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June 29, 2013: The Other Side of the US Supreme Court Decisions

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Title: The Other Side of the US Supreme Court Decisions

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6/29/2013—I find myself looking at the three recent US Supreme Court decisions from a different point of view from most people. The three cases are *Shelby County v. Holder*, the case that struck down preclearance under the Voting Rights Act, *Perry v. Hollingsworth*, the case that dismissed the defense of Proposition 8, and *US v. Windsor*, the case that struck down section 3 of the Defense of Marriage Act.

The *Shelby* case held in effect that the states are equal and that Congress could not rely on conditions after the Civil War or even in the 1960s to treat the states differently in 2013.

The problem is really not *Shelby*, it is all the other Supreme Court decisions. The truth is that the states are equal—they are about equally racist and vote suppressive and the Supreme Court will not do anything about it. For example, shortly after *Shelby* was handed down, Texas moved to implement voter ID. This was clearly aimed at suppressing groups that will vote Democratic, including racial minority groups. People saw this action as proof that *Shelby* was wrongly decided. But my state, Pennsylvania, already implemented voter ID for the same reasons. This shows in a weird way that *Shelby* was correctly decided. (It also shows that voter ID should be held unconstitutional, but that is what the Supreme Court will not do).

The same thing is true of political gerrymandering. That undemocratic act is why the Republican Party controls the House of Representatives. Again, this shows that the states are the same. The Court should find political gerrymandering to be unconstitutional.

Perry, the Proposition 8 case, leaves us in a really lawless condition. The entire state of California is governed by a decision by a single federal District Judge. And, the euphoria of people notwithstanding, there were probably not five votes on the Supreme Court to actually uphold the District Judge's decision. That means that the entire state of California is governed by a presumptively mistaken decision by a single federal District Judge. In addition, the case only held that the outside parties challenging the District Judge's decision lacked standing. The Governor of California or the Attorney General would have had standing. So California is governed by a presumptively mistaken decision by a single federal District Judge because the executive branch in California will not do its job and uphold California law. This is no victory. It would have been far better if a new Proposition had legalized gay marriage in California.

Finally, while I am personally very happy that the vicious Defense of Marriage Act has been struck down in pertinent part, I have to ask how it is that the states get to decide how the federal government spends its money and grants its benefits? *Windsor* seems to be a gross interference by the states in the workings of the federal government. I absolutely disagree that marriage is something only the states can decide when the decision has only to do with federal resources and not those of the states. It just shows how result oriented law has become that liberal justices joined a decision emasculating the federal government and conservative justices wrote and joined a dissent in favor of centralized governmental power. Not one justice crossed the result line that he or she favored.

What is great about *Windsor*, however, is that it will destabilize states that currently ban gay

marriage. It appears that if you are married in Boston and are a gay couple, you lose your status as married if you move therefore, to Philadelphia or Pittsburgh. This means that gay couples will not move to those cities. The loss of benefits and status would be enormous, from federal tax rates, to employment and medical benefits, to inheritance.

And that is not all. Not only will these couples not move to Pittsburgh but companies that might in the future wish to attract such couples will also not set up shop in Pittsburgh. And that is not only a lot of companies but many of the best and most important companies.

And not only that, but gay people who are not married but wish to be in the future will have no reason to stay in Pittsburgh or move here. You might as well put up a sign that says gay people are not welcome in Pittsburgh, Philadelphia and Pennsylvania. Of course it is only justice that Pennsylvania will be harmed by all this. But it is not a consequence that businesses in Pennsylvania that are not free to leave are going to put up with. And a lot of those business people are Republicans. Relatively soon, states like Pennsylvania are going to be forced to adopt gay marriage. That is at least one good thing that the Supreme Court accomplished this week.