

4-16-2009

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Recommended Citation

Roger Williams University School of Law, "Dean Logan's Blog: Prof. Cahill Joins Justice Ginsburg at Major Symposium" (2009). *Law School Blogs*. 71.
https://docs.rwu.edu/law_pubs_blogs/71

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Dean Logan's Blog

Prof. Cahill Joins Justice Ginsburg at Major Symposium

Posted by David Logan on 04/16/2009 at 12:00 AM

Last week, our own Courtney Cahill participated in a symposium on Justice Ruth Bader Ginsburg's jurisprudence, held at the Ohio State University. The program drew legal luminaries from across the country, including Cynthia Estlund (NYU), Pam Karlan (Stanford), Kenneth Karst (UCLA), Martha Nussbaum (Chicago), Reva Siegel (Yale), Chris Slobogin (Vanderbilt), Wendy Williams (Georgetown), and Tobias Wolff (Penn). What made this a unique experience was the rare opportunity to join in a discussion of a sitting justice's jurisprudence with the justice in attendance. The [symposium brochure](#) provides a fuller discussion of the program. Here is a précis of Courtney's presentation (her written comments will appear in an upcoming issue of the [Ohio State Law Journal](#)).



Reorienting Sexual Orientation and the Law: Lessons Learned from Justice Ginsburg and *US v. Virginia* *United States v. Virginia* is an unmistakable part of the law's sex or gender equality canon. Less clear to many, however, is whether *Virginia* is also a part of the law's sexual equality canon. Each year, I begin the section on marriage equality in my *Sexuality and the Law* course by having my students read that landmark sex equality case, even though they are likely expecting to begin that section instead by reading the 'real' *Virginia* marriage case. As this presentation will argue, and as I tell my students each year, there are a number of reasons why it makes as much sense to begin a class on marriage equality with *United States v. Virginia* as it does to start off such a class with *Loving v. Virginia*. While those reasons are many, chief among them is this: The more recent *Virginia* case, and Justice Ginsburg's ambitious and distinctive understanding of sex equality found therein, offers a model for what gay rights advocacy in the area of marriage equality (and well beyond it) might ideally look like. While advocates for gay rights both in and beyond the marriage context have downplayed and/or retreated from the idea of difference—be it the difference between race and sexual orientation discrimination or the difference between same- and opposite-sex relationships—Justice Ginsburg reckons with difference in *Virginia* in a way that suggests that difference need not defeat, or be an impediment to, equality claims. Curiously, and unfortunately, neither *United States v. Virginia*, nor Justice Ginsburg's understanding of sex equality found therein, has played as robust a role as it might (or should) in marriage equality litigation—and that notwithstanding the fact that *Virginia* opens up powerful avenues for sexuality advocacy, and perhaps even for a sexuality jurisprudence, not previously contemplated either by gay rights advocates or by courts. This presentation will consider both (1) how *United States v. Virginia* might be deployed in this more expansive way by gay rights advocates, and (2) why it has not been deployed in this way in recent marriage litigation.