

Obergefell v. Hodges / Excerpts from the Dissenting Opinions

The following are excerpts of the dissenting opinions written by Chief Justice John Roberts and Justice Clarence Thomas:

In the dissent, Chief Justice Roberts and Justices Scalia, Thomas, and Alito made two basic constitutional arguments:

- First, the Court overstepped its bounds by creating a new right.
- Second, by allowing same-sex marriage, the majority decision infringes upon the religious liberty of those who oppose same-sex marriage on religious grounds.

“But this Court is not a legislature. Whether same-sex marriage is a good idea should be of no concern to us. Under the Constitution, judges have power to say what the law is, not what it should be. The people who ratified the Constitution authorized courts to exercise ‘neither force nor will but merely judgment.’ (The Federalist No. 78, p. 465)

The majority’s decision is an act of will, not legal judgment. The right it announces has no basis in the Constitution or this Court’s precedent. The majority expressly disclaims judicial “caution” and omits even a pretense of humility, openly relying on its desire to remake society according to its own “new insight” into the “nature of injustice.”... As a result, the Court invalidates the marriage laws of more than half the States and orders the transformation of a social institution that has formed the basis of human society for millennia, for the Kalahari Bushmen and the Han Chinese, the Carthaginians and the Aztecs. Just who do we think we are?”

—*Chief Justice John Roberts*

“In our society, marriage is not simply a governmental institution; it is a religious institution as well. Today’s decision might change the former, but it cannot change the latter. It appears all but inevitable that the two will come into conflict, particularly as individuals and churches are confronted with demands to participate in and endorse civil marriages between same-sex couples. The majority appears unmoved by that inevitability.”

—*Justice Clarence Thomas*

