



Elizabeth Wydra: Doing the right thing about marriage equality

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It's the Supreme Court's job to resolve disagreements over the meaning of the U.S. Constitution. With its announcement that it will hear the appeal of state bans on same-sex marriage from Ohio, Michigan, Tennessee and Kentucky, it is doing that job.

The country soon will have resolution of a major dispute over fundamental rights. Because the Constitution guarantees the right to equal treatment for all, especially when it comes to something as fundamental as marriage, the court should uphold the right of gay and lesbian couples to marry.

Some have argued that the court should stay out of the debate over marriage equality. Sixth Circuit Court of Appeals Judge Jeffrey Sutton, whose ruling upholding state marriage bans will be reviewed by the Supreme Court, argued that the issue should be worked out by the voters of the states, not by judges.

And certainly, as even Sutton acknowledged, the country does seem to be moving in the direction of recognizing the rights of gay and lesbian couples to marry. Thirty-six states have marriage equality for same-sex couples.

But what Sutton, and everyone, also should recognize is that much of that movement is due to the courts rather than the ballot box.

Even if the country eventually would get to national recognition of marriage equality — and that is a big if — the court is doing its duty by stepping in now. Currently, our nation is a patchwork of marriage law, with many gay and lesbian Americans still unable to enjoy the fundamental liberty of marrying and raising a family with the person they love.

The nation's experience with state bans on interracial marriage is a useful guide. By the time the Supreme Court decided *Loving v. Virginia* in 1967, all but 16 states had gotten such abhorrent laws off their books. It was unquestionably right for the court to issue its unanimous ruling making clear that even one such state law still on the books was one too many. Such restrictive marriage laws violated the Constitution and could not stand.

The court should follow the Constitution again in striking down marriage laws that discriminate against gay and lesbian couples. The 14th Amendment guarantees equal protection of the laws to any person. These words protect everyone — white or black, gay or straight, man or woman — against hostile and arbitrary discrimination by state governments.

Denying this equality in the context of marriage is perhaps especially hurtful. As the Supreme Court has recognized, marriage is the "most important relation in life" and the "foundation of the family in our society." When states tell gay and lesbian couples that their relationships and their families are not worthy of legal recognition, these couples and their children are treated as second-class citizens, regardless of the intent of those who voted on these provisions.

In striking down part of the so-called Defense of Marriage Act two years ago, the Supreme Court already has decided that the federal government cannot deny benefits to same-sex couples lawfully wed in states that recognize marriage equality. Now the Court will decide whether all states must respect same-sex couples' right to marry.

It has done the right thing by agreeing to take the case. When it decides the issues later this year, it should do the right thing again and follow the Constitution, making history once more and finding that discrimination has no place in American society.

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