

## **Obergefell v. Hodges (2015)**

**Argued:** April 28, 2015

**Decided:** June 26, 2015

### **Background**

**Federalism** is a type of government where power is divided between the national government and state governments. Some powers are shared between the national and state governments. Some powers only belong to the national government while others only belong to the state governments. One power traditionally belonging to state governments is the power to pass laws about marriage.

The 14<sup>th</sup> Amendment to the U.S. Constitution was passed after the Civil War. It says states must give people **equal protection of the laws**. This means state laws must treat all people who are in the same situation equally unless the state has a very good reason for treating them differently.

### **Facts**

Between 1996 and 2005, several states including Ohio passed laws and state constitutional amendments defining marriage as being between one man and one woman. This meant same-sex couples could not marry in those states and were, therefore, stopped from receiving the same benefits opposite-sex married couples received, like being allowed to visit each other in the hospital when visitors were limited to family members.

Several states also passed laws allowing same-sex marriage during that time. However, even if a same-sex couple was legally married in a state that allowed same-sex marriage, their marriage would not be considered legitimate if they moved to a state that banned same-sex marriage.

Same-sex couples all over the country argued that banning same-sex marriage was **unconstitutional**. Some district courts agreed, saying it was unfair to treat same-sex couples differently. Other courts upheld the bans, arguing that because states that banned same-sex marriage voted to do so, they should be allowed to.

The U.S. Supreme Court was asked to hear many of these cases, and it decided to hear four of them. They were combined into one argument under the name *Obergefell v. Hodges*.

### **Issues**

Does the 14<sup>th</sup> Amendment require a state to allow same-sex marriages?

Does the 14<sup>th</sup> Amendment require states to recognize same-sex marriages that happened in other states?

**Arguments for Obergefell / the Same-Sex Couple (petitioner)**

- Laws banning same-sex marriage take away important rights from same-sex couples and their families simply because of their **sexual orientation**. This is **discrimination** and is not allowed under the 14<sup>th</sup> Amendment.
- Marriage is a **fundamental right**. It has been a key part of society for a long time. It is also very important to a lot of people because it represents love.
- States should have to show a **compelling** (very important) reason to support laws banning same-sex marriage. This is the test that is required to support laws that discriminate based on race. People can't change their sexual orientation, just like people can't change their race. There is no good reason to discriminate against people in same-sex relationships.
- The states argue this should be left to the state **legislatures** to decide. But marriage is a fundamental right, and people's rights should not be put up to a vote.

**Arguments for Hodges / the States (respondent)**

- Under federalism some powers are given to the states. States have always had the power to pass laws about marriage. The national government, including the Supreme Court, should not decide this.
- Laws banning same-sex marriage have been around for a very long time. These laws represent historical views about marriage.
- Because marriage is defined as only between a man and a woman, the couples are not seeking a right to marriage that is the same as the right of opposite-sex couples. They are instead asking for a new right to same-sex marriage.
- Many people have different ideas about how to define marriage. It should be up to the state's voters to decide whether they want to allow same-sex marriage. By 2015, 11 states had passed laws or amendments allowing same-sex marriage.

**Decision**

The Supreme Court ruled for Obergefell and the other same-sex couples in a 5–4 decision. Justice Kennedy wrote the majority opinion, ruling that bans on same-sex marriage are unconstitutional.

The Court said the **Due Process Clause** of the 14<sup>th</sup> Amendment says the government cannot take away certain fundamental rights unless there is a very good reason. The Supreme Court has held for a long time that marriage is one of these fundamental rights. All of the Court's previous decisions assumed marriage was between a man and a woman. However, times have changed and laws should change with society. In this case the Court decided the characteristics of marriage that make it a fundamental right are true for same-sex couples as well. Marriage is a very personal decision for all couples. It creates and protects families and supports society. The Supreme Court said that even though voting on issues is important, fundamental rights like marriage should not be left to a vote.

The justices also said that the bans on same-sex marriage violate the **Equal Protection Clause** of the 14<sup>th</sup> Amendment. The laws were unconstitutional because they treated people in same-sex relationships differently from how they treated straight people.

### **Impact**

When the Court decided *Obergefell v. Hodges* on June 26, 2015, many people across the country celebrated. James Obergefell said, “Today’s ruling from the Supreme Court affirms what millions across the country already know to be true in our hearts: that our love is equal.” Bans in the 14 states that had them were struck down. Same-sex couples now had all the benefits of marriage such as Social Security survivor benefits, being able to file taxes jointly which often results in lower taxes, and being eligible for a spouse’s health insurance.

Although many agreed with the Court’s decision, others continued to oppose same-sex marriage. Months after the decision, Kim Davis, a county clerk in Kentucky, made the news when she refused to issue **marriage licenses** to same-sex couples. David was sued by those couples who were denied licenses and jailed for contempt of court for refusing to comply with the court order. She lost her campaign to be re-elected county clerk in 2018 and no longer holds that position within the Kentucky government.

The decision in *Obergefell v. Hodges* has paved the way to other cases attempting to expand **LGBTQ** protections. In *Pavan v. Smith* (2017), the *Obergefell* decision was used to successfully argue that same-sex couples must be treated the same as opposite-sex couples on the birth certificates of their children.

### **Glossary**

- **Compelling:** very important and persuasive.
- **Discrimination:** when someone is treated differently just because of certain characteristics, like their race or gender.
- **Due Process Clause:** the part of the 14th Amendment that says the states cannot take away someone’s life, liberty, or property without due process of law. “Due process of law” means that the government must follow certain procedures, like a trial. These procedures are different depending on what the government is trying to take away.
- **Equal Protection Clause:** the part of the 14<sup>th</sup> Amendment that guarantees that individuals are treated equally regardless of their race, gender, religion, nationality, or other characteristics.
- **Equal protection of the laws:** the idea that people who are in the same situation must be treated the same by the government.
- **Federalism:** the division of powers between the national and state governments
- **Fundamental right:** a right that is considered so important that the government must protect it.

- **Legislature:** the part of the government that writes and passes laws.
- **LGBTQ:** lesbian, gay, bisexual, transgender, and queer or questioning.
- **Majority:** the opinion signed by more than half of the Supreme Court.
- **Marriage license:** a document that shows that the state has given a couple permission to get married. Couples must have a marriage license in order to get married.
- **Sexual orientation:** a part of someone’s identity defined by their gender compared with the gender or genders of people they are attracted to.
- **Unconstitutional:** when a law conflicts with the Constitution.

Additional information about *Obergefell v. Hodges*, including background at three reading levels, opinion quotes and summaries, teaching activities, and additional resources, can be found at <https://www.landmarkcases.org/>.