

Rights Aren't Subject to Majority Rule

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Recently the ACLU of West Virginia received a letter from an individual who raised questions about a news item that noted “opponents [of a gay marriage amendment] cast the amendment campaign as an attempt at tyranny of the majority.” “Doesn’t the majority rule?” she wanted to know. If a majority of citizens favor defining marriage as between one man and one woman, shouldn’t we enshrine that definition in our state Constitution? Not necessarily.

The United States Constitution spells out rights that cannot be taken away from us by majority vote. For example, we have freedom of religion, speech, press, assembly, and petition, the right to equal protection of the laws, and the right not to be deprived of life, liberty, or property without due process of law. Still others are spelled out in the Bill of Rights.

We don’t have a “right” to everything we might prefer, though. For example, we have the right to vote for our representatives, but we don’t have a right to have the people we vote for elected, or to require our representatives to pass only legislation of which we approve. We have a right to freely exercise our religion, but not to require others to share our beliefs.

The question regarding gay marriage, which is at issue here in West Virginia and across the country, and about which reasonable people may differ, is whether all people have a right to marry the person they love regardless of gender. The ACLU believes they do. Civil marriage has been held to be a fundamental right of all people, and courts have held that we can’t single out and discriminate against groups of people just because we don’t like them. Does barring marriage for gay people violate their Constitutional right to equal protection of the law, to due process of law, to pursue and obtain happiness as guaranteed by the West Virginia constitution?

We may disagree as to the answer, but *if* the answer is that these Constitutional rights encompass the right of gays and lesbians to marry then they can’t be overturned by a vote of the majority.

The limits on majority rule are spelled out in a paragraph from a famous case, *West Virginia Board of Education v. Barnette*, in which the United States Supreme Court declared unconstitutional a West Virginia law that required students to salute the flag in violation of their religious beliefs and their First Amendment rights. The Court struck down the law despite the fact that a majority of the legislature had voted for it.

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and to establish them as legal

principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no election.

West Virginia Bd. of Education v. Barnette, 319 U.S. 624, 638 (1943)

To sum up, while we may differ as to whether gays and lesbians have a right to marry, if they *do* have that right, it can't be taken away by majority vote. That same principle protects you, if you're a member of an unpopular minority, from having to participate in a religion dictated by the government or having your home searched without a warrant. It permits you to express your political views without fearing that you'll be arrested, and guarantees that you'll be free of arbitrary government action.

It's likely that each of us will be part of a number of majorities and minorities at one time or another, so we can all appreciate both the power of the majority and the vulnerability of the minority, as well as the constitutional limits that ensure the rights of both.