



New Jersey Court Stops Short of Marriage Equality

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The New Jersey Supreme Court unanimously ruled that same-sex couples have a constitutional right to the same state benefits, protections, and obligations as different-sex couples. The court split, however, on how to remedy current state law.

The majority ruled that the New Jersey State Legislature must comply with the constitution by amending state laws to allow equal marriage rights or create a legal status like civil unions. Three dissenting judges argued that the only correct solution, however, is to grant gay and lesbian couples the fundamental right to marry.

The court's majority tempered its instructions to the legislature, however, by stating that the only legal point at issue was that same-sex couples had a right to equal protection, not a right to marry.

Writing for the majority, Justice Barry T. Albin appeared to argue that traditional marriage, as defined exclusively for different-sex couples, was too strong a concept to apply to same-sex couples and as such warranted creating a separate status for same-sex couples without using the term marriage.

Writing for the three dissenting judges, Chief Justice Deborah T. Poritz argued that the law does not defer solely to tradition. Justice Poritz pointed out that the US Supreme Court struck down legal prohibitions on interracial marriage by saying that the right to marry was Constitutionally protected regardless of tradition.

Responses to the New Jersey decision were mixed. The limitations in the decision prompted Arthur S. Leonard, of the New York News to ask, if the aim of the court is to eliminate discrimination against same-sex couples, what possible public need could be served by failing to acknowledging the fundamental right to marry?

Journalist Doug Ireland, writing in his blog DIRELAND, described the ruling as a "a Solomon-like decision that cut the baby in half, so to speak." The decision appears to give the New Jersey State Legislature far too much room to maneuver on the issue, and may even afford a victory to opponents of marriage equality by creating a "separate, but equal" status, Ireland suggested.

Human Rights Campaign President Joe Solomonese called the decision a "a pro-family, pro-equality decision" and asked the state legislature to "do the right thing" and follow the court's directives.

Expressing some reservations about the wording of the majority opinion, Solomonese added, "This decision recognizes that New Jersey's constitution protects all families. The legislature should not go down the path of separate but equal, but rather should embrace marriage equality."

Matt Foreman, executive director of the National Gay and Lesbian Taskforce, congratulated the court on recognizing the "equal needs of same-sex couples" but also urged the state legislature to amend state law to include full marriage equality.

Foreman warned that right-wing politicians would use the decision to attack both gay people and so-called activist judges in a “shameless” effort to create “wedge issues” for political gain in the November 7th election. “[T]hey will use us,” Foreman stated, “to try to distract voters from the war in Iraq and failures in education, energy and health care. Again they will resort to lies, myths and fear mongering to promote more discriminatory, anti-family state constitutional amendments.”

These concerns were echoed by Pride at Work, AFL-CIO, the labor federation’s constituency group for lesbian, gay, bisexual, and transgender union members. Describing the decision as “great and long awaited,” a statement on Pride at Work’s website reads, “[W]e are sure that our adversaries will try and use this decision to divide working people, as they have tried to do with LGBT issues, immigration, and race-baiting in the past.”

Pride at Work Co-President Nancy Wohlforth said, “We need to remind working folks about what we think is important in this election: finding an end to the war in Iraq, ending the ongoing cycle of government scandals, holding our government accountable, and finding candidates who will implement policies that will help working people find jobs, healthcare , and decent wages.”

Wohlforth preemptively rejected the accusation of “judicial activism” likely to be leveled by opponents of marriage equality. “For those who think this decision goes against the will of the people, it should be noted that 56% of New Jersey residents support legalizing same-sex marriage in New Jersey, so the court is echoing the demands of New Jersey residents themselves,” she stated.

NOW President Kim Gandy also guardedly praised the decision. “We regret that the court did not take the final step by ordering that the term ‘marriage’ be applied across the board to all couples,” said Gandy. “No other word has the same power as ‘marriage’ and no other status can provide the full complement of state and federal protections that opposite-sex couples enjoy without question.”

The New Jersey Supreme Court ruling came in an appeal of the case of Lewis v. Harris, a lawsuit filed in 2002 on behalf of seven same-sex couples who were denied marriage licenses.

The ruling overturns an appellate court decision, which upheld the initial trial court’s rejection of the plaintiffs’ complaint against the state for denying the licenses.

Marriage equality activists say that regardless of the New Jersey State Legislature’s ultimate decision on the issue, federal law, with the so-called Defense of Marriage Act (passed in 1996), will not recognize any same-sex marriages and authorizes other states to refuse to recognize them.