Obergefell v. Hodges

Date: June 26. 2015
Authors: Justice Anthony M. Kennedy, with dissents by Chief Justice John Roberts and Justices Scalia, Thomas, and Alito
Genre: Court Opinion
Area of Law: Due Process; Equal Protection; Same-sex Marriage

Summary Overview

The case of Obergefell v. Hodges *was front-page news for weeks prior to the announcement of a ruling by the U.S. Supreme Court. Supporters of both the plaintiffs and the defendants were certain that their side would prevail. When, in the end, the Court decided that prohibiting same-sex marriage was illegal in the United States, there was great rejoicing among supporters of lesbian, gay, bisexual, transgender, and queer (LGBTQ) rights and great consternation among those opposed to gay marriage and other LGBTQ causes. The 5-4 vote by the justices completed the transition of the definition of marriage from an institution between a man and a woman to one between two persons regardless of gender. Where previously there was no uniform definition of marriage in the fifty states and federal territories, the ruling in Obergefell mandated one, at least as regards gender neutrality. Having shown in previous rulings that a majority on the Court was not opposed to same-sex marriage per se, this ruling went further and stated that limiting marriage to heterosexual couples was a form of discrimination and therefore unconstitutional.*

Defining Moment

Since 1993, when the Hawaii Supreme Court ruled that denying marriage licenses to same-sex couples was unconstitutional (a ruling later overturned by an amendment to the Hawaii state constitution), the advocates of same-sex marriage had been gaining ground. By mid-2015, thirty-six states and two federal territories recognized same-sex marriages in some fashion. With some states allowing same-sex marriages, others recognizing them but not performing them, and still others doing neither, a checkerboard pattern had been created across the United States. Legally, the situation was becoming untenable. In virtually all of the cases being brought before federal courts, same-sex couples were granted the relief they sought—namely, recognition of their marriage from another state or the right to marry within a state. After the Supreme Court ruled that Section 3 of the Defense of Marriage Act (DOMA) was unconstitutional in *United States v. Windsor* (2013), the trickle of judicial support for same-sex marriage became a torrent. Six cases from Michigan, Ohio, Kentucky, and Tennessee had come before district courts, and in each case the judge had ruled in favor of same-sex marriage. These cases were combined before the Court of Appeals for the Sixth Circuit. In November 2014, the appeals court ruled, by a 2-1 vote, that barring same-sex marriages was constitutionally permissible. In other circuits, in contrast, appeals courts had uniformly upheld the right of same-sex couples to marry. Because there was a difference between the various appeals courts' decisions, the Supreme Court took up the issue.

One could argue that, in some respects, this was the most hotly contested case in the history of the Supreme Court, for more friend-of-the-court (*amicus curiae*) briefs were filed—148 of them—than in any other Supreme Court case to date. The briefs were received and oral arguments were heard in April 2015. While some commentators talked about creating a constitutional amendment either to allow or to disallow same-sex marriage, depending on one's predilection, neither side had any real hope of passing such an amendment. Thus, it was clear to both supporters and opponents that the Supreme Court ruling would be

The White House illuminated in rainbow colors on the evening of the Obergefell ruling, June 26, 2015. Photo by tedeytan, via Wikimedia Commons.

the final word. When the court issued its ruling on June 26, 2015, same-sex couples were given the legal right to marry anywhere in the United States.

Author Biography

The nine justices on the Supreme Court during the October 2014 term were (by seniority): Antonin Scalia (appointed 1986), Anthony Kennedy (1988), Clarence Thomas (1991), Ruth Bader Ginsburg (1993), Stephen Breyer (1994), John Roberts (2005), Samuel Alito (2006), Sonia Sotomayor (2009), and Elena Kagan (2010). All have law degrees from Ivy League law schools (Harvard, 5; Yale, 3; and Columbia, 1). Eight of the justices had previously served as appeals court judges; only Kagan had not. John Roberts was Chief Justice, and during his era more rulings have tended to be politically conservative than politically liberal.

As in a previous landmark single-sex marriage case, *United States v Windsor,* Anthony Kennedy (b. 1936) wrote the majority opinion. Prior to being a judge he lived in California and was a law professor for twenty-three years, while being in private practice for fourteen years. The authors of the dissenting opinions, Roberts (b. 1955), Scalia (b. 1936), Thomas (b. 1948), and Alito (b. 1950), had all served most of their pre-judicial careers in government as legal counsels or prosecuting attorneys. Roberts had the most extensive experience in private practice.

