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# Will of the majority doesn't trump the Constitution

David H. Gans
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There is no "will of the majority" exception to the Constitution. Unfortunately, the opinion by U.S. Sixth Circuit Court of Appeals Judge Jeffrey Sutton upholding the discriminatory marriage laws of Michigan, Ohio, Kentucky and Tennessee attempted to create one, exalting majority will over the Constitution's promise of liberty and equality.

Sutton's opinion is chock full of legal errors, but its most basic is a faulty understanding of majority rule and federalism. The Constitution protects equal rights for all, and gives to the courts the job of preventing oppression of minorities at the hands of the majority. Leaving constitutional safeguards to the voters would place our most precious constitutional guarantees in jeopardy and subject to the whim of majority rule. Constitutional rights are not subject to a vote. Sutton's opinion got these foundational principles backward, empowering voters to discriminate against disfavored minorities and deny them core aspects of liberty.

Sutton recognized that our "written charter cements the limitations on government into an unbending bulwark," only to exalt majority will over individual rights. But the Constitution directly guarantees fundamental rights and equality for all. Further, it explicitly gives to the courts the power to enforce our most cherished constitutional protections. In addition, the Constitution specifically provides, in what is known as the Supremacy Clause, that it is the "supreme law of the land" which all states must respect. States cannot pick or choose which parts of the Constitution to follow. Otherwise, the Constitution's promise of liberty and equality would be an empty one.

Respect for federalism has never meant that states could put constitutional guarantees up to a vote. At our nation's founding, the Founding Fathers wrote the Supremacy Clause and provided for judicial review to ensure that states respected constitutional rights. Since then, it's been the job of the courts to prevent majorities in the states from violating constitutional guarantees designed to protect the rights of all.

A judge's job is to apply the meaning of the Constitution. Sutton's opinion abdicated this most basic judicial duty. The 14th Amendment's sweeping guarantees protect fundamental rights and outlaw discrimination against all people — whether black or white, man or woman, straight or gay — preventing legislative or popular majorities from oppressing minorities. Under the 14th Amendment, states cannot treat any group of individuals as inferior, second-class citizens and

deny them the fundamental liberties the Constitution grants to all. Had Sutton consulted the text and history of the 14th Amendment, he would have found that it requires marriage equality.

The 14th Amendment does not permit the voters of a state to impose a badge of inferiority on same-sex couples and their families and deny them the right to marry. The Constitution's promise of liberty and equality for all is not subject to a vote on Election Day; it is a fundamental principle that protects the rights of all to shape our destiny, to find freedom, to seek out opportunities and to pursue happiness. The Constitution requires marriage equality, and it is the responsibility of the courts to protect that right.

*David H. Gans is the director of the Civil Rights, Human Rights and Citizenship Program at the Constitutional Accountability Center, which joined the Cato Institute in filing a brief in DeBoer v. Snyder. He is also the author of "Faulty Federalism: Constitutional Misconceptions in the Newly Emerging Arguments Against Marriage Equality."*