

California Marriage Victory

What the Supreme Court Said

May 16, 2008

WHAT DID THE SUPREME COURT OF CALIFORNIA SAY?

The Court declared in a 4-3 split that the California Constitution requires the state to end the exclusion of same-sex couples from marriage.

In light of the fundamental nature of the substantive rights embodied in the right to marry — and their central importance to an individual's opportunity to live a happy, meaningful and satisfying life as a full member of society — the California Constitution properly must be interpreted to guarantee this basic civil right to all couples, without regard to their sexual orientation.

The state's exclusion violated two different rights of individuals who wished to marry a person of the same-sex: the fundamental right to marry and the right to equal treatment.

THE SUPREME COURT OF CALIFORNIA IS THE FIRST HIGH COURT TO RECOGNIZE SAME-SEX COUPLES' FUNDAMENTAL RIGHT TO MARRY

A fundamental right is one that cannot be taken away unjustifiably from anyone, whether or not there is any unequal treatment. This is the first time a state's highest court has recognized same-sex couples' fundamental right to marry.

...we conclude that the right to marry, as embodied in article I, sections 1 and 7 of the California Constitution, guarantees same-sex couples the same substantive constitutional rights as opposite sex couples to choose one's life partner and enter with that person into a committed, officially recognized, and protected family relationship that enjoys all of the constitutionally based incidents of marriage.

In Lambda Legal's victory in *Lawrence v. Texas*, the U.S. Supreme Court said that courts cannot analyze a fundamental right by looking only at how it has historically been enjoyed by a certain group of people because that will automatically preclude extending that right to those who have been excluded. Instead, courts must look at the underlying liberty itself. The California Supreme Court followed that reasoning to examine the fundamental right to marry, explaining that the key precedents do not...

... define a fundamental constitutional right or interest in so narrow a fashion that the basic protections afforded by the right are withheld from a class of persons — composed of individuals sharing a personal characteristic such as a particular sexual orientation — who historically have been denied the benefit of such rights.

THE SUPREME COURT OF CALIFORNIA IS THE FIRST HIGH COURT TO RECOGNIZE THAT WHEN A STATE TREATS PEOPLE DIFFERENTLY BASED ON SEXUAL ORIENTATION, THE JUSTIFICATION MUST PASS THE MOST DIFFICULT LEGAL TEST - STRICT SCRUTINY

When the government treats people unequally, it has to justify that treatment. The most difficult legal test for the government to meet in equality cases is called the “strict scrutiny” test, commonly applied in cases where people were classified for different treatment based on their race or religion. The California Supreme Court concluded that unequal treatment based on sexual orientation should be subject to strict scrutiny:

Because sexual orientation, like gender, race, or religion, is a characteristic that frequently has been the basis for biased and improperly stereotypical treatment and that generally bears no relation to an individual’s ability to perform or contribute to society, it is appropriate for courts to evaluate with great care and with considerable skepticism any statute that embodies such a classification. The strict scrutiny standard therefore is applicable to statutes that impose differential treatment on the basis of sexual orientation.

That is the first time a state’s highest court has recognized that strict scrutiny is the appropriate test when a state has discriminated on the basis of sexual orientation.

In applying the strict scrutiny test to decide our claim for equality, the Supreme Court again relied on *Lawrence v. Texas*, this time to reject the state’s excuse of needing to preserve the traditional definition of marriage:

Although the understanding of marriage as limited to a union of a man and a woman is undeniably the predominant one, if we have learned anything from the significant evolution in the prevailing societal views and official policies toward members of minority races and toward women over the past half-century, it is that even the most familiar and generally accepted of social

*practices and traditions often mask an unfairness and inequality that frequently is not recognized or appreciated by those not directly harmed by those practices or traditions. . . . As the United States Supreme Court observed in its decision in *Lawrence v. Texas* . . . the expansive and protective provisions of our constitutions, such as the due process clause, were drafted with the knowledge that ‘times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress.’”*

Under the strict scrutiny test, all excuses for discrimination failed, and the Supreme Court held that excluding same-sex couples’ from marriage was a violation of their right to equality.

