

Opinion: DOMA, Loving v. Virginia and anti-gay marriage laws

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Sometimes love is very inconvenient and the heart follows its own course in spite of conventional wisdom. We don't always choose who we love and this is especially true for those who find themselves in love with someone others find inappropriate. It's even more true for those who find themselves attracted only to members of the same sex. Gay couples are not the first group of people to find themselves bucking convention, tradition and especially religious thought when it comes to matters of the heart and they aren't the first to fight the law over the issue of who can and can't marry.

In 1959, Richard and Mildred Loving found themselves in more than a religious confrontation over loving each other, they found themselves in jail. Their crime? They were an inter-racial couple and the state of Virginia in its "wisdom" deemed their marriage a felony.

After marrying in Washington, D.C., Richard and Mildred Loving were arrested in the early morning of July 11, 1959 when they were removed by police from their bed in their Virginia home. Under *Virginia's Racial Integrity Act* of 1662 the Lovings were charged with and pleaded guilty to a felony. They were sentenced to a partial exile from their home state but eventually were allowed to return home SEPARATELY. The judge, who was no great believer in separation of church and state, stated in his ruling:

*"Almighty God created the races white, black, yellow, malay and red, and he placed them in separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races show that he did not intend for the races to mix."*²

Yes, such reasoning probably seems absurd to most of us, although white supremacists might agree with the judge. Can you imagine a judge today trying to justify the anti-miscegenation laws with such tripe?

For those who might think that I put all the blame on the conservatives for the denial of constitutional rights to homosexuals, let me say that a good portion of blame belongs to Bill Clinton for signing DOMA...or the Defense of Marriage Act.

DOMA, is the short title of a federal law of the United States passed on September 21, 1996 as Public Law No. 104-199, 110 Stat. 2419. Its provisions are codified at 1 U.S.C. § 7 and 28 U.S.C. § 1738C. The law has two effects: 1) No state (or other political subdivision within the United States) needs to treat a relationship between persons of the same sex as a marriage, even if the relationship is considered a marriage in another state. 2) The federal government may not treat same-sex relationships as marriages for any purpose, even if concluded or recognized by one of the states.

*The bill was passed by Congress by a vote of 85-14 in the Senate and a vote of 342-67 in the House of Representatives, and was signed into law by President Bill Clinton on September 21, 1996.*⁷

I would hope that we can all agree on the fact that homosexuals are in fact free men (and women) and in that court decision no exception to the rule was given. Were the Supreme Court to hear the appeals on DOMA they would, in my opinion, have to do one of two things....risk alienating the right by ruling DOMA and all state laws banning gay marriage as unconstitutional, OR reversing themselves and making an exception to the previous ruling that recognizes the freedom to marry as one of VITAL personal rights afforded to FREE men, possibly outraging the left and minorities.

To hear an appeal is to admit there is no middle ground such as the one that California tried to take by banning gay marriage while recognizing the gay marriages that took place during the short period of time that it was legal in California. In fact the Supreme Court's refusal to hear the appeals are an egregious act of cowardice and one that leaves the gay citizens of this country in limbo and the issue up for court battle after court battle on the state level.

Fortunately for the reader, (because I could go on and on with different points), I have decided to close with the following from Mildred Loving – a statement she made in 2007 on the 40th anniversary of the *Loving* decision:

*“Surrounded as I am now by wonderful children and grandchildren, not a day goes by that I don't think of Richard and our love, our right to marry, and how much it meant to me to have that freedom to marry the person precious to me, even if others thought he was the 'wrong kind of person' for me to marry. **I believe all Americans, no matter their race, no matter their sex, no matter their sexual orientation, should have that same freedom to marry. Government has no business imposing some people's religious beliefs over others. Especially if it denies people's civil rights.**”*

*“I am still not a political person, but I am proud that Richard's and my name is on a court case that can help reinforce the love, the commitment, the fairness, and the family that so many people, black or white, young or old, gay or straight seek in life. **I support the freedom to marry for all. That's what Loving, and loving, are all about.**”⁹*

And to that, Mrs. Loving, all I can say is AMEN.