LEGALIZATION OF GAY MARRIAGE—UNITED STATES SUPREME COURT DECLARES IT UNCONSTITUTIONAL FOR STATES TO DENY SAME-SEX COUPLES THE RIGHT TO MARRY: IMMEDIATE IMPACT OF GAY MARRIAGE IN NORTH DAKOTA

Obergefell v. Hodges, 135 S. Ct. 2584 (2015)

ABSTRACT

In *Obergefell v. Hodges,* the United States Supreme Court held the Equal Protection Clause of the Fourteenth Amendment affords same-sex couples the fundamental right to marry. Additionally, the Court held because the right to marry is fundamental, a State cannot refuse to recognize a lawful same-sex marriage performed in another state. The Court illustrated four main reasons marriage is fundamental under the Constitution. First, the Court found the right of personal choice regarding marriage is an integral part of a person's individual autonomy. Second, the right to marry is fundamental because it supports a two-person union unlike any other. Third, the right to marry is a safeguard for families and their children, which connects it to similar fundamental rights. Last, an individual's right to marry is a keystone of the nation's social order. *Obergefell* expands the rights of same-sex couples and allows them to obtain the rights and privileges incorporated in marriage. However, it may create potential issues with how North Dakota government officials execute their duties because of their personal religious standing.

I. FACTS

Michigan, Kentucky, Ohio, and Tennessee laws defined marriage as a union between one man and one woman.[1] The petitioners, fourteen same-sex couples and an additional two men whose same-sex partners were deceased, challenged those states' laws as unconstitutional.[2] The respondents were "the state officials responsible for enforcing the laws in question."[3] "The petitioners claim[ed] the respondents violate[d] the Fourteenth Amendment by denying them the right to marry" and refusing to recognize their lawful marriages performed out of state.[4]

The respondents argued the institution of marriage should remain the same.[5] To them, if same-sex couples could obtain the lawful status of

1. Obergefell v. Hodges, 135 S. Ct. 2584, 2593 (2015).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.* at 2594.

marriage, it would demean the institution itself.[6] In the respondents' view, marriage, by its nature, is an opposite-gender union between man and woman.[7] On the contrary, the petitioners' concern was with the importance of marriage within society.[8] They acknowledged the historical purpose and nature of marriage.[9] However, their intent was not to degrade the institution, but rather to participate in it and retain its privileges for their own families.[10]

Initially, the petitioners filed these suits in their home states in the respective United States district court.[11] Each district court ruled in favor of the petitioners.[12] Respondents appealed these adverse decisions to the United States Court of Appeals for the Sixth Circuit, which reversed the district court decisions.[13] The court of appeals held States have "no constitutional obligation to license same-sex marriages" or to recognize out-of-state same-sex marriages.[14] As a result, the petitioners sought certiorari and the United States Supreme Court granted review.[15]

II. LEGAL BACKGROUND

Human history unveils the importance of marriage in maintaining order in society.[16] The union of two people promises nobility and dignity and offers a unique fulfillment to the parties involved.[17] The act of marriage allows two people to find a particular type of life not feasible by themselves.[18] Historically, marriage in the United States has been based on a union between two people of opposite sex.[19] However, since the mid-20th century, same-sex marriage in the United States has grown to become a highly debated issue.[20]

Until the mid-20th century, most Western nations' governments condemned same-sex intimacy as immoral and criminal.[21] Even after the

6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.* at 2593.
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.* at 2594.
17. *Id*
18. *Id.*
19. *Id.* at 2595.
20. *Id.* at 2596.
21. *Id.*

awareness occurring after World War II, same-sex intimacy remained a crime in many states.[22] Additionally, during this time, gays and lesbians could not obtain government jobs or join the military.[23] In fact, when the first Diagnostic and Statistical Manual of Mental Disorders was published in 1952, the American Psychiatric Association classified homosexuality as a mental disorder.[24]

However, following significant cultural and political developments in the late 20th century, same-sex couples began living more open and public lives.[25] This led both governmental and private sectors to shift their attitudes towards a greater tolerance of homosexuals.[26] Therefore, questions about the rights of same-sex couples promptly reached the courts.[27]

