

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. New York's statutory law clearly limits marriage to opposite-sex couples. The more serious question is whether that limitation is consistent with the New York Constitution.

New York is one of many states in which supporters of same-sex marriage have asserted it as a state constitutional right. Here, plaintiffs claim that, by limiting marriage to opposite-sex couples, the New York Domestic Relations Law violates two provisions of the State Constitution: the Due Process Clause (Article I, § 6: "No person shall be deprived of life, liberty or property without due process of law") and the Equal Protection Clause (Article I, § 11: "No person shall be denied the equal protection of the laws of this State or any subdivision thereof").

It is undisputed that the benefits of marriage are many. The diligence of counsel has identified 316 such benefits in New York law, of which it is enough to summarize some of the most important: Married people receive significant tax advantages, rights in probate and intestacy proceedings, rights to support from their spouses both during the marriage and after it is dissolved, and rights to be treated as family members in obtaining insurance coverage and making health care decisions. Beyond this, they receive the symbolic benefit, or moral satisfaction, of seeing their relationships recognized by the State.

The critical question is whether a rational legislature could decide that these benefits should be given to members of opposite-sex couples, but not same-sex couples. The question is not, we emphasize, whether the Legislature must or should continue to limit marriage in this way; of course the Legislature may (subject to the effect of the Federal Defense of Marriage Act, Pub L 104-199, 110 Stat 2419) extend marriage or some or all of its benefits to same-sex couples. We conclude, however, that there are at least two grounds that rationally support the limitation on marriage that the Legislature has enacted. Others have been advanced, but we will discuss only these two, both of which are derived from the undisputed assumption that marriage is important to the welfare of children.

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.

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.

Plaintiffs, and amici supporting them, argue that the proposition asserted is simply untrue: that a home with two parents of different sexes has no advantage, from the point of view of raising children, over a home with two parents of the same sex. Perhaps they are right, but the Legislature could rationally think otherwise.

To support their argument, plaintiffs and amici supporting them refer to social science literature reporting studies of same-sex parents and their children. Some opponents of same-sex marriage criticize these studies, but we need not consider the criticism, for the studies on their face do not establish beyond doubt that children fare equally well in same-sex and opposite-sex households. What they show, at most, is that rather limited observation has detected no marked differences. More definitive results could hardly be expected, for until recently few children have been raised in same-sex households, and there has not been enough time to study the long-term results of such child-rearing.

It is true that there has been serious injustice in the treatment of homosexuals also, a wrong that has been widely recognized only in the relatively recent past, and one our Legislature tried to address when it enacted the Sexual Orientation Non-Discrimination Act four years ago (L 2002, ch 2). But the traditional definition of marriage is not merely a by-product of historical injustice. Its history is of a different kind.

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.

Our conclusion that there is a rational basis for limiting marriage to opposite-sex couples leads us to hold that that limitation is valid under the New York Due Process and Equal Protection Clauses, and that any expansion of the traditional definition of marriage should come from the Legislature.

In deciding the validity of legislation under the Due Process Clause, courts first inquire whether the legislation restricts the exercise of a fundamental right, one that is "deeply rooted in this Nation's history and tradition" (Washington v Glucksberg, 521 US 702, 721 [1997], quoting Moore v City of East Cleveland, 431 US 494, 503 [1977] [plurality opinion]; Hope v Perales, 83 NY2d 563, 575 [1994]). In this case, whether the right in question is "fundamental" depends on how it is defined. The right to marry is unquestionably a fundamental right (Loving, 388 US at 12; Zablocki v Redhail, 434 US 374, 384 [1978]; Cooper, 49 NY2d at 79). The right to marry someone of the same sex, however, is not "deeply rooted"; it has not even been asserted until relatively recent times. The issue then becomes whether the right to marry must be defined to include a right to same-sex marriage.

Where no fundamental right is at issue, legislation is valid under the Due Process Clause if it is rationally related to legitimate government interests (Glucksberg, 521 US at 728; Hope, 83 NY2d at 577). Again, our earlier discussion answers this question. Protecting the welfare of children is a legitimate governmental interest, and we have shown above that there is a rational relationship between that interest and the limitation of marriage to opposite-sex couples. That limitation therefore does not deprive plaintiffs of due process of law. Where rational basis scrutiny applies, "[t]he general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest" (id. at 440).

