Massachusetts Supreme Judicial Court

HILLARY GOODRIDGE & others vs. DEPARTMENT OF PUBLIC HEALTH
March 4, 2003 - **November 18, 2003**
Suffolk County
Present: MARSHALL, C.J., GREANEY, IRELAND, SPINA, COWIN, SOSMAN, & CORDY, JJ.

EXCERPTS:

MAJORITY OPINION

MARSHALL, C.J. Marriage is a vital social institution. The exclusive commitment of two individuals to each other nurtures love and mutual support; it brings stability to our society. For those who choose to marry, and for their children, marriage provides an abundance of legal, financial, and social benefits. In return it imposes weighty legal, financial, and social obligations. The question before us is whether, consistent with the Massachusetts Constitution, the Commonwealth may deny the protections, benefits, and obligations conferred by civil marriage to two individuals of the same sex who wish to marry. We conclude that it may not. The Massachusetts Constitution affirms the dignity and equality of all individuals. It forbids the creation of second class citizens. In reaching our conclusion we have given full deference to the arguments made by the Commonwealth. But it has failed to identify any constitutionally adequate reason for denying civil marriage to same-sex couples.

We are mindful that our decision marks a change in the history of our marriage law. Many people hold deep-seated religious, moral, and ethical convictions that marriage should be limited to the union of one man and one woman, and that homosexual conduct is immoral. Many hold equally strong religious, moral, and ethical convictions that same-sex couples are entitled to be married, and that homosexual persons should be treated no differently than their heterosexual neighbors. Neither view answers the question before us. Our concern is with the Massachusetts Constitution as a charter of governance for every person properly within its reach. "Our obligation is to define the liberty of all, not to mandate our own moral code." Lawrence v. Texas, 123 S. Ct. 2472, 2480 (2003) (Lawrence), quoting Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 850 (1992).

Whether the Commonwealth may use its formidable regulatory
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authority to bar same-sex couples from civil marriage is a question not previously addressed by a Massachusetts appellate court. [Note 3] It is a question the United States Supreme Court left open as a matter of Federal law in Lawrence, supra at 2484, where it was not an issue. There, the Court affirmed that the core concept of common human dignity protected by the Fourteenth Amendment to the United States Constitution precludes government intrusion into the deeply personal realms of consensual adult expressions of intimacy and one's choice of an intimate partner. The Court also reaffirmed the central role that decisions whether to marry or have children bear in shaping one's identity. Id. at 2481. The Massachusetts Constitution is, if anything, more protective of individual liberty and equality than the Federal Constitution; it may demand broader protection for fundamental rights; and it is less tolerant of government intrusion into the protected spheres of private life.

Barred access to the protections, benefits, and obligations of civil marriage, a person who enters into an intimate, exclusive union with another of the same sex is arbitrarily deprived of membership in one of our community's most rewarding and cherished institutions. That exclusion is incompatible with the constitutional principles of respect for individual autonomy and equality under law.

....

Sections I and 2 of G. L. c. 207 prohibit marriages between a man and certain female relatives and a woman and certain male relatives, but are silent as to the consanguinity of male-male or female-female marriage applicants. See G. L. c. 207, s.s. 1-2. The only reasonable explanation is that the Legislature did not intend that same-sex couples be licensed to marry. We conclude, as did the
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judge, that G. L. c. 207 may not be construed to permit same-sex couples to marry.
III
A
The larger question is whether, as the department claims, government action that bars same-sex couples from civil marriage constitutes a legitimate exercise of the State's authority to regulate conduct, or whether, as the plaintiffs claim, this categorical marriage exclusion violates the Massachusetts Constitution. We have recognized the long-standing statutory understanding, derived from the common law, that "marriage" means the lawful union of a woman and a man. But that history cannot and does not foreclose the constitutional question.
...
Civil marriage anchors an ordered society by encouraging stable relationships over transient ones. It is central to the way the Commonwealth identifies individuals, provides for the orderly distribution of property, ensures that children and adults are cared for and supported whenever possible from private rather than public funds, and tracks important epidemiological and demographic data.

