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Fight for Same-Sex Marriage Equality Moves to the NY Legislature

NY COURT OF APPEALS CREATES SECOND-CLASS CITIZENS

Read excerpts from the decision, the reaction of local PFLAG members, and some of the things you can do to advance the cause of equal marriage rights for same-sex couples. For more information, for links to resources on same-sex marriage, and more ways to get involved, see: www.pflag-buffalo-niagara.org/marriage.html

EDITORIAL, The Buffalo News, July 7, 2006

Find gay marriage remedy

New York's highest court Thursday placed the right of gays to marry in the hands of the Legislature, and it should act favorably to make this legal right available to all people.

The court ruled that gay marriage is not allowed under state law. The court did not rule it unconstitutional. Writing for the four-member majority, Judge Robert Smith narrowly focused the issue: "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." The remedy, therefore, is legislative.

New Yorkers who feel that marriage can only be between a man and a woman currently hold sway in Albany, indeed in most states. The Legislature as presently constituted is not likely to allow same-gender marriage. But with a new governor coming in next year and possible new legislative leaders with him, a new day may dawn.

This is a difficult and divisive issue. We have great respect for religious and social traditions and for people who feel their present image of marriage

is inviolate. But we find it wrong to deny such a basic right - like voting, where to live and a host of now-common non-discrimination rules - to people who love each other, promise monogamy and respect, and should thereby have the same legal rights as everyone else.

In her dissent, Chief Judge Judith Kaye said the court's majority failed to correct inequalities.

"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," she wrote. "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."

We agree. No one would argue this is an easy issue, but throughout America's history, the majority denied rights to minority groups and felt righteous in doing so. Passage of time and evolutionary thinking changed much of that. We have faith that gays and lesbians will gain the right to marry in New York, as they should.

Parents, Families, and Friends of Lesbians and Gays, Buffalo/Niagara, is a non-profit, all volunteer, community-based organization not affiliated with any ethnic, religious, economic, or political group. Membership is open to all. PFLAG membership lists are kept confidential; and mailings are sent in plain envelopes.

Excerpt from the Majority Opinion

We conclude that there are at least two grounds that rationally support the limitation on marriage that the Legislature has enacted. [B]oth 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. The Legislature could also find that [opposite-sex] 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.

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.

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.

Excerpt from the Concurring Opinion

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.

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.

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.

From the Dissenting Opinion

Fundamental rights, once recognized, cannot be denied to particular groups on the ground that these groups have historically been denied those rights. [The US] 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."

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. 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. 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.

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.

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 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.

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. Simply put, a history or tradition of discrimination – no matter how entrenched – does not make the discrimination constitutional.

From Jeffrey McConnell

I'm an optimistic person. So, when I went to bed on July 5th, I truly believed that the NY Court of Appeals would issue a ruling allowing same-sex marriage. In fact, I was so certain that I developed a plan. I'm always awake before Fred, my partner of over 14 years. When I got up and saw the ruling granting us the right to marry, I planned to gently wake him up and utter the words I've longed to say: "Will you marry me?"

Imagine my utter dismay when I woke up on July 6th to find that the NY Court of Appeals decided otherwise. Being naturally inquisitive, I just had to read the opinions. I find the majority opinion insulting not only to Gay and Lesbian people but to everyone. Basically, the court decided against same-sex marriage because opposite-sex couples have relationships that "are all too often casual or temporary." Or that marriage has to be preserved for just opposite-sex couples as "an incentive for opposite-sex couples -- for whom children may be conceived from casual, even momentary intimate relationships." Or that marriage rights aren't necessary for same-sex couples because they "do not become parents as a result of accident or impulse."

So in the great (formerly) progressive state of New York, equal marriage rights can't be granted to same-sex couples for reasons that sound like they came from the dark ages. The majority opinion almost seemed to express the belief that without marriage being preserved for opposite-sex couples, families would crumble and straight people would become no more than rutting animals.

As disgusting as I find the majority opinion, that's now history. I can no more change that decision than I can change my sexual orientation. But the decision left me depressed, which is not surprising. Studies are now showing that when same-sex couples have the right to marry they are not only legally better off, but they are also emotionally better off. (see, *Gay Marriage: For Better or For Worse? What We've Learned from the Evidence* by Spedale & Eskridge)

Fred and I went to the rally in Buffalo the evening of the decision. Being there helped my mood. My depression turned to anger. And later that evening my anger turned to action. One of the speakers at the rally asked us if we knew our NY Legislators' positions on same-sex marriage. Well my Assembly member was easy because Sam Hoyt talked forcefully at the rally. But I didn't know about my Senator -- so I sent him an email to asking if he supports same-sex marriage and will he commit to actively working in the senate to see it passes. I really want to know the answer to my question because his primary opponent was at the rally even though he didn't speak.

The next step in the process is not just in the hands of the Legislature. It's also in our hands. We need to talk to our Legislators. We need to get our friends, co-workers, and family members to talk to their Legislators. We need to be aware of where the candidates for office

stand on the issue of same-sex marriage and we need to vote for those who support us. We need to get our friends, co-workers, and family members to do the same thing. We need to write letters to the editor. We need to get involved with lobbying groups. And we need to keep doing it until New York joins the 21st century and grants equal marriage rights to same-sex couples.

From John Covert

My state just slapped me. All my life I have believed in our system of government, three distinct branches of government, independent of each other. All three working for the people.

