

Same-Sex Marriages

by John Patrick Quigley

Fourteenth Amendment to the United States Constitution, Section 1

“All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of its laws.”

Obergefell v. Hodges, 133 S.Ct. 2584 (June 26, 2015)

Justice Kennedy, joined by Justices Breyer, Ginsburg, Sotomayor and Kagan, ruled: “The Fourteenth Amendment requires a State to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out of state.” (Ibid, p. 2588)

This case is not about the desirability of same-sex marriages. The issue between the majority Justices and those dissenting is not even about its permissibility under the Constitution. It is about whether its legality should be decided by the states or by five unelected lawyers.

Justice Kennedy’s opinion reflects the finest traditions of

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Lawyer Referral & Information Service

by Elizabeth Harmon

Finding the right attorney for a person’s particular legal situation can be intimidating. However, the Orange County Bar Association can make this much easier with their Lawyer Referral & Information Service (LRIS). This resource can be the first step in finding the right attorney for whatever legal needs a person might have. The service matches callers to attorneys that are knowledgeable in a particular field and in good standing with the State Bar of California. Developed by the Orange County Bar Association, the non-profit organization meets the American Bar Association referral service standards.

The referral service consists of attorneys who are qualified in 35 areas of the law and trained specialists who will match a client to an appropriate attorney for a \$25.00 administrative charge. The fee is waived for referrals dealing with Family Law, Criminal Law, Medical Malpractice, Personal Injury, Social Security, and Worker’s Compensation. A brief consultation will be conducted by the attorney free of charge. If the initial referral is not suitable, the client may call back the LRIS for another referral – up to two times without additional charge.

The LRIS specialist uses basic information provided to them by the caller to assess whether

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Proposition 47:

Robbing Peter to pay Paul?

by Mora Prestinary

Proposition 47, also known by its ballot title *Criminal Sentences. Misdemeanor Penalties*, was a referendum passed by voters in the state of California on November 4, 2014. The measure was also referred to by its supporters as the *Safe Neighborhoods and Schools Act*. It redefined some nonviolent offenses as misdemeanors, rather than felonies, as they had previously been identified.

The measure reduces penalties for certain offenders convicted of non-serious and nonviolent property and drug crimes. The measure also allows certain offenders who have been previously convicted of such crimes to apply for reduced sentences. It boasts that net state criminal savings resulting from jail and court expenditures could reach the low hundreds of millions of dollars annually by requiring any state savings that result from the measure be spent to support substance abuse treatment as well as truancy (unexcused absences) prevention, mental health issues, and victim services.

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Same-Sex Marriage*(Continued from page 1)*

English Common Law, which arguably made the greatest advances of human rights and liberties for individuals by court decisions rather than parliamentary acts reflecting majoritarian views. But after increasing Parliamentary power culminating in a beheading of the King, the Parliament became supreme, gaining the last word. The English courts cannot declare acts of Parliament unconstitutional, although they continue to affect their implementation by interpretation. That practice is well illustrated by the present case.

In contrast, under the American system of balanced powers, the Supreme Court has the last word (subject to Constitutional amendment) and can strike down legislation that violates provisions in our *written* Constitution. This can come down to differing interpretations of a single word. In the present case, that word is “liberty”.

Substantive Due Process

In defining liberty, Justice Kennedy takes a progressive view of the Fourteenth Amendment. “The generations that wrote and ratified the Fourteenth Amendment did not presume to know the extent of freedom in all its dimensions, and so they enlisted to future generations a charter protecting the right to enjoy liberty as we learn its meaning. When new insight reveals discord between the Constitution’s central provisions and a received legal structure, a claim to liberty must be addressed.” (Ibid, p. 2598).

He then cites four principles and traditions which demonstrate that the right to marriage is fundamental under the Constitution, including cases where government refusal to license marriages for same sex-couples restricted their liberty to enjoy the benefits of marriage, describing said refusal as a denial of “substantive due process”. (Ibid, pp. 2599-2602)

Dissents

In his dissent, the Chief Justice appears to accept the concept of “substantive due process”, but claims that the majority fails to exercise the “utmost care” as required in prior cases. In particular, he claims that none of the cases cited by Justice Kennedy “purported to change the core definition of marriage as the union of a man and a woman”. (Ibid, p. 2619).

