

Gay Marriage Advocates Lose by Winning

Homosexual activists achieved historic gains in the November 2012 election in the states of Washington, Maine and Maryland. These three notoriously liberal states passed laws extending marriage benefits to homosexual relationships by four to six percentage points. But will these legal victories ultimately deny them the sweeping Supreme Court decision they long for?

Judge Robert Jones of a federal court in Nevada has laid the groundwork for such a conclusion. In his ruling on a lawsuit which sought to overturn Nevada's ban on gay marriage, Jones wrote that the Lesbian, Gay, Bisexual and Transgender (LGBT) lobby's success in advancing its agenda means that it does not need help from the courts: "It simply cannot be seriously maintained, in light of these and other recent democratic victories, that homosexuals do not have the ability to protect themselves from discrimination through democratic processes such that extraordinary protection from majoritarian processes is appropriate."

In 1997, the General Accounting Office found that there were 1,049 references to "marriage" in federal law. Since then, homosexual activists and their friends in the media have referred to the "thousand federal benefits of marriage" as evidence that marriage must be redefined to include homosexual couples. But what exactly are these benefits homosexual couples are so eager to enjoy?

Unsurprisingly, a closer look at the relevant laws reveals that some of these "benefits" might be more accurately described as "liabilities" or "obligations." The most obvious example would be the cost in time and money of divorce. Ultimately, what homosexual activists want is state-mandated approval of their lifestyle. And waiting in the wings,

polygamists and polyamorists want the abolition of the traditional family altogether.

The Supreme Court's recent decision to hear *Hollingsworth v. Perry* and *U.S. v. Windsor* has come at a critical time for traditional marriage advocates. *Hollingsworth* is a challenge to California's Proposition 8 (which defines marriage as the union of one man and one woman), and *Windsor* is a challenge to President Bill Clinton's Defense of Marriage Act (DOMA). Both will be heard and ruled on before the current court's recess in June 2013, and, barring catastrophe, before President Obama has had a chance to appoint any more Supreme Court Justices.

The current court is headed by Chief Justice John Roberts. Four of the justices are now in their seventies: liberals Ruth Bader Ginsberg and Stephen Breyer, conservative Antonin Scalia and the unpredictable Anthony Kennedy. The likely retirement of Ginsberg (and subsequent presidential appointment) would not change the balance of the court, but the possible retirement of Kennedy might.

Naturally advocates on both sides of the marriage argument are scrambling to influence the court. Even long time observers are hesitant to predict an outcome, but all eyes are on Chief Justice Roberts and Justice Kennedy. Kennedy wrote two of the Court's most important recent decisions on related matters: *Romer v. Evans* (1996), where he affirmed the designation of "sexual orientation" as a protected class of people, and *Lawrence v. Texas* (2003), the decision which struck down the last of the nation's sodomy laws. However, Kennedy clarified in his *Lawrence* decision that the Court was not addressing the issue of homosexual "marriage."

The present case does not involve minors. It does not involve persons who might be injured or coerced or who are situated in relationships where consent might not easily be refused. It does not involve public conduct or prostitution. It does not

involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter.

Much of the weight will be on Chief Justice Roberts' shoulders. Some critics felt he succumbed to political pressure when the Court ruled on the constitutionality of President Obama's healthcare plan, affirming the package by citing an argument that its proponents never made: that Obamacare was in fact a tax, and therefore constitutional.

Much will rest on how Justice Roberts views the issue in the grand scheme of things. Does he see same-sex marriage as inevitable? He might then see himself as the preserver of the Court's credibility, and craft an opinion for it. Or does he see traditional marriage as a transcendent institution, larger than both the Court and the State itself? Then he might see himself as the preserver of timeless truths and the protector of an established practice which must weather cultural fads for our society to survive.

Whatever the Court decides in June 2013, the arguments will continue. May traditional marriage advocates hold their ground and make their arguments well. And in the words of the invocation that opens every Supreme Court session, "God save the United States and this honorable court."

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