Marriage also bestows enormous private and social advantages on those who choose to marry. Civil marriage is at once a deeply personal commitment to another human being and a highly public celebration of the ideals of mutuality, companionship, intimacy, fidelity, and family. "It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects." Griswold v. Connecticut, 381 U.S. 479, 486 (1965). Because it fulfils yearnings for security, safe haven, and connection that express our common humanity, civil marriage is an esteemed institution, and the decision whether and whom to marry is among life's momentous acts of self-definition.
Tangible as well as intangible benefits flow from marriage. The marriage license grants valuable property rights to those who meet the entry requirements, and who agree to what might otherwise be a burdensome degree of government regulation of their activities.
...
For decades, indeed centuries, in much of this country (including Massachusetts) no lawful marriage was possible between white and black Americans. That long history availed not when the Supreme Court of California held in 1948 that a legislative prohibition against interracial marriage violated the due process and equality guarantees of the Fourteenth Amendment, Perez v. Sharp, 32 Cal. 2d 711, 728 (1948), or when, nineteen years later, the United States Supreme Court also held that a statutory bar to interracial marriage violated the Fourteenth Amendment, Loving v. Virginia, 388 U.S. 1 (1967). [Note 16] As both Perez and Loving make clear, the right to marry means
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little if it does not include the right to marry the person of one's choice, subject to appropriate government restrictions in the interests of public health, safety, and welfare. See Perez v. Sharp, supra at 717 ("the essence of the right to marry is freedom to join in marriage with the person of one's choice"). See also Loving v. Virginia, supra at 12. In this case, as in Perez and Loving, a statute deprives individuals of access to an institution of fundamental legal, personal, and social significance - the institution of marriage - because of a single trait: skin color in Perez and Loving, sexual orientation here. As it did in Perez and Loving, history must yield to a more fully developed understanding of the invidious quality of the discrimination. [Note 17]
The Massachusetts Constitution protects matters of personal liberty against government incursion as zealously, and often more so, than does the Federal Constitution, even where both Constitutions employ essentially the same language. See Planned Parenthood League of Mass., Inc. v. Attorney Gen., 424 Mass. 586, 590 (1997); Corning Glass Works v. Ann & Hope, Inc. of Danvers, 363 Mass. 409, 416 (1973). That the Massachusetts Constitution is in some instances more protective of individual liberty interests than is the Federal Constitution is not surprising. Fundamental to the vigor of our Federal system of government is that "state courts are absolutely free to interpret state constitutional provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution." Arizona v. Evans, 514 U.S. 1, 8 (1995). [Note 18]

The individual liberty and equality safeguards of the Massachusetts
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Constitution protect both "freedom from" unwarranted government intrusion into protected spheres of life and "freedom to" partake in benefits created by the State for the common good. See Bachrach v. Secretary of the Commonwealth, 382 Mass. 268, 273 (1981); Dalli v. Board of Educ., 358 Mass. 753, 759 (1971). Both freedoms are involved here. Whether and whom to marry, how to express sexual intimacy, and whether and how to establish a family - these are among the most basic of every individual's liberty and due process rights. See, e.g., Lawrence, supra at 2481; Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 851 (1992); Zablocki v. Redhail, 434 U.S. 374, 384 (1978); Roe v. Wade, 410 U.S. 113, 152-153 (1973); Eisenstadt v. Baird, 405 U.S. 438, 453 (1972); Loving v. Virginia, supra. And central to personal freedom and security is the assurance that the laws will apply equally to persons in similar situations. "Absolute equality before the law is a fundamental principle of our own Constitution." Opinion of the Justices, 211 Mass. 618, 619 (1912). The liberty interest in choosing whether and whom to marry would be hollow if the Commonwealth could, without sufficient justification, foreclose an individual from freely choosing the person with whom to share an exclusive commitment in the unique institution of civil marriage.

The Massachusetts Constitution requires, at a minimum, that the exercise of the State's regulatory authority not be "arbitrary or capricious." Commonwealth v. Henry's Drywall Co., 366 Mass. 539, 542 (1974). [Note 19] Under both the equality and liberty guarantees, regulatory authority must, at very least, serve "a
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legitimate purpose in a rational way"; a statute must "bear a reasonable relation to a permissible legislative objective." Rushworth v. Registrar of Motor Vehicles, 413 Mass. 265, 270 (1992). See, e.g., Massachusetts Fed'n of Teachers v. Board of Educ., 436 Mass. 763, 778 (2002) (equal protection); Coffee-Rich, Inc. v. Commissioner of Pub. Health, 348 Mass. 414, 422 (1965) (due process). Any law failing to satisfy the basic standards of rationality is void.