Historical Document

Obergefell v Hodges

Justice Kennedy delivered the opinion of the Court.

...Marriage is sacred to those who live by their religions and offers unique fulfillment to those who find meaning in the secular realm. Its dynamic allows two people to find a life that could not be found alone, for a marriage becomes greater than just the two persons. Rising from the most basic human needs, marriage is essential to our most profound hopes and aspirations.

As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. ... Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser. They also suffer the significant material costs of being raised by unmarried parents, relegated through no fault of their own to a more difficult and uncertain family life. The marriage laws at issue here thus harm and humiliate the children of same-sex couples.

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.

Chief Justice Roberts, with whom Justice Scalia and Justice Thomas join, dissenting.

Roberts: Many people will rejoice at this decision, and I begrudge none their celebration. But for those who believe in a government of laws, not of men, the majority's approach is deeply disheartening. ... Five lawyers have closed the debate and enacted their own vision of marriage as a matter of constitutional law. Stealing this issue from the people will for many cast a cloud over same-sex marriage, making a dramatic social change that much more difficult to accept.

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.

Scalia: The substance of today's decree is not of immense personal importance to me. The law can recognize as marriage whatever sexual attachments and living arrangements it wishes, and can accord them favorable civil consequences, from tax treatment to rights of inheritance. ... It is of overwhelming importance, however, who it is that rules me. Today's decree says that my Ruler, and the Ruler of 320 million Americans coast-to-coast, is a majority of the nine lawyers on the Supreme Court.

If, even as the price to be paid for a fifth vote, I ever joined an opinion for the Court that began: 'The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons, within a lawful realm, to define and express their identity,' I would hide my head in a bag. The Supreme Court of the United States has descended from the disciplined legal reasoning of John Marshall and Joseph Story to the mystical aphorisms of the fortune cookie.

Thomas: The Court's decision today is at odds not only with the Constitution, but with the principles upon which our Nation was built. Since well before 1787, liberty has been understood as freedom from government action, not entitlement to government benefits. The Framers created our Constitution to preserve that understanding of liberty. Yet the majority invokes our Constitution in the name of a 'liberty' that the Framers would not have recognized, to the detriment of the liberty they sought to protect."

Justice Alito, with whom Justice Scalia and Justice Thomas join, dissenting.

Alito: Today's decision shows that decades of attempts to restrain this Court's abuse of its authority have failed. A lesson that some will take from today's decision is that preaching about the proper method of interpreting the Constitution or the virtues of judicial self-restraint and humility cannot compete with the temptation to achieve what is viewed as a noble end by any practicable means.

Glossary

aphorism: an adage or pat saying; it also can mean a very brief statement of opinion or generally recognized truth

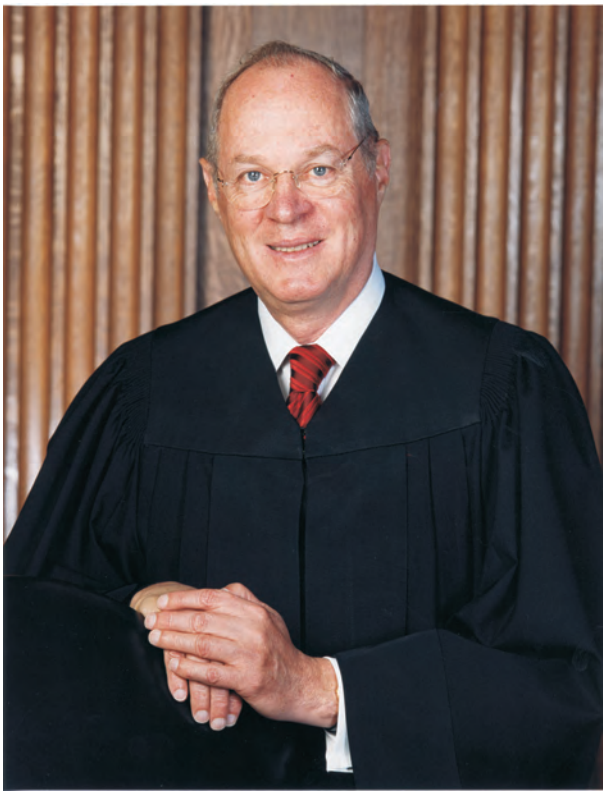
v.: versus

Document Analysis

In the full, thirty-four page majority opinion, the focus is on individual liberty, and keeping the state from unreasonably limiting the liberty to marry. As the argument goes, if marriage is a good thing, then why limit it only to heterosexual couples? As with many civil rights rulings, the effect on children becomes an important part of the consideration. Most of the *anti*-same-sex marriage arguments, found in the sixty-four pages of dissenting opinions, focus on judicial activism, criticizing the other members of the court for forcing change upon the parts of the nation that had not adopted same-sex marriage as a legal option, and what is the proper definition of liberty in this context and more broadly.

