

## Obergefell v. Hodges / Excerpts from the Majority Opinion—Answer Key

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### **The following are excerpts from Justice Kennedy’s majority opinion:**

“No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. ... It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization’s oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.”

“Same-sex couples are consigned to an instability many opposite-sex couples would deem intolerable in their own lives. As the State itself makes marriage all the more precious by the significance it attaches to it, exclusion from that status has the effect of teaching that gays and lesbians are unequal in important respects. It demeans gays and lesbians for the State to lock them out of a central institution of the Nation’s society.”

“As the role and status of women changed, the institution further evolved. ... These new insights have strengthened, not weakened, the institution of marriage. Indeed, changed understandings of marriage are characteristic of a Nation where new dimensions of freedom become apparent to new generations, often through perspectives that begin in pleas or protests and then are considered in the political sphere and the judicial process.”

“April DeBoer and Jayne Rowse are co-plaintiffs in the case from Michigan. They celebrated a commitment ceremony to honor their permanent relation in 2007. ... Michigan, however, permits only opposite-sex married couples or single individuals to adopt, so each child can have only one woman as his or her legal parent. If an emergency were to arise, schools and hospitals may treat the three children as if they had only one parent. And, were tragedy to befall either DeBoer or Rowse, the other would have no legal rights over the children she had not been permitted to adopt. This couple seeks relief from the continuing uncertainty their unmarried status creates in their lives.”

“Under the Due Process Clause of the Fourteenth Amendment, no State shall ‘deprive any person of life, liberty, or property, without due process of law.’ ... Applying these established tenets, the Court has long held the right to marry is protected by the Constitution. In *Loving v. Virginia* ... which invalidated bans on interracial unions, a unanimous Court held marriage is ‘one of the vital personal rights essential to the orderly pursuit of happiness by free men.’”

“Especially against a long history of disapproval of their relationships, this denial to same-sex couples of the right to marry works a grave and continuing harm. The imposition of this disability on gays and lesbians serves to disrespect and subordinate them. And the Equal

Protection Clause, like the Due Process Clause, prohibits this unjustified infringement of the fundamental right to marry.”

## Questions to Consider

1. What do think Justice Kennedy meant when he wrote that the United States is a country “where new dimensions of freedom become apparent to new generations”?

Student answers will vary, but students should write something like “Over the course of American history the U.S. has expanded rights to new groups that had been previously discriminated against.”

2. What are some historical examples of “new dimensions of freedom” in American history?

Answers may include that after the Civil War, people could no longer be owned as slaves, or after *Brown v. Board of Education* schools could no longer be segregated by race.

3. How does prohibiting same-sex couples the right to marry create instability in their lives?

Student answers will vary but may include “When same-sex marriage is not allowed it creates instability for these couples. For example, when marriages are not recognized, partners are not be able to make medical decisions for each other, have both names appear on adoption papers, or file taxes jointly which might reduce taxes for married couples.”

4. How was the Due Process Clause applied in this decision?

The majority opinion states, “Under the Due Process Clause of the Fourteenth Amendment, no State shall 'deprive any person of life, liberty, or property, without due process of law.' ... Applying these established tenets, the Court has long held the right to marry is protected by the Constitution.” The Court considers marriage a fundamental part of the “liberty” to which all Americans are guaranteed.

5. How was the Equal Protection Clause applied in this decision?

The majority opinion states, “Especially against a long history of disapproval of their relationships, this denial to same-sex couples of the right to marry works a grave and continuing harm. The imposition of this disability on gays and lesbians serves to disrespect and subordinate them. And the Equal Protection Clause, like the Due Process Clause, prohibits this unjustified infringement of the fundamental right to marry.” Justice Kennedy is saying that because marriage is a fundamental right enshrined in law, its denial to same-sex couples solely based on their sexual orientation is unjust and violates the principle of equal application of the law to all.