# Obergefell v. Hodges

## United States Supreme Court
## 576 U.S. ___ (2015)

## Rule of Law

**Under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, states must issue marriage licenses and recognize lawful out-of-state marriages for same-sex couples.**

## Facts

In response to some states legalizing same-sex marriage, various states enacted laws and constitutional amendments defining marriage as between one man and one woman. When James Obergefell's (plaintiff) partner, John Arthur, became terminally ill, the pair decided to marry. The couple wed in Maryland, where same-sex marriage was legal. After Arthur died, however, the couple's home state of Ohio refused to list Obergefell as Arthur's surviving spouse on the death certificate. April DeBoer and Jayne Rowse (plaintiffs), a same-sex couple living in Michigan, adopted three children. Because of a state ban on adoptions by same-sex couples, DeBoer and Rowse could not both be legal parents to their children. Ipje DeKoe and Thomas Kostura (plaintiffs) got married in New York before DeKoe was deployed to Afghanistan with the army reserve. They later moved to Tennessee, which refuses to recognize the union. These and similarly situated plaintiffs separately sued state officials (defendants) charged with enforcing state marriage laws in federal courts in Michigan, Kentucky, Ohio, and Tennessee, alleging violations of their rights under the Fourteenth Amendment. The district courts found for the plaintiffs in each instance, but the state officials appealed to United States Court of Appeals for the Sixth Circuit. The court of appeals consolidated the cases and reversed, holding that states were under no constitutional duty to license or recognize same-sex marriages. The plaintiffs petitioned the United States Supreme Court for certiorari, which was granted.

## Issue

Must states issue marriage licenses and recognize lawful out-of-state marriages

for same-sex couples?

## **Holding and Reasoning** (Kennedy, J.)

Yes. Same-sex couples have a constitutional right to marry protected by the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Marriage is a fundamental right protected by the Due Process Clause. For example, in *Loving v. Virginia*, 388 U.S. 1 (1967), the Court struck down anti-miscegenation laws that interfered with the right to marry. Similarly, in *Zablocki v. Redhail*, 434 U.S. 374 (1978), the Court invalidated state laws limiting the ability of individuals with unpaid child support to marry. Ultimately, the four principles underpinning the protection of the right to marry apply equally to opposite and same-sex couples: (1) the right to choose whether and whom to marry is "inherent in the concept of individual autonomy"; (2) the right serves relationships that are equal in importance to all who enter them; (3) assuring the right to marry protects children and families, which implicates the myriad of rights related to procreation and childrearing; and (4) lastly, marriage is the very "keystone of our social order" and foundation of the family unit. Though marriage has historically been viewed as between opposite-sex couples, the institution has changed over time, including through the changing legal status of women. Similarly, while same-sex relationships were once forbidden, in *Lawrence v. Texas*, 539 U.S. 558 (2003), the Court held that same-sex couples had an equal right to intimate associations. Refusing to allow same-sex couples to marry denies them a myriad of legal rights, including those related to taxation, insurance benefits, intestate succession, spousal evidentiary privileges, child custody and support, etc. In this instance, the liberty interest protected by due process intersects with the right to equal protection, and same-sex marriage bans violate both. Therefore, states must issue marriage licenses to same-sex couples. Further, states must recognize lawful out-of-state marriages between same-sex couples. All contrary laws are struck down. The court of appeals is reversed.

## **Dissent** (Scalia, J.)

An unelected committee of nine lawyers has stopped the debate and the democratic process on this issue. There is no question that those who ratified the Fourteenth Amendment could not possibly have intended for it to eliminate the traditional and, at least at that time, universal understanding of marriage. The justices are selected for their skill as lawyers, not policymakers, and in are in no way representative of the rest of the country.

## **Dissent** (Roberts, C.J.)

Although there are strong arguments for the inherent fairness in recognizing same-sex marriages, this should be left to individual states to decide. The Constitution does not define marriage, and states should be free to define it as they will, including maintaining the traditional definition of marriage recognized throughout history. The Court has usurped the right of the people to make such a decision through the democratic process and denied same-sex marriage the legitimacy that comes with that. Marriage developed as a means of ensuring children were cared for by two parents. The Court has warned of the dangers of finding new, implied fundamental rights as a matter of substantive due process, as the Court fatefully did in *Dred Scott v. Sandford*, 19 How. 393 (1857) and *Lochner v. New York*, 198 U.S. 45 (1905). The Court is acting as a super-legislature and substituting its own judgment for the law. Further, if same-sex marriage is valid, there is no good argument why plural marriage should not be. Finally, the Court fails to conduct the traditional Equal Protection Clause analysis before declaring the clause to be violated.