



June 2015

Supreme Court Rules Same-Sex Marriage is a Fundamental Right

On June 26, 2015, in a 5-4 decision authored by Justice Kennedy, the Supreme Court struck down the laws of those states that preclude same-sex marriage and also held that each state must recognize same-sex marriages lawfully performed in other states. The Court held state laws invalidating same-sex marriage violated both the Due Process and Equal Protection Clauses of the 14th Amendment. Chief Justice Roberts, Justices Scalia, Thomas, and Alito dissented.

The *Obergefell v. Hodges* opinion, which reverses the Sixth Circuit, combined four challenges to same-sex marriage bans in Kentucky, Tennessee, Ohio, and Michigan. The petitioners, 14 same-sex couples and two men whose same-sex partners had died, challenged state laws that either prevented them from marrying or that prevented the state in which they reside from recognizing their marriage which taken place in another state. For example, Petitioner Obergefell married his long-time partner in Maryland, where same-sex marriage is legal. However, as a resident of Ohio, which does not allow same-sex marriage, when Obergefell's partner died, he could not be listed as the surviving spouse on his partner's death certificate. The petitioners in Michigan challenged a law that only permitted opposite-sex married couples or single individuals to adopt children. Thus, if an emergency were to arise, schools and hospitals treated the children as if they only had one parent.

Justice Kennedy first addressed the history and tradition of marriage and recognized that the concept of marriage has evolved over time. However, according to the opinion, the Court has consistently recognized that the right to marry is protected by the Constitution. Justice Kennedy opined that the reasons marriage is fundamental under the Constitution should apply with equal force to same-sex couples. Thus, the refusal to recognize same-sex marriage and denying such couples a fundamental right, stigmatizes and gravely harms both them and their children.

The Court then recognized the many benefits associated with marriage, including but not limited to health insurance, taxation, inheritance and property rights, spousal privilege, hospital access, medical decision-making authority, and workers' compensation benefits. Denying same-sex couples the benefits afforded to opposite-sex couples is a violation of

both the Equal Protection Clause and Due Process Clause. The Court rejected Respondents' argument that this should remain a state issue, reasoning individuals should not have to wait for legislative action to assert a fundamental right. Accordingly, state laws precluding same-sex marriage are now invalid and consequently states must recognize same-sex marriages lawfully performed in other states.

While same-sex marriage is already allowed in 37 states and Washington D.C., the judgment compels the remaining 13 states to perform and to recognize same sex marriages. Those benefits that the Court listed, such as health insurance and workers' compensation, will now apply to all legally-married couples, regardless of their sexual orientation and the state in which they were married.

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