

Obergefell v. Hodges / Background ••

The first case on same-sex marriage that made it to the Supreme Court was *Baker v. Nelson* in 1971. A same-sex couple in Minnesota applied for a marriage license and were denied by the county clerk. The U.S. Supreme Court dismissed the appeal because the Court at that time did not think that there was even a serious argument to be made that the 14th Amendment protects same-sex marriage. While the decision did not itself ban same-sex marriage, it sent a message to states that they could ban same-sex marriage without violating the Constitution.

For the next couple of decades, the progress for marriage equality was uneven, but activists kept fighting for marriage equality. This was not only for same-sex couples to be equal to straight couples, but also so same-sex couples could obtain the legal benefits to marriage that were available to straight couples. For example, married couples who file taxes jointly tend to pay less than two people who file separately. Certain important medical decisions can also only be made by a spouse when a patient is seriously injured or ill. In some states, marriage is a requirement for adopting a child.

In 1973, Maryland became the first state to clearly define marriage as between one man and one woman, and others followed. In 1989, San Francisco became the first government to allow same-sex couples to enter into what they called “domestic partnerships,” in which two people lived in the same home were not married. Domestic partnerships had some, but not all, of the benefits of marriage. In 1993, the Supreme Court of the State of Hawaii ruled that the state’s ban on same-sex marriage violated the state’s equal protection clause.

However, the country was still divided. In 1996, Congress passed the Defense of Marriage Act (DOMA). DOMA defined marriage, at least in the eyes of the **federal** government, as between one man and one woman and denied same-sex couples the federal benefits associated with marriage such as Social Security survivor benefits, joint filing of taxes, and access to spouses’ health insurance. DOMA also allowed states to refuse to recognize same-sex marriages that were performed in another states.

DOMA only applied to the federal government, however, and Massachusetts became the first state to legalize same-sex marriage in 2003. It was followed by several other states, mostly in the Northeast. At the same time, many states passed constitutional amendments that specifically outlawed same-sex marriage.

Then in 2013, in its decision in *United States v. Windsor*, the U.S. Supreme Court struck down DOMA as unconstitutional. While this did not automatically make same-sex marriage legal in states that had banned it, same-sex couples married in states where it was legal could receive federal benefits denied under DOMA.

In July 2013, Jim Obergefell married his terminally ill partner, John Arthur. They married in Maryland because their home state of Ohio did not allow same-sex marriage. Arthur died shortly after the marriage ceremony, and Obergefell wanted his name on Arthur’s death certificate as his

legal spouse. When officials in Ohio refused to recognize their marriage as valid, Obergefell sued and won in the district court. The Ohio government challenged this decision to the Sixth Circuit Court of Appeals, which overturned the lower court and ruled in favor of Ohio. Obergefell asked the U.S. Supreme Court to hear the case, and it agreed to do so.

While Obergefell's case was moving through the court, three other similar cases were going through the courts in Kentucky, Michigan, and Tennessee. In the three other cases, the petitioners were same-sex couples who either wanted to get married in their state but were unable to because of a state law or constitutional amendment, or they were same-sex couples who were married lawfully in another state and wanted their home state to recognize that marriage as valid. However, the Sixth Circuit Court of Appeals also ruled in favor of upholding those states' same-sex marriage bans. Because the cases all involved the same constitutional issue, the Supreme Court **consolidated** all four cases into the *Obergefell* case to be argued together.

Obergefell and the other petitioners argued that the marriage bans violated the **Equal Protection Clause** of the 14th Amendment which states, "No state shall ... deny to any person within its jurisdiction the equal protection of the laws." The Equal Protection Clause requires states to apply laws equally to all people.

Also involved was the **Full Faith and Credit Clause** in Article IV of the U.S. Constitution, which states in part, "Full faith and credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." This means states must treat government actions in other states as being valid in their own state. The petitioners argued that this required states to recognize same-sex marriages legally licensed in another state even if that state itself forbid same-sex marriage.

The Supreme Court considered two questions: Does the 14th Amendment require a state to license same-sex marriages? Does the 14th Amendment require a state to recognize a same-sex marriage that was lawfully licensed out-of-state?

Questions to Consider

1. Explain why, from a legal standpoint, same-sex couples would want the right to marry.

2. Given that many Americans get married in states other than where they live, should states be allowed to have different laws regarding marriage? Why or why not?

