



OBERGEFELL V. HODGES **THE UNITED STATES** **SUPREME COURT ISSUES** **OPINION ON SAME-SEX MARRIAGE**

On June 26, 2015, the United States Supreme Court issued its much anticipated opinion in Obergefell v. Hodges. The case involved fourteen same-sex couples and two men whose same-sex partners are deceased from Kentucky, Michigan, Ohio and Tennessee, claiming that the denial by a state of the right to marry or to have marriages lawfully performed in another state violates the Fourteenth Amendment. Each District Court ruled in the same-sex couples' favor, but the Sixth Circuit Court of Appeals consolidated the cases and reversed the District Court opinions. Deboer v. Snyder, 772 F.3d 388 (6th Cir. Mich. 2014).

In a 5-4 decision, the United States Supreme Court held that under the Fourteenth Amendment “*same-sex couples may exercise the fundamental right to marry in all States,*” and “*that there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character.*” Obergefell v. Hodges, 576 U. S. ____ (2015), p. 28.

In the majority opinion, the Court references “*four principles and traditions to be discussed demonstrat[ing] . . . the reasons marriage is fundamental under the Constitution [and] apply with equal force to same-sex couples.*”

In addressing the first principle, the Supreme Court cites Loving v. Virginia, 388 U. S. 1 (1967):

“A first premise of the Court’s relevant precedents is that the right to personal choice regarding marriage is inherent in the concept of individual autonomy. This abiding connection between marriage and liberty is why Loving invalidated interracial marriage bans under the Due Process Clause.” *Id.*, p. 12.

The majority opinion goes on to state that:

“A second principle in this Court’s jurisprudence is that the right to marry is fundamental because it supports a two-person union unlike any other in its importance to the committed individuals.” *Id.*, p. 13.

The Court refers to the protection of children and families in the third principle:

“A third basis for protecting the right to marry is that it safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education.” *Id.*, p. 14.
“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. .” *Id.*, p. 15.

Lastly, the Court, in the majority opinion, reasons as follows:

“Fourth and finally, this Court’s cases and the Nation’s traditions make clear that marriage is a keystone of our social order.” *Id.*, p. 16.

The Court goes on to discuss the government benefits afforded married couples:

“Indeed, while the States are in general free to vary the benefits they confer on all married couples, they have throughout our history made marriage the basis for an expanding list of governmental rights, benefits, and responsibilities. These aspects of marital status include: taxation; inheritance and property rights; rules of intestate succession; spousal privilege in the law of evidence; hospital access; medical decision making authority; adoption rights; the rights and benefits of survivors; birth and death certificates; professional ethics rules; campaign finance restrictions; workers’ compensation benefits; health insurance; and child custody, support, and visitation rules.” *Id.*, pp. 16-17.

The majority opinion is summed up in the following statements:

“No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. 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." Id., p. 28.

Chief Justice Roberts, joined by Justices Thomas and Scalia filed a dissenting opinion. Justice Alito also dissented in a separate dissenting opinion. In his dissent, Chief Justice Roberts declares that the states should make the decision on the definition of marriage:

"Although the policy arguments for extending marriage to same-sex couples may be compelling, the legal arguments for requiring such an extension are not. The fundamental right to marry does not include a right to make a State change its definition of marriage. And a State's decision to maintain the meaning of marriage that has persisted in every culture throughout human history can hardly be called irrational. In short, our Constitution does not enact any one theory of marriage. The people of a State are free to expand marriage to include same-sex couples, or to retain the historic definition." Id., p. 2 (Roberts, dissenting).

Chief Justice Roberts goes on to describe the majority decision as *"an act of will, not legal judgment."* *Id.*, p. 3 (Roberts, dissenting). In his closing remarks, Chief Justice Roberts says:

"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." Id., p. 29 (Roberts, dissenting).

The obvious implication of this decision to employers is that benefits provided to spouses of employees will expand to include same-sex spouses. We will address the additional implications of this decision in future newsletters. The opinion and its effect on employers will also be discussed in detail at the Holifield & Associates, PLLC Second Annual Employee Benefit Update in Knoxville on September 9, 2015. For more information about this seminar, please visit <http://www.holifieldlaw.com>.

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