

Alex Berg (Host):

Hi, and welcome to Making the Case with Lambda Legal. A podcast from Lambda Legal highlighting impactful cases and policy work. I'm Alex Berg, a journalist and host, and I cover all things LGBTQ+ and the issues that impact us.

Alex Berg (Host):

On this episode of Making the Case, we're going to discuss a case that laid the groundwork for marriage equality to proliferate across the US. It's a case involving same-sex couples and their children fighting for the right to marry in Iowa. It's called Varnum v. Brien.

Alex Berg (Host):

The lawsuit representing the families was first filed in 2004. To take you back to the climate for LGBTQ families during that period, at the time, Massachusetts was the only state where same-sex marriage was legal, and it would be over a decade before the Supreme Court ruled in Obergefell v. Hodges that same-sex couples have the right to marry under the constitution.

Alex Berg (Host):

Now, it came as a surprise to many that Iowa was the site of this case. However, that was an intentional decision as part of the strategy crafted by Camilla Taylor. Lambda Legal's Legal Director for Litigation. Camilla would go on to serve as counsel in Obergefell. So she has a distinctly accomplished level of expertise on this topic.

Alex Berg (Host):

In this conversation, we'll talk more about why she chose Iowa, how the plaintiff's children were a key part of the strategy, and the day the Iowa Supreme Court's decision came down. Let's dive in.

Alex Berg (Host):

I'm joined by Deputy Legal Director for Litigation, Camilla Taylor. Welcome.

Camilla Taylor:

Thank you so much for having me.

Alex Berg (Host):

It is truly a delight to get to talk to you. So, to kick things off, briefly tell us what this specific case is about.

Camilla Taylor:

Well, we filed Varnum v. Brien In 2005, I believe, maybe December 2004, and it was a time when only one state in the country allowed same-sex couples to marry, and this was a lawsuit we filed in Iowa in order to secure the freedom to marry for same-sex couples in Iowa. It was a time when we were not going to Federal Courts yet to seek marriage equality. We had a state-by-state strategy, and we chose Iowa as a very early place in order to litigate marriage equality.

Alex Berg (Host):

You mentioned you had a state-by-state approach. The climate around same-sex marriage cases in the early 2000s was quite different than it is today. This is what President George Bush had to say at the time.

President George Bush:

I'm not for gay marriage. I think marriage is a sacred institution between a man and a woman.

Alex Berg (Host):

Can you set the scene for us?

Camilla Taylor:

Well, at that time, only Massachusetts allowed same-sex couples to marry, and this was from a decision in 2004, and it was very early. There was a big discussion among litigation groups, such as Lambda Legal and the National Center for Lesbian Rights, and the ACLU, and Gay and Lesbian Advocates and Defenders in New England, about where next we should litigate marriage equality.

Camilla Taylor:

And at Lambda Legal, we believed that Iowa was a fertile ground for a marriage equality victory. And it was a state that many of the other groups weren't looking at because there were all sorts of preconceived notions about how receptive Iowans would be to marriage equality. And there was a big fight at the time about fighting marriage equality lawsuits in blue states like California and New York on the coasts.

Camilla Taylor:

But in those states, it wasn't necessarily true that the state high courts would be very receptive to marriage equality simply because, at that time, public opinion didn't necessarily favor same-sex couples being able to marry. We knew that we were in an uphill battle with respect to public opinion, even in some of the bluest states in the country.

Alex Berg (Host):

Now, I know in some of the news coverage following the outcome of this case, a lot of pundits who will go unnamed here were shocked that Iowa was the place that you chose, but this was really a very researched and calculated decision. Can you talk about why exactly Iowa?

Camilla Taylor:

Well, at the time, we were looking at a number of factors. First of all, if we were successful in State Court, and if we won a State High Court victory on behalf of same-sex couples seeking to marry, we needed to be able to hold onto that victory. And so, it was important for us to consider not only the political context of a lawsuit but also the way in which a state could amend its State Constitution to preclude same-sex couples from marrying.

Camilla Taylor:

Because if you win pyrrhic victory in front of a State High Court, and then the voters in that state immediately amend the constitution to roll back your victory, not only are you defeated in what you're trying to achieve with respect to marriage equality, but often these state constitutional amendments

would go further than simply banning same-sex couples from marrying, and would reify all sorts of other forms of discrimination in the State Constitution in ways that were deeply troubling.

Camilla Taylor:

So, we were looking at the structure of state constitutions and the process by which you could amend, and Iowa had a relatively cumbersome process. State constitutional amendment had to pass twice through the state legislature in periods of two years. So, that was important because that meant we'd have some breathing room to win a State High Court victory, do public education, try and educate Iowans about who their gay and lesbian neighbors were, and help them to understand that it's important to respect their right to marry on the same terms as different-sex couples right to marry.

