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NATIONAL news



Gina Smith and Heidi Norton (left) and Richard Linnell and Gary Chalmers are two of the plaintiff couples who successfully sued Massachusetts for the right to marry



CELEBRATING MASS.

Continued from Page 1

Rather than throw out the marriage law as unconstitutional, the court remanded the case to the trial court and delayed its implementation for 180 days "to permit the Legislature to take such action as it may deem appropriate in light of this opinion."

Justice John M. Greaney concurred with the majority but would have gone further. Using "equal protection" analysis, he would order immediate issuance of marriage licenses to the plaintiff couples. Delaying the remedy "on the grounds that the couples are of the same gender constitutes a categorical restriction of a fundamental right."

The three dissenters, in a decision penned by Justice Robert J. Corday, argued, "The court has transmuted the 'right' to marry into a right to change the institution of marriage."

They drew upon U.S. Supreme Court decisions that tied the "fundamental" right to marry "primarily on the underlying interest of every individual in procreation, which, historically, could only legally occur within the construct of marriage because sexual intercourse outside of marriage was a criminal act.... No matter how personal or intimate a decision to marry someone of the same sex might be, the right to make it is not guaranteed by the right of personal autonomy."

Corday's dissent acknowledged that plaintiffs had made a powerful case for the extension of the benefits and burdens of civil marriage to same-sex couples, but he argued, "that decision must be made by the Legislature, not the court."

Justice Martha B. Sosman, in a separate dissent that was joined by the two other judges, argued that the Legislature should not tinker with the traditional definition of marriage until it is sure that it will not adversely affect this critical institution within society. She advocated a circular Catch-22 approach that would defer gay marriage until society reached a consensus that the idea in the abstraction was a good one.

REACTIONS

"This is a momentous legal and cultural milestone. The law caught up with the reality that gay people and families are part of the fabric of our communities," said Mary L. Bonauto. She is an attorney with Gay & Lesbian Advocates and Defenders, the Boston-based group that represented the gay and lesbian couples.

"This is a proud moment for our family," lead plaintiff Hillary Goodridge said. "We no longer

have to explain to our 8-year-old daughter why we can't marry, or that we love each other even though we are not married. And more importantly, we'll be able to provide Annie with the full protections under marriage" that we cannot provide now.


"We hope that our fellow Americans will treat these new marriages just like they want their own to be treated, offering respect and support to these couples," said David Buckel, director of Lambda Legal's Marriage Project. The organization is appealing a lower court decision on marriage in New Jersey.

Lambda executive director Kevin Cathcart said the U.S. Supreme Court's Lawrence vs. Texas ruling, which banned state sodomy statutes, "pushed open a door that had been locked for gay people for decades. Today's decision is in that same spirit. We will build on our victory and deliver its promise to gay people in all areas of life, including relationship recognition, parenting, schools and employment."

Yet even amid the celebrating came warnings of caution. "We are also preparing our families for an onslaught of attacks by right-wing activists," said Dave Noble, executive director of National Stonewall Democrats. "The ruling is the beginning, not the end, of our struggle for all marriages to be treated equally."

The Family Research Council is leading the right-wing charge. "This is a wake-up call for both the American public and our elected officials," said president Tony Perkins, predicting the apocalypse. "If we do not amend the Massachusetts State Constitution so that it explicitly protects marriage as the union of one man and one woman, and if we do not amend the U.S. Constitution with a Federal Marriage Amendment that will protect marriage on the federal level, we will lose marriage in this nation. We must amend the Constitution if we are to stop a tyrannical judiciary from redefining marriage to the point of extinction."

Most leading Democratic political leaders have embraced a traditional definition of marriage as between a man and a woman yet have opposed changing the Constitution. Their Republican counterparts have been wary of embracing an amendment, pending the Massachusetts decision.

The court's involvement of the Legislature in the process of creating gay marriage might offer a sufficient fig leaf to deter the Bush administration from jumping on the amendment bandwagon. Only time, and polling data, will tell. 

BOB ROEHR is a free-lance reporter based in Washington, D.C.