Plaintiffs argue that a classification distinguishing between opposite-sex couples and same-sex couples cannot pass rational basis scrutiny, because if the relevant State interest is the protection of children, the category of those permitted to marry -- opposite-sex couples -- is both underinclusive and overinclusive. We disagree. Plaintiffs argue that the category is underinclusive because, as we recognized above, same-sex couples, as well as opposite-sex couples, may have children. That is indeed a reason why the Legislature might rationally choose to extend marriage or its benefits to same-sex couples; but it could also, for the reasons we have explained, rationally make another choice, based on the different characteristics of opposite-sex and same-sex relationships. Our earlier discussion demonstrates that the definition of marriage to include only opposite-sex couples is not irrationally underinclusive.

In arguing that the definition is overinclusive, plaintiffs point out that many opposite-sex couples cannot have or do not want to have children. How can it be rational, they ask, to permit these couples, but not same-sex couples, to marry? The question is not a difficult one to answer. While same-sex couples and opposite-sex couples are easily distinguished, limiting marriage to opposite-sex couples likely to have children would require grossly intrusive inquiries, and arbitrary and unreliable line-drawing. A legislature that regarded marriage primarily or solely as an institution for the benefit of children could rationally find that an attempt to exclude childless opposite-sex couples from the institution would be a very bad idea.

We hold, in sum, that the Domestic Relations Law's limitation of marriage to opposite-sex couples is not unconstitutional. We emphasize once again that we are deciding only this constitutional question. It is not for us to say whether same-sex marriage is right or wrong. We have presented some (though not all) of the arguments against same-sex marriage because our duty to defer to the Legislature requires us to do so. We do not imply that there are no persuasive arguments on the other side -- and we know, of course, that there are very powerful emotions on both sides of the question.

The dissenters assert confidently that "future generations" will agree with their view of this case (dissenting op at 28). We do not predict what people will think generations from now, but we believe the present generation should have a chance to decide the issue through its elected representatives. We therefore express our hope that the participants in the controversy over same-sex marriage will address their arguments to the Legislature; that the Legislature will listen and decide as wisely as it can; and that those unhappy with the result -- as many undoubtedly will be -- will respect it as people in a democratic state should respect choices democratically made.

GRAFFEO, J. (concurring):

The historical conception of marriage as a union between a man and a woman is reflected in the civil institution of marriage adopted by the New York Legislature. The cases before us present no occasion for this Court to debate whether the State Legislature should, as a matter of social welfare or sound public policy, extend marriage to same-sex couples. Our role is limited to assessing whether the current statutory scheme offends the Due Process or Equal Protection Clauses of the New York Constitution. Because it does not, we must affirm. Absent a constitutional violation, we may not disturb duly enacted statutes to, in effect, substitute another policy preference for that of the Legislature.

Plaintiffs argue that the Domestic Relations Law violates article I, § 6 of the New York Constitution, which provides that "[n]o person shall be deprived of life, liberty or property without due process of law." Their substantive due process challenge is predicated on the assertion that the New York Constitution precludes the State from defining marriage as a union between one man and one woman because the right to privacy derived therein grants each individual the unqualified right to select and marry the person of his or her choice. If the Due Process Clause encompasses this right, and if it is one of the bundle of rights deemed "fundamental" as plaintiffs contend, the Domestic Relations Law would be subjected to the most demanding form of constitutional review, with the State having the burden to prove that it is narrowly tailored to serve compelling state interests.

But it is an inescapable fact that New York due process cases and the relevant federal caselaw cited therein do not support plaintiffs' argument. While many U.S. Supreme Court decisions recognize marriage as a fundamental right protected under the Due Process Clause, all of these cases understood the marriage right as involving a union of one woman and one man.

