

Supreme Court Case Study

Background to the Case

The U.S. Supreme Court case of *Obergefell v. Hodges* is not the culmination of one lawsuit. Ultimately, it is the consolidation of six lower-court cases, originally representing sixteen same-sex couples, seven of their children, a widower, an adoption agency, and a funeral director. In all cases, district trial courts were ruling in favor of the couples. One of the six cases is listed below as an example:

June 2013, following the U.S. Supreme Court's decision in *United States v. Windsor*, James "Jim" Obergefell and John Arthur decided to get married to obtain legal recognition of their relationship. They married in Maryland on July 11. After learning that their state of residence, Ohio, would not recognize their marriage, they filed a lawsuit, *Obergefell v. Kasich*, in the United States District Court for the Southern District of Ohio on July 19, 2013, alleging that the state discriminates against same-sex couples who have married lawfully out-of-state. The lead defendant was Ohio Governor John Kasich.

As the case progressed, on July 22, District Judge Timothy S. Black wrote that "[t]hroughout Ohio's history, Ohio law has been clear: a marriage solemnized outside of Ohio is valid in Ohio if it is valid where solemnized...When a state effectively terminates the marriage of a same-sex couple married in another jurisdiction, it intrudes into the realm of private marital, family, and intimate relations specifically protected by the Supreme Court."

Between January 2012 and February 2014, plaintiffs in Michigan, Ohio, Kentucky, and Tennessee filed federal district court cases that culminated in *Obergefell v. Hodges*. After all district courts ruled for the plaintiffs, the rulings were appealed to the Sixth Circuit. In November 2014, following a lengthy series of appeals court rulings that year from the Fourth, Seventh, Ninth, and Tenth Circuits that state-level bans on same-sex marriage were unconstitutional, the Sixth Circuit ruled that it was bound by *Baker v. Nelson* and found such bans to be constitutional. This created a split between circuits and led to an almost inevitable Supreme Court review.

Constitutional Issue

Is denying same-sex couples the right to marry, including recognition of out-of-state marriages, violated the Due Process or Equal Protections Clauses of the Fourteenth Amendment?

Supreme Court's Decision

On June 26, 2015, the U.S. Supreme Court held in a 5–4 decision that the Fourteenth Amendment requires all states to grant same-sex marriages and recognize same-sex marriages granted in other states. The Court overruled its prior decision in *Baker v. Nelson*, which the Sixth Circuit had invoked as precedent.

The *Obergefell v. Hodges* decision came on the second anniversary of the *United States v. Windsor* ruling that struck down Section 3 of the Defense of Marriage Act (DOMA), which denied federal recognition to same-sex marriages, as being unconstitutional. It also came on the twelfth anniversary of *Lawrence v. Texas*,

which struck down sodomy laws in 13 states. The *Obergefell* decision was issued on the second-to-last decision day of the Court's term; and, as late as 9:59 a.m. in the morning of the decision, same sex couples were unable to marry in many states.

Justice Anthony Kennedy authored the majority opinion and was joined by Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan. The majority held that state same-sex marriage bans are a violation of the Fourteenth Amendment's Due Process and Equal Protection Clauses.

In closing, Justice Kennedy wrote for the Court:

“No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. 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.”

Dissenting Opinion

Chief Justice John Roberts stated that marriage, which he proposed had always had a "universal definition" as "the union of a man and a woman", arose to ensure successful childrearing. Roberts criticized the majority opinion for relying on moral convictions rather than a constitutional basis, and for expanding fundamental rights without caution or regard for history. He also suggested the majority opinion could be used to expand marriage to include legalized polygamy. Roberts also suggested the majority's opinion will ultimately lead to consequences for religious liberty, and he found the Court's language unfairly attacks opponents of same-sex marriage.

Scalia stated that the Court's decision effectively robs the people of "the freedom to govern themselves", noting that a rigorous debate on same-sex marriage had been taking place and that, by deciding the issue nationwide, the democratic process had been unduly halted. Addressing the claimed Fourteenth Amendment violation, Scalia asserted that, because a same-sex marriage ban would not have been considered unconstitutional at the time of the Fourteenth Amendment's adoption, such bans are not unconstitutional today.

Case Analysis Questions

- 1) Do you think the number of cases being brought to the courts was a deciding factor on the court's decision?
- 2) What was the basis of Justice Kennedy's opinion?
- 3) What rights are the dissenters worried about after this decision?
- 4) If you had been a justice of the Supreme Court considering this case, how would you have voted? Give reasons for your answer.