Of the six cases that had been before the appeals court, four were selected by the Supreme Court for written and legal arguments within *Obergefell v. Hodges*. The arguments put forward focus on the Full Faith and Credit clause (the duties of states vis-à-vis other states) in Article Four of the Constitution, and various provisions of the Fourteenth Amendment (equal protection and other provisions), as well as consideration of the purpose of marriage. Any religious or secular moral concerns regarding the definition of marriage are not a part of the decision-making process. Marriage is seen as a positive action that creates a new social, as well as legal, entity. Indeed, in the full majority opinion, one can identify a view that there is such diversity in heterosexual marriages that it is impossible to find anything in that form of the institution that cannot be found in a same-sex marriage. That being the case, and given the rights afforded by the Fourteenth Amendment, the justices in the majority conclude that there is no reason to limit marriage to heterosexual couples. In fact, any number of complications, for a same-sex couple and any children in the family, arise from *not* allowing the couple to marry. Same-sex couples were seeking "equal dignity in the eyes of the law," and the Court majority (Kennedy, Ginsburg, Breyer, Sotomayor, Kagan) agreed that this should be so. The scope of the ruling meant that same-sex marriage became legal everywhere in the United States as a result.

Each of the four justices who dissented from the ruling, on the other hand, wrote his own dissent.



Justice Anthony Kennedy authored the Court's opinion declaring same-sex couples have the right to marry. Photo via Wikimedia Commons. [Public domain.]

Nevertheless, the dissents tend to be similar in their focus. One objection, raised by Roberts, is that "five lawyers" (justices) were in effect defining marriage for the entire nation. The dissents represent a repudiation of what their authors see as judicial activism and the extension of the Fourteenth Amendment to areas not intended by its originators. This is not an unusual argument for conservative justices to make. Scalia goes further and states that "legal reasoning" has been abandoned. Various dissenters state their belief that liberty as outlined in the Constitution entails the absence of unwanted government intrusion in citizens' lives; it is not the liberty of individuals to force a state, via the federal government, to change its laws in order to accommodate them. The four dissenting justices generally see the ruling not only as a legal mistake but also as a step toward limiting democracy and even lowering the esteem of the Court in the eyes of Americans.

Essential Themes

Obergefell v. Hodges represents the culmination of a decades-long push for same-sex couples to obtain equal rights vis-à-vis heterosexual couples. While the Supreme Court ruled only on constitutional and legal issues, for many people the institution of marriage goes beyond such matters to include moral or religious values. As in all cases where differentiation, or discrimination, has existed, the granting of legal equality does not mean that equal treatment of same-sex couples by all members of society will necessarily follow. Social equality and acceptance of same-sex couples is not guaranteed by a court ruling, especially in the case of those who view same-sex marriage as immoral. The overlapping of religious and secular aspects of marriage, acknowledged by Justice Kennedy, insure that the discussion of same-sex marriage will continue, as people try to reconcile the legal imperative with their personal beliefs. Generally speaking, however, the ruling was seen as positive by liberals and negative by conservatives.

Within the history of the Supreme Court, the debate surrounding *Obergefell* continues two major post-World War II trends in legal reasoning. The first, associated primarily with liberal justices, has to do with extending Fourteenth Amendment rights to other areas of civic life in an effort to bring fairness to all. To put it simply, if there is no good reason to differentiate between two groups of people, then giving one privileges that are not given to the other is unconstitutional; the rights of the one should be applied to the plight of the other. The second trend, associated mostly with conservative justices, has to do with expanding individual liberty and states' rights and limiting the reach of the federal government. Simply put, national government should be restrained from intruding into the affairs of states and the private lives of American citizens, and individual liberty should be allowed to flourish. The debate between adherents of these two differing points of view has been going on for at least sixty years and is likely to continue to occur in the future.

Outside the Supreme Court on the morning of June 26, 2015, James Obergefell (foreground, center) and attorney Al Gerhardstein (foreground, left) react to its historic decision. Photo by Elvert Barnes, via Wikimedia Commons.

—Donald A. Watt, PhD

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