The binary nature of marriage -- its inclusion of one woman and one man -- reflects the biological fact that human procreation cannot be accomplished without the genetic contribution of both a male and a female. Marriage creates a supportive environment for procreation to occur and the resulting offspring to be nurtured. Although plaintiffs suggest that the connection between procreation and marriage has become anachronistic because of scientific advances in assisted reproduction technology, the fact remains that the vast majority of children are conceived naturally through sexual contact between a woman and a man.

In these cases, respondents articulate a number of interests that they claim are legitimate and are advanced by the current definition of marriage. Given the extremely deferential standard of review, plaintiffs cannot prevail unless they establish that no conceivable legitimate interest is served by the statutory scheme. This means that if this Court finds a rational connection between the classification and any single governmental concern, the marriage laws survive review under both the Due Process and Equal Protection Clauses.

As set forth in the plurality opinion, plaintiffs have failed to negate respondents' explanation that the current definition of marriage is rationally related to the state's legitimate interest in channeling opposite-sex relationships into marriage because of the natural propensity of sexual contact between opposite-sex couples to result in pregnancy and childbirth. Of course, marriage can and does serve individual interests that extend well beyond creating an environment conducive to procreation and child-rearing, such as companionship and emotional fulfillment. But here we are concerned with the State's interest in promoting the institution of marriage.

Since marriage was instituted to address the fact that sexual contact between a man and a woman naturally can result in pregnancy and childbirth, the Legislature's decision to focus on opposite-sex couples is understandable.

It is not irrational for the Legislature to provide an incentive for opposite-sex couples -- for whom children may be conceived from casual, even momentary intimate relationships -- to marry, create a family environment, and support their children. Although many same-sex couples share these family objectives and are competently raising children in a stable environment, they are simply not similarly situated to opposite-sex couples in this regard given the intrinsic differences in the assisted reproduction or adoption processes that most homosexual

couples rely on to have children.

As respondents concede, the marriage classification is imperfect and could be viewed in some respects as overinclusive or underinclusive since not all opposite-sex couples procreate, opposite-sex couples who cannot procreate may marry, and opposite-sex partners can and do procreate outside of marriage. It is also true that children being raised in same-sex households would derive economic and social benefits if their parents could marry. But under rational basis review, the classification need not be perfectly precise or narrowly tailored -- all that is required is a reasonable connection between the classification and the interest at issue. In light of the history and purpose of the institution of marriage, the marriage classification in the Domestic Relations Law meets that test.

KAYE, CHIEF JUDGE (dissenting):

For most of us, leading a full life includes establishing a family. Indeed, most New Yorkers can look back on, or forward to, their wedding as among the most significant events of their lives. They, like plaintiffs, grew up hoping to find that one person with whom they would share their future, eager to express their mutual lifetime pledge through civil marriage. Solely because of their sexual orientation, however-- that is, because of who they love--plaintiffs are denied the rights and responsibilities of civil marriage. This State has a proud tradition of affording equal rights to all New Yorkers. Sadly, the Court today retreats from that proud tradition. Under both the State and Federal Constitutions, the right to due process of law protects certain fundamental liberty interests, including the right to marry. Central to the right to marry is the right to marry the person of one's choice.

Fundamental rights are those "which are, objectively, deeply rooted in this Nation's history and tradition . . . and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." Again and again, the Supreme Court and this Court have made clear that the right to marry is fundamental.

The Court concludes, however, that same-sex marriage is not deeply rooted in tradition, and thus cannot implicate any fundamental liberty. But fundamental rights, once recognized, cannot be denied to particular groups on the ground that these groups have historically been denied those rights. Indeed, in recasting plaintiffs' invocation of their fundamental right to marry as a request for recognition of a "new" right to same-sex marriage, the Court misapprehends the nature of the liberty interest at stake.

An asserted liberty interest is not to be characterized so narrowly as to make inevitable the conclusion that the claimed right could not be fundamental because historically it has been denied to those who now seek to exercise it.

Simply put, fundamental rights are fundamental rights. They are not defined in terms of who is entitled to exercise them.

