

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

*Obergefell v. Hodges* was a landmark 2015 Supreme Court decision that found same-sex marriage to be constitutionally protected by the Fourteenth Amendment. Writing for a 5-4 majority, Justice Kennedy's hope-filled opinion explained that it would violate the Constitution to deny same-sex couples marriage licenses. In four separate opinions, Chief Justice Roberts, along with Justices Scalia, Thomas, and Alito blasted the Majority, contending that the issue of marriage should be left to the states. That belief, however, has not aged particularly well; today, record numbers of Americans support same-sex marriage, and with the right codified into law in the *Respect for Marriage Act*, it appears as though same-sex marriage is here to stay.

### **Facts of the Case**

In 2011, an Ohio resident named James Obergefell received devastating news: his life-partner, John Arthur, had been diagnosed with a debilitating illness known as ALS. The two men had been together for more than twenty years, but because their home-state (Ohio) defined marriage as the union between a man and a woman, the two had never gotten married.

Realizing that Arthur's death was imminent and seeking to reaffirm their love for one another, the two men decided to get married. To do so, however, they had to travel to a different state (Maryland) where same-sex marriage was legal. By the time they had gone through the motions and made it to Maryland, Arthur could barely move. The couple was wed inside a medical transport plane on the airport tarmac, and three months later, Arthur died.

Tragically, Obergefell's pain did not end there. He had just lost his husband, but under Ohio state law, Arthur's death certificate could not list Obergefell as the surviving spouse. Grieving the loss of his loved one and pained by this state-imposed separation, Obergefell filed a lawsuit, alleging that Ohio state law violated his civil rights under the Fourteenth Amendment of the Constitution.

Obergefell, however, was not the only one going through this motion. More than a dozen other non-married, same-sex couples had filed similar lawsuits in Michigan, Tennessee, Ohio, and Kentucky (four of the forty states that forbade same-sex marriage only a decade ago). As the cases moved up through the courts, they merged together, eventually reaching the Supreme Court in 2015. It was clear that this was *the* moment that would decide the future of same-sex marriage, and as such, there were only two questions before the Court:

- I. Is same-sex marriage constitutionally protected by the Fourteenth Amendment?
- II. If a same-sex marriage license is issued in one state, are other states required to recognize that marriage license as valid?

## **The Majority Opinion (Justice Kennedy)**

*Justice Kennedy finds that same-sex marriage is protected by the Fourteenth Amendment. The institution of marriage, he writes, has undergone changes before, and there is no reason why this should be any different. With respect to the Constitution, Kennedy reminds us that the Supreme Court has, time and again, held that marriage is a liberty fully protected by the Fourteenth Amendment. To deny that right to certain people, then, would violate their due process and equal protection, meaning that same-sex marriage is, in fact, protected by the Constitution.*

- I. To begin, Justice Kennedy offers a brief history of the institution of marriage, noting that it has evolved over time for the better. For example, while marriage was once an arranged process, it is now a voluntary contract between consenting men and women. “These new insights,” Kennedy writes, “have strengthened, not weakened, the institution of marriage,” and there is no reason why continued change cannot yield similar results.
- II. At this point, Justice Kennedy moves onto the legal argument. The Due Process Clause of the Fourteenth Amendment provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” In previous decisions, Kennedy notes, the Court found that marriage is one of these “liberties” included within the Due Process Clause. As such, to bar same-sex couples from marriage is to deprive them of due process.
  - A. Justice Kennedy also holds that same-sex marriage bans violate the Equal Protection Clause of the Fourteenth Amendment. After all, he reasons, it is certainly not equal to hand out those state benefits that come with marriage to opposite-sex couples but not to same-sex couples.
- III. But above all, Kennedy’s opinion is remembered for its optimistic language, capturing the hopes and dreams of so many. The final paragraph of Kennedy’s opinion reflects this reality: “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.”