In 1986, the United States Supreme Court first considered the legal status of homosexuals.[28] In *Bowers*, the Court upheld a Georgia law, which criminalized homosexual acts.[29] About a decade later, the Court nullified an amendment to Colorado's Constitution, which essentially foreclosed any state governmental entity from protecting against discrimination based on sexual orientation.[30] Further, in 2003, the Court overturned *Bowers*, striking down "laws making same-sex intimacy a crime" because they "demea[n] the lives of homosexual persons."[31] As a result, the legal question of same-sex marriage grew out of this discussion.[32]

In 1996, Congress passed the Defense of Marriage Act, which defined marriage as an exclusive union between one man and one woman.[33] However, individual states began to reach different conclusions.[34] For example, in 2003, the Supreme Judicial Court of Massachusetts ruled that its state constitution "guaranteed same-sex couples the right to marry."[35] Further, in 2013, the United States Supreme Court invalidated Congress's

22. *Id.*
23. *Id.*
24. *Id.*
25. *Id*
26. *Id.*
27. *Id.*
28. *Id.* (citing Bowers v. Hardwick, 478 U.S. 186 (1986)).
29. *Id.*
30. Romer v. Evans, 517 U.S. 620, 635 (1996).
31. Lawrence v. Texas, 539 U.S. 558, 575 (2003).
32. *Obergefell*, 135 S. Ct. at 2596.
33. *Id.* at 2597.
34. *Id.*
35. Goodridge v. Dep't of Pub. Health, 440 Mass. 309, 344 (2003).

Defense of Marriage Act in *Windsor*.[36] Since *Windsor*, the United States Courts of Appeals have written several cases concerning same-sex marriage.[37] These cases have held excluding same-sex couples from lawful marriage violates the Federal Constitution.[38] In addition, the states are currently divided on the issue of same-sex marriage.[39] Therefore, the United States Supreme Court granted the petitioners' writ for certiorari.

III. ANALYSIS

In *Obergefell*, the United States Supreme Court, with Justice Kennedy writing for the majority,[40] ruled the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution affords same-sex couples the same rights as opposite-sex couples with regard to marriage.[41] Since the founding of the United States, the institution of marriage and the law have been part of an ever-changing American society.[42] Initially, marriage began as an arrangement by the couple's parents, which stemmed out of concerns based on politics, religion, and finances."[43] As time went on, though, women have obtained many rights within marriage.[44] This example illustrated to the Court that American society is in a constant state of change.[45] The Court noted that the constant change in the institution of marriage has strengthened it in its totality.[46] Accordingly, the Court held the Constitution affords same-sex couples the fundamental right to marry based on four principles derived from precedent.[47]

A. THE MAJORITY OPINION

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."[48] The majority in *Obergefell* held that under the Fourteenth

36. United States v. Windsor, 133 S. Ct. 2675, 2595-96 (2013) (holding the Defense of Marriage Act degrades same-sex couples and their families who seek the multiple benefits of marriage).
37. *Obergefell*, 135 S. Ct. at 2597.
38. *Id.*
39. *Id.*
40. *Id.* at 2593.
41. *Id.* at 2604-05.
42. *Id.* at 2596.
43. *Id.* at 2595.
44. *Id.*
45. *Id.*
46. *Id.* at 2596.
47. *Id.* at 2599.
48. U.S. CONST. amend. XIV.

Amendment same-sex couples possess a fundamental right to marry due to four reasons.[49]

1. *Individual Autonomy*

First, the Court held there is a connection between an individual's personal choice regarding marriage and his or her concept of individual autonomy.[50] Additionally, the Court noted *Loving* invalidated interracial marriage bans under the Due Process Clause because of this connection between marriage and individual liberty.[51] According to the Court, "[l]ike 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."[52] To the majority, there is nobility in the bond between two individuals who, in their own autonomy, seek to have a family and be a part of society, regardless of whether it is two men, two women, or one man and one woman.[53]

2. *Two-Person Union*

Second, the Court held "that the right to marry is fundamental because it supports a two-person union unlike any other in its importance" to the people in the union.[54] This principle is illustrated in *Griswold*, where the Court held that a married couples' right to use contraception is fundamental.[55] Additionally, in *Turner*, the Court held that the denial of the right to marry to prisoners was unconstitutional because even individuals in prison, who seek committed relationships, fulfilled the basic principles as to why marriage is a fundamental right.[56] These principles include emotional support, public commitment, spiritual guidance, and government benefits.[57]

Furthermore, the Court in *Lawrence* held "same-sex couples have the same right as opposite-sex couples to enjoy intimate association."[58] More

49. *Obergefell*, 135 S. Ct. at 2607-08.

