights of disfavored minorities in our constitutional democracy.

In January, shortly after the Supreme Court granted certiorari in these cases, I wrote a column in the Daily Journal noting that “Justice Kennedy was the author of every major decision protecting the rights of gay and lesbian Americans over the past twenty years — *Romer v. Evans*, *Lawrence v. Texas*, and *United States v. Windsor* — and his view is likely to carry the day.” On Friday, the 12-year anniversary of *Lawrence* and the two-year anniversary of *Windsor*, Justice Kennedy once again proved himself a guardian of liberty and equality, authoring a landmark opinion ushering in marriage equality and striking down discriminatory laws in every State.

The court’s ruling in *Obergefell v. Hodges* is grounded in both due process and equal protection: It reaffirms that marriage is a fundamental and cherished due process right, and strikes down on equal protection grounds discrimination on the basis of sexual orientation. In Kennedy’s words, “Far from seeking to devalue marriage, the petitioners seek it for themselves because of their respect — and need



The New York Times

Supporters of same-sex marriage outside the U.S. Supreme Court following the announcement of the ruling on the same-sex marriage case, in Washington on Friday.

— for its privileges and responsibilities. And their immutable nature dictates that same-sex marriage is their only real path to this profound commitment.”

The court’s inspirational opinion is an ode to the meaning and importance of marriage as a bedrock institution in our society and across civilizations. And it confirms that our understanding of liberty and equality under our Constitution can and must evolve to eradicate discrimination in every form.

The decision’s analysis correctly begins with the recognition that marriage is an evolving institution that has remained resilient because of its ability to adapt throughout history. Relying on the seminal work of historian Nancy Cott, the court chronicles those developments: “changed understandings of marriage are characteristic of a Nation where new dimensions of freedom become apparent to new generations, often through perspectives that begin in pleas or protests and then are considered in the political sphere and the judicial process.”

The court’s decision also recounts the painful discrimination that gays and lesbians have faced and recognizes that “new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged.” These laws violate equal protection because they “abridge central precepts of equality.” After this decision, it is clear that all laws that discriminate on the basis of sexual orientation must fall.

The court’s analysis trains on four fundamental principles animating the court’s marriage jurisprudence and concludes that same-sex

couples are no different with respect to these principles. First, “the right to personal choice regarding marriage is inherent in the concept of individual autonomy.” Second, “the right to marry is fundamental because it supports a two-person union unlike any other in its importance to the committed individuals.” Third, marriage “safeguards children and families and thus draws meaning from related rights of child-rearing, procreation, and education.” Finally, “marriage is a keystone of our social order.” On that basis, the court concludes that same-sex couple cannot be denied this fundamental right.

Above all, the court’s opinion reinforces the notion of an evolving Constitution. It teaches that we must “respect[] our history and learn[] from it without allowing the past alone to rule the present.” This is because “[t]he nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning. When new insight reveals discord between the Constitution’s central protections and a received legal stricture, a claim to liberty must be addressed.”

Obergefell v. Hodges will thus join the ranks of *Brown v. Board of Education* and *Loving v. Virginia* as a landmark civil rights decision. As with *Brown* and *Loving*, *Obergefell*’s impact will be far-reaching — it is a testament to the Supreme Court’s — and the judiciary’s — powerful and necessary role in our constitutional democracy. Decisions like these bolster the court’s legitimacy in the eyes of the public and reaffirm our nation’s role as a beacon of liberty for the world.



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