

National Employment Lawyers Association (NELA/NY)

Keynote Address by Evan Wolfson - November 19, 2009

I am honored to have been invited to join in celebrating the work of the National Employment Lawyers Association of New York.

In our wonderful New York – in a roomful of supportive, committed people like you, dedicated to defending rights and moving the country to greater inclusion and respect – it is sometimes hard to believe, or even remember, that those of us in this association who are lesbian, gay, bisexual, or transgender are second-class citizens under the law of this state and our country.

Though November brought passage of the Matthew Shepard Act, there are still no significant protections federally.

Only 21 states have laws prohibiting sexual orientation discrimination in employment; only 12 bar workplace discrimination based on gender identity.

Congress has not yet passed the Employment Non-Discrimination Act (ENDA), though President Obama has promised to see it through and sign it. Its time is now.

On top of this absence of protection and inclusion, the biggest discriminator against us is, in fact, the government – at both the federal level, through the military’s discriminatory regime and the so-called “Defense of Marriage Act,” and at the level of the states, through the massive and cruel denial of the freedom to marry and other family protections.

It’s clear why you in the National Employment Lawyers Association speak out on fairness for gay workers, access to coverage and benefits, and non-discrimination – but why do NELA and the community you serve have a stake in the struggle to end the exclusion of same-sex couples from marriage?

For several reasons.

First, you care about fairness and what the Vermont Supreme Court called in the marriage case there, our “common humanity.”

Gay people want and need the freedom to marry for the same mix of reasons as non-gay people: reasons that are emotional as well as economic, practical as well as personal, social as well as spiritual, and reasons that resonate in law as they do in love.

Second, gay workers want and need the freedom to marry as a matter, too, of respect, fairness, and economic protection.

Just today, two respected federal judges in California – one considered “conservative,” one “liberal” – ruled in employment disputes over the denial of health coverage to the partners of federal employees due to so-called “DOMA” and the failure to treat their lawful marriages

equally. Chief Judge Kozinski and Judge Reinhardt each found this discrimination by the government against its own intolerable.

According to the 2009 Out & Equal Workplace Survey, other factors being equal, 79% percent of lesbian and gay adults, 8 out of 10, would prefer a job with an employer based in a state that has ended exclusion from marriage over an employer based in a state that denies marriage to same-sex couples. Fairness and dignity and the ability to support and care for loved ones are employment concerns, too.

Because the freedom to marry is a workplace concern as well as a question of justice, it is unsurprising, though gratifying, that nationally and here in New York, labor unions have been at the forefront of the movement to end marriage discrimination.

Third, the opponents of gay equality are the opponents of so many other values and policies we all support:

- Fairness in the workplace
- sane and compassionate immigration policies
- access to quality health care for all
- Securing America's promise of equality -- for all

And, finally, treating gay couples with respect and dignity actually improves the lives and conditions for non-gay people as well – the people we work with, our families and friends, our neighbors and fellow citizens.

In his landmark research, Richard Florida asked the question, “What factor best indicates a community or city’s best likelihood to fare well in the global economy?” Is it proximity to rivers or natural resources? Investment in infrastructure? Splashy projects such as sports stadiums? Iconic buildings, or access to shopping centers or good traffic patterns?

Florida found that the single best predictor of economic vitality was the presence of a visible gay population.

Now this is not just because gay people are so productive, vibrant, and, well, fabulous – though we are.

The reason gay integration predicts (and spurs) a better economic climate is not so much because of what it says about gay people, but what it says about the non-gay people.

Gay integration, gay visibility, gay inclusion says that a successful community, like a successful workplace, is welcoming, dynamic, and willing to embrace and make use of the creative contributions of all, to the betterment of all.

Not only does government have no business putting obstacles in the path of people seeking to care for one another, but supporting caring, committed couples builds strong families. Strong

families strengthen the community for everyone, just as fair treatment for workers and attracting and retaining good talent is good for labor and business alike.

In Maine a couple weeks ago, the marriage legislation passed earlier in the year was subjected to an up-or-down vote by ballot-measure. A minority should not have to go before the majority and plead for an end to discrimination in a vote on fundamental rights; nevertheless, we came very close to prevailing. The most striking demographic feature was that we overwhelmingly carried the urban areas, while the more rural parts of Maine – and there are a lot of them – voted against equality.

In other words, in places where gay people are most visible, where our families most integrated into the fabric of life, where we've had the most conversations about who gay people are and why marriage matters, people affirmed the freedom to marry. In the areas with less visibility and fewer conversations, we narrowly failed to move the just 15,000 more people whose support would have made the difference.

The path ahead is clear: we need more of us, gay and non-gay, speaking with others in our circles and beyond about the shared values of family, fairness, and freedom – the values underlying this human rights movement, a movement in which NELA / NY has played a proud part.

In 2006, the National Employment Lawyers Association / NY joined the City Bar, the Asian American Bar Association, Legal Aid Society, and others in urging the New York Court of Appeals to end this state's exclusion of committed same-sex couples from the freedom to marry.

Invoking a report done by the City Bar, you stated:

The institution of marriage confers countless rights and benefits on its participants that same-sex couples in New York are excluded from enjoying. [I]n countless areas -- including health care, estates, torts, divorce and custody -- same-sex life partners in long-term, committed relationships lack the rights, benefits and duties that opposite-sex married couples automatically receive. By preventing same-sex partners from marrying, the state thrusts their families into legal limbo and excludes these couples and their children from full membership in society.

Your brief noted the incongruity that many of New York's same-sex couples have now gotten legally married in places that have ended discrimination – neighbors such as Canada, Massachusetts, and Connecticut, or Vermont or Iowa, or California, or Spain, South Africa, and Sweden – and returned home to be treated, under long-standing New York policy, as what they are: *married*.

That policy of honoring marriages on equal terms was upheld in a unanimous ruling just today by the New York Court of Appeals, with a strong and repeated plea by the high court to the legislature to act now on the underlying question of the freedom to marry.

Why should New Yorkers have to go to Niagara Falls, Canada to have what they should have in Niagara Falls, NY?

As we gather tonight, the New York State Assembly has passed a marriage bill not once, but twice, and Governor Paterson has strongly championed it and promised to sign it into law the moment it comes to his desk.

Poll after poll shows that a majority of New Yorkers support the freedom to marry, and for years now, not a single legislator anywhere in the country has lost his or her seat because of a vote to end marriage discrimination.

It is now up to the State Senate to follow the Assembly's lead, bring the bill to a vote, and make marriage equality the law of New York before Thanksgiving.

You've spoken up before the courts. I hope that NELA will immediately be heard urging the State Senate to bring up the bill and vote for the freedom to marry now.

Meanwhile, each of you individually, please go to the website of the group leading the fight to end marriage discrimination here in New York – prideagenda.org – and take action to encourage your state senators to vote for the freedom to marry.

When it comes to inclusion, equality, security, freedom, and fairness, New York should lead, not lag.

At another time of great challenge to our economy and security, a great workers' advocate, President Franklin D. Roosevelt, spoke to Americans and urged:

“Enable us to guard for the least among us the freedom we covet for ourselves; make us ill-content with the inequalities of opportunity which still prevail among us.”

Roosevelt didn't believe we could afford to work on only one thing at a time. And, happily, the National Employment Lawyers Association remains ill-content with inequality, and on guard for a better America.

Together, let's do our part in New York, and before this historic year is through, go on to win the freedom to marry in New Jersey and our Nation's Capital.

Let's continue the momentum to end exclusion from marriage nationwide -- as part of our shared vision of securing America's promise of a better life, liberty, and justice for all.