50. *Id.* at 2589.

51. *Id.* (citing Loving v. Virginia, 388 U.S. 1, 12 (1967)). In *Loving*, the Court held that miscegenation statutes adopted by Virginia to prevent marriages between persons solely on the basis of race violated the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment. 388 U.S. at 2.

52. *Id.* at 2599 (quoting Lawrence v. Texas, 539 U.S. 558, 574 (2003)).

53. *Id.*

54. *Id.*

55. *Id.* (citing Griswold v. Connecticut, 381 U.S. 479, 484-86 (1965)).

56. *Id.* (citing Turner v. Safley, 482 U.S. 78, 95-96 (1987)).

57. *Id.* at 2599-601.

58. *Id.* at 2600 (citing Lawrence v. Texas, 539 U.S. 558, 567 (2003)).

specifically, the Court in *Lawrence* "invalidated laws [which] made same-sex intimacy a criminal act."[59] To the Court, because *Lawrence* extended this dimension of freedom, it only makes sense that the freedom does not stop there.[60] Therefore, this example illustrates the Court's willingness to expand the definition of liberty with respect to marriage because of its importance to the individuals involved.

3. *Family Fundamental Rights*

Third, the right to marry is fundamental because it provides a safeguard for children and their families, which is related to similar rights regarding childrearing, procreation, and education.[61] Legal recognition of a marriage allows children to understand the closeness and importance of their own family.[62] Additionally, marriage is in the best interests of children because it allows for permanency and stability.[63]

Barring same-sex couples from marriage conflicts with the chief principal promoted by the right to marry.[64] Children are stigmatized by believing their families are someway lesser if their same-sex parents are prohibited from marriage.[65] Also, children suffer material costs of being raised by unmarried parents, which in turn demotes their way of life.[66] Therefore, the Court noted the marriage laws at issue in *Obergefell* harm and potentially demean the children of same-sex couples.[67]

4. *Social Order*

Last, the fundamental right to "marriage is a keystone of the [United States'] social order."[68] For example, in *Maynard*, the Court explained that marriage is the foundation of society, which without it, "there would be neither civilization nor progress."[69] As a result, the Court noted that

59. *Id.* (citing *Lawrence*, 539 U.S. at 578).
60. *Id.* at 2600.
61. *Id.*
62. *Id.* (citing United States v. Windsor, 133 S. Ct. 2675, 2694 (2013)).
63. *Id.* (citing Brief for Scholars of the Constitutional Rights of Children as Amici Curiae Supporting Petitioners at 22, Obergefell v. Hodges, 135 S. Ct. 2584 (2015) (No. 14-556, 14-562, 14-571, 14-574), 2015 WL 1088972).
64. *Id.* at 6-7.
65. *Id.* at 29-31.
66. *Id.*
67. *Obergefell*, 135 S. Ct. at 2600.
68. *Id.*
69. Maynard v. Hill, 125 U.S. 190, 211. (1888).

marriage has changed throughout time, "superseding rules related to parental consent, gender, and race once thought by many as essential."[70]

When same-sex couples are denied the benefits, recognition, and stability of marriage, the harm results in more than just material problems.[71] Denying them the right to marry leads couples and their families to believe they are somewhat inadequate and unstable.[72] In addition, as States make marriage more significant by attaching benefits to it, it is much more important to allow homosexual couples to partake in its practices.[73]

5. *Majority's Conclusion*

Accordingly, the four principles listed by the Court lead to the decision that the right to marry is fundamental and that under the Due Process and Equal Protection Clauses of the Fourteenth Amendment two people of the same sex may exercise their right to marry.[74] In concluding its analysis, the Court noted the petitioners' wish to respect the institution of marriage and to find its fulfillment for themselves.[75] Additionally, the Court indicated the petitioners did not seek to disrespect marriage.[76] Therefore, the Court held same-sex couples possess and may exercise their fundamental right to marry, and the States cannot refuse to recognize a lawful same-sex marriage performed in another state on the ground of its same-sex character.[77]

B. THE DISSENTING OPINIONS

Four Justices, including Chief Justice Roberts,[78] Justice Scalia,[79] Justice Thomas,[80] and Justice Alito,[81] wrote dissents in *Obergefell*. Although they all disagree with the majority for different reasons, their common denominator rests in the notion that the determination of the definition of marriage rests with the individual citizens of the states, and not the nine justices of the Supreme Court of the United States.

