Obergefell, *et al.* v. Hodges, *et al.* (576 U.S. __ 2015)[1]

Justice Kennedy, J., delivered the opinion of the Court, in which Ginsburg, Breyer, Sotomayor, and Kagan, JJ., joined. Roberts, C. J., filed a dissenting opinion, in which Scalia and Thomas, JJ., joined. Scalia, J., filed a dissenting opinion, in which Thomas, J., joined. Thomas, J., filed a dissenting opinion, in which Scalia, J., joined. Alito, J., filed a dissenting opinion, in which Scalia and Thomas, JJ., joined.

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. The petitioners in these cases seek to find that liberty by marrying someone of the same sex and having their marriages deemed lawful on the same terms and conditions as marriages between persons of the opposite sex.

I

These cases come from Michigan, Kentucky, Ohio, and Tennessee, States that define marriage as a union between one man and one woman [...]. The petitioners are 14 same-sex couples and two men whose same-sex partners are deceased. The respondents are state officials responsible for enforcing the laws in question. The petitioners claim the respondents violate the Fourteenth Amendment by denying them the right to marry or to have their marriages, lawfully performed in another State, given full recognition.

Petitioners filed these suits in United States District Courts in their home States. Each District Court ruled in their favor. [...] The respondents appealed the decisions against them to the United States Court of Appeals for the Sixth Circuit. [...] The petitioners sought certiorari. This Court granted review, limited to two questions. 574 U. S. ___ (2015). The first [...] is whether the Fourteenth Amendment requires a State to license a marriage between two people of the same sex. The second [...] is whether the Fourteenth Amendment requires a State to recognize a same-sex marriage licensed and performed in a State which does grant that right.

II

Before addressing the principles and precedents that govern these cases, it is appropriate to note the history of the subject now before the Court.

A

Rising from the most basic human needs, marriage is essential to our most profound hopes and aspirations. [...]

That history is the beginning of these cases. The respondents say it should be the end as well. [...] Marriage, in their view, is by its nature a gender-differentiated union of man and woman. [...]

The petitioners acknowledge this history but contend that these cases cannot end there. Were their intent to demean the revered idea and reality of marriage, the petitioners' claims would be of a different order. But that is neither their purpose nor their submission. [...] Far from seeking to devalue marriage, the petitioners seek it for themselves because of their respect and need for its privileges and responsibilities. [...]

[1]Note: This majority opinion has been edited from the original text by Travis Braidwood for classroom use. The full case text can be found here: < http://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf >

Recounting the circumstances of [one] of these cases illustrates the urgency of the petitioners' cause from their perspective. Petitioner James Obergefell, a plaintiff in the Ohio case, met John Arthur over two decades ago. They fell in love and started a life together, establishing a lasting, committed relation. In 2011, however, Arthur was diagnosed with amyotrophic lateral sclerosis, or ALS. This debilitating disease is progressive, with no known cure. Two years ago, Obergefell and Arthur decided to commit to one another, resolving to marry before Arthur died. [...] Three months later, Arthur died. Ohio law does not permit Obergefell to be listed as the surviving spouse on Arthur's death certificate. [...] He brought suit to be shown as the surviving spouse on Arthur's death certificate.

B

The history of marriage is one of both continuity and change. That institution even as confined to opposite-sex relations has evolved over time.

For example, marriage was once viewed as an arrangement by the couple's parents based on political, religious, and financial concerns[.] [...] As women gained legal, political, and property rights, and as society began to understand that women have their own equal dignity, the law of coverture was abandoned. [...]

These new insights have strengthened, not weakened, the institution of marriage. [...]

This dynamic can be seen in the Nation's experiences with the rights of gays and lesbians. Until the mid-20th century, same-sex intimacy long had been condemned as immoral by the state itself in most Western nations[.]

For much of the 20th century, moreover, homosexuality was treated as an illness. [...] Only in more recent years have psychiatrists and others recognized that sexual orientation is both a normal expression of human sexuality and immutable. [...]

This Court first gave detailed consideration to the legal status of homosexuals in *Bowers v. Hardwick*, 478 U. S. 186 (1986) . There it upheld the constitutionality of a Georgia law deemed to criminalize certain homosexual acts. Ten years later, in *Romer v. Evan*s, 517 U. S. 620 (1996) , the Court invalidated an amendment to Colorado's Constitution that sought to foreclose any branch or political subdivision of the State from protecting persons against discrimination based on sexual orientation. Then, in 2003, the Court overruled Bowers, holding that laws making same-sex intimacy a crime "demea[n] the lives of homosexual persons." *Lawrence v. Texas*, 539 U. S. 558 .

[I]n 1996, Congress passed the Defense of Marriage Act (DOMA), 110Stat. 2419, defining marriage for all federal-law purposes as "only a legal union between one man and one woman as husband and wife." 1 U. S. C. §7.

