Supreme Court Ruling Makes Same-Sex Marriage a Right Nationwide

by Adam Liptik

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WASHINGTON — In a long-sought victory for the gay rights movement, the Supreme Court ruled by a 5-to-4 vote on Friday that the Constitution guarantees a right to same-sex marriage.

“No longer may this liberty be denied,” Justice Anthony M. Kennedy wrote for the majority in the historic decision. “No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice and family. In forming a marital union, two people become something greater than once they were.” Marriage is a “keystone of our social order,” Justice Kennedy said, adding that the plaintiffs in the case were seeking “equal dignity in the eyes of the law.”

The decision, which was the culmination of decades of litigation and activism, set off jubilation and tearful embraces across the country, the first same-sex marriages in several states, and resistance—or at least stalling—in others. It came against the backdrop of fast-moving changes in public opinion, with polls indicating that most Americans now approve of the unions.

The court’s four more liberal justices joined Justice Kennedy’s majority opinion. Each member of the court’s conservative wing filed a separate dissent, in tones ranging from resigned dismay to bitter scorn.

In dissent, Chief Justice John G. Roberts Jr. said the Constitution had nothing to say on the subject of same-sex marriage. “If you are among the many Americans—of whatever sexual orientation—who favor expanding same-sex marriage, by all means celebrate today’s decision,” Chief Justice Roberts wrote. “Celebrate the achievement of a desired goal. Celebrate the opportunity for a new expression of commitment to a partner. Celebrate the availability of new benefits. But do not celebrate the Constitution. It had nothing to do with it.”

In a second dissent, Justice Antonin Scalia mocked the soaring language of Justice Kennedy, who has become the nation’s most important judicial champion of gay rights. “The opinion is couched in a style that is as pretentious as its content is egotistic,” Justice Scalia wrote of his colleague’s work. “Of course the opinion’s showy profundities are often profoundly incoherent.”

As Justice Kennedy finished announcing his opinion from the bench on Friday, several lawyers seated in the bar section of the court’s gallery wiped away tears, while others grinned and exchanged embraces. Justice John Paul Stevens, who retired in 2010, was on hand for the decision, and many of the justices’ clerks took seats in the chamber, which was nearly full as the ruling was announced. The decision made same-sex marriage a reality in the 13 states that had continued to ban it.

Outside the Supreme Court, the police allowed hundreds of people waving rainbow flags and holding signs to advance onto the court plaza as those present for the decision streamed down the steps. “Love has won,” the crowd chanted as courtroom witnesses threw up their arms in victory.

In remarks in the Rose Garden, President Obama welcomed the decision, saying it “affirms what millions of Americans already believe in their hearts. Today we can say, in no uncertain terms, that we have made our union a little more perfect.”

Justice Kennedy was the author of all three of the Supreme Court’s previous gay rights landmarks. The latest decision came exactly two years after his majority opinion in *United States v. Windsor*, which struck down a federal law denying benefits to married same-sex couples, and exactly 12 years after his majority opinion in *Lawrence v. Texas*, which struck down laws making gay sex a crime.

In all of those decisions, Justice Kennedy embraced a vision of a living Constitution, one that evolves with societal changes.

“The nature of injustice is that we may not always see it in our own times,” he wrote on Friday. “The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning.”

This drew a withering response from Justice Scalia, a proponent of reading the Constitution according to the original understanding of those who adopted it. His dissent was joined by Justice Clarence Thomas. “They have discovered in the Fourteenth Amendment,” Justice Scalia wrote of the majority, “a ‘fundamental right’ overlooked by every person alive at the time of ratification, and almost everyone else in the time since. These justices know,” Justice Scalia said, “that limiting marriage to one man and one woman is contrary to reason; they know that an institution as old as government itself, and accepted by every nation in history until 15 years ago, cannot possibly be supported by anything other than ignorance or bigotry.”

Justice Kennedy rooted the ruling in a fundamental right to marriage. Of special importance to couples, he said, is raising children. “Without the recognition, stability and predictability marriage offers,” he wrote, “their children suffer the stigma of knowing their families are somehow lesser. They also suffer the significant material costs of being raised by unmarried parents, relegated through no fault of their own to a more difficult and uncertain family life. The marriage laws at issue here thus harm and humiliate the children of same-sex couples.”

In dissent, Chief Justice Roberts said the majority opinion was “an act of will, not legal judgment.　The court invalidates the marriage laws of more than half the states and orders the transformation of a social institution that has formed the basis of human society for millennia, for the Kalahari Bushmen and the Han Chinese, the Carthaginians and the Aztecs,” he wrote. “Just who do we think we are?”

The majority and dissenting opinions took differing views about whether the decision would harm religious liberty. Justice Kennedy said the First Amendment “ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths.” He said both sides should engage in “an open and searching debate.”

Chief Justice Roberts responded that “people of faith can take no comfort in the treatment they receive from the majority today.” Justice Samuel A. Alito, Jr., in his dissent, saw a broader threat from the majority opinion. “It will be used to vilify Americans who are unwilling to assent to the new orthodoxy,” Justice Alito wrote. “In the course of its opinion, the majority compares traditional marriage laws to laws that denied equal treatment for African-Americans and women. The implications of this analogy will be exploited by those who are determined to stamp out every vestige of dissent.”

Gay rights advocates had constructed a careful litigation and public relations strategy to build momentum and bring the issue to the Supreme Court when it appeared ready to rule in their favor. As in earlier civil rights cases, the court had responded cautiously and methodically, laying judicial groundwork for a transformative decision.

It waited for scores of lower courts to strike down bans on same-sex marriages before addressing the issue, and Justice Kennedy took the unusual step of listing those decisions in an appendix to his opinion.

Chief Justice Roberts said that only 11 states and the District of Columbia had embraced the right to same-sex marriage democratically, at voting booths and in legislatures. The rest of the 37 states that allow such unions did so because of court rulings. Gay rights advocates, the chief justice wrote, would have been better off with a victory achieved through the political process, particularly “when the winds of change were freshening at their backs.”

In his own dissent, Justice Scalia took a similar view, saying that the majority’s assertiveness represented a “threat to American democracy.”

However, Justice Kennedy rejected that idea. “It is of no moment whether advocates of same-sex marriage now enjoy or lack momentum in the democratic process,” he wrote. “The issue before the court here is the legal question whether the Constitution protects the right of same-sex couples to marry.”

Later in the opinion, Justice Kennedy answered the question. “The Constitution,” he wrote, “grants them that right.”

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