70. *Obergefell*, 135 S. Ct. at 2601.
71. *Id.*
72. *Id.*
73. *Id.*
74. *Id.* at 2604-05.
75. *Id.* at 2608.
76. *Id.*
77. *Id.*
78. *See id.* at 2611 (Roberts, C.J., dissenting).
79. *See id.* at 2626 (Scalia, J., dissenting).
80. *See id.* at 2631 (Thomas, J., dissenting).
81. *See* id. at 2640 (Alito, J., dissenting).

1. *Chief Justice Roberts's Dissent*

In the first *Obergefell* dissent, Chief Justice Roberts, in which Justices Scalia and Thomas joined, wrote about his concerns with the Court overstepping the legislative process.[82] According to Roberts, "But this Court is not a legislature. Whether same-sex marriage is a good idea should be of no concern to us."[83] Further, Roberts noted that multiple States and the District of Columbia have reviewed and amended their laws to allow same-sex marriage.[84] In his defense, Roberts recognized the compelling pull of same-sex policy arguments, however, he rejected the legal arguments in its favor.[85] Put simply, because the Constitution does not support any one theory of marriage, Roberts asserted that the people of each state are required to determine its contours, not the Court.[86]

Roberts pointed to Justice Holmes's dissent in 1905 in *Lochner v. New York*, where the Court stated the Constitution "is made for people of fundamentally differing views."[87] In *Lochner*, the Court invalidated a law setting maximum hours for bakery employees based on its view that there was "no reasonable foundation for holding it to be necessary or appropriate as a health law."[88] Roberts noted that the *Lochner* dissent opposed the majority on the basis that the law, which the majority struck down, could have been viewed as the State's reasonable response to its concern about the bakery employees' health.[89] Specifically, the dissent in *Lochner*, which Roberts agreed with, asserted that an individual Justice's personal preferences towards a case should not influence the final adjudication of a constitutional issue.[90] Therefore, as the case was clear to Justice Holmes in 1905, it was equally as clear to Roberts. To the Chief Justice, the majority abandoned its position as an adjudicator, and answered a question before it, "based not on neutral principles of constitutional law," but on its individual comprehension of what freedom is and what it will become in the future.[91]

Further, Roberts acknowledged that marriage has changed over time through Supreme Court cases.[92] However, he highlighted the fact that

82. *Id.* at 2611 (Roberts, C.J., dissenting).
83. *Id.*
84. *Id.*
85. *Id.*
86. *See id.*
87. *Id.* at 2612 (quoting *Lochner v.* New York, 198 U.S. 45, 76 (1905) (Holmes, J., dissenting)).
88. *Id.* at 2617 (quoting *Lochner,* 198 U.S. at 58).
89. *Id.* (citing *Lochner*, 198 U.S. at 72).
90. *See id.* (citing *Lochner*, 198 U.S. at 75-76).
91. *Id.* at 2612.
92. *Id.* at 2614.

although the Court has molded aspects of marriage over time, it has not altered its central essence as the union between one man and one woman.[93] Additionally, Roberts stated, "Nowhere is the majority's extravagant conception of judicial supremacy more evident than in its description—and dismissal—of the public debate regarding same-sex marriage."[94] Therefore, to Roberts the majority incorrectly enacted its own vision of marriage.[95] Furthermore, Roberts asserted that the democratic process is the appropriate method for change in this case, rather than the courts.[96]

2. *Justice Scalia's Dissent*

In the second *Obergefell* dissent, Justice Scalia, in which Justice Thomas joined, wrote about his concern that the Court's decision is a "threat to American democracy."[97] Before the majority's ruling, Scalia viewed the "public debate over [gay] marriage as American democracy at its best."[98] He noted "the electorates of 11 States . . . chose to expand their [outdated] definition of marriage."[99] In sum, Scalia utilized a theory of constitutional interpretation called originalism, with which he looks to the framer's original intent for constitutional questions and leaves the method for change to formal constitutional amendments.[100]

