



RELIGIOUS LIBERTY AND SCOTUS 2015

It seems every year – always fittingly in advance of the annual observance of Independence Day – the U.S. Supreme Court issues one or more decisions relating to or affecting religious liberty. But this year it didn't. Or did it? In the landmark Obergefell v. Hodges decision of June 26th, a 5-4 majority relied on the 14th Amendment to rule that marriage licenses cannot be denied to couples of the same sex. The opinion and the dissents, one for each of the dissenting Justices, some of whom joined in the dissents of the others, are well worth reading and very readable. [http://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf]

The majority opinion asserted that:

“the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty.”

That is, people spontaneously establish and maintain partnership-family relationships as a part of their humanity. Government-issued marriage licenses merely recognize and confer legal status to such relationships. Before Obergefell, 34 states already did so for same-sex couples. But as the government may not arbitrarily deny police and fire protection, or access to courts of justice, or anything else it ordinarily does or may do in the future, it may not deny marriage licenses to couples simply because they are of the same sex. The majority found not only that there was no justification for such denial but that not allowing same-sex couples to marry injured them.

The dissenting Justices assert that the majority overstepped its bounds and even usurped and threatened the democratic form of our government. Justice Thomas raises another interesting objection. He accuses the majority of holding that “human dignity ... comes from the Government” when, in fact:

“the Constitution contains no ‘dignity’ Clause, and even if it did, the government would be incapable of bestowing dignity. ... Slaves did not lose their dignity (any more than they lost their humanity) because the government allowed them to be enslaved. Those held in internment camps did not lose their dignity because the government confined them. And those denied governmental benefits certainly do not lose their dignity because

the government denies them those benefits. The government cannot bestow dignity, and it cannot take it away.”

This is all true. In a metaphysical sense, intrinsic rights and human dignity exist and cannot be expunged even in the deepest darkest death camp gulag that ever existed. But this is irrelevant to the practical purposes of the Supreme Court. The US Declaration of Independence asserts that “Governments are instituted among men” so that “the governed,” can “secure ... certain unalienable Rights ... [among which] are Life, Liberty and the pursuit of Happiness.” That is, the purpose of government, the “benefits” of having a government of, by and for the people, as Lincoln put it, is to give a practical effect to liberty, and thereby dignity. It is to try to make an “is” out of what would otherwise remain only an “ought.” It is the vision and mission of our nation.

And what of religious liberty? It is beyond dispute that opposition to same-sex relationships comes entirely from beliefs that “God” or “holy” writings forbid homosexuality. Such beliefs are protected by the 1st Amendment’s guarantee of religious liberty. But there is no “liberty” that allows the imposition of anyone’s beliefs – religious or otherwise – upon others or that justifies harm to others.

The majority opinion notes that those who object to homosexuality:

“may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned.”

Justice Alito, who avoids referring to religion at all in his dissent, responded:

“the majority attempts ... to reassure those who oppose same-sex marriage that their rights of conscience will be protected. We will soon see ... I assume that those who cling to old beliefs ... if they repeat those views in public ... will risk being labeled as bigots and treated as such”

In fact, such people are already so labeled, as they should be and as are those who publicly assert, as their “right of conscience,” that their own ethnic group is superior to all others, that Jews control the world, that dark-skinned people are inferior and so on. It is anyone’s right to believe in nonsense, to be wrong, and even to be a bigot. But there is no right

not to be recognized as such. This is the here-and-now meaning of the biblical admonition to “judge not lest ye be judged.” A professional judge ought to understand this more deeply than most. So it is puzzling why Justice Alito attaches greater importance to the sensibilities of bigots than to the practical problems of same-sex couples denied the equal protections of the law, in this case family law matters.

Of course, there is no question that the Obergefell decision will lead to additional litigation styled as “religious liberty” cases. Already, legislation has been introduced, the First Amendment Defense Act, which is basically a specialized federal “Religious Freedom Restoration Act” (RFRA)(see the NTCOF bulletins of July and August of 2014). It reads:

“the Federal Government shall not take any discriminatory action against a person, wholly or partially on the basis that such person believes or acts in accordance with a religious belief or moral conviction that marriage is or should be recognized as the union of one man and one woman, or that sexual relations are properly reserved to such a marriage.”

Here in Texas, Lieutenant Governor Dan Patrick wants to expand a law, SB 2065, passed this year, stating that religious clergy are not required to solemnize same-sex marriages. The law was meaningless since such clergy may decline to solemnize any marriage they object to. Patrick wants “to include County Clerks, judges and Justices of the Peace” –who are in the pay of the government – who may object to same-sex marriage. Patrick said:

“It has been said that those who oppose gay marriage are on the wrong side of history. I would rather be on the wrong side of history than on the wrong side of my faith and my beliefs.” [https://www.ltgov.state.tx.us/2015/06/26/lt-governor-patrick-statement-on-supreme-court-ruling-on-same-sex-marriage/]

It would not be the first or only time that religious beliefs come into conflict with one’s work responsibilities. Indeed, such cases gave rise to the RFRA laws. But what sense does it make for orthodox Jews or Muslims to be employed as inspectors of pork products, or for devout Catholics to be divorce judges, or for Jehovah’s Witnesses to be put in charge of blood banks? Religious freedom does not mean the “freedom” to subject others to one’s peculiar religious strictures and scruples. If someone’s religious beliefs puts them at odds with applying the equal protection of the law then they should remove themselves and leave it to others to do the right thing. It is not much different than the consequences that atheists suffered when it was insisted that they swear oaths to “God.” -- TG

All NTCOF events can be found through our website calendar , or our meetup page, from which you can RSVP, at:
- www.meetup.com/church-of-freethought - JOIN THE NTCOF MEETUP GROUP !!!

Social Luncheon: Today, immediately after our Service, join us for lunch and discussion at the Jason’s Deli on MacArthur Blvd just south of 635, at 7707 N MacArthur Blvd, phone (972) 432-0555.

Freethought Salon: Discuss today’s service topic or other conundrums of interest. It happens most non-1st Sundays, over breakfast, at the Hilton DFW Lakes Hotel restaurant in Grapevine beginning 10:30 AM.

Game Night: This is nearly every Friday night at the IHOP on 2310 Stemmons Trail (I-35), near Northwest Highway (Loop 12). Plan to arrive at about 7:30 PM, and stay late playing Risk, Rummikub, and other fun games!

Freethought Book Club: Coming August 29th! Details to be announced! BOOK: The Bonobo and the Atheist by Frans De Waal.

Communitas Dinner Groups: To Be Announced! Have Another Idea? Email or call us about it!

PLANNED FOR NEXT MONTH:
“THE ATHEIST MISSIONARY Part II”
> Sunday, August 2nd, 2015 <
COMFORT INN DFW AIRPORT NORTH
(about 1/2 mile west of the Sheraton on 114
- take the Freeport Parkway exit, then the frontage road east just past Best Western)

YOUR GENEROUS DONATIONS TO THE NTCOF ARE NEEDED, APPRECIATED, AND TAX-DEDUCTIBLE!!

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 The Fellowship of Unbelievers

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