

Obergefell v. Hodges / Background ●●●

In 1971, a same-sex couple in Minnesota applied for a marriage license and were denied by the county clerk. The lower courts upheld this decision, and in 1972 the U.S. Supreme Court upheld the decision with a one-line ruling: “dismissed for want of a substantial federal question,” meaning that 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 provided the basis for states to do so without violating the Constitution. In reaction to this situation, Maryland became the first state in 1973 to clearly define marriage as between one man and one woman. Other states followed suit.

The campaign to allow same-sex marriage was not only for same-sex couples to be equal to straight couples, but also so same-sex couples could obtain benefits to marriage 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 the 21st century, progress toward same-sex marriage was uneven. In 1989, San Francisco became the first government to allow same-sex couples to enter into domestic partnerships, which confer 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, this ruling was never implemented as it was tied up by lawsuits.

Partially in response to the decision in Hawaii, Congress passed the Defense of Marriage Act (DOMA) in 1996. 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 that were associated with marriage, such as Social Security survivor benefits, joint filing of taxes, and access to spouses’ health insurance. In fact, there over 1,000 federal policies or benefits in which marriage plays a role. DOMA also allowed states to not recognize a same-sex marriage performed in another state.

In 2003 Massachusetts became the first state to legalize same-sex marriage. It was followed by several other states. 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 ruled that DOMA was unconstitutional because it discriminated against same-sex couples by preventing the federal government from recognizing their marriages, even though some states had expressly chosen to license those marriages. Moreover, the basic intent of DOMA was to express disapproval of state sanctioned same-sex marriage, and there was not a legitimate state purpose being served in prohibiting same-sex couples from exercising the same right to marriage as

straight couples. While *United States v. Windsor* expanded marriage rights at the federal level, it still allowed states to ban same-sex marriage and not recognize a legal same-sex marriage performed in another state.

In July 2013, Jim Obergefell married his terminally ill partner, John Arthur, in Maryland because their home state of Ohio did not allow same-sex marriage. Arthur died shortly after the marriage ceremony. Obergefell wanted his name recorded as Arthur's legal spouse on the death certificate. Officials in Ohio refused. The district court sided with Obergefell, but the Ohio government appealed the decision and the federal Sixth Circuit Court of Appeals sided with the state of Ohio.

Obergefell appealed to the U.S. Supreme Court, which agreed to hear the case. The same year of the Sixth Circuit decision against Obergefell, several other Circuit Courts of Appeals had struck down same-sex marriage bans in other states. When different Circuit Courts of Appeal disagree on the law, it is sometimes referred to as a circuit split. The U.S. Supreme Court is the only authority higher than the Circuit Courts of Appeals on matters relating to the U.S. Constitution; therefore, constitutional questions with circuit splits usually have a good chance of being accepted by the Court.

The Supreme Court consolidated Obergefell's case with cases from Kentucky, Michigan, and Tennessee. In all four cases, the petitioners were same-sex couples who either wanted to get married in their state but were prohibited from doing so by a state law or state 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. Each of the four states had a law banning same-sex marriage passed by its state legislature or a state constitutional amendment approved directly by the voters.

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." 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 the Supreme Court historically did not take cases regarding marriage law.
2. Explain why, from a legal standpoint, same-sex couples would want the right to marry.
3. 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?
4. Define the Equal Protection Clause and explain how it relates to *Obergefell v. Hodges*.
5. If you were a justice on the Supreme Court, how would you rule in this case and why?