## **The Dissents (Justices Roberts, Scalia, Thomas, and Alito)**

*Rarely do all the dissenting justices — especially when there are so many of them — each issue their own dissent, but that is what happened here. While each of the four believe that the Court overstepped its authority by taking control of a state-controlled matter, they focused on different*

*supplemental points. From a more literary standpoint, the dissents are also linked together by a somewhat derisive tone, ranging from Chief Justice Roberts' now-infamous rhetorical question ("Just who do we think we are?") to Justice Scalia's biting attack on the Majority's "straining-to-be-memorable" passages.*

- I. Chief Justice Roberts authors the primary dissent, arguing that the policy benefits of same-sex marriage do not mean that the Court has any authority to rule on the matter. The Constitution, he explains, does not even hint at marriage, and as a result, the question must be left to the states. As he puts it, "If you are among the many Americans — of whatever sexual orientation — who favor expanding same-sex marriage, by all means celebrate today's decision. Celebrate the achievement of a desired goal. Celebrate the opportunity for a new expression of commitment to a partner. Celebrate the availability of new benefits. But do not celebrate the Constitution. It had nothing to do with it."
- II. Justice Scalia slashes the Majority in his dissent, claiming that their opinion is a "naked judicial claim to legislative — indeed, *super*-legislative — power" that "robs the People of the most important liberty they asserted in the Declaration of Independence and won in the Revolution of 1776: the freedom to govern themselves." In many ways, Scalia builds upon Roberts' dissent, not only arguing that the decision is constitutionally unfounded, but also that it is subversive to democracy itself. In addition, Scalia's dissent is filled with countless slights and insults, including his attack on the Majority's "judicial Putsch" that "is couched in a style that is as pretentious as its content is egotistic."
- III. Justice Thomas' dissent offers an in-depth analysis of the Due Process Clause, leading to his conclusion that the Majority's decision has no constitutional basis. As for Justice Alito, his dissent is most memorable for the following line, which captured a sentiment that seemed to be present in all of the dissenting justices' opinions: "I assume that those who cling to old beliefs will be able to whisper their thoughts in the recesses of their homes, but if they repeat those views in public, they will risk being labeled as bigots and treated as such by governments, employers, and schools..."

## **Ramifications of the Decision**

*Obergefell* has left an extraordinary mark on this country. Hundreds of thousands of same-sex couples have been married since the decision, which marked a turning point in the fight for gay rights. Since the ruling came down in 2015, the equal protection of gay folks has been not only reaffirmed, but expanded; most notably, the Supreme Court in 2020 found that workplace discrimination on the basis of sexual orientation and gender identity is illegal. This decision, admittedly, was not grounded in constitutional law (it was based on a statute from the 1964 Civil Rights Act), but it nevertheless marked a momentous occasion.

In 2022, America witnessed yet another victory for gay rights: the Respect for Marriage Act was passed by Congress, codifying the right to same-sex marriage into law. Now, *Obergefell* is the law of the land through both a Supreme Court decision and legislation. That is not to say, however, that the passage of the *Respect for Marriage Act* was entirely positive. In June of 2022, the Supreme Court overturned *Roe v. Wade*, and in that decision, Justice Thomas wrote a concurrence calling for previous decisions that relied on substantive due process to be revisited — including *Obergefell*. Thus, the *Respect for Marriage Act* was passed as a precautionary measure. In other words, the success of the bill's passage was tainted by Justice Thomas' open threat to revisit and potentially overturn *Obergefell*.

Moreover, the fight for transgender rights in this country has not been easy. Politicians such as Florida Governor Ron DeSantis have emerged as vocal opponents to the trans community, and book bans (bans that overwhelmingly target LGBT-related books) are rampant. In fact, some might argue that the fight against marriage equality and gay rights has given way to an even more vile movement against transgender people. Suffice it to say that marriage equality may be settled, but the fight for equal rights for all Americans remains ongoing.