The Chief Justice uses Justice Kennedy’s own words from a speech at Stanford: “One can conclude that certain essential, or fundamental, rights should exist in any just society. It does not follow that each of these fundamental rights is one that we as judges can enforce under the written Constitution. The Due Process Clause is not a guarantee of every right that should inhere in an ideal system.” (Ibid, p. 2616).

Although Justices Thomas and Scalia joined the Chief Justice’s opinion, they didn’t seem as receptive to the concept of “substantive due process”, and wrote separate opinions. Justice Thomas wrote that the doctrine of substantive due process was indefensible, and that the majority’s concept of liberty “bears no resemblance to any plausible meaning of that word as it is used in the Due Process Clauses.” (Ibid, p. 2632).

Justice Alito did not join the Chief Justice’s opinion, but wrote a separate opinion that was joined by Justices Thomas and Scalia. “Today’s decision shows that decades of attempts to restrain this Court’s abuse of its authority have failed....What it evidences is the deep and perhaps irremediable corruption of our legal culture’s conception of constitutional interpretation.” (Ibid, p. 2643).

Constitutional Interpretation

Philosophical arguments often devolve into the interpretation or definition of words. The opinions in this case discuss the meaning of “liberty” and also “rights” and “freedoms”. It was observed that what is usually called the “Bill of Rights” actually refers to negative rights. Rights are commonly thought to be claims against the government to bestow some benefit, whereas the First Ten Amendments are demands not to do something that restricts what might better be called liberties, or freedom from constraints. Conservatives usually emphasize restrictions on government actions, whereas Progressives usually emphasize increasing government power, although there are exceptions in both instances.

The Bill of Rights are limitations on the federal government, whereas the Nineteenth Amendment limits the states in three ways. “Privileges and immunities” of the U. S. is often assumed to be the Bill of Rights. The “due process of law” language is copied from the Fifth Amendment, and has uncertain meaning. They both limit government power. “Equal protection” can be viewed as either a positive or negative requirement, e.g. stop favoring some or favor everybody.

Equal Protection

Justice Kennedy also supports his ruling by reference to a “synergy” with the equal protection clause, which he explains. (See Ibid, pp 2603-2605). The Chief Justice observes that: “The majority does not seriously engage with this claim. Its discussion is, quite frankly, difficult to follow....The equal protection analysis might be different, in my view, if we were confronted with a more focused challenge to the denial of certain tangible benefits.” (Ibid, p. 2623)



Lawyer Referral*(Continued from page 1)*

a referral to an attorney is necessary. Only those in need of an attorney and are able to pay will be referred. All information provided by a caller is kept private and only given to the appointed attorney. If a caller does not have the means to pay for legal counsel, they will be directed to local pro bono organizations or to attorneys in the *LRIS Modest Means* program - they do not handle any actual referrals to pro bono attorneys.

The *Modest Means* program is available for Orange County residents who do not qualify for any of the county pro bono services and at the same time, meet the income guidelines. They are referred to attorneys who will help them with their legal matters at considerably lowered rates. This program also requires the same administrative fee of \$25.00 for referrals - in the areas of Consumer Law, Bankruptcy, Elder Law, Landlord/Tenant (Housing), and Immigration Law. There is no administrative fee for the area of Family Law.

The LRIS also provides emergency legal assistance when their office is closed. Their "After Hours" program handles legal issues dealing with criminal law, family law, and personal injury law. A person can call the LRIS phone number and leave a message stating their name, phone number, and brief explanation of their situation and an experienced attorney will return the person's call.

To request a referral or for "After Hours" emergency assistance, call: (949) 440-6747 or (877) 257-4762

To request a referral online go to:

<http://www.lrisoc.org/refer.asp>

**Prop 47***(Continued from page 1)*

It appears to have solved one problem but may have created a new problem. Previously, The Drug Courts Program mandated that pre-plea diversion drug courts under Penal Code section 1000.5, allow criminal proceedings to be suspended while the defendant participated in a program involving counseling, drug testing, education, or other requirements. If the defendant successfully completed the program, the criminal charges could be dismissed. "After the passing of Prop 47, many drug offenders became misdemeanors, and as a result, drug treatment became impossible to mandate and participation in drug courts went down," said San Diego County District Bonnie Dumanis (L.A. Daily Journal, August 12, 2015).