Scalia utilized originalism when he looked to the history of the Constitution and the time period in which it was created.[101] More specifically, he looked to the Fourteenth Amendment and its ratification in 1868.[102] During this time, "every State limited marriage to one man and one woman."[103] To Scalia, this resolved the definition of marriage and whether the court possessed the power to extend it to same-sex couples.[104] Additionally, because it is not expressly endorsed or prohibited by the text of the Fourteenth Amendment, the Court possessed no grounds to strike down state laws that defined marriage as only between opposite-sex couples.[105] To Scalia, the majority ruled incorrectly and demolished a

93. *Id.* at 2614-15 ("The majority may be right that the 'history of marriage is one of both continuity and change,' but the core meaning of marriage has endured.")
94. *Id.* at 2624.
95. *Id.* at 2625.
96. *Id.*
97. *Id.* at 2626 (Scalia, J., dissenting).
98. *Id.* at 2627.
99. *Id.*
100. *Originalism*, BLACK'S LAW DICTIONARY (10th ed. 2014).
101. *Id.*
102. *Id.* at 2628.
103. *Id.*
104. *Id.*
105. *Id.*

heated public debate over same-sex marriage.[106] Therefore, Scalia would have ruled in favor of the state statutes, which defined marriage as between opposite-sex partners only.[107] Moreover, Scalia would have allowed the democratic process to continue in order to allow further public understanding of the issue.[108]

3. *Justice Thomas's Dissent*

In the third *Obergefell* dissent, Justice Thomas, in which Justice Scalia joined, asserted that the Constitution's definition of liberty has always been implied as "freedom from government action, not entitlement to government benefits."[109] Moreover, according to Thomas, the majority incorrectly applied the Constitution to protect the latter definition of liberty, which the Framers would not have acknowledged.[110] As a result, because Thomas believed that the majority's decision ran afoul of the Constitution and Declaration of Independence, and upset the country's relationship between the individual and State, he disagreed with the decision.[111]

Specifically, Thomas cited *McDonald v. Chicago* to illustrate his concern with applying the Due Process Clause synonymously with substantive rights.[112] In *McDonald*, the Court determined "that the right to keep and bear arms applied to the States through the Fourteenth Amendment's Due Process Clause because it is 'fundamental' to the American 'scheme of ordered liberty.'"[113] Further, in *McDonald*, Thomas explained that although he agreed with that explanation of the fundamental right, he disagreed that the right should be administered through the Due Process Clause.[114] To Thomas, it was inappropriate to enforce a right "against the States through a Clause that speaks only to 'process.'"[115] Similarly, in *Obergefell*, Thomas argued that the majority incorrectly applied the Due Process Clause in place of a more appropriate and democratic solution.[116]

106. *Id.*
107. *See id.*
108. *Id.*
109. *Id.* at 2631 (Thomas, J., dissenting).
110. *Id.*
111. *Id.*
112. *Id.* (citing *McDonald v. Chicago*, 561 U.S. 742, 811-12 (2010).
113. *McDonald*, 561 U.S. at 767 (Thomas, J., concurring).
114. *Id.*
115. *Id.*
116. *Obergefell*, 135 S. Ct. at 2631 ("By straying from the text of the Constitution, substantive due process exalts judges at the expense of the People from whom they derive their authority.").

Additionally, Thomas noted that to the majority, the state laws in question divest the petitioners of their "liberty."[117] However, according to Thomas, the word "liberty" in the Due Process Clause "most likely refers to "the power of locomotion, of changing situation, or removing one's person to whatsoever place one's own inclination may direct; without imprisonment or restraint, unless by due course of law."[118] Therefore, with this definition in mind, Thomas reasoned the word "liberty" in the Due Process Clause does not extend to the "type of rights claimed by the majority."[119] In conclusion, Thomas stressed the distinction that both the Constitution and Declaration of Independence established that an individual's liberty should be shielded from the State, not provided by it.[120]

4. *Justice Alito's Dissent*

In the last *Obergefell* dissent, Justice Alito, in which Justices Scalia and Thomas joined, expressed his concerns with the majority's decision and whether the Constitution adequately answers the question regarding same-sex marriage.[121] According to Alito, the Constitution leaves that question to be decided by the people of each state.[122] In *Washington v. Glucksberg*,[123] the Court has held liberty under the Due Process Clause only protects those rights that are "[o]bjectively, deeply rooted in this Nation's history and tradition."[124] Deeply rooted rights are rights that are implicit to the concept to liberty and which "[n]either liberty nor justice would exist if they were sacrificed."[125] To Alito, the majority ignored the lack of "deep roots" for same-sex marriage and improperly claimed "the authority to confer constitutional protection upon [a] right simply because they believe[d] that it [was] fundamental."[126] In conclusion, Alito supported his claim by stating that the Constitution says nothing about marriage. Therefore, according to him, the States have the right to define marriage how they see fit.[127]

