Case Summary

Obergefell et al. v. Hodges, Director, Ohio Department of Health, et al. 576 US (2015)

1. Reference details

Jurisdiction: Supreme Court of the United States

Date of decision: 26 June 2015

Link to full case: http://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf

2. Facts of the case

The petitioners were two men whose same-sex partners had died and fourteen same-sex couples who all brought cases in their respective District Courts challenging either the denial of their right to marry or the right to have their marriage performed elsewhere recognised in their own state. The cases were heard in Michigan, Kentucky, Ohio and Tennessee, each of which defines marriage as between a woman and a man. In each case, the relevant District Court found in favour of the petitioner. Each of the respondents, who were state officials responsible for enforcing the relevant laws, appealed. The Court of Appeals for the Sixth Circuit consolidated the respondents' appeals and reversed the decisions, finding in favour of the respondents. The petitioners then sought certiorari in the Supreme Court.

The situation of three of the petitioners illustrates the nature of the cases. James Obergefell and his partner of over twenty years, John Arthur travelled from Ohio to Maryland in order to marry. John died three months later of amyotrophic lateral sclerosis but Ohio law prevented James being listed on John's death certificate as surviving spouse. Same-sex partners April DeBoer and Jayne Rowse have three adopted children; however, Michigan permits only opposite-sex married couples or single persons to adopt, with the result that each child is treated as having only one parent, and if that partner passed away, the other would have no legal right to the children. Ijpe DeKoe and Thomas Kostura married in New York, where same-sex marriage was legal, before Ijpe was deployed to Afghanistan. Upon his return, they settled in Tennessee where their marriage is not recognised, with the result that their legal status in relation to each other changes as they travel between states.

3. Law

Section 1 of the Fourteenth Amendment to the United States Constitution:

> *(…) nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

4. Legal Arguments

Each petitioner sought certiorari (review of the decision of the Court of Appeals). They each argued that the actions of the relevant respondent violated the Fourteenth Amendment by either denying them their right to marry, or by denying the recognition of their marriage legally performed in another state. The petitioners argued that rather than intending to devalue marriage, it was their respect for the institution of marriage which meant that they sought it for themselves.

The respondents argued that the petitioners did not seek recognition of the right to marry, but sought recognition of a new and non-existent "right to same-sex marriage". They argued that marriage was by nature between a man and a woman and recognition of same-sex marriage would demean the institution of marriage. Further, the respondents warned that there had not been sufficient democratic discourse to decide on an issue as important as the definition of marriage. In addition, they argued that if same-sex couples are allowed to marry, fewer opposite-sex couples would marry because the connection between marriage and procreation would be severed. This would further harm the institution of marriage.

5. Decision

The Court ruled by a majority of 5 to 4 in favour of the petitioners. The majority decision, delivered by Justice Kennedy (Ginsburg, Breyer, Sotomayor, and Kagan, JJ. joined), first considered the issue arising from the cases from Michigan and Kentucky, of whether states are required to register same-sex marriages.

Requirement to Register Same-Sex Marriages

The majority began by noting that the institution of marriage has evolved over time both legally and socially and that the states were now divided on the issue of same-sex marriage, before turning to consider the Due Process Clause ("nor shall any state deprive any person of life, liberty, or property, without due process of law"). The liberties protected by this Clause extend to choices that are central to a person's dignity and autonomy, including intimate choices about personal beliefs and identity. Injustice is not always recognised in our own times and when new insights reveal a conflict between Constitutional provisions and legislation, the Court must consider a claim to liberty. Applying these considerations, the Court has long recognised that the Constitution protected the right to marry, including in *Loving v Virginia* 388 US 1, 12 (1967), in which the Court invalidated bans on interracial marriage.

Although these previous cases concerned opposite-sex marriages, they established more far-reaching constitutional principles, including four essential principles relating to the right to marry: the right to personal choice in relation to marriage as an inherent aspect of an individual's autonomy; the importance of the union of marriage to the two individuals which was "unlike any other"; that marriage provides a safeguard for children and families; and that marriage was central to social order, with states offering married couples rights, benefits and responsibilities. Each of these principles applies equally to same-sex marriages and while limiting marriage may have previously been seen as just and natural, it is now manifest that limiting marriage to opposite-sex partners is inconsistent with the "central meaning of the right to marry". Such

knowledge must lead to recognition that banning of same-sex marriage imposes "stigma and injury of the kind prohibited by our basic charter."

The respondents' argument that the petitioners did not seek to exercise their right to marry but rather sought a new "right to same-sex marriage" was inconsistent with the Court's previous approach to fundamental rights, including marriage. Rights cannot be restricted only to those who have exercised them in the past. Such a restriction would allow accepted practice to provide its own continuing justification and prevent groups from invoking rights previously denied to them. Rights do not come only from history, but from a better understanding of how liberty should be defined in our own time. It would diminish the personhood of same-sex couples and disparage their choices if they were denied the same rights to marry as opposite-sex couples under the Constitution.

The right to same-sex marriage is also guaranteed by the Equal Protection Clause. In interpreting this Clause, the Court has "recognized that new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged". The marriage laws challenged by the petitioners are "in essence unequal". They denied same-sex couples all the benefits granted to opposite-sex couples and work as a "grave and continuing harm", serving to disrespect and subordinate gays and lesbians.

The respondents warned that the recognition of the right to same-sex marriage has been the subject of too little democratic discourse. While it is recognised in the Constitution that democracy is the appropriate process for changes to be made, that process cannot impair fundamental rights. The Constitution allows an individual to seek protection for a violation of their rights, even if the public disagrees and the legislature does not wish to act. The issue is whether the Constitution protects the right to same-sex marriage and not whether same-sex marriage currently has or lacks popular support.

The respondents showed no foundation to conclude that recognising same-sex marriage would harm the institution of marriage.

Recognition of Same-Sex Marriages in Other States

If the current state of affairs is left in place (being married in one place but not another), the result would be instability and uncertainty. It follows from the decision that same-sex couples may marry in all states, that there is no lawful basis on which a state can refuse to recognise a same-sex marriage lawfully performed in another state because of its same-sex character.

Dissenting Judgments

Chief Justice Roberts (Scalia and Thomas JJ joining) dissented from the majority on the basis that the Constitution did not allow judges to decide the definition of marriage as it left that decision to the legislature. There was no legal basis for the majority to reach its conclusion.

Justice Scalia (Thomas J joining) joined the opinion of the Chief Justice in full and wrote a further dissent, stating that the majority had robbed the people of the freedom to govern themselves. Justice Thomas (Scalia J joining), noted that due process is not a "font of substantive rights"; it simply required that before the right to life, liberty or property is taken away, a person is granted whatever process is due. The danger of substantive due process is evidenced by the majority taking away the right of the people to decide this issue for themselves. Even if there were a right

to substantive due process, the petitioners would still not succeed; the liberty spoken of in the Constitution refers to freedom from physical restraint. Further, even if the notion of liberty was expanded, it would not encompass the right to marry; it would refer to a freedom from governmental action, not a right to any entitlement granted by the government.

The final dissent was Justice Alito (Tomas and Scalia JJ joining), dissenting on the basis that the Constitution left the question of what states should do about same-sex marriage to the people of each state.