Instead, the Supreme Court has repeatedly held that the fundamental right to marry must be afforded even to those who have previously been excluded from its scope--that is, to those whose exclusion from the right was "deeply rooted." Well into the twentieth century, the sheer weight of precedent accepting the constitutionality of bans on interracial marriage was deemed sufficient justification in and of itself to perpetuate these discriminatory laws (see e.g. Jones v Lorenzen, 441 P2d 986, 989 [Okla 1965] [upholding anti-miscegenation law since the "great weight of authority holds such statutes constitutional"])--much as defendants now contend that same-sex couples should be prohibited from marrying because historically they always have been.

Just 10 years before Loving declared unconstitutional state laws banning marriage between persons of different races, 96% of Americans were opposed to interracial marriage (see Br. of NAACP Legal Defense and Educational Fund, Inc. as Amicus Curiae in Support of Plaintiffs, at 5). Sadly, many of the arguments then raised in support of the anti-miscegenation laws were identical to those made today in opposition to same-sex marriage (see e.g. Kinney v Commonwealth, 71 Va [30 Gratt] 858, 869 [1878] [marriage between the races is "unnatural" and a violation of God's will]; Pace v State, 69 Ala 231, 232 [1881] ["amalgamation" of the races would produce a "degraded civilization"]; see also Lonas v State, 50 Tenn [3 Heisk] 287, 310 [1871] ["(t)he laws of civilization demand that the races be kept apart"]).

To those who appealed to history as a basis for prohibiting interracial marriage, it was simply inconceivable that the right of interracial couples to marry could be deemed "fundamental." Incredible as it may seem today, during the lifetime of every Judge on this Court, interracial marriage was forbidden in at least a third of American jurisdictions. In 1948, New York was one of only 18 states in the nation that did not have such a ban.

By 1967, when Loving was decided, 17 states still outlawed marriages between persons of different races. Nevertheless, even though it was the ban on interracial marriage--not interracial marriage itself--that had a long and shameful national tradition, the Supreme Court determined that interracial couples could not be deprived of their fundamental right to marry.

Unconstitutional infringements on the right to marry are not limited to impermissible racial restrictions. Inasmuch as the fundamental right to marry is shared by "all the State's citizens" (Loving, 388 US at 12), the State may not, for example, require individuals with child support obligations to obtain court approval before getting married (see Zablocki, 434 US 374).

The Supreme Court determined that the right to marry was so fundamental that it could not be denied to prison inmates.

Under our Constitution, discriminatory views about proper marriage partners can no more prevent same-sex couples from marrying than they could different-race couples. Nor can "deeply rooted" prejudices uphold the infringement of a fundamental right.

It is no answer that same-sex couples can be excluded from marriage because "marriage," by definition, does not include them. In the end, "an argument that marriage is heterosexual because it 'just is' amounts to circular reasoning."

The claim that marriage has always had a single and unalterable meaning is a plain distortion of history. In truth, the common understanding of "marriage" has changed dramatically over the centuries (see Br. of Professors of History and Family Law as Amici Curiae in Support of Plaintiffs). Until well into the nineteenth century, for example, marriage was defined by the doctrine of coverture, according to which the wife's legal identity was merged into that of her husband, whose property she became. A married woman, by definition, could not own property and could not enter into contracts. Moreover, until as recently as 1984, a husband could not be prosecuted for raping his wife. Such was the very "meaning" of marriage. Only since the mid-twentieth century has the institution of marriage come to be understood as a relationship between two equal partners, founded upon shared intimacy and mutual financial and emotional support. Indeed, as amici professors note, "The historical record shows that, through adjudication and legislation, all of New York's sex-specific rules for marriage have been invalidated save for the one at issue here" (Br. of Professors of History and Family Law as Amici Curiae in Support of Plaintiffs, at 2).

By virtue of their being denied entry into civil marriage, plaintiff couples are deprived of a number of statutory benefits and protections extended to married couples under New York law. Unlike married spouses, same-sex partners may be denied hospital visitation of their critically ill life partners. They must spend more of their joint income to obtain equivalent levels of health care coverage. They may, upon the death of their partners, find themselves at risk of losing the family home. The record is replete with examples of the hundreds of ways in which committed same-sex couples and their children are deprived of equal benefits under New York law. Same-sex families are, among other things, denied equal treatment with respect to intestacy, inheritance, tenancy by the entirety, taxes, insurance, health benefits, medical decisionmaking, workers' compensation, the right to sue for wrongful death, and spousal privilege. Each of these statutory inequities, as well as the discriminatory exclusion of same-sex couples from the benefits and protections of civil marriage as a whole, violates their constitutional right to equal protection of the laws.