117. *Id.* at 2632.
118. *Id.* (quoting 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 130 (1769)).
119. *Id.* at 2634.
120. *Id.* 2639-40.
121. *Id.* at 2640 (Alito, J., dissenting).
122. *Id.*
123. 521 U.S. 702 (1997).
124. *Id.* at 721 (citing Moore v. East Cleveland, 431 U.S. 494, 503 (1977)).
125. *Id.* (citing Palko v. Connecticut, 302 U.S. 319, 325 (1937)).
126. *Obergefell*, 135 S. Ct. at 2640-41.
127. *Id.*

IV. IMPACT

Although a relatively new case, *Obergefell*'s implications became known shortly after the Court wrote the opinion. It essentially forces all States to issue a marriage license at the request of a same-sex couple. As anticipated, the decision created issues because of its substantial extension of the definition of marriage. Specifically, in North Dakota, the requirement that state and local governments issue marriage licenses to same-sex couples could conflict with some people's religious beliefs.

Up until the Court decided *Obergefell*, North Dakota defined marriage as between one man and one woman. North Dakota Century Code section 14-03-01 states:

> Marriage is a personal relation arising out of a civil contract between one man and one woman to which the consent of the parties is essential. The marriage relation may be entered into, maintained, annulled, or dissolved only as provided by law. A spouse refers only to a person of the opposite sex who is a husband or wife.[128]

In addition, shortly after the Court ruled on *Obergefell*, Governor Jack Dalrymple publicly stated, "The U.S. Supreme Court has ruled that same-sex marriage is legal throughout the nation and we will abide by this federal mandate."[129] However, some North Dakotans found the decision to conflict with their religious beliefs. For example, recorders in two North Dakota counties claim issuing marriage licenses to same-sex couples substantially interferes with their ability to do their jobs.[130] The recorders relied on religious objections when refusing to issue same-sex marriage licenses.[131] However, both recorders found solutions to the problem and requested the board of commissioners appoint a substitute official in instances of applications for marriage licenses for same-sex marriages.[132] Regardless of these solutions, *Obergefell*'s implications immediately affected the people

128. N.D. CENT. CODE § 14-03-01 (2015).

129. John Hageman, *Gov. Dalrymple Says North Dakota Will Abide Same-Sex Marriage Mandate*, INFORUM (June 26, 2015), http://www.inforum.com/news/3774663-gov-dalrymple-says-north-dakota-will-abide-same-sex-marriage-mandate.

130. Andrew Warnette, *ND County Recorder Refuses to Issue Same-Sex Marriage Licenses*, INFORUM (July 7, 2015), http://www.inforum.com/news/3781560-nd-county-recorder-refuses-issue-same-sex-marriage-licenses; Neil Carlson, *County Official in Grafton Says No To Same Sex Marriage Licenses*, VALLEY NEWS LIVE (July 14, 2015), *http://www.valleynewslive.com/home/headlines/County-Official-In-Grafton-Says-No-To-Same-Sex-Marriage-Licenses-315012321.html*.

131. Warnette, *supra* note 130; Carlson, *supra* note 130.

132. Warnette, *supra* note 130; Carlson, *supra* note 130.

of North Dakota.[133] Moreover, only time will tell how other North Dakota counties will handle issues similar to the ones in Walsh and Stark County.

V. CONCLUSION

In *Obergefell,* the United States Supreme Court held the Equal Protection Clause of the Fourteenth Amendment affords same-sex couples the fundamental right to marry. Additionally, the Court held because the right to marry is fundamental, a State cannot refuse to recognize a lawful same-sex marriage performed in another state. *Obergefell* expands the rights of same-sex couples and allows them to obtain the rights and privileges incorporated in marriage. However, it has created potential issues with how North Dakota government officials execute their duties because of their personal religious standing. To that end, North Dakota will not know the full effects of *Obergefell* until the legal system has had adequate time and exposure to the new law.

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133. Warnette, *supra* note 130; Carlson, *supra* note 130.

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