

Why Gay Marriage Is Winning

Hint: it's not the marriage part.

By: Richard Kim – July 2, 2013

Dressed in an immaculate white shirt and white pants, a straw hat with a hot pink band and the customary rainbow sash, 84-year-old Edie Windsor looked like she was having the time of her life as a grand marshal of this year's New York City Pride parade. As well she should. Four days earlier, the Supreme Court had issued a 5-4 ruling in the case that bears her name, *United States v. Windsor*, to which she was an unusually active plaintiff. The decision strikes down Section 3 of the Defense of Marriage Act, which prohibited the federal government from recognizing same-sex marriages. A 5-4 ruling in another gay rights case, *Hollingsworth v. Perry*, restarted same-sex marriage in California. With these two legal victories, 30 percent of Americans now live in states that recognize same-sex marriage, as does the federal government. For this, revelers along the parade route carried signs that said simply, Thank you, Edie.

Let's put this sea change in perspective. In the summer of 1996, the Defense of Marriage Act whipped through Congress and onto President Bill Clinton's desk with such ferocity that gay rights groups were unable to mount a credible counteroffensive. The measure won a veto-proof majority in both chambers—including the support of thirty-two Democrats in the Senate and 120 Democrats in the House. Clinton, up for re-election that year, signed the bill with minimum fuss (and, presciently, no photographers present). At the time, polls showed that 68 percent of Americans opposed same-sex marriage.

Seventeen years later, the air of inevitability and invincibility is on the other side. The government not only declined to defend DOMA; it filed an amicus brief arguing that it violates the Constitution's equal protection clause, essentially leaving the defense of the bill to House Republicans and a sad-sack list of professional homophobes like the Westboro Baptist Church, Concerned Women for America, and the Parents and Friends of Ex-Gays and Gays. The amicus curiae list on the other side in *Windsor* and *Perry* included not just the usual suspects, but the NAACP, NFL players Chris Kluwe and Brendon Ayanbadejo, formerly closeted GOP operative Ken Mehlman, the libertarian Cato Institute and a Who's Who of Fortune 500 companies, including Facebook, Google, Apple, Nike, Verizon, Intel and AIG. In the year leading up to the decision, a slew of Democrats (and a few Republicans) who once opposed same-sex marriage—led by former President Clinton and Senate majority leader Harry Reid—tripped over themselves in their rush to denounce the law.

If all this sounds less like a constitutional debate and more like an overstuffed high school popularity contest, that's because it is. And there's nothing wrong with that. Gay marriage isn't winning the day because of some singularly persuasive legal argument; it's winning because the battleground has shifted from the court of law to the court of public opinion. Consider this: the first four states to legalize same-sex marriage did so under

court edict; the next nine states plus DC did so through the democratic legislative process.

This shift has been a salutary one for the gay rights movement. It was forced to frame its arguments in broadly populist rhetoric about fairness and equality, to empower its base as protagonists and not passive recipients. It also necessitated a turn away from the “marriage” part of the equation and toward the “gay,” which is to say that the cause has become less about the rights and responsibilities of marriage and more about equal citizenship. And let’s face it: on a certain base level, it was a referendum on the idea that gay is cool.

Along the way, a lot of baggage got dropped. For example, Andrew Sullivan’s 1989 *New Republic* essay “Here Comes the Groom,” which is widely credited with kickstarting the fight for same-sex marriage, is remarkable now not because it comes off as prophetic, but because, in fact, its arguments carry such little resonance. Like other gay conservatives, Sullivan was seemingly less interested in winning a popular debate about gay rights than he was in using same-sex marriage as a cudgel to browbeat liberation-era gays for their perceived cultural excesses. In his schema, marriage wasn’t just a right; it was a universal aspiration, one that would reinforce sexual responsibility and monogamy, “economic prudence,” “bourgeois” values, “social cohesion,” “emotional security” and “public health.” Advocates for gay marriage don’t talk like this anymore—because it’s rightly perceived as insulting, parochial, judgmental, retrograde and elitist. In fact, it smacks of every quality the gay rights movement has successfully pinned on its opponents in the Christian right, in contrast to gay culture’s values of inclusivity, secularism, cosmopolitanism and tolerance. Sullivan thought that the socially conservative, socially exclusionary case for same-sex marriage qua marriage would triumph, but instead it has been socially progressive values like equality and open-mindedness that have drawn straight allies to the cause.

None of this is very surprising when you step back to take a wider look. In the last decade, the number of Americans who personally know and approve of gay people has spiked dramatically. Meanwhile, the institution of marriage, although it is available to more people than ever before, is at its nadir: just 51 percent of American adults are married, an all-time low.

Which brings me back to the pride parade and the thousands of marchers following Edie Windsor’s lead. A few of them were there celebrating their own vows, but many more were paying homage to something less tangible and more expansive: their full inclusion in the American social fabric, and, relatedly, a sense of their own self-worth. There were those “respectably” coupled, and many others riotously letting their freak flag fly. As the battle for marriage equality now turns to the thirty-eight states that don’t recognize same-sex marriage, many of them in the deep-red South, there will be a temptation to retrench, to retreat to some outdated vision of marriage as a virtue. This would be a shameful strategy, and a losing one too.