Correctly framed, the question before us is not whether the marriage statutes properly benefit those they are intended to benefit--any discriminatory classification does that--but whether there exists any legitimate basis for excluding those who are not covered by the law. That the language of the licensing statute does not expressly reference the implicit exclusion of same-sex couples is of no moment (see Domestic Relations Law § 13 ["persons intended to be married" must obtain a marriage license]). The Court has, properly, construed the statutory scheme as prohibiting same-sex marriage. That being so, the statute, in practical effect, becomes identical to--and, for purposes of equal protection analysis, must be analyzed as if it were--one explicitly providing that "civil marriage is hereby established for couples consisting of a man and a woman," or, synonymously, "marriage between persons of the same sex is prohibited."

Nor is plaintiffs' claim legitimately answered by the argument that the licensing statute does not discriminate on the basis of sexual orientation since it permits homosexuals to marry persons of the opposite sex and forbids heterosexuals to marry persons of the same sex. The purported "right" of gays and lesbians to enter into

marriages with different-sex partners to whom they have no innate attraction cannot possibly cure the constitutional violation actually at issue here. Indeed, the true nature and extent of the discrimination suffered by gays and lesbians in this regard is perhaps best illustrated by the simple truth that each one of the plaintiffs here could lawfully enter into a marriage of convenience with a complete stranger of the opposite sex tomorrow, and thereby immediately obtain all of the myriad benefits and protections incident to marriage. Plaintiffs are, however, denied these rights because they each desire instead to marry the person they love and with whom they have created their family.

Rational-basis review requires both the existence of a legitimate interest and that the classification rationally advance that interest. Although a number of interests have been proffered in support of the challenged classification at issue, none is rationally furthered by the exclusion of same-sex couples from marriage. Some fail even to meet the threshold test of legitimacy.

It is not enough that the State have a legitimate interest in recognizing or supporting opposite-sex marriages. The relevant question here is whether there exists a rational basis for excluding same-sex couples from marriage, and, in fact, whether the State's interests in recognizing or supporting opposite-sex marriages are rationally furthered by the exclusion.

Defendants primarily assert an interest in encouraging procreation within marriage. But while encouraging opposite-sex couples to marry before they have children is certainly a legitimate interest of the State, the exclusion of gay men and lesbians from marriage in no way furthers this interest. There are enough marriage licenses to go around for everyone.

Nor does this exclusion rationally further the State's legitimate interest in encouraging heterosexual married couples to procreate. Plainly, the ability or desire to procreate is not a prerequisite for marriage. The elderly are permitted to marry, and many same-sex couples do indeed have children. Thus, the statutory classification here--which prohibits only same-sex couples, and no one else, from marrying--is so grossly underinclusive and overinclusive as to make the asserted rationale in promoting procreation "impossible to credit"

Of course, there are many ways in which the government could rationally promote procreation--for example, by giving tax breaks to couples who have children, subsidizing child care for those couples, or mandating generous family leave for parents. Any of these benefits--and many more--might convince people who would not otherwise have children to do so. But no one rationally decides to have children because gays and lesbians are excluded from marriage.

Marriage is about much more than producing children, yet same-sex couples are excluded from the entire spectrum of protections that come with civil marriage--purportedly to encourage other people to procreate. Indeed, the protections that the State gives to couples who do marry--such as the right to own property as a unit or to make medical decisions for each other--are focused largely on the adult relationship, rather than on the couple's possible role as parents. Nor does the plurality even attempt to explain how offering only heterosexuals the right to visit a sick loved one in the hospital, for example, conceivably furthers the State's interest in encouraging opposite-sex couples to have children, or indeed how excluding same-sex couples from each of the specific legal benefits of civil marriage--even apart from the totality of marriage itself--does not independently violate plaintiffs' rights to equal protection of the laws. The breadth of protections that the marriage laws make unavailable to gays and lesbians is "so far removed" from the State's asserted goal of promoting procreation that the justification is, again, "impossible to credit" (Romer, 517 US at 635).

