SUPREME COURT OF THE UNITED STATES

State of Columbiana, et al., Petitioners
v.
Columbiana Civil Liberties Union (CCLU), et al.

* * * * *

We consider whether an amendment to the Constitution of the State of Columbiana prohibiting the issuance of a marriage certificate to two individuals of the same sex while permitting the issuance of a certificate of domestic partnership carrying equivalent rights and benefits to affected individuals violates the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

I.

In January of 2010, the Supreme Court of the State of Columbiana decided that marriage licenses must be granted to same-sex couples under the state constitution. Beginning that January, the State of Columbiana [the State] began to issue marriage licenses to individuals of the same sex. Following that ruling, opponents of same-sex marriage organized and, under the public referendum laws of the State, passed the "Protection of Marriage Amendment" (the amendment). The amendment specifies "[o]nly marriages between one man and one woman will be valid and recognized by the State of Columbiana." The status of the persons who were married pursuant to the state supreme court ruling is not affected by the constitutional amendment.

The State, however, has granted Certificates of Domestic Partnership (partnerships) to same-sex couples entitling those couples to the same rights and privileges under state and federal law that are conferred upon married heterosexual couples, and will continue to do so under the amendment.

The amendment was challenged by the Columbiana Civil Liberties Union (CCLU), on behalf of two individuals of the same sex seeking a marriage license, in the District Court for the Southern District of Columbiana on the grounds that it violates the Fourteenth Amendment to the Constitution of the United States. The District Court found in favor of the CCLU and struck down the constitutional amendment. The case was then appealed to and affirmed by the 13th Circuit Court of Appeals.

We granted certiorari.

II.

Before we can even evaluate the amendment, we must determine whether or not the Respondents have in fact been denied a right. As it stands, same-sex couples in the State have the right to seek partnerships that entitle them to the same rights, privileges, and

immunities as married heterosexual couples. Therefore, we must evaluate if the State's issuance of a marriage certificate is a right that is constitutionally distinguishable from a domestic partnership.

A.

Civil marriage, as we know it today, has its origins in canon law and common law. Prior to the reformation in the United Kingdom, marriage was "firmly entrenched as one of the seven sacraments of the Catholic Church…[and] under the jurisdiction of the ecclesiastical courts…"[1]

One of the earliest additions of restrictions to public marriage came from the Fourth Lateran Council, Canon 51, in 1213 that declared "…when marriages are to be contracted they must be announced publicly in the churches by the priests during a suitable and fixed time, so that if legitimate impediments exist, they may be made known.[2]" In 1215, to comply, the "Banns of Marriage" was introduced in England that required a public announcement of a forthcoming marriage in the couple's parish church for three Sundays prior to the wedding for it to be a legal wedding.

In the 14th century, the first marriage licenses were introduced, allowing couples that swore there were no canonical impediments to their marriage to pay a fee and bypass the banns. Few changes in the United Kingdom were made until the Marriage Act of 1753, which did not apply to British overseas colonies.

Following the colonization of the Americas, certain rules regarding marriage by clergy were relaxed in order to compensate for the lack of approved Churches in the new world. While many American colonies required marriages to be recorded, it was not until after the Civil War that states began to require marriage licenses for a marriage to be recognized by the state. In fact, it was not until the early 20th century and the passage of certain laws such as the Social Security Act that certain civil rights, privileges, and benefits began to attach to marriage licenses.

B.

As the history has shown, the use of marriage in western civilization has been predominantly religious in nature and the adoption of marriage as a civil institution was, especially in the beginning, dependent upon the religious institution. Additionally, even since marriage has evolved as a civil institution, it has generally followed most of the requirements that were set forth in ecclesiastical laws, namely that marriage is between one man and one woman.

Thus, we interpret the term "marriage," in the civil sense, to be largely empty when compared to the term marriage in the religious sense. The significance of the term marriage does not come from the secular name but rather comes from the religious

---

[1] Marriage, Sex, And Civic Culture in Late Medieval London

[2] http://www.f. ordham.edu/halsall/basis/lateran4.asp

institution. The significance of marriage as a civil institution is in the rights, privileges, and immunities that it confers upon couples, which are exactly the same for heterosexual and homosexual couples under the law in Columbiana.

Accordingly, granting marriage licenses to heterosexual couples is not a distinguishable right from the granting of partnership to homosexual couples. As the difference created by the amendment is only semantic in nature and does not actually create a differential in the rights that are received by individuals, it is not violative of the Equal Protection Clause of the Fourteenth Amendment.

Additionally, it cannot be neglected that there are several denominations of churches and other religious groups that will marry two people of the same sex, though it is not pervasive throughout the religious community. As a result, any same sex couple meeting the requirements of certain religious groups could become married in the eyes of their God or whatever they believe in, arguably a far greater event than the reception of a paper from a state.