THE SUPREME COURT OF CALIFORNIA AGREED THAT THE “M” WORD MATTERS

In California, same-sex couples could register as domestic partners and thus obtain most of the protections of marriage, except for the powerful name of marriage itself. The Supreme Court agreed with us that the name of marriage matters:

While retention of the limitation of marriage to opposite-sex couples is not needed to preserve the rights and benefits of opposite-sex couples, the exclusion of same-sex couples from the designation of marriage works a real and appreciable harm upon same-sex couples and their children. As discussed above, because of the long and celebrated history of the term “marriage” and the widespread understanding that this word describes a family relationship unreservedly sanctioned by the community, the statutory provisions that continue to limit access to this designation exclusively to opposite-sex couples — while providing only a novel, alternative institution for same-sex couples — likely will be viewed as an official statement that the family relationship of same-sex couples is not of comparable stature or equal dignity to the family relationship of opposite-sex couples.

Furthermore, because of the historic disparagement of gay persons, the retention of a distinction in nomenclature by which the term “marriage” is withheld only from the family relationship of same-sex couples is all the more likely to cause the new parallel institution that has been established for same-sex couples to be considered a mark of second-class citizenship. Finally, in addition to the potential harm flowing from the lesser stature that is likely to be afforded to the family relationships of same-sex couples by designating them domestic partnerships, there exists a substantial risk that a judicial decision upholding the differential treatment of opposite-sex and same-sex couples would be understood as validating a more general proposition that our state by now has repudiated: that it is permissible, under the law, for society to treat gay individuals and same-sex couples differently from, and less favorably than, heterosexual individuals and opposite-sex couples.

This is more strong authority for Lambda Legal’s ongoing campaign to educate America about how a separate legal structure for same-sex couples’ relationships is an invitation for others to discriminate against those couples.

THE SUPREME COURT OF CALIFORNIA MADE A STRONG STATEMENT ABOUT THE INDEPENDENT ROLE OF THE COURTS TO UPHOLD THE PROMISES OF THE STATE CONSTITUTION

The Supreme Court of California stood firm in asserting its proper role to make sure constitutional promises are kept by other branches of government:

. . . under “the constitutional theory of ‘checks and balances’ that the separation-of-powers doctrine is intended to serve” . . . a court has an obligation to enforce the limitations that the California Constitution imposes upon legislative measures, and a court would shirk the responsibility it owes to each member of the public were it to consider such statutory provisions to be insulated from judicial review.

As Chief Justice Poritz of the New Jersey Supreme Court observed in her concurring and dissenting opinion in Lewis v. Harris . . . “Perhaps the political branches will right the wrong presented in this case by amending the marriage statutes to recognize fully the fundamental right of same-sex couples to marry. That possibility does not relieve this Court of its responsibility to decide constitutional questions, no matter how difficult. . . . The question of access to civil marriage by same-sex couples ‘is not a matter of social policy but of constitutional interpretation.’ . . . It is a question for this Court to decide.

One justice concurred, emphasizing the profound importance of judicial independence:

In holding today that the right to marry guaranteed by the state Constitution may not be withheld from anyone on the ground of sexual orientation, this court discharges its gravest and most important responsibility under our constitutional form of government. There is a reason why the words “Equal Justice Under Law” are inscribed above the entrance to the courthouse of the United States Supreme Court. Both the federal and the state Constitutions guarantee to all the “equal protection of the laws” . . . and it is the particular responsibility of the judiciary to enforce those guarantees. The architects of our federal and state Constitutions understood that widespread and deeply rooted prejudices may lead majoritarian institutions to deny fundamental freedoms to unpopular minority groups, and that the most effective remedy for this form of oppression is an independent judiciary charged with the solemn responsibility to interpret and enforce the constitutional provisions guaranteeing fundamental freedoms and equal protection.

This will be a core source of authority for Lambda Legal’s continuing work to protect judicial independence through our Fair Courts Project.