[...] Two Terms ago, in *United States v. Windsor*, 570 U. S. ___ (2013), this Court invalidated DOMA to the extent it barred the Federal Government from treating same-sex marriages as valid even when they were lawful in the State where they were licensed. DOMA, the Court held, impermissibly disparaged those same-sex couples "who wanted to affirm their commitment to one another before their children, their family, their friends, and their community." Id., at ___ (slip op., at 14).

Numerous cases about same-sex marriage have reached the United States Courts of Appeals in recent years. In accordance with the judicial duty to base their decisions on principled reasons and neutral discussions, without scornful or disparaging commentary, courts have written a substantial body of law considering all sides of these issues. That case law helps to explain and formulate the underlying principles this Court now must consider. With the exception of the opinion here under review and one other, see *Citizens for Equal Pro-*

tection v. Bruning, 455 F. 3d 859, 864 868, the Courts of Appeals have held that excluding same-sex couples from marriage violates the Constitution. [...]

After years of litigation, legislation, referenda, and the discussions that attended these public acts, the States are now divided on the issue of same-sex marriage. [...]

III

Under the Due Process Clause of the Fourteenth Amendment, no State shall "deprive any person of life, liberty, or property, without due process of law." The fundamental liberties protected by this Clause include most of the rights enumerated in the Bill of Rights. See *Duncan v. Louisiana*, 391 U. S. 145 149 (1968). In addition these liberties extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs. See, e.g., *Eisenstadt v. Baird*, 405 U. S. 438, 453 (1972) ; *Griswold v. Connecticut*, 381 U. S. 479 486 (1965).

The identification and protection of fundamental rights is an enduring part of the judicial duty to interpret the Constitution. That responsibility, however, "has not been reduced to any formula." *Poe v. Ullman*, 367 U. S. 497, 542 (1961) (Harlan, J., dissenting). Rather, it requires courts to exercise reasoned judgment in identifying interests of the person so fundamental that the State must accord them its respect. [...] History and tradition guide and discipline this inquiry but do not set its outer boundaries. See *Lawrence*, *supra*, at 572. [...]

The nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning. When new insight reveals discord between the Constitution's central protections and a received legal stricture, a claim to liberty must be addressed.

Applying these established tenets, the Court has long held the right to marry is protected by the Constitution. In *Loving v. Virginia*, 388 U. S. 1, 12 (1967) , which invalidated bans on interracial unions, a unanimous Court held marriage is "one of the vital personal rights essential to the orderly pursuit of happiness by free men." The Court reaffirmed that holding in *Zablocki v. Redhail*, 434 U. S. 374, 384 (1978) , which held the right to marry was burdened by a law prohibiting fathers who were behind on child support from marrying. The Court again applied this principle in *Turner v. Safley*, 482 U. S. 78, 95 (1987) , which held the right to marry was abridged by regulations limiting the privilege of prison inmates to marry. Over time and in other contexts, the Court has reiterated that the right to marry is fundamental under the Due Process Clause. [...]

This analysis compels the conclusion that same-sex couples may exercise the right to marry. The four principles and traditions to be discussed demonstrate that the reasons marriage is fundamental under the Constitution apply with equal force to same-sex couples.

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. [...] Like choices concerning contraception, family relationships, procreation, and childrearing, all of which are protected by the Constitution, decisions concerning marriage are among the most intimate that an individual can make. [...]

Choices about marriage shape an individual's destiny. [...] The nature of marriage is that, through its enduring bond, two persons together can find other freedoms, such as expression, intimacy, and spirituality. This is true for all persons, whatever their sexual orientation. [...]

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. [...]

Marriage responds to the universal fear that a lonely person might call out only to find no one there. It offers the hope of companionship and understanding and assurance that while both still live there will be someone to care for the other.

As this Court held in *Lawrence*, same-sex couples have the same right as opposite-sex couples to enjoy intimate association. [...] And it acknowledged that "[w]hen sexuality finds overt expression in intimate conduct with another person, the conduct can be but one element in a personal bond that is more enduring." [...]

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. See *Pierce v. Society of Sisters*, 268 U. S. 510 (1925) ; *Meyer*, 262 U. S., at 399. [...] By giving recognition and legal structure to their parents' relationship, marriage allows children "to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives." *Windsor*, supra, at ___ (slip op., at 23). [...]

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. See *Windsor*, supra, at ___ (slip op., at 23).

That is not to say the right to marry is less meaningful for those who do not or cannot have children. [...]

Fourth and finally, this Court's cases and the Nation's traditions make clear that marriage is a keystone of our social order.

[A]spects 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. [...] Valid marriage under state law is also a significant status for over a thousand provisions of federal law.

[...] This harm results in more than just material burdens. [...] It demeans gays and lesbians for the State to lock them out of a central institution of the Nation's society. [...]