Look in a neighborhood around you. Do you know where these *misdemeanors offenders* ended up? (See article "Effects of Prison Reform Initiatives Felt at Santa Ana Civic Center": <http://voiceofoc.org/2015/03/effects-of-prison-reform-initiatives-being-felt-at-santa-ana-civic-center/>).

Statutes affected by Prop. 47

1. PC 459 – commercial burglary not exceeding \$950 is now a misdemeanor called "Shoplifting."
2. PC 470, 471, 472, 473, 475, 476, 484f, & 484i (forgery statutes) – are now misdemeanors, unless a defendant is also convicted of identity theft under PC 530.5
3. PC 476a – checks with nonsufficient funds not exceeding \$950 if defendant does not have three or more priors for PC 470, 475, or 476.
4. PC 490.2 – Grand theft – obtaining property by theft not exceeding \$950 is now considered petty theft and a misdemeanor.
5. PC 496 – Receiving stolen property is now a misdemeanor or if the value of the property does not exceed \$950.
6. PC 484/666 – Petty theft with a prior 7. H&S 11350, 11357a, 11377 – certain specified categories of drug possession are now misdemeanors – (From California Attorneys for criminal Justice: <http://www.cacj.org/Legislation/2014-Legislative-Review/Prop-47.aspx>)

For more information see the California Courts website on Prop 47 at www.courts.ca.gov/prop47.htm.

ask a
librarian

by Lu Nguyen



What is a Vexatious Litigant?



Black's Law Dictionary defines a Vexatious Litigant as "A litigant who repeatedly files frivolous lawsuits. Many jurisdictions have statutes or local rules requiring a vexatious litigant to obtain the court's permission to file any further lawsuits or pleadings. The litigant may also be subject to sanctions".

You can find more information regarding Vexatious Litigants, including the *Vexatious Litigant List* (updated monthly) at the California Court's website: www.courts.ca.gov/12272.htm



New

Looking at the Web

Proposition 47:

<http://www.voterguide.sos.ca.gov/en/propositions/47/>

http://www.cdcr.ca.gov/news/Proposition_47.html

Forms Packet - Felony Violation Designated as Misdemeanor and Resentencing – P.C.1170.18 (Prop 47)

Form number L-0925:

<http://www.occourts.org/forms/formslocal.html>

Corte de Reclamos Menores Una Guía Práctica para Su Uso

http://www.dca.ca.gov/publications/small_claims/small_claims_span.pdf

FindLaw en Español <http://espanol.findlaw.com/>

Cortes de California Centro de Ayuda

<http://www.courts.ca.gov/selfhelp.htm?rdeLocaleAttr=es>

Inquilinos de California Guía de Derechos & Responsabilidades

http://www.dca.ca.gov/publications/landlordbook/spanish_version.pdf

Guía del Consumidor Proteja a su Familia

<http://publications.usa.gov/USAPubs.php?PubID=8202>

Informational and Instructional Materials Translated by California Superior Courts <http://www.courts.ca.gov/partners/305.htm#civharass>

Obergefell v. Hodges (135 S.Ct. 2584) a landmark United States Supreme Court case in which the Court held in a 5–4 decision that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Supreme Court - http://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf

ABA - http://www.americanbar.org/publications/preview_home/14-556-14-562-14-571-14-574.html?25077268167

¿Habla Español?

The current book display on Floor 3 features Spanish language materials available in the Library and on the Web. Please take a moment to stop and look at the collection. You will find many more titles in the bibliography that accompanies the display. ¡Hasta la vista!

ProView

From Thomson Reuters (West) a new online platform called “ProView” is available on the library’s public computer network.

ProView contains the full-text of selected treatises covering the following topics:

Bankruptcy, Business & Organizations law, California civil procedure, Commercial, Construction, Damages, Elder law, Environmental, Estate Planning, Evidence, Family Law, Immigration, Insurance, Intellectual Property, Personal Injury, Product Liability, Real Estate, Securities, Taxation, Wills & Trusts, Zoning.

Included also are California desktop codes & court rules, Rutter publications & Fragomen Immigration publications.

Print or download PDFs to flash.

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Wednesday November 11
&
Thursday, Friday, & Saturday
November 26, 27, & 28



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