... The department posits three legislative rationales for prohibiting same-sex couples from marrying: (1) providing a "favorable setting for procreation"; (2) ensuring the optimal setting for

child rearing, which the department defines as "a two-parent family with one parent of each sex"; and (3) preserving scarce State and private financial resources. We consider each in, turn.

... No one disputes that the plaintiff couples are families, that many are parents, and that the children they are raising, like all children, need and should have the fullest opportunity to grow up in a secure, protected family unit. Similarly, no one disputes that, under the rubric of marriage, the State provides a
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cornucopia of substantial benefits to married parents and their children. The preferential treatment of civil marriage reflects the Legislature's conclusion that marriage "is the foremost setting for the education and socialization of children" precisely because it "encourages parents to remain committed to each other and to their children as they grow." Post at 383 (Cordy, J., dissenting).
In this case, we are confronted with an entire, sizeable class of parents raising children who have absolutely no access to civil marriage and its protections because they are forbidden from procuring a marriage license. It cannot be rational under our laws, and indeed it is not permitted, to penalize children by depriving them of State benefits because the State disapproves of their parents' sexual orientation.
....

The history of constitutional law "is the story of the extension of constitutional rights and protections to people once ignored or excluded." United States v. Virginia, 518 U.S. 515, 557 (1996) (construing equal protection clause of Fourteenth Amendment to prohibit categorical exclusion of women from public military institute). This statement is as true in the area of civil marriage as in any other area of civil rights. See, e.g., Turner v. Safley, 482 U.S. 78 (1987); Loving v. Virginia, 388 U.S. 1 (1967); Perez v. Sharp, 32 Cal. 2d 711 (1948). As a public institution and a right of fundamental importance, civil marriage is an evolving paradigm. The common law was exceptionally harsh toward women who became wives: a woman's legal identity all but evaporated into that of her husband. See generally C.P. Kindregan, Jr., & M.L. Inker, Family Law and Practice s.s. 1.9 and 1.10 (3d ed. 2002). Thus, one

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early Nineteenth Century jurist could observe matter of factly that, prior to the abolition of slavery in Massachusetts, "the condition of a slave resembled the connection of a wife with her husband, and of infant children with their father. He is obliged to maintain them, and they cannot be separated from him." Winchendon v. Hatfield, 4 Mass. 123, 129 (1808). But since at least the middle of the Nineteenth Century, both the courts and the Legislature have acted to ameliorate the harshness of the common-law regime. In Bradford v. Worcester, 184 Mass. 557, 562 (1904), we refused to apply the common-law rule that the wife's legal residence was that of her husband to defeat her claim to a municipal "settlement of paupers." In Lewis v. Lewis, 370 Mass. 619, 629 (1976), we abrogated the common-law doctrine immunizing a husband against certain suits because the common-law rule was predicated on "antediluvian assumptions concerning the role and status of women in marriage and in society." Id. at 621. Alarms about the imminent erosion of the "natural" order of marriage were sounded over the demise of anti-miscegenation laws, the expansion of the rights of married women, and the introduction of "no-fault" divorce. [Note 32] Marriage has survived all of these transformations, and we have no doubt that marriage will continue to be a vibrant and revered institution.

DISSENTERS -3

SPINA, J., with whom Sosman and Cordy, JJ., joined, dissented on the basis that what was at stake in the case was not the unequal treatment of individuals or whether individual rights had been impermissibly burdened, but the power of the Legislature to effectuate social change without interference from the courts, pursuant to art. 30 of the Massachusetts Declaration of Rights. [350-357]

SOSMAN, J., with whom Spina and Cordy, JJ., joined, dissented, stating that the issue was not whether the Legislature's rationale behind the statutory scheme being challenged was persuasive to the court, but whether it was rational for the Legislature to reserve judgment on whether changing the definition of marriage could be made at this time without damaging the institution of marriage or adversely affecting the critical role it has played in our society. [357-363]

CORDY, J., with whom Spina and Sosman, JJ., joined, dissented on the ground that the marriage statute, as historically interpreted to mean the union of one man and one woman, did not violate the Massachusetts Constitution because the Legislature could rationally conclude that it furthered the legitimate State purpose of ensuring, promoting, and supporting an optimal social structure for the bearing and raising of children. [363-395]

NOTE
In **June 2015** the United States Supreme Court decided the **Obergefell** case, concluding that the due process and equal protections clauses of the 14th Amendment (Federal Constitution) protected the right of same-sex couples to marry.