

The Supreme Court's Marriage Decision Threatens Tolerance

As we mark the anniversary of our independence, it is fitting to celebrate that America is a diverse, pluralistic society enriched by people of every background. We are a nation, as Margaret Thatcher said, not created out of geography, language, and ethnicity like the nations of Europe, but created by ideas, such as our common devotion to the rule of law and to representative democracy. We all believe in equality before government, and we aspire to mutual respect and tolerance for one another.

In its proper role, the democratic process promotes tolerance because it requires citizens to use reason, not force, to persuade one another of their opinions.

Judicial activism, in contrast, undermines rule of law and short-circuits this process. Judges are not elected; they are neither representative of nor accountable to the people. When judges act not like judges but like legislators—who are representative of and accountable to the people—they usurp power not only from the legislature but more importantly from the people whom the legislature represents.

Many on both sides of the debate about marriage have expressed the opinion that the debate is really about tolerance, and that, with *Obergefell* decided, it is over.

Would that it were so. Not even 24 hours after the decision was announced, the American Civil Liberties Union published an op-ed piece in *The Washington Post* advocating the restriction of the federal Religious Freedom Restoration Act. A few days later, a *Time* magazine columnist argued that churches should lose their tax exempt status. At a pride parade over the weekend in New York City, a Catholic priest was spit on by two

men.

Over the same weekend, the Lancaster (Pennsylvania) newspaper published an article detailing the repugnant, vitriolic, and often obscene personal attacks I have received on social media since the *Obergefell* ruling. Never have I experienced such intolerance as from those who claim to be tolerant, such judgment as from those who disclaim judgment, or such hatred as from those who declare themselves enemies of hatred. It bodes poorly for tolerance in our country, that such a campaign of intimidation and slander has become socially acceptable and, in too many cases, politically effective.

These are only mild hints of what is to come. Infringements of religious liberty are inevitable now that the five justices have codified in federal constitutional law that certain religious beliefs held by all societies for all of history until fifteen years ago are motivated only by animus. Were this the case, then the absurd implication would follow that Hillary Clinton, Barack Obama, Joe Biden, and countless others, were bigots until three years ago.

Pennsylvania voted to define marriage as between a man and a woman as recently as 1996. Pennsylvanians are not bigots. They are tolerant, generous, and kind people, as anyone who has ever visited Lancaster can attest.

Had this issue been discussed as a matter of policy by legislators and by voters, rather than being settled by five judges, then we could have a legitimate discussion about the definition and meaning of marriage, whether it is merely a positivistic social construction or actually a legal reflection of a pre-existent reality, whether it is a nominalistic, meaningless concept which is given its meaning by government, or actually an aspect of human nature which governments recognize in practice, whether it is a temporary state recognition of a breakable emotional relationship between adults, or the foundation for the next generation.

Under present law, however, it would require a constitutional amendment to overturn *Obergefell*. The Court has halted debate in government, and rabid aggressors in the culture wars are trying to halt debate outside of it with personal attacks and name-calling.

I see true tolerance every day when I go to vote. I go to Washington representing the people of Lancaster County, Chester County, and Berks County, to bring our Pennsylvania common sense to the federal government. When I do, I see my colleagues and friends on both sides of the aisle, from every part of our country, engaging in conversation together to find common ground, common principles and common goals. That is tolerance at work.

Rep. Joe Pitts, R-PA, represents Pennsylvania's 16th Congressional district.