

Same-Sex Marriage Case United States Supreme Court

14-574 BOURKE V. BESHEAR, CONSOLIDATED WITH 14-556 (OBERGEFELL V. HODGES), 14-562 (TANCO V. HASLAM) AND 14-571 (DEBOER V. SNYDER)

Four same-sex couples from Tennessee, Kentucky, Michigan and Ohio sued to overturn laws in those states that ban issuing marriage licenses to same-sex couples and/or ban the recognition of marriages of same-sex couples who were legally married in another State. The Supreme Court will decide the following two questions:

- 1) DOES THE FOURTEENTH AMENDMENT REQUIRE A STATE TO LICENSE A MARRIAGE BETWEEN TWO PEOPLE OF THE SAME SEX?

- 2) DOES THE FOURTEENTH AMENDMENT REQUIRE A STATE TO RECOGNIZE A MARRIAGE BETWEEN TWO PEOPLE OF THE SAME SEX WHEN THEIR MARRIAGE WAS LAWFULLY LICENSED AND PERFORMED OUT-OFSTATE?

The case is essentially about equal protection. The **Fourteenth Amendment of the United State Constitution reads, in relevant part:**

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. ***No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States***; nor shall any State deprive any person of life, liberty, or property, without due process of law; ***nor deny to any person within its jurisdiction the equal protection of the laws.***

The same-sex couples' argument is that the Courts have long recognized marriage to be a "fundamental right," that these kinds of rights are attach to citizens of the United States regardless of what State they live in, and the States' refusal to license or recognize marriages between same-sex couples violates the equal protection clause of the Fourteenth Amendment. The refusal to license or recognize marriages between same-sex couples impinges upon the liberty of such couples and treats them unequally under the law.

The States' argument is the states issue marriage licenses, not the federal government, the definition of marriage is a state decision. The states that ban same-sex marriage define marriage as between one man and one woman. The citizens of the four States banning same-sex marriage voted for the laws that banned same-sex marriages. Since the definition of marriage should be up to each individual State, the 14th Amendment does not give the federal government the power to "Federalize" marriage (that is to turn a State question into a Federal question) and overturn the democratically passed laws by the citizens of the States that have voted to ban same-sex marriage. Because the federal government does not determine marriage, same-sex marriage is not an equal protection question under the U.S. Constitution.