

Obergefell v. Hodges

by Mark Mark

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The right for same sex marriage has been a struggling fight for over decades and has been denied from various jurisdictions. Outcomes as such have stemmed from traditional thinking and beliefs. In previous years same sex marriage was commonly frowned upon yet as time progresses so does people. On June 26, 2015 a 5-4 decision was made in the case of Obergefell v. Hodges in which same-sex couples should be granted the right to marry under the fundamentals of the Constitution in the Fourteenth Amendment.¹ First we must look at previous events that lead to the influence of the succeeding case.

In 1970 a couple from the University of Minnesota was denied a marriage license because they were of the same sex. They then filed suit in claims that their human rights found in the First, Eighth, Ninth, and Fourteenth Amendment were violated. In 1971, Minnesota Supreme Court decided that denying marriage of same-sex couples does not violate the laws of the Constitution in the case of Baker v. Nelson and the couple never received their marriage license. Shortly after the Defense of Marriage Act (DOMA) was later passed by president Bill Clinton stating that a marriage should be between a man

¹ Cain, Patrick N, and David Ramsey. *American Constitutionalism, Marriage, and the Family: Obergefell V. Hodges and U.s. V. Windsor in Context.* , 2016. Internet resource.

and a woman. So this help the courts justify why they could deny gay couples marriage license.²

Looking at these outcomes from a social standpoint can easily help reflect as to why rights for gay marriage were at a standstill. In the 70's through 80's American citizens were still coping with the removal of segregation, KKK, and the Civil Rights Act itself. More crucial issues as well as the financial damage from other previous events piloted America's attention. Kennedy's assassination was also a media changing topic several years prior. Socially and economically American citizens had bigger fish to fry than making same-sex marriage a true priority.³

It wouldn't be until May 17, 2014 that the majority of America got on board with same sex marriage, because of the court case, "Goodridge v. Department of Public Health" held in Massachusetts. Preceding this case was more that 70% of the United States became a legal place for it. Some jurisdictions legalized same sex marriages through enactment of state legislation or state courts. On June 26, 2015 in the case of Obergefell v. Hodges it is now required that all states must recognize same sex marriage licenses and prohibiting same-sex marriage is unconstitutional.

The case made its way to the Supreme Court through the question of does the Fourteenth Amendment require a state to license a marriage between two people of the same sex, and the second question of does the Fourteenth Amendment require a state to

² Ibid.,

³ Ibid.,

recognize a marriage between two people of the same sex that was legally licensed and performed in another state.⁴

In this ruling, Justice Kennedy M. Anthony stated clearly that this liberty would no longer be denied for those who willed to do the same. He did proclaim that marriage is the most profound union since it embodies a very high ideal for love, for fidelity, a greater devotion, with sacrifice and also family. In formation of such a union, the two people involved become something of greater value than they used to be. Marriage also happens to be the keystone for any social order, as Justice Kennedy tried to put it, adding the plaintiffs within this case were indeed seeking an equal dignity to the law. This decision happened to be a culmination of litigation together with activism for over decades, being a first same-sex marriage for the several states in the USA. The ruling came at a backdrop in fast-moving changes within the public perception, with most Americans appreciating such unions.⁵

The supreme court's four justices also joined their fellow Justice Kennedy in the majority opinion, all of them filling a dissent, to express their tones, in particular of dismay and bitter scorn. The Chief Justice Roberts John, in his dissent said that the Constitution does not have anything to comment a subject like marriage between the same-sex, even telling the Americans to indeed celebrate such an achievement for a goal desired. But for the Constitution, he emphasized that he had no comment about it since he

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⁴ Daniels, Gary. *Married Same-Sex Couples: Religious Objection, Social Security and Tax Treatment Issues*. , 2016. Internet resource.

⁵ Porterfield, Jason. *Marriage Equality: Obergefell V. Hodges*. , 2017. Print.

had not contributed to it. In another dissent by Justice Scalia, he mocked the language used by Justice Kennedy, and his becoming of the nation's champion for the gay rights.

After Justice Kennedy had finished making the announcement of his opinion, some of the lawyers at the bar did wipe away their tears, and the others grinned in embraces. Justice John, who had retired in the year 2010, happened to be present at the chamber that was almost full when this ruling was being announced. This decision indeed made the marriage of same-sex become a reality within the thirteen states given that they had continuously banned the marriage between same-sex.⁶ The ruling had a greater reception as the crowds celebrated in victory with a notion that love had indeed won. President Obama also welcomed this decision by saying that it did affirm what the Americans believed within their hearts.⁷

Justice Kennedy also happened to be the author for all of the three Supreme Court's gay rights in such landmark rulings, such as the United States v. Windsor ruling, in which he did strike down the federal law that had denied benefits to the married couples of same-sex, and another such ruling happened to be the Lawrence v. Texas, in which again he struck down the laws that made the gay sex to be considered as a crime. In such decisions, his Justice Kennedy did embrace the vision from the constitution, and he indeed brought an evolvement to the changes in a society in need.⁸

Justice Kennedy also had to deliver the Supreme Court's opinion in this particular ruling. He emphasized that Constitution did promise liberty for all the citizens within the

⁶ Ibid.,

⁷ Porterfield, Jason. *Marriage Equality: Obergefell V. Hodges.* , 2017. Print.

⁸ Ibid.,

reach of this constitution, a liberty which includes specific rights allowing people, in a lawful manner, to define or even express an identity that they desire. The petitioner within this case did seek to know what liberty someone could get by marrying another person of same sex. And what would they gain by having this marriages passed as lawful within the same confines or conditions that the other marriages happening between persons from opposite sex indeed had.

They had discovered a loop hole in this Fourteenth Amendment Act, and decided to claim it as a fundamental right that has been overlooked by very many people. Justice Kennedy also rooted his ruling to the fundamental right towards marriage, which is so special to couples, and he however said that it is of importance in raising children. Therefore, without recognizing it, and giving it the stability it requires, their children would eventually suffer stigma and trauma for knowing that ³ their families were somehow lesser.⁹ They would also suffer a significant cost of material for being raised in unmarried situation. Therefore this marriage laws would bring harm together with humiliation to the children in this same-sex marriage.

Conclusion

The ancient times where marriage originates indeed confirms its position of centrality and therefore its importance within the society, but the very same marriage hasn't stood at isolation from some of the developments that have been witnessed within the confines of law or even the society at large. The history for this marriage has been

⁹ Ibid.,

able to show both a continuity and also change in any particular society. This institution of marriage has since evolved even in the perspective of opposite-sex relationships.

For instance, marriage used to be once viewed to be an arrangement between couples based on any political affiliations, or religious grounds, being regarded as a voluntary contract that existed between people of opposite sex. Majority of people have been dissenting over their opinions and have taken many differing opinions and views. This has caused the world to be able to accept the changes occurring in its wake.

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