The State plainly has a legitimate interest in the welfare of children, but excluding same-sex couples from marriage in no way furthers this interest. In fact, it undermines it. Civil marriage provides tangible legal protections and economic benefits to married couples and their children, and tens of thousands of children are currently being raised by same-sex couples in New York. Depriving these children of the benefits and protections available to the children of opposite-sex couples is antithetical to their welfare, as defendants do not dispute

Nor may the State legitimately seek either to promote heterosexual parents over homosexual parents, as the

plurality posits, or to discourage same-sex parenting. First, granting such a preference to heterosexuals would be an acknowledgment of purposeful discrimination against homosexuals, thus constituting a flagrant equal protection violation.

That civil marriage has traditionally excluded same-sex couples--i.e., that the "historic and cultural understanding of marriage" has been between a man and a woman--cannot in itself provide a rational basis for the challenged exclusion. To say that discrimination is "traditional" is to say only that the discrimination has existed for a long time. A classification, however, cannot be maintained merely "for its own sake" (Romer, 517 US at 635). Instead, the classification (here, the exclusion of gay men and lesbians from civil marriage) must advance a state interest that is separate from the classification itself (see Romer, 517 US at 633, 635). Because the "tradition" of excluding gay men and lesbians from civil marriage is no different from the classification itself, the exclusion cannot be justified on the basis of "history." Indeed, the justification of "tradition" does not explain the classification; it merely repeats it. Simply put, a history or tradition of discrimination--no matter how entrenched--does not make the discrimination constitutional.

The State asserts an interest in maintaining uniformity with the marriage laws of other states. But our marriage laws currently are not uniform with those of other states. For example, New York--unlike most other states in the nation--permits first cousins to marry (see Domestic Relations Law § 5). This disparity has caused no trouble, however, because well-settled principles of comity resolve any conflicts. The same well-settled principles of comity would resolve any conflicts arising from any disparity involving the recognition of same-sex marriages.

It is, additionally, already impossible to maintain uniformity among all the states, inasmuch as Massachusetts has now legalized same-sex marriage. Indeed, of the seven jurisdictions that border New York State, only Pennsylvania currently affords no legal status to same-sex relationships. Massachusetts, Ontario and Quebec all authorize same-sex marriage; Vermont and Connecticut provide for civil unions (see 15 Vt Stat Ann tit 15, § 1204 [a]; Conn Gen Stat § 46b-38nn); and New Jersey has a statewide domestic partnership law (see NJ Stat Ann § 26:8A-1 et seq.). Moreover, insofar as a number of localities within New York offer domestic partnership registration, even the law within the State is not uniform. Finally, and most fundamentally, to justify the exclusion of gay men and lesbians from civil marriage because "others do it too" is no more a justification for the discriminatory classification than the contention that the discrimination is rational because it has existed for a long time. As history has well taught us, separate is inherently unequal.

The Court ultimately concludes that the issue of same-sex marriage should be addressed by the Legislature. If the Legislature were to amend the statutory scheme by making it gender neutral, obviously the instant controversy would disappear. But this Court cannot avoid its obligation to remedy constitutional violations in the hope that the Legislature might some day render the question presented academic.

It is uniquely the function of the Judicial Branch to safeguard individual liberties guaranteed by the New York State Constitution, and to order redress for their violation. The Court's duty to protect constitutional rights is an imperative of the separation of powers, not its enemy.

I am confident that future generations will look back on today's decision as an unfortunate misstep.

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In each case: Order affirmed, without costs. Opinion by Judge R.S. Smith. Judges G.B. Smith and Read concur. Judge Graffeo concurs in result in an opinion in which Judge G.B. Smith concurs. Chief Judge Kaye dissents in an opinion in which Judge Ciparick concurs. Judge Rosenblatt took no part.

Decided July 6, 2006