My wife and I met on June 19th, 1970, exactly six days before I entered the Air Force to begin my career. We dated six days and I left. I knew in my heart that I had met the woman of my dreams and that someday she would be my wife, the mother of our children. Labor Day weekend, 1970, I came home for the first time, and proposed. Fortunately for me, Diane accepted and the planning for our wedding began. We were married in October 1971. We had all of the legal rights and privileges and responsibilities given to all married couples. It did not matter how old we were, how long we had known each other. We were married and that was that! We have been blessed with three beautiful children, two boys and a girl.

The kids are now grown; the last will be moving to Missouri this summer to begin graduate school. The oldest is married and we now have one beautiful grandson. He and his wife have all of the rights, privileges, and obligations of marriage and parenthood. My daughter however, has been not so lucky. You see she cannot marry the love of her life. She is lesbian. She does not love less - she does not love more. She does love differently. She loves someone who looks like she looks. They are beautiful together, and I proudly display their picture on my desk at work. I am very proud of what she has accomplished. She will at some point have all of the obligations of parenthood. She will have all of the obligations of citizenship. She will not have the rights granted to married couples. I am heartsick that she cannot marry her love. This has to change!

For months, I personally dragged my feet when asked to become a Marriage Ambassador. One that will speak to others, speak to politicians, speak to clergy about why gays and lesbians should be allowed to marry. I figured the courts would never deny the right to marry - all they had to do was hear the argument. Boy was I wrong. They heard the argument but I don't think they listened - at least four of them did not listen. Yesterday, in a 4 to 2 decision, the state Court of Appeals denied that the state of New York must issue licenses to marry to same sex couples. They were wrong in their decision and I am to blame at least in part because I did not do my part, as a parent, to insure that

my kids were treated equally and fairly. I assure you that I will not make that mistake again.

In September, the Empire State Pride Agenda will be holding another Marriage Ambassador training. This training will be in Buffalo and I can guarantee that I will be attending. Please join me. We must make this world safe for our kids. And one way to start to insure their safety, is to make their lives as normal as possible. No more discrimination - no more hoping someone else will do it for me. Please come with me to this most important training.

From Wendy J. Christophersen

As a newcomer to PFLAG Buffalo/Niagara, it is especially meaningful to me that the New York State Court of Appeals rendered its disappointing decision on same-sex marriage on July 6, 2006. My husband and I had plans that evening to have a quiet dinner together to celebrate our 21st wedding anniversary. Those plans were postponed for a few hours when we learned of the decision and headed downtown to attend the rally sponsored by the Empire State Pride Agenda on Bidwell Parkway.

Before I knew that my daughter was a lesbian, if you had asked me whether I supported same-sex marriage, my answer would have been the same as it is now, a resounding yes. A "yes" because I have always thought of myself as inclusive, and it just seemed "right" that people should marry who they love regardless of gender, but really it was just a gay issue (I thought) and didn't have much to do with me.

Now, even though my answer to the question is the same, everything else has changed. The right to same-sex marriage is now personal. My daughter is only a few weeks shy of 18 years old and heading off to college. When the time comes and she decides to settle down and have a family, I want her to have all the same rights and privileges that her father and I have enjoyed and taken for granted as a married couple for over 20 years.

I am so grateful to all the speakers who attended the rally and shared their perspective and their stories. The testimonials by the couples in loving committed relationships being denied the right to something I have taken for granted was incredibly compelling. I must honor the commitment of those couples and my own marriage now by helping the Pride Agenda achieve equality in marriage.

I challenge everyone, but especially straight people who want to support gay friends and family, to communicate with their state representatives on this issue and get involved. I believe that this is not just a gay issue. While opponents of same sex marriage love to invoke a perceived threat to family values, I believe that equal access can only strengthen families and afford more protection for children.

Before July 6, 2006, I had only a vague notion of who my local state representatives were. I am now in possession of their names, addresses and e-mail addresses and have a pretty good idea as to where they

stand on this issue by looking at their past voting record. I have also read every word of the sad, landmark decision of the New York State Court of Appeals. My representatives will be hearing from me. I hope your representatives will be hearing from you, too.

Things You Can Do to Help

The following is a list of some of the things that you can do to help achieve marriage rights for same-sex couples.

- Educate yourself about the issue of same-sex marriage. Our marriage web site has links to many resources that can help. The web address is on the front page of this newsletter.
- Find out what your NY Legislators' positions are on same-sex marriage. Let your Legislators know your position. Our web site has links that can help you find who they are and how to contact them.
- Make sure you are registered to vote, know the candidates stands on marriage rights for same-sex couples, and vote in the primaries and general election.
- Get involved with the Empire State Pride Agenda (ESPA). This is the GLBT Lobbying group in New York State and is the group leading the effort for equal marriage rights in New York. (www.prideagenda.org)
- Talk to your friends and family members about same-sex marriage. Tell them why it's an important issue for you and your family. Explain to them why it's important that they contact their Legislators to ask them to support equal marriage rights for same-sex couples.
- Become a Marriage Ambassador. ESPA will be holding training sessions in September so that you can take a leadership role in the effort to increase support among all New Yorkers for same-sex marriage.
- Enlist the support of a community leader, elected official, member of the clergy or respected business person in your area who will lend their name to the fight for marriage equality in your area. ESPA will provide you with a letter and some guidelines on how to do this.

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