Objecting that this does not reflect an appropriate framing of the issue, the respondents refer to *Washington v. Glucksberg*, 521 U. S. 702, 721 (1997) [.] *Glucksberg* did insist that liberty under the Due Process Clause must be defined in a most circumscribed manner, with central reference to specific historical practices. Yet while that approach may have been appropriate for the asserted right there involved (physician-assisted suicide), it is inconsistent with the approach this Court has used in discussing other fundamental rights, including marriage and intimacy. *Loving* did not ask about a "right to interracial marriage"; *Turner* did not ask about a "right of inmates to marry"; and *Zablocki* did not ask about a "right of fathers with unpaid child support duties to marry." [...]

That principle applies here. If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied. This Court has rejected that approach, both with respect to the right to marry and the rights of gays and lesbians. See *Loving* 388 U. S., at 12; *Lawrence*, 539 U. S., at 566 567. [...]

The right of same-sex couples to marry that is part of the liberty promised by the Fourteenth Amendment is derived, too, from that Amendment's guarantee of the equal protection of the laws. The Due Process Clause and the Equal Protection Clause are connected in a profound way, though they set forth independent principles. Rights implicit in liberty and rights secured by equal protection may rest on different precepts and are not always coextensive, yet in some instances each may be instructive as to the meaning and reach of the other. In any particular case one Clause may be thought to capture the essence of the right in a more accurate and comprehensive way, even as the two Clauses may converge in the identification and definition of the right. [...]

The Court's cases touching upon the right to marry reflect this dynamic. In *Loving* the Court invalidated a prohibition on interracial marriage under both the Equal Protection Clause and the Due Process Clause. [...] It stated: "There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause." 388 U. S., at 12. With this link to equal protection the Court proceeded to hold the prohibition offended central precepts of liberty: "To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law." [...]

Indeed, in interpreting the Equal Protection 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. [...] Notwithstanding the gradual erosion of the doctrine of coverture, see *supra*, at 6, invidious sex-based classifications in marriage remained common through the mid-20th century. See App. to Brief for Appellant in *Reed v. Reed*, O. T. 1971, No. 70 4, pp. 69 88 (an extensive reference to laws extant as of 1971 treating women as unequal to men in marriage). These classifications denied the equal dignity of men and women. [...]

It is now clear that the challenged laws burden the liberty of same-sex couples, and it must be further acknowledged that they abridge central precepts of equality. Here the marriage laws enforced by the respondents are in essence unequal: same-sex couples are denied all the benefits afforded to opposite-sex couples and are barred from exercising a fundamental right. [T]he Equal Protection Clause, like the Due Process Clause, prohibits this unjustified infringement of the fundamental right to marry. [...]

Baker v. Nelson must be and now is overruled, and the State laws challenged by Petitioners in these cases are now held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.

IV

There may be an initial inclination in these cases to proceed with caution to await further legislation, litigation, and debate. The respondents warn there has been insufficient democratic discourse before deciding an issue so basic as the definition of marriage. [...]

Yet there has been far more deliberation than this argument acknowledges. [...]

The dynamic of our constitutional system is that individuals need not await legislative action before asserting a fundamental right. [...] This is why "fundamental rights may not be submitted to a vote; they depend on the outcome of no elections." [...]

This is not the first time the Court has been asked to adopt a cautious approach to recognizing and protecting fundamental rights [see *Bowers*]. [...] Although *Bowers* was eventually repudiated in *Lawrence*, men and women were harmed in the interim[.] Dignitary wounds cannot always be healed with the stroke of a pen.

A ruling against same-sex couples would have the same effect and, like *Bowers*, would be unjustified under the Fourteenth Amendment. [...]

The respondents also argue allowing same-sex couples to wed will harm marriage as an institution by leading to fewer opposite-sex marriages. [...] That argument, however, rests on a counterintuitive view of opposite-sex couple's decisionmaking processes regarding marriage and parenthood. Decisions about whether to marry and raise children are based on many personal, romantic, and practical considerations; and it is unrealistic to conclude that an opposite-sex couple would choose not to marry simply because same-sex couples may do so. See *Kitchen v. Herbert*, 755 F. 3d 1193, 1223. [...] The respondents have not shown a foundation for the conclusion that allowing same-sex marriage will cause the harmful outcomes they describe. [...]

Finally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths[.] The Constitution, however, does not permit the State to bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex.

V

These cases also present the question whether the Constitution requires States to recognize same-sex marriages validly performed out of State. [...]

As counsel for the respondents acknowledged at argument, if States are required by the Constitution to issue marriage licenses to same-sex couples, the justifications for refusing to recognize those marriages performed elsewhere are undermined. [Therefore, the court holds] 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. [...]

*** * ***

In forming a marital union, two people become something greater than once they were. [...] 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. [...] They ask for equal dignity in the eyes of the law. The Constitution grants them that right. [...]

It is so ordered.