

For gay marriage

FOR 200 YEARS American society has drawn a steadily expanding circle of rights: the rights of blacks, then women, and then 18-year-olds to vote; of minorities, women, gays, and the physically disabled to be free from discrimination; of single mothers, adoptive parents, and other nontraditional families to receive government benefits. In the 1967 case *Loving v. Virginia*, the US Supreme Court ruled that the right to marry could not be restricted by race. In 1993 the Massachusetts Supreme Judicial Court ruled that the right to adopt children could not be denied on the basis of sexual orientation. In 1999 the Vermont Supreme Court found that the benefits of legal marriage could not be withheld from lesbian and gay couples.

Now seven same-sex couples have petitioned the SJC for the right to marry under civil law. Their stories of courtship and commitment are so ordinary, and their claim to equal benefits so compelling, that it seems inevitable the circle of rights will eventually widen to enfold them as well. We think the SJC should say that day has come.

The Massachusetts Constitution guarantees that "equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin." The plaintiffs in the case before the SJC believe that this declaration of rights means that the "common benefits and protections" of marriage may not be denied to couples because they are the same gender. For all the legal acrobatics offered by opponents, it is hard to see how anything other than an animus toward gays and lesbians prevents them from obtaining the same "benefits and protections" enjoyed by heterosexual couples.

The arguments presented by the opposition — primarily the Massachusetts attorney general, supported by several accompanying briefs — boil down to three. First, opponents argue that the state has an interest in limiting marriage to heterosexuals because such arrangements better advance the "main object" of marriage — that is, procreation and child-rearing. Aside from the insult implied to all marriages that don't include children, the SJC has already recognized that gay parents can bear, adopt, and raise children, and the Legislature has affirmed that by passing laws about the care of children from such unions. It is a logical contortion to define the primary function of marriage as child-rearing, to allow gay couples to perform that function, then to deny them the right to form a marriage.

'Grievous' violation

Opponents also say that denying a marriage license to same-sex couples, while possibly discriminatory, is not a "sufficiently grievous" constitutional violation to require the court's interference with the legislative branch. Tell that to Hillary Goodridge, one of the plaintiffs, whose health care proxy document was little help when her partner of 15 years gave birth and she tried to see her newborn daughter in a neonatal intensive care unit. Or David Wilson, who was treated as a stranger by emergency medical personnel when his partner of 13 years suffered a fatal heart attack.

Finally, opponents say the Legislature should decide all issues dealing with marriage licenses. But the court is being asked for its opinion on a constitutional matter of fundamental rights — its proper purview — and it should deliver such an opinion. The Legislature may be asked, as in Vermont, to sort out the specific remedy. Or the SJC could simply declare that marriages between two individuals of the same gender are legal and valid.

It is worth repeating that these are civil marriages. No one is asking any religious organization to sanctify, or even recognize, these unions.

A good model for the case before the SJC is *Loving v. Virginia*, which ruled almost 40 years ago that bans on interracial marriage are unconstitutional. It may be difficult to imagine a time when interracial marriage was considered an abomination by much of society and was specifically outlawed by many states, just as some day it will be hard to imagine that gay couples were once ostracized simply for trying to form stable families. In *Loving*, the Supreme Court said that constitutional rights must be vindicated despite a long history of laws to the contrary. So too with the right of same-sex couples to marry.

A social institution

It is true that most people still view marriage as an arrangement between a man and a woman. The traditional definition of marriage as a social institution designed to promote child-bearing and child-rearing is grounded in distinct gender roles that were not just socially but legally imposed for much of American history. But society, and the law, have already greatly expanded the definition of family, and civil marriage has been redefined as a partnership of equals. No doubt marriage between one man and one woman will continue to define the vast majority of unions. But that needn't be the only acceptable definition.

In Massachusetts as elsewhere, the everyday reality of same-sex families is far ahead of the law. At Little League games, school plays, and Thanksgiving dinners, gay and lesbian couples and parents are living ordinary lives. They have made moral, emotional, and financial obligations to each other and seek only the recognition and protections a legal marriage affords. "The desire to marry is grounded in the intangibles of love, an enduring commitment and a shared journey through life," reads the plaintiff statement to the SJC. It is time to extend these rights — and responsibilities — to all Americans.

Editorial by Renée Loth, reprinted with permission of the author.