

# BACK STORY

## MARRIAGE EQUALITY – LAW OF THE NINTH CIRCUIT AND LAW OF THE LAND

BY KELLY DOVE, ESQ.

Sometimes, things become clear when you are forced to explain them in simple terms. As I prepared to travel to San Francisco last September to join the legal team at oral argument before the Ninth Circuit Court of Appeals, I tried to explain to my four-year-old son why I was leaving for a few days. I told him that some people weren't allowed to marry the people they loved, and that I was working with a team to change that. And, in so many ways, it was that simple.

My involvement in *Sevcik v. Sandoval*, the case that defeated Nevada's marriage ban, began in late 2011 in partnership with Lambda Legal and O'Melveny & Myers. As we prepared to bring this challenge, we had the pleasure of getting to know the remarkable and courageous plaintiffs who had chosen to be part of this fight. Lead plaintiffs, Beverly Sevcik and Mary Baranovich, had been together for more than 40 years. All spoke of their desire to be married, or to have the state recognize their marriages, and for the privileges and rights so many people do not have to think twice about. These couples had been excluded from hospital rooms, been asked who their children's "real" mothers or fathers were as they sought medical care, and have had to expend significant resources in order to protect basic property and parental rights that different-sex married couples enjoy through simple operation of law.

On April 10, 2012, Snell & Wilmer, Lambda Legal, and O'Melveny & Myers filed a complaint on behalf of eight plaintiff couples in federal district court, challenging Nevada's state constitutional ban on marriage equality. At that time, same-sex marriage was legal in only six states. Three states voted to legalize same-sex marriage in November 2012, and one voted against a proposed constitutional amendment that would have banned gay marriage in the state. By the end of 2012, however, 29 states still had constitutional bans on same-sex marriage.

The federal district court ruled against the *Sevcik* plaintiffs in short order, which the plaintiffs immediately appealed to the Ninth Circuit. During the appeal, three key decisions changed the legal landscape and added momentum to the movement

seeking the eradication of marriage bans. The U.S. Supreme Court issued a pair of decisions: *United States v. Windsor*, 570 U.S., (2013), ruled that the Defense of Marriage Act, limiting the definitions of "marriage" and "spouse" to apply only to heterosexual couples, was unconstitutional; and *Hollingsworth v. Perry*, 570 U.S., (2013), reinstated same-sex marriage in California. The Ninth Circuit then held that classification based on sexual orientation is subject to heightened scrutiny in *SmithKline Beecham v. Abbott Laboratories*, 740 F.3d 471 (9th Cir. 2014), giving the plaintiffs' challenges based on the Equal Protection Clause undeniable teeth. Indeed, only weeks after *SmithKline*, all named defendants withdrew their opposition to the *Sevcik* appeal, leaving only the Coalition for the Protection of Marriage to defend the ban.

Marriage equality became the law in the Ninth Circuit on October 7, 2014, when a unanimous panel struck down discriminatory marriage bans for same-sex couples in

Nevada and Idaho. Now, less than a year later, marriage equality is the law of the land. Undeniably, there is still work to be done. Some have announced their refusal to comply with the Supreme Court's decision. In many states, it remains legal to fire an employee for being gay. However, support for the LGBT population's equal rights is still growing, and the fact that challenges remain does not overshadow the fact that *Obergefell v. Hodges* is an enormous win.

When the U.S. Supreme Court issued its decision Friday morning, deciding in no uncertain terms that marriage bans are unconstitutional, I reminded my son of our conversation last September, and explained that, before, not everyone could marry who they wanted to, but that from now on they can. And it's that simple. **NL**



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