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“On Equal Terms” — New Jersey Joins the Revolution

Thursday, October 26, 2006



In a 4-3 decision handed down on Wednesday, the New Jersey Supreme Court ordered the state’s legislature to grant same-sex couples all the rights and responsibilities previously reserved for civil marriage. In a sweeping decision, the court found that homosexual couples in the state have been unconstitutionally denied the statutory benefits and privileges conferred on married heterosexual couples.

The court stopped short of ordering the legislature to call this new arrangement “marriage,” but it left the legislature that option and gave the legislative branch 180 days to comply with the order. Furthermore, the court declared that the legislature must provide some rational basis for

denying homosexual unions the terminology of marriage, should it choose to create another equal but distinct statutory arrangement.

The case originated with seven same-sex couples who filed suit against the state, claiming that they were denied fundamental rights granted to married heterosexual couples. Each of the plaintiff couples have been together at least 10 years and several are raising children received through adoption or artificial insemination.

The court indicated its direction when it declared: “The seeming ordinariness of plaintiffs’ lives is belied by the social indignities and economic difficulties that they daily face due to the inferior legal standing of their relationships compared to that of married couples.” The Court accepted the argument that “the laws prohibiting same-sex couples to marry caused harm to their dignity and social standing, and inflicted psychic injuries on them, their children, and their extended families.”

New Jersey is already one of the most progressive states in terms of homosexual rights legislation and court decisions. The state adopted domestic partnerships in 2004 and has granted adoption and foster parent rights to homosexuals and homosexual couples. With this decision, the state will, at the least, join Connecticut and Vermont in adopting civil union statutes that are equal to marriage. The court’s decision would also allow the legislature to amend the state’s marriage laws to join Massachusetts in legalizing same-sex marriage.

The court based its decision on the New Jersey Constitution, not the U.S. Constitution. The plaintiffs made no charge in this case that the New Jersey laws violated the Federal Constitution.

In another interesting legal twist, the state chose not to defend the unique status of marriage on the basis of a privileged status in terms of procreation and the raising of children — grounds on which courts in the states of Washington and New York had recently ruled to protect the privileged status of marriage. Instead, the state attempted to defend marriage solely in terms of its status as a traditionally respected institution.

The three dissenting justices of the New Jersey court concurred with the majority’s ruling that same-sex couples must be granted a parallel legal structure equal in every way to marriage, but the minority went on to insist that this legal structure must not be merely parallel to marriage, but be granted the status of marriage itself.

The dissenting opinion was written by the court's Chief Justice, who declared that same-sex couples are denied due process rights when their unions are denied the terminology of marriage. "They ask to participate, not simply in the tangible benefits that civil marriage provides — although certainly those benefits are of enormous importance — but in the intangible benefits that flow from being civilly married," she noted.

The majority disagreed, claiming to exercise restraint in its reluctance to "presume that a difference in name alone is of constitutional magnitude." Further:

"We cannot escape the reality that the shared societal meaning of marriage — passed down through the common law into our statutory law — has always been the union of a man and a woman. To alter that meaning would render a profound change in the public consciousness of a social institution of ancient origin."

Nevertheless:

"The institution of marriage reflects society's changing social mores and values. In the last two centuries, that institution has undergone a great transformation, much of it through legislative action."

In concluding its decision, the majority declared itself to have significantly advanced the rights of gays and lesbians. The justices then moved to call for social change that would advance those rights in the future:

"Our decision today significantly advances the civil rights of gays and lesbians. We have decided that our state constitution guarantees that every statutory right and benefit conferred the heterosexual couples from civil marriage must be made available to committed same-sex couples. Now the legislature must determine whether to alter the long accepted definition of marriage. The great engine for social change in this country has always been the democratic process. Although courts can ensure equal treatment, they cannot guarantee social acceptance, which must come through the evolving ethos of a maturing society. Plaintiffs request does not end here. Their next appeal must be to their fellow citizens, whose voices are heard through their popularly elected representatives."

What does all this mean? With this decision, the number of states granting homosexual couples something at least equivalent to marital rights rises to four. At present, all four of the states (Massachusetts, Vermont, Connecticut, and New Jersey) are in the Northeast. Nevertheless, this decision adds considerable momentum to the movement for normalizing homosexual relationships and legalizing homosexual marriage across the nation. Once a significant number of states adopt similar legislation or are faced with similar court decisions, it will become much more difficult for other states to withstand demands that these unions be fully recognized.

One of the most striking aspects of the New Jersey decision is the fact that not a single justice held marriage to be an essentially heterosexual institution that deserves a privileged status as recognized in law. This points to a basic social revolution that is sweeping through the nation's elites — especially on college and university campuses, and law schools, and in the media.

We are living in an age of ambitious and open revolt against civilization's most central institution. The headlines of the newspapers will indicate that the New Jersey decision is significant. Only a relative few seem to understand that this amounts to a redefinition of human society. The social regulation of sexuality and the legal recognition of marriage are fundamental to our civilization and way of life. We are witnessing the destruction of an institution fundamental to human happiness and well-being — and all in the name of a radical conception of human rights.

Note this: These plaintiffs did not charge that their rights to marry were violated by the U.S. Constitution — but that charge is surely coming. In short order a case like this will arrive at the US Supreme Court. This is why the Marriage Protection Amendment is so urgently needed and why the battle must be fought in every state.

We are reminded once again that we face a stark set of alternatives: Either we will define marriage for the judges, or the judges will define marriage for us.

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