Camilla Taylor:

So that was one factor. There was another factor too, though, which was the quality of the precedent we'd be relying on in Iowa, and whether we thought we could actually win in state courts. And in Iowa, there was this tradition of independence, and the State High Court repeatedly had held that the State Constitution provided broader protections on the federal constitution and that there were important equality principles at stake in Iowa. And early on, Iowa courts had ruled in favor of nondiscrimination principles when it came to race and sex, often long before other courts around the country and certainly long before federal courts.

Camilla Taylor:

So we were looking at that tradition of early rectitude with respect to civil rights precedents. And we were relying on that when we decided that we should put our resources into Iowa as one of the earliest states in which we litigated.

Alex Berg (Host):

The history is fascinating. And one other layer here is that it was a hotly debated choice to include the children. Why did you make them plaintiffs?

Camilla Taylor:

Well, at the time, we were fighting against all sorts of attacks on LGBT families that were using children as the justification for preventing same-sex couples from marrying. There were a number of losses in state courts where the state court held that the reason for excluding same-sex couples from marriage was in order to protect children, that different-sex couples provided the best environment for rearing children, and that if you prevent same-sex couples from marrying, you're somehow channeling procreation into the most favorable households for child-rearing.

Camilla Taylor:

So, we had to confront these arguments, and we used a lot of social science in order to demonstrate that same-sex couples are just as good parents, and their children turn out just as well as children in different-sex couples households. But we were also fighting against efforts to attack LGBT couples in ad campaigns, for example, and in the context of referenda.

Camilla Taylor:

So, in California in 2008, should give you just one example. There was an ad that was often credited as being the reason that we lost the Proposition 8 referendum, which rolled back marriage equality in California at that time. And that ad featured a first-grade teacher who had invited her students to attend her wedding if they wished. Not mandatory by any means, but she was getting married, and she was excited, and she welcomed her students if they wish to come.

Camilla Taylor:

And this was used against us. There was a lot of polling at the time that suggested that if you ask the public should same-sex couples be able to have children, or is a same-sex couple household as good as a different-sex household for rearing children, the public by something like 85%, would say, no, it's not as good an environment, and kids should be able to have a mommy and a daddy.

Camilla Taylor:

So, in order to confront that, we then tried to ask in polling and in focus groups, all right, well, what happens if you have a particular child? Little Jimmy has two moms. Would little Jimmy be better off if his moms could marry? And we ended up finding out that when the public were actually introduced to a particular child when they realized that a child already exists in a home with two same-sex parents, that they would overwhelmingly support the right to marry of those parents in order to create a more secure environment for that child.

Camilla Taylor:

So there were a lot of factors that went into this, and we decided that if children were going to be wielded as a weapon against same-sex couples, that we should help people to understand that children exist being reared in homes with same-sex couples, and these children deserve to be heard too. Their interests deserve to be considered.

Alex Berg (Host):

This brings us to April 3rd, 2009. Can you walk us through your day?

Camilla Taylor:

Well, we had heard from someone who had a friend who was a security guard at the Iowa Supreme Court that the Iowa Supreme Court on April 2nd had increased its security in anticipation of opinion announcements the following day. And while we weren't sure that our decision was necessarily going to be the one announced on the following day, we weren't expecting the Supreme Court to rule so quickly on our case. We nevertheless suspected, based on the increase to security, that it was likely our case.

Camilla Taylor:

Because unfortunately, as you mentioned, Alex, the attacks on LGBT people are all too frequent. And we thought that if it were potentially a victory or a mixed decision, that the Supreme Court might be fearing some sort of negative repercussions. So we all got in a car from the Chicago office of Lambda Legal. We actually caravanned out there with multiple cars, as I remember, and we camped out for the evening so that we would be on-site with our plaintiff couples. These brave couples from around the state, with their children who had become plaintiffs themselves in the lawsuit waiting to hear the outcome.

Camilla Taylor:

And we were absolutely thrilled. The plaintiffs agreed not to look at their phones, not to look at newspapers until they could hear the outcome of the case in front of the media because they understood that part of holding onto any victory that we might win would require introducing themselves to their fellow Iowans, and allowing their fellow Iowans to see their elation if they were lucky enough to win. So they bravely got the victory from us and celebrated.

Camilla Taylor:

We won. Not only that. It is unanimous.

Alex Berg (Host):

I can only imagine the nervous energy in the room waiting to hear the outcome, and then just, did it feel celebratory at the time?

