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. . . . They ask for equal dignity in the eyes of the law. The Constitution grants them that right.


The New York State Bar Association has long supported marriage equality, but even the most steadfast same-sex marriage supporters may have had a hard time predicting the breadth and magnitude of the recent U.S. Supreme Court decision in Obergefell v. Hodges, 135 S. Ct. 2584 (2015). The outcome is a testament to couples who not only pledged their love to one another but pledged to fight for those who viewed marriage – and nothing less – as the only “real path to profound commitment.” Id. at 2594. The holding is also a testament to two principles that lie at the foundation of this decision and our nation’s modern understanding of liberty: due process and equal protection of the law, as applied through the Fourteenth Amendment. See http://constitutioncenter.org/constitution/the-amendments/amendment-14-citizenship-rights.

Enshrined in our law almost 150 years ago, due process and equal protection have allowed our nation’s policies to evolve and grow. A look into the recent past reveals how truly far we have come: overcoming a ban on interracial marriage (Obergefell, 135 S. Ct. at 2589 (citing Loving v. Va., 388 U.S. 1, 12 (1967))); a statute proclaiming the husband as head of the household, and that “the wife is subject to him,” having no separate “legal civil existence” (id. at 2603–04 (citing Ga. Code Ann. § 53-501)); and a prohibition on distributing contraception to unmarried people. Id. at 2604 (citing Eisenstadt v. Baird, 405 U.S. 438, 446–54 (1972))). Statutes like these were on the books, with variations in states throughout the country, during our lifetimes. Today, the courts, lawyers, and laypeople see these statutes as an affront to an individual’s ability to enjoy equal dignity under the law and as an obstacle to our progress as a free society.

In its ruling in Obergefell, which invalidated bans on same-sex marriage, the Court observed that the “nature of injustice is that we may not always see it in our own times.” Id. at 2598. But, as lawyers, we have the duty to use the collective strength of our voices to be agents for change once we do see injustice: “The generations that wrote and ratified the Bill of Rights during our lifetimes. Today, the courts, our courts, and for our Association. The Obergefell holding instructs us that the interrelation of due process and equal protection “furthers our understanding of what freedom is and must become.” Id. at 2603.

The Due Process Clause and the Equal Protection Clause do not just provide a mechanism for correcting unjust statutes. They provide the foundation upon which liberty stands and ensure each of us that freedom is truly enjoyed by all through equal application of the law, regardless of race, gender, marital status, sexual orientation, or any other suspect classification.

The New York State Bar Association stands with those who seek equal dignity in the eyes of the law and has worked to advance equality in New York and throughout the nation.

In 2005, our House of Delegates called for granting same-sex couples the same rights and responsibilities available to heterosexual couples. Six years later, the Association endorsed legalization of same-sex marriage to ensure equal rights among all people, regardless of sexual orientation, concluding that civil unions conferred an inferior status. We fought hard for the passage of a precursor to the Obergefell ruling – the Marriage Equality Act, which legalized same-sex marriage here in New York. Then–State Bar President Vincent E. Doyle lauded the Legislature’s passage of the bill:

For the State Bar Association, it came down to a legal issue – the disparate treatment of a group of people because of who they are. When the issue was debated within our committees and House of Delegates, there was an overwhelming consensus that this discrimination was wrong and that

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as lawyers, we should advocate its end. I believe that the Association will look back at our advocacy as a shining moment in our history.

Our advocacy and our educational efforts continued to shine a light on the constitutional protections guaranteed to all New Yorkers and all Americans. In 2013, we joined amicus curiae briefs that challenged the constitutionality of California’s Proposition 8, which prohibited same-sex marriages in the state, and the federal Defense of Marriage Act (DOMA), on the grounds that these violated the Equal Protection Clause by defining marriage exclusively as the legal union between a man and a woman. View the briefs at www.nysba.org/PerryBrief and www.nysba.org/WindsorBrief. In March of this year, we joined an amicus brief filed before the Court as it considered Obergefell; our argument was part of that which prevailed to make the right to marry among same-sex couples the law of the land.

We will continue to inform the public and our members on the latest developments in this area of the law. In September, we are hosting a continuing legal education seminar on some of the most pressing issues facing attorneys who represent LGBT clients in light of the Obergefell ruling, including how the decision affects same-sex parenting, estate planning, and representing transgender clients.

In its interpretation of the Equal Protection Clause in Obergefell, the Court stated that “new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged.” Obergefell, 135 S. Ct. at 2603. As lawyers, and New Yorkers, let us take this as a challenge to reveal and reverse inequality. Together, we shall use our expertise and resources to continue to assist the struggle to end discriminatory practices throughout our great state and nation, and to increase access to justice for all. As the largest voluntary state bar association in the nation, we must champion equality at every opportunity.

As a New York State Bar Association member you recognize the value and relevance of NYSBA membership.

For that, we say thank you.

Your commitment as members has made NYSBA the largest voluntary state bar association in the country. You keep us vibrant and help make us a strong, effective voice for the profession.