II.

Even if one does believe that there is a certain right that is being denied by restricting marriage certificates to heterosexual couples, the prior decisions of this Court lead us to the conclusion that the amendment is consistent with the Constitution.

First, we decided in *Bowers v. Hardwick,* 478 U.S. 186 (1986) that homosexuals were not a protected class and that there was no fundamental right to engage in homosexual sodomy. Later, in *Romer v. Evans*, 517 U.S. 620 (1996), we decided that Colorado Constitutional Amendment Two, which declared that homosexuals were to receive no protection as a class, was contrary to the Fourteenth amendment because the State had no legitimate interest in upholding such a law. Finally, in *Lawrence v. Texas,* 539 U.S. 558 (2003) we held that *Bowers* was found incorrectly and that there is a liberty interest under the Due Process Clause in protecting homosexual sodomy in the confines of one's home.

Despite the Court's decisions in *Romer* to strike down the constitutional amendment and in *Lawrence* to create a fundamental right to private sodomy, neither case establishes homosexuals as a protected class. In fact, the decision in *Romer* justifies the Columbiana constitutional amendment that is in question in this case as it establishes that the state only needs a legitimate governmental interest to treat homosexuals as a class differently.

A.

Petitioners assert that there is a government interest in upholding the traditions of the people of Columbiana. In their brief, Petitioners have provided an abundance of evidence that the influence of the Church of the Celestial Mother is omnipresent in civil society in the State. Petitioners have cited a recent study that nearly 70% of the population of Columbiana affiliates with the Church of the Celestial Mother and an additional 13% believe in the God of the Old Testament. Additionally, while the Church

of the Celestial Mother has been tolerant of homosexual couples, it has established very strictly in its teachings that marriage is between one man and one woman.

As a result, it is a legitimate interest of the state to uphold the traditions of its population as the tradition do not infringe on any other persons rights. Accordingly, the constitutional amendment would be consistent with the Constitution even if the granting of a marriage certificate were found to be a distinguishable right from the receiving of a partnership.

It should be noted, however, that while the Court does not find it appropriate at this time to incorporate homosexuals as a suspect class, the State's interest in this case will not be sufficient to overcome a higher burden if homosexuals one day are considered to be a suspect class. The constitutional amendment in question would not stand if homosexuals are made to be a protected class with heightened scrutiny and marriage is considered to be a distinguishable right from a partnership.

III.

The final point that we will address is the claim by the Respondents that the constitutional amendment is violative of the United States Constitution because there is the Fourteenth Amendment protects a liberty interest in the right to marry. In *Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 433 (1992), Justice O'Connor wrote for a plurality that "[o]ur law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education."

We do not disagree with the concepts that are included in the *Casey* decision. However, the liberty interests mentioned in *Casey* are not applicable as our question of "marriage" is not one of whether or not two people of the same sex in a loving, committed relationship should be entitled to the same rights as two people of different sexes living in the same condition. We interpret the statement of the liberty interest in marriage to mean the rights associated with marriage and, more broadly, as the right to spend the rest of one's life with another individual they love. The question that we have been asked in this case, however, is ultimately about semantics, not rights. Accordingly, there is no liberty interest being denied by the constitutional amendment.

IV.

In sum, the Protection of Marriage Amendment that was dually approved by the people of Columbiana is consistent with both the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

Respondents have argued that the Columbiana constitutional amendment violates the Equal Protection Clause because it treats two groups of people differently by granting heterosexual couples marriage certificates and homosexual couples domestic partnership certificates. We disagree because the question in this case is not one of rights but is one

of semantics. The word marriage is primarily a religious tradition that is defined as between one man and one woman and should not mean anything more or less in the civil perspective than a partnership.

Even if one does believe that a civil marriage is a distinguishable right from that of a partnership, it would still be constitutional under our decisions in *Bowers, Romer,* and *Lawrence*. Homosexuals have not been held to be a protected class and, therefore, the State would only need to prove a legitimate governmental interest. Petitioners in their brief provide that the protection of religious freedom for the largely pious population of Columbiana is an interest. Though it is not a particularly strong interest, we agree that it overcomes the low burden set for homosexuals in *Romer*.

Finally, Respondents argue that there is a liberty interest protected by the Due Process Clause in obtaining a marriage as opposed to a civil union. We disagree as the liberty interest is in finding a partner and having certain rights as a result of being together, not in obtaining the specific term "marriage."

While it would be up to each member of the Court to decide whether he or she agrees with the amendment as a matter of public policy, it is nonetheless permissible under the Fourteenth Amendment to the Constitution of the United States.

Reversed and remanded.