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Supreme Court Strikes Down Same-Sex Marriage Bans

In a landmark decision, the U.S. Supreme Court held that the Fourteenth Amendment requires states to license marriages between two people of the same sex and to recognize same sex marriages that were validly licensed in other states. The decision in *Obergefell v. Hodges*, written by Justice Kennedy, overturned a decision by the U.S. Court of Appeals for the Sixth Circuit, which had upheld the constitutionality of same-sex-marriage bans in four states. Four Justices dissented.

The majority opinion discussed "the transcendent importance of marriage" in society and "the centrality of marriage to the human condition." It concluded that those petitioning for same-sex-marriage rights do not seek to devalue marriage but "seek it for themselves because of their respect—and need—for its privileges and responsibilities." Although the Court affirmed "[t]he ancient origins of marriage," it also concluded that "[t]he history of marriage is one of both continuity and change. That institution—even as confined to opposite-sex relations—has evolved over time."

Reaching the issues in the four consolidated cases before it, the Court ultimately echoed its previous discussion in *United States v. Windsor*, which struck down the federal Defense of Marriage Act. The Court concluded that the Fourteenth Amendment's Due Process clause created a fundamental right to marriage, and it concluded that this right extended to same-sex couples as well. The Court also relied on principles of Equal Protection, concluding that denial of marriage rights impermissibly served to disrespect and subordinate gays and lesbians. Applying those principles, the Court held "that the right to marry is a fundamental right inherent to the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty." Based on its conclusion that states must license same-sex marriages, the Court concluded there was no justification for refusing to recognize same-sex marriages performed elsewhere.

The primary effect of the Court's decision will be to invalidate same-sex marriage bans enacted by the various states. It remains to be seen whether the Court will determine that the federal government and state governments must retroactively recognize validly performed same-sex marriages from other states. Furthermore, the redefinition of an institution as fundamental to society as marriage will almost certainly have unforeseen consequences in other areas of the law. As often happens, the answering of one question raises a host of other questions. It may ultimately take many years to sort out all of the effects of the Court's decision.

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