Camilla Taylor:

Yes. And my biggest memory is of little McKinley Barbourouske. And when we filed the lawsuit, she was eight years old, and we realized that her story was central to our ability to secure a victory. And in fact, it was her story that Dennis Johnson told as the final closing of the oral argument. And her moms described a time when they were looking for a preschool in which to enroll McKinley. And they thought to ask the head of the preschool if there's any way that McKinley would be treated differently because she has two moms in school. And the head of the preschool thought for a moment and then said, well, she wouldn't be able to participate in the unit on families because we wouldn't want to offend the other parents.

Camilla Taylor:

And Jen and Dawn, McKinley's moms, had this image of McKinley being forced to sit silently while everybody else talks about their families. And they realized that they needed to participate in the struggle for the freedom to marry because they wanted McKinley to grow up without hearing the message that there is something somehow wrong with her family. And so, seeing McKinley raise her arms above her head in celebration, that was just, I still tear up thinking about it because it was her victory as much as it was anybody's.

McKinley Barbourouske:

Hi, I'm McKinley Quinn Barbourouske, and I'm happy to say that my parents have the legal right to be married. Yay. I feel like I could not have any better parents. They are really great.

Alex Berg (Host):

Were you expecting a win?

Camilla Taylor:

Well, we were hopeful. We filed the lawsuit all because we thought we had a chance. But never in a million years did we think it would be unanimous. And this was a unanimous victory in the heartland of the country. One of the more conservative states in the country because these Justices had integrity. And when they heard the stories and examined their own constitution, they realized there could only be one result.

Alex Berg (Host):

Now, you said this was a unanimous victory in the heartland of the country. Obviously, such a pivotal marriage win that took years to prep and strategize around. How did this case prove to be a turning point for marriage equality, and was the cultural impact immediate?

Camilla Taylor:

I think it was immediate. At that time, Iowa was only the third state in the country to allow same-sex couples to marry. And I think there was a cry, particularly among people on the coast, thinking Iowa, is that possible? Why Iowa? And if Iowa can do it, why can't we? And I think too, there was a shift in the way we were talking about marriage equality through this case.

Camilla Taylor:

And it was understood that marriage equality was necessary, not just for the adults, but for families to be thought of and understood as equal. And it was a pivotal victory because it allowed us to begin to think about marriage equality as inevitable in every corner of the country. And once you get there in terms of understanding that with your head and with your heart, you can't really go back.

Alex Berg (Host):

It's easy to say in 2022 that it felt inevitable, but, of course, it wasn't. So, it's interesting to hear you take us back into that moment. I mentioned earlier that junk science and children's safety seem to be common tools of our opposition. What did you learn from this case and subsequent cases about the value of debunking these claims?

Camilla Taylor:

Well, through this case, this was actually the first time that we introduced social scientists on our side in order to debunk the junk science that the governments were using to suggest that somehow same-sex couples were worse parents than different-sex couples. And it was really important for the court to hear from these scientists and to realize that the consensus was, in fact, the opposite. That parents' gender and their sexual orientation were just irrelevant to their ability to be a good parent.

Camilla Taylor:

And now, we're seeing similar attacks on trans children in particular across the country. Those of us who were in the marriage equality fight remember the days in the early 2000s when state after state amended its constitution and passed laws attacking same-sex couples and preventing them from accessing marriage. Now we're seeing something worse. We're seeing cynical and politically motivated attacks on young people just to gin up particular component of the base in order to target young people conveniently.

Camilla Taylor:

It is important for us to use the medical professionals who again, have achieved consensus that transgender young people exist, that they deserve to be respected, and that medical care for trans youth that's affirming is medically necessary, and that their parents should be supported as they support their young people too. So once again, we're in a similar cycle of attacks and hate, but we're also, I think, very optimistic that we will come out the other side and that we will have the ability to educate the public and to bring people along.

Alex Berg (Host):

Well, Camilla. It was delightful learning more about how this came together. Thank you for joining me.

Camilla Taylor:

Thank you for having me. It was a pleasure.

Alex Berg (Host):

Thank you for listening to this week's episode of Making the Case, with Lambda legal.

Alex Berg (Host):

If you are seeking information to assist with a legal matter involving sexual orientation, gender identity, or HIV, please reach out to our legal help desk at lambdalegal.org/helpdesk.

Alex Berg (Host):

Making the Case is hosted by me, Alex Berg, and produced by Erica Kramer for Lambda Legal. Our show is recorded and mixed by Erik Monical for Mouth Media Network. Original music for Making the Case made by Meghan Rose.

Alex Berg (Host):

Lambda Legal is the oldest and largest national legal organization whose mission is to achieve full recognition of the civil rights of LGBTQ+ people, and everyone living with HIV through impact litigation, education, and public policy work.

Alex Berg (Host):

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