

***Obergefell v. Hodges* / Summary of Decision**

The Supreme Court ruled for the same-sex couples in a 5–4 decision. Justice Kennedy wrote the majority opinion and was joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan. Chief Justice Roberts and Justices Scalia, Thomas, and Alito each wrote dissenting opinions.

The Court’s decision pointed out that the Due Process Clause of the 14th Amendment protects Americans’ fundamental liberties from government interference. Those fundamental liberties include most of the rights in the Bill of Rights, as well as some rights not described explicitly, including certain personal choices central to individual dignity and autonomy. The majority went on to note that the Supreme Court has long held that marriage is one of these fundamental rights that are central to individual dignity.

All of those decisions, however, assumed that marriage was a union between a man and a woman. In the present case, the Supreme Court determined that the features of marriage that make it a fundamental right apply equally to same-sex couples as to opposite-sex couples. For same-sex and opposite-sex couples alike, the justices said, marriage is an intimate, personal decision, a union that is unlike any other, which safeguards children and families and forms the basis of our society. Those features taken together make marriage a fundamental right and excluding same-sex couples from that right harms them and is inconsistent with the meaning of the right.

The decision also said that the bans on same-sex marriage violate the central aspects of the Equal Protection Clause because the states’ marriage laws were in essence unequal and served to disrespect and subordinate lesbians and gays.

The majority recognized that people may object to same-sex marriage based on their “decent and honorable religious or philosophical” beliefs but said that a state may not enact that “personal opposition” into law and thereby demean those who wish to marry. The justices did reaffirm the rights of those people to speak out about their beliefs, however.

Finally, the decision addressed the states’ arguments that the definition of marriage should be left up to the democratic, political process. While affirming the importance of democracy to bring about change, the Court said that fundamental rights should not be subjected to a popular vote.

Chief Justice Roberts wrote the principal dissent and was joined by Justices Thomas and Scalia. He said that, however strong the policy arguments made by the petitioners and Justice Kennedy might be, they were not constitutional or legal arguments. He said there was no basis in the Constitution for this ruling, that a long history supported the traditional definition of marriage, and that the majority had substituted its policy preferences for an analysis of the law. He said

this decision should have been left to the people through the democratic process, not to five justices.

Justice Scalia's dissent argued that the Court exceeded its authority and removed an issue properly belonging to the democratic process from public debate. Justice Thomas dissented because he disagreed with the majority's application of the 14th Amendment. He said that the "liberty" protected there is a right to be free from government action, not to government benefits or recognition. In his dissent, Justice Alito argued that, for most of human history, marriage had been linked to the ability to procreate and expressed deep concerns over the risk of demeaning those who sincerely oppose same-sex marriage as "bigoted."

When the Court handed down its decision in *Obergefell v. Hodges* on June 26, 2015, in practice making same-sex marriage legal across the nation, many individuals celebrated. Plaintiff 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."

Although many praised the Court's decisions, others continued to oppose same-sex marriage. Months after the decision, Kim Davis, a county clerk in Kentucky, caused public controversy when she refused to issue marriage licenses to same-sex couples despite a court order requiring her to comply with *Obergefell*. David was sued by couples denied licenses and ultimately 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 as precedent to ensure that same-sex couples must be treated the same as